

MINUTES
SENATE FINANCE COMMITTEE
April 22, 2004
9:03 AM

TAPES

SFC-04 # 90, Side A
SFC 04 # 90, Side B
SFC 04 # 91, Side A

CALL TO ORDER

Co-Chair Gary Wilken convened the meeting at approximately 9:03 AM.

PRESENT

Senator Lyda Green, Co-Chair
Senator Gary Wilken, Co-Chair
Senator Con Bunde, Vice Chair
Senator Fred Dyson
Senator Lyman Hoffman
Senator Donny Olson
Senator Ben Stevens

Also Attending: REPRESENTATIVE WEYHRAUCH; DOUG WOOLVIER introduced his daughter MOLLY WOOLVIER, who was attending the meeting as part of Take Your Child to Work Day; RICHARD, SCHMITZ, Staff to Senator John Cowdery; WENDY LINDSKOOG, Director of External Affairs, Alaska Railroad Corporation, Department of Community and Economic Development; ERNESTA BALLARD, Commissioner, Department of Environmental Conservation; JON TILLINGHAST, Attorney, Sealaska Corporation; LINDA HALL, Director, Division of Insurance, Department of Community and Economic Development; PAUL LISANKIE, Director, Division of Workers' Compensation, Department of Labor and Workforce Development;

Attending via Teleconference: From an offnet location: JEANNETTE JAMES, former Alaska State legislator; PHILLIS JOHNSON, Attorney, Alaska Railroad Corporation; ADRIAN LECORNU, Administrator, Hydaburg Cooperative Association; CHUCK LUNDEEN, General Counsel, Liberty Northwest Insurance; From Anchorage: LORI WING, President, Alaska Independent Insurance Agents and Brokers; KEVIN DAUGHERTY, Alaska Labor and Management Ad Hoc Committee; From Kenai: DENNIS MURRAY, Administrator, Heritage Place Nursing Home, and former president, Alaska State Hospital and Nursing Home Association; PAUL

BRENNER, Vice President, Quality Management, Central Peninsula General Hospital

SUMMARY INFORMATION

HB 213-PROVISIONAL DRIVER'S LICENSE

The Committee heard from the sponsor. Two amendments were considered and one was adopted. The bill moved from Committee.

SB 31-RAILROAD UTILITY CORRIDOR TO & IN CANADA

The Committee heard from the sponsor, the Alaska Railroad Corporation and a former legislator. The bill was reported from Committee.

SB 378-POLLUTION DISCHARGE & WASTE TRMT/DISPOSAL

The Committee heard from the Department of Environmental Conservation and Native Corporations. The bill was held in Committee.

SB 311-INSURANCE & WORKERS' COMPENSATION SYSTEM

The Committee heard from the Department of Community and Economic Development, the Department of Labor and Workforce Development, industry representatives, the Alaska Labor and Management Ad Hoc Committee and employers. The bill was held in Committee.

#HB213

CS FOR HOUSE BILL NO. 213(FIN)

"An Act relating to a provisional driver's license and to issuance of a driver's license; and providing for an effective date."

This was the second hearing for this bill in the Senate Finance Committee.

Co-Chair Wilken reminded that this bill, "implements a graduated driver's license system."

REPRESENTATIVE WEYHRAUCH, Sponsor, noted he was available to answer any questions.

Amendment #1: This amendment deletes "for the first six months after receiving a provisional driver's license" from AS

28.15.057(b)(1) amended in Section 3 on page 2 line 20. The amended language reads as follows.

(1) operate a motor vehicle that is carrying any passengers

Co-Chair Wilken moved for adoption and objected for an explanation.

Representative Weyhrauch stated this is a technical amendment in that the six-month provisional driver's license is already addressed in Section 2.

Co-Chair Wilken removed his objection and the amendment was ADOPTED without objection.

Amendment #2: This amendment inserts a new bill section on page 1, following line 3 to read as follows.

Section 1. AS 28.05.095(e) is amended to read:

(e) Notwithstanding any other provision of law, a peace officer may not stop or detain a motor vehicle to determine compliance with (a) of this section, or issue a citation for a violation of (a) of this section, unless

(1) the driver has a provisional license; or

(2) the peace officer has probable cause to stop or detain the motor vehicle other than for a violation of (a) of this section.

New Text Underlined [DELETED TEXT BRACKETED]

Senator Bunde moved for adoption.

Co-Chair Wilken objected for discussion purposes.

Senator Bunde assured this amendment is not intended to make "life difficult" for those with provisional driver's licenses, but rather to stress the importance of wearing seat belts and to creating habits for rest of the driver's life.

Representative Weyhrauch did not object to the amendment.

Senator Dyson noted that a peace officer could not stop a vehicle for this offense unless the driver has provisional driver's license.

Senator Bunde replied that the peace officer could recognize the younger age of the driver.

Senator Dyson surmised this would encourage profiling.

Senator Bunde remarked that if successful in increasing seatbelt use, such profiling would be acceptable.

Senator Dyson expressed, "Pragmatists scare me."

Senator Olson predicted that the efforts required to enforce this law could encumber peace officers, in that it would divert energy from higher priorities.

Co-Chair Green asked if this provision would apply to all licensed drivers in the State.

Senator Bunde replied that any driver in this age group could be affected. He pointed out that State law requires seat belt use and the only "nuance" is that for older drivers, seat belt violations could only be issued as a secondary offense.

Co-Chair Green referenced other pending legislation would allow seat belt use violations to be issued as a primary offense to all drivers.

Senator Bunde affirmed, but noted that this other legislation has yet to pass the House of Representatives.

Co-Chair Green asked if that legislation passes whether this provision is necessary.

Senator Bunde answered that it would not.

Senator Olson posed a situation of an older vehicle without installed seatbelts, and asked what assurance drivers of those vehicles have that they would not be issued citations.

Senator Bunde remarked that Alaska law requires seatbelt use.

Senator Olson qualified that vehicles without manufacturer-installed seatbelts are exempt.

Senator Bunde informed that 30 years ago he was able to install a seatbelt in a vehicle and he surmised this could still be done.

Senator Olson contended that installation standards are more stringent today than 30 years ago.

Co-Chair Wilken removed his objection to the adoption of the amendment.

Co-Chair Green objected to the adoption of the amendment.

Senator Hoffman asked about issuing citations to a driver seven months after receiving a driver's license, essentially one-month after completion of the provisional driver's license term.

Senator Bunde replied that no primary citation would be issued.

Senator B. Stevens requested the sponsor's opinion on the amendment.

Representative Weyhrauch reiterated that he would not object to the amendment. He understood from conversations with Alaska State Troopers that they stop teen drivers without hesitation upon observation of driving violations. He surmised that witnessing a young driver with several young passengers in the vehicle would be probable cause for a peace officer to stop the vehicle and check whether the driver has a provisional driver's license. He commented that helmet use is required of teen drivers of motorcycles, while not required of adult drivers, and therefore the distinction has been established for higher safety requirements based on age.

Co-Chair Wilken understood sponsor did not oppose the amendment, but would prefer that a Senate committee substitute be uncontentious and receive concurrence in the House of Representatives.

Representative Weyhrauch replied he is not concerned that adoption of this amendment would hamper the bill's ability to pass the House of Representatives. He explained that an amendment to allow seatbelt violations as a primary offense for drivers of all ages would present significant challenges with passage of this legislation.

Co-Chair Green asked for clarification that the amendment pertained to violation of seatbelt requirements.

Senator Bunde reported that it was discussed whether to include the "entire seatbelt bill" in this legislation, but he agreed with the sponsor that the provisional driver's license program is too important to jeopardize with any opposition to the seatbelt issue. Therefore, he pointed out this amendment only applies to holders of a provisional driver's license.

A roll call was taken on the motion to adopt Amendment #2.

IN FAVOR: Senator B. Stevens, Senator Bunde and Co-Chair Wilken

OPPOSED: Senator Olson, Senator Dyson, Senator Hoffman and Co-Chair Green

The motion FAILED (3-4)

The amendment FAILED to be adopted.

Co-Chair Green offered a motion to report the bill, as amended from Committee with individual recommendations and accompanying fiscal note.

There was no objection and SCS CS HB 213 (FIN) MOVED from Committee with fiscal note #1 for \$13,600 from the Department of Administration.

DOUG WOOLVIER introduced his daughter MOLLY WOOLVIER, who was attending the meeting as part of Take Your Child to Work Day. Ms. Wooliver is seven years old, resides in Anchorage and was on her first visit to Juneau.

#SB31

CS FOR SENATE BILL NO. 31(RES)

"An Act relating to a transportation corridor for extension of the Alaska Railroad to Canada and to extension of the Alaska Railroad to connect with the North American railroad system."

This was the third hearing for this bill in the Senate Finance Committee.

Co-Chair Wilken stated this bill, sponsored by Senator Cowdery, "authorizes [the] Alaska Railroad Corporation to delineate a transportation and utility corridor from Eielson Air Force Base to the Alaska-Canada border."

RICHARD, SCHMITZ, Staff to Senator John Cowdery, testified that no changes have been proposed to this legislation since the previous hearing. He stressed the importance that it passes into law, expounding on the support and importance to establish a corridor to extend the railroad into Canada. He reminded of the significant discussion held in the Senate Resources Committee and efforts to resolve certain issues. He noted that the provisions of the legislation would not be immediately implemented, as other steps must be first taken.

Co-Chair Wilken asked if the Alaska Railroad Corporation supports

this legislation.

WENDY LINDSKOOG, Director of External Affairs, Alaska Railroad Corporation, Department of Community and Economic Development, affirmed.

Senator Hoffman clarified that the Railroad supports the bill.

JEANNETTE JAMES, former Alaska State legislator, testified via teleconference from an offnet location in her position as an advisor to the Murkowski Administration on railroad issues, in support of the bill. She stated that the legislation has undergone compromises and that it should be advanced.

Co-Chair Wilken noted new fiscal zero notes being distributed to the Committee.

Senator Bunde understood ownership of this land would be transferred to the Railroad, which would maintain complete control of the land and could restrict access to citizens. He questioned how this would have cost to the State.

Mr. Schmitz replied that access to the land would not be restricted until track is actually laid. He stated this legislation would transfer ownership of a 200-foot corridor in locations where the railroad would cross State-owned land. He noted that the Railroad would be required to negotiate right of ways separately for federally-owned land, lands owned by Native corporations and privately-owned lands.

Senator Bunde contended that the 200-foot corridor, therefore, could not be otherwise disposed of by the State, which would be a financial loss.

Ms. James countered that this argument "falls on its face" because the land would transfer from one State entity to another. She explained that if the railroad were not constructed on the property, ownership would transfer back to the State.

Senator Bunde remarked that this legislation would transfer ownership from a State entity to a "quasi-private" entity, not subject to administrative and procedures statutes. He disputed this transfer would not have a zero fiscal impact.

Ms. Lindskoog detailed that as a compromise a 200-foot corridor within a 500-foot corridor would be transferred to the Railroad fee simple. She noted that the Department of Natural Resources would reserve oil and gas mineral rights and that the State would have

control over the placement of railroad crossings. She also pointed out that the State would have rights to utilize the property for a natural gas pipeline. As a result of these differences, she stated the proposed land would be unlike traditional Railroad-owned property.

Senator Bunde informed that ownership of subsurface rights is not transferred to any landowner and he therefore maintained his disagreement.

Senator Olson asked how access for recreation and hunting activities would be protected.

Ms. Lindskoog reminded that people are not allowed access to airport runway tarmacs because of safety issues. She replied that the Railroad and the Department of Natural Resources would review user needs closely to determine where crossings would be located.

Senator Olson expressed concern about complaints from hunters cited with trespassing for crossing the tracks "in the middle of nowhere".

Ms. Lindskoog asked if Senator Olson suggests that hunters should have a right to access the right of way.

Senator Olson "expressed discomfort" that hunters would be in violation of trespassing laws.

Senator Dyson asked if Railroad rights of way have more access restrictions than a highway.

Ms. Lindskoog surmised they do not. She furthered that the Department of Natural Resources would retain significantly more control over these lands than currently exercised with the route between Seward and Fairbanks. She stated that if an area were commonly used for hunting, it would likely be assumed that a crossing would be located at the site.

Senator Dyson noted the assumption that people hunting or berry picking would have the wherewithal to move off the highway to avoid a passing truck. He opined that designated railroad crossings in remote areas would be impractical.

Ms. Lindskoog informed that jaywalkers are not always ticketed. She stressed that the trespass laws are intended for safety.

Co-Chair Wilken characterized crossing of the Railroad as potential trespassing and pitching of a tent on the rails as trespassing.

Mr. Schmitz outlined possible signage to alert people of trespassing laws and safety concerns. He assumed that a "commonsense approach" would be adopted. He stated that in many rural areas, warning signs are all that is necessary, as opposed to a commuter train in an urban area which would likely be fenced off

Senator Bunde knew of specific duck hunters cited for trespassing along the Railroad. He emphasized that this legislation does not provide a "typical transfer" of property and that if undertaken the Railroad would receive sole control over the land. He remarked that if the decision is to "give away our natural resources" this fact must be understood fully.

Senator Olson asked what party would retain the power of eminent domain.

Ms. Lindskoog replied that the Railroad would have this power.

PHILLIS JOHNSON, Attorney, Alaska Railroad Corporation, testified via teleconference from an offnet location, to affirm that the Railroad holds the power of eminent domain just as the Department of Natural Resources and utility corporations do for lands it administers. However, she pointed out that the Railroad has never exercised the power of eminent domain. She noted that in some areas of the proposed route the entire width of the corridor is not needed. She stated this was established as a compromise in this legislation and that corridor width is commonly negotiated in land transfers as a "last resort".

Ms. Johnson also commented that as a lawyer representing the interest of the Railroad, she is always mindful of potential litigation relating to trespassing issues. She stressed that the transfer of title is important to the State, whether the Railroad obtains fee simple title or "other mechanism" to utilize the land, such as a permit from the Department of Natural Resources. Regardless, she stressed, safety concerns would remain and the issue of "tunneling" people must be addressed.

Senator Dyson strongly supported this bill and suggested the safety issues could be addressed "in another forum". He viewed land owned by the Railroad to be held in trust for the people of Alaska and that access should not be limited. He was offended with "what the Railroad has done in Whittier" indicating the extensive barriers erected to prevent trespassing. He stressed that common sense is expected when near railroad tracks and opined that most persons hit by a train likely "deserve it." He expressed that the Railroad should hold the land proposed in this legislation, not only for

Railroad purposes, but also for Alaskans in general.

Co-Chair Green stated that although she agreed with Senator Dyson's comments about railroad crossings, major liability issues exist. She spoke of "major issues" with access to Railroad property in the Mat-Su. She spoke of attempts to change casual use at a "non-official" crossing an established crossing through repeated use. She stated that the Railroad insists upon involvement in these decisions. She remarked that any land transferred to the Railroad with the expectation that the land would be used for the benefit of the public would not occur. Rather, this land would be utilized for the Railroad's purpose and to generate profit for the Railroad. She was unsure how a dividend program could be established to ensure benefit for all Alaskans, or of a method to promise access to everyone.

Senator Dyson offered a motion to report the bill from Committee with individual recommendations and new fiscal notes.

Senator Bunde objected. He remarked that the zero amounts of the fiscal notes are disingenuous. He expounded that this legislation involves the transfer of State assets and suggested that the legislature is "sometimes...too flexible."

A roll call was taken on the motion.

IN FAVOR: Senator B. Stevens, Senator Dyson, Senator Hoffman, Senator Olson, Co-Chair Green and Co-Chair Wilken

OPPOSED: Senator Bunde

The motion PASSED (6-1)

CS SB 31 (RES) MOVED from Committee with three zero fiscal notes from the Department of Natural Resources, dated 1/23/04, the Department of Transportation and Public Facilities, dated 1/28/04, and the Department of Community and Economic Development, Alaska Railroad Corporation, dated 4/22/04.

#SB378

SENATE BILL NO. 378

"An Act relating to regulation of the discharge of pollutants from timber-related activities under the National Pollutant Discharge Elimination System; relating to waste treatment and disposal permits; making conforming amendments; and providing for an effective date."

This was the first hearing for this bill in the Senate Finance Committee.

Co-Chair Wilken stated this bill, sponsored by the Senate Rules Committee at the request of the Governor, "authorizes the Department of Environmental Conservation to administer the National Pollutant Discharge Elimination Permit for the timber industry."

ERNESTA BALLARD, Commissioner, Department of Environmental Conservation, informed that 21 years ago she served as the Regional Administrator for the federal Department of Environmental Protection Agency (EPA) and traveled to Alaska to meet with Governor Sheffield and the commissioner of the Department of Environmental Conservation. She reported that she recommended at that time that to protect its waters and also allow for resource development, the State should assume primacy on waters. However, she remarked that the State did not and since that date, 45 other states have done so, leaving Alaska as one of five that do not have primacy. She told of the advantages to the states that have assumed primacy in streamlining and establishment of state standards, administrative procedures and appeal procedures. She stated that because Alaska does not have primacy, the EPA writes permits and a second process for State approval is required.

Ms. Ballard explained that this legislation would apply to timber-related activities as a pilot project, with the intention to expand to other development activities in the future.

JON TILLINGHAST, Attorney, Sealaska Corporation testified in support of the bill. He commented that it is "no secret" that Alaska's timber industry was "on the ropes" and expressed this legislation would assist the industry and other industries in the future.

Senator Olson surmised the witness' assertion is to the "best of your knowledge".

Mr. Tillinghast affirmed, noting his knowledge is first hand.

ADRIAN LECORNU, Administrator, Hydaburg Cooperative Association, testified via teleconference from an offnet location, asked whether the assumption of partial primacy for the timber sector would stipulate that the State would require Klukwan, Inc. to obtain a National Pollution Discharge Elimination System (NPDES) permit.

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Mr. LeCornu continued that a Ninth Circuit Court of Appeals opinion, issued in November 2002 relating to a case brought by the League of Wilderness Defenders clarifies that the NPDES permitting is required for aerial spraying of pesticides. He relayed the Association's concerns that the consumption of partial primacy by the State would further erode the community's "voice" as an Alaska Native Tribe. He opined that the State has not "demonstrated a willingness to listen" to the concerns of tribal members about proposed pesticide spraying on Long Island.

Mr. LeCornu asserted this legislation would limit public participation by eliminating public notice of proposed permits. He stated that permits could be issued for spraying near Hydaburg with no notice or opportunity for comment given to residents. He added that public hearings located in Ketchikan, for activities proposed for Prince of Wales Island, would present a hardship for Hydaburg residents wishing to participate.

Co-Chair Wilken requested the Department respond to the concerns voiced by the witness.

Ms. Ballard responded the matter to which the witness testified is a different, pesticide program, rather than the water discharge program addressed in this legislation. She understood that the concerns relate to the public hearing process for a permit application submitted by the Klukwan Corporation requesting authority for aerial pesticide application on Long Island, near Hydaburg. She informed that Department of Environmental Conservation regulations require that the Klukwan Corporation must hold public hearings, which have not been scheduled and location has not been determined. She also noted that questions of the Department of Environmental Conservation and the Department of Natural Resources must be answered before the application could be accepted.

Co-Chair Wilken requested witness contact the Department to resolve this issue.

Mr. LeCornu agreed to do so.

Co-Chair Wilken ordered the bill HELD in Committee.

#SB311

CS FOR SENATE BILL NO. 311(JUD)

"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; relating to assigned risk pools and insurers; and providing for an effective date."

This was the first hearing for this bill in the Senate Finance Committee.

Co-Chair Wilken stated this bill, sponsored by the Senate Rules Committee at the request of the Governor, "changes the way workmans' compensation disputes and appeals are resolved. Under SB 311, appeals are reviewed by the newly created Workmans' Compensation Commission, which is composed of three persons experienced in practicing Workmans' compensation law in Alaska instead of the Alaska Superior Court."

LINDA HALL, Director, Division of Insurance, Department of Community and Economic Development, noted the complexity of the legislation and testified as follows.

With this Committee previously, I have discussed the financial crisis in the Alaska Insurance Guarantee Association. The other area of tremendous concern to me today is the lack of a

healthy workers' compensation insurance environment. I'd like to give a little background on the problems that we're encountering. We have had for the past five years, a lack of profitability in our market, which is making it unattractive to insurers. Losses have ranged from a low of 99.9 percent to a high of 154 percent. At that high, insurance companies are spending \$1.54 for every dollar of workers' compensation premium they collect. Alaska carriers are losing five percent more money in Alaska than the national average.

The second area that has created a problem has been the cost of workers' compensation claims. As everyone is aware, cost of medical benefits has increased substantially over the past several years. We have seen double-digit increases in the cost of medical care. This is accepted and at least understood usually in the health insurance arena, but sometimes we don't make that connection with the cost of workers' compensation. It does have a dramatic impact on the cost of claims.

Major cost drivers in the state of Alaska for workers' compensation insurance are physician's fees, [which] are among the highest in the country. We have a permanent partial cost per case that is 40 percent higher than the countrywide average. We have lengthening duration of claims, as we have an aging workforce. I think maybe we heal less quickly. We have a claim frequency in our temporary total that is total the countrywide average. These cost drivers affect the cost of claims, which in turn certainly impact the cost of insurance.

As I think everyone is aware, I've talked about it with this group before, we have had substantial premium increases. Effective January 1 of this year, the average rate increase was 21.2 percent. As the cost of claims is increased, the actuarial analysis of historical claims cost and projections into the future indicated the need for that substantial rate increase. The change was an average. We actually have seen ranges from a 15 percent reduction in costs to a high of 57 percent increase in people's workers' compensation. We had 17 classifications that had increases in excess of 50 percent.

Combining that increase in premium with the assessments that are occurring for the deficit in the Guarantee Association, has combined to make dramatic increases in the cost of workers' compensation.

The fourth factor that is impacting our workers' compensation market is the assigned risk pool. It's another factor that has made the Alaska marketplace increasingly unattractive. Due to

the mandatory nature of workers' compensation, we have a mechanism called the "assigned risk pool", where, if an employer is unable to obtain insurance in the traditional market, they can obtain insurance in the assigned risk pool. Currently, 17 percent of the market is in the assigned risk pool. When the cost of claims in the assigned risk pool exceeds the cost of the premiums collected, the difference is charged back to insurance companies. Over the past five years, Alaska has had the highest charge of any state for the losses in the assigned risk pool. This charges range from four percent to six percent. It's an additional cost to insurance companies, comes directly out of their operating costs and makes doing business in Alaska very expensive.

Overall, we have a workers' compensation environment that is becoming very expensive for employers and very unattractive to insurers.

As these issues became apparent, staff from the Division of Insurance, the Department of Labor and Workforce Development and the Department of Law have met to attempt to find ways to overcome these challenges. We cannot continue to merely increase workers' compensation premiums for employers. We must look to find ways to stem the increasing costs of providing benefits to workers.

We've looked at a number of options, ranging from the cost of medical benefits, provider fee payments, definitions of compensability, and a variety of technical terms that deal with the benefit system.

SB 311 makes some insurance changes to enhance our marketplace and it proposes a change in the workers' compensation adjudicatory process that we feel will bring about more efficiencies, more predictability. We desperately need a healthy workers' compensation marketplace in Alaska. We need a market that's sustainable, that will encourage companies to continue to do business, to attract new markets. We need compensation insurance that is available and affordable for employers to continue to develop jobs to sustain economic development.

This bill is fairly unique in that it's a cross departmental effort to find solutions to the issues. I will address the insurance pieces of the bill, Director Paul Lisankie and Deputy Attorney General Scott Nordstrad will address the Department of Labor, workers' compensation pieces of the bill.

Realizing that the bill is fairly long, there are only four sections that I would like to address for insurance. Section 3 is a requirement for an increase in the deposit required of insurance companies writing workers' compensation. This deposit will be for the protection of Alaskans covered under the workers' compensation system. As you've seen, and this body has passed a bill funding the current deficit in the AIGA [Alaska Insurance Guarantee Association] these special deposits would go to the Guarantee Association, which would diminish the need for assessments that we're currently facing.

Section 4 really makes that an order of priority and bankruptcy.

Section 5 changes the composition of the Board of Governors of the Guarantee Association. Currently, insurance - there are seven insurance company members and two public members. The proposal is to change that composition so that all stakeholders have a seat at the table. We've seen what a dramatic impact in solvencies can have on both injured workers and on employers and I'd like to see more people at the table.

Section 105 is the other insurance section I'd like to discuss. Section 105 repeals the 25 percent statutory cap on surcharges on the assigned risk pool. The assigned risk pool currently has a statutory cap of 25 percent. I feel strongly the pool must be self-funding. Premiums have lagged well behind the cost of claims in the pool. Nearly 6,000 of the 8,800 policies in the pool will have premiums under \$3,000. The average cost of claim in Alaska today is \$19,363. So we have an \$800 premium and a \$19,000 claim. That is an average. The pool has lost money at an even more rapid rate than the traditional insurance market. Small employers are the bulk of these 6,000 policies. They are just as likely to have claims even though probably not as many as larger employers. As I described in the introduction, the financial burden on insurance companies from the Alaska assigned risk pool, has contributed dramatically to the overall attractiveness of Alaska to insurers. We have a fragile insurance marketplace and we're looking for solutions to bring about change to that marketplace so that we can have an impact on the cost of workers' compensation.

Co-Chair Green interrupted to question the section of the bill the witness was explaining.

Ms. Hall corrected that Section 106 pertains to the assigned risk pool, as she was discussion.

Co-Chair Wilken announced as much time as necessary would be allotted for consideration of this bill due to the importance and complexity of the matter.

PAUL LISANKIE, Director, Division of Workers' Compensation, Department of Labor and Workforce Development testified that several features in bill would affect the administration of workers' compensation insurance in Alaska. He stressed that this bill proposes no changes to workers' compensation benefits payable to residents of Alaska, although the calculation of rates for nonresidents would be changed. He explained this is to prevent injured nonresidents from receiving higher benefit payments while residing outside the State.

Mr. Lisankie furthered this bill would formally divide the functions of the Workers' Compensation Board into adjudication and administration. He informed that the Division currently assists the Board in all Board functions, although this is not required by statute. He stressed the need to "informally" insure that claims are not decided as a result of the current practice whereby the Division and the Board both investigate claims, accuse parties of wrongdoing and issue joint determinations. Due process constraints, he specified, provide that the party charging and prosecuting matters could not be the same party that judges upon those matters. He noted this bill would make a formal distinction between the Division, which would undertake administrative, investigative and prosecutorial activities, and the Board, which would resolve any disputes between the Division and the party.

Mr. Lisankie told of the proposed establishment of a Workers' Compensation Appeals Commission in this legislation. He stated this Commission would hire and retain hearing examiners, who along with the current panel members would undertake the initial hearings in disputed claims for benefits and accusations against employers failing to provide insurance.

Mr. Lisankie then shared that currently, if the Division discovers an employer failing to provide insurance, the only sanction that could be imposed is closure of the business if such insurance is not purchased; however, he remarked that once insurance is purchased, no other consequences could be imposed on the employer. He stated that this legislation would impose penalties of up to \$100 per day, per employee that the employer fails to carry insurance. He expressed the intent is to strengthen cease and desist orders, and to show to employers that this issue is critical. He asserted that employers failing to carry insurance place the physical health of employees at risk, and also provides

an unfair fiscal advantage against other employers who lawfully purchase this insurance.

Mr. Lisankie listed the motivation behind the proposed changes is greater consistency of decisions and predictability of decisions. He remarked that injured workers would have more certainty of the benefits they would receive. He gave the history of the Workers' Compensation Board established at statehood in 1959 with three members, with no question as to who resolved the issues. However, he noted that with increased population in the State, the Board membership expanded to the current seven panels, with the 14 total members appointed by the Governor to seats designated for labor interests and industry interests, and confirmed by the Legislature. Each panel, he informed, independently decides how to interpret and implement the workers' compensation laws and are not required to be consistent with the other panels.

Mr. Lisankie noted that if a party is dissatisfied with the ruling of a panel, they are entitled to an appeal through the Alaska superior court, which serves as the appellate body. He remarked that most superior court judges do not have expertise in workers' compensation law. He furthered that the decisions of the superior court are binding but that panels are not required to follow the rulings in future cases.

Mr. Lisankie explained that this bill would eliminate the superior court from the workers' compensation appeal process and establish a commission to address appeals. This commission of three members, he said, would issue binding decisions that would set precedence for future cases. He qualified that the Alaska Supreme Court remains the sole arbiter of law in the State and that final commission decisions could be appealed to the Supreme Court. He indicated that precedence set by the commission would continue to apply to other ongoing cases until overturned by the Supreme Court.

Mr. Lisankie predicted that the consistency and predictability of decisions would result in less litigation and be less costly. He informed that the proposed changes in this legislation are similar to the laws of some other states. He anticipated that insurance providers currently not issuing policies in Alaska would be encouraged to participate in the Alaska marketplace knowing that their experiences here would be similar to those in other states.

LORI WING, President, Alaska Independent Insurance Agents and Brokers, testified via teleconference from Anchorage and read testimony into the record as follows.

Our association, the AIIAB represents in the insurance

marketplace employers from Ketchikan to Barrow, from Kaktovik to Adak. Our clients are governmental entities, privately held, and publicly traded corporations, limited liability companies, and joint ventures. They are for-profit and not-for-profit; they are large and small. All together they make up the business community, the economic base of the State. Each of these entities is required to comply with the respective statutes that are often referred to as the "Work Comp Act". Each of these entities contribute a significant portion of their revenues to a work-comp program regardless of whether they are insurers to a commercial insurance product or self insured through an alternative risk financing technique.

The past few years, these employers, regardless of what mechanism they have chosen to comply with the Act, have experienced significant increased costs. The cost of insurance, reinsurance, claims and the associated expenses; the costs have increased. For those that have purchased a commercial insurance product, the cost is reflected in the insurance premium. For those self-insuring, the cost is reflected in the direct payment of claims. Regardless, the employer is paying the cost, the increased cost.

We, the AIIAB, as an association, agree that some of these costs are difficult to control. Workers' compensation claims are every bit as much subject to the increased cost of medical care as a health or medical insurance program. But there are some costs we think can be controlled. Costs that can be quantified, defined, not subjected to the opinion to what is commonly referred to as [indiscernible]. Those costs can be controlled. Our hope is that Senate Bill 311 will allow those costs to be quantified, defined once and for all, allowing rate-making organizations and insurers to adequately trend and price the cost of workers' compensation, making the recent rate premium or claim cost, the increases or a portion of those costs, unnecessary.

I can tell you that I personally deal with a client, a regional hospital out in Dillingham. Their work comp this year, based on the rate increases as of January 21st will go from \$391,000 to \$524,000 without changing the payroll a penny.

Senate Bill 311 does not limit or eliminate any benefits due an injured worker or an injured employee, but it may help reduce the cost of complying with the Act to employers. It may help, and we believe it will, make those corporations, governmental entities, and other organizations from Ketchikan

to Barrow, from Kaktovik to Adak, remain viable, profitable, Alaskan employers.

We the AIIAB respectfully request that you the members of the Senate Finance Committee, refer the bill on and we ask that your colleagues, regardless of they're Republican or Democrat, do the same. We, those that deal with the employers, the insurers, the few that we have in this State, the adjusters and attorneys, the employees and the claimants, are confident that this bill will help stabilize and hopefully reduce the costs associated with compliance with the mandates defined in this Act. We are confident Senate Bill 311 will help those employers that are the economic base of this State.

Senator Hoffman remarked upon the significant cost increase for the Bristol Bay Health Corporation and asked how this bill would reduce those costs.

Ms. Wing was unsure this legislation would affect rates in the current year, but predicted that cost reductions would begin the following year and continue for several years.

Senator Hoffman asked what emphasis should the State place on reducing claims through promotion of workplace safety.

Ms. Wing admitted this is a viable component, but stressed that regardless of how safe a workplace is, injuries occur. She noted that all employers she works with emphasize safety.

Senator Olson asked whether the witness supports the proposed appeals commission of three attorneys, or predicts the commission would complicate future matters.

Ms. Wing expressed the association supports the bill as written with the three attorney positions.

KEVIN DAUGHERTY, Alaska Labor and Management Ad Hoc Committee, testified via teleconference from Anchorage that this bill does not reflect the process of the Ad Hoc Committee, which has been in place since 1981. He reminded that during the 1990s, Ad Hoc Committee efforts reduced premiums for employers a total of 49 percent. He cited this as an example of the ability of the Ad Hoc Committee to protect benefits and provide for a more cost effective system. He charged that this bill departs from the actions of the Committee and instead proposes to replace a "common-sense layman board" with three "so-called expert" attorneys.

Mr. Daugherty remarked this would not provide better "decision

making", stressing this is not only his opinion, but also reflects the assessment of the National Commission of Compensation Insurers (NCCI). He relayed the process in which a Pacific Northwest panel within the Commission reviews all proposed legislation relating to insurance matters in the region. He pointed to the lack of documentation in this legislation of any actual economic savings to employers. He provided the phone number of the Commission, (503) 624-5890 to allow Members to obtain more information and he qualified that the Commission has not taken an official position on this bill.

Mr. Daugherty cited the 2002 Workers' Compensation Board Annual Report, the most recent available, noting that total death benefits paid to all survivors in Alaska was \$3.2 million, compared to \$7.06 million paid to attorneys representing insurance companies. He surmised that if currently, over double the amount is paid to attorneys than survivors, the system should be made more efficient rather than adding more attorneys and appeals. He pointed out that this legislation does not provide that additional benefits would be provided for injured workers or survivors.

Mr. Daugherty next referenced a fiscal note from the Alaska Court System projecting an implementation cost of approximately \$500,000. He also predicted the cost of a new office for the appeals commission would be approximately \$500,000, plus additional expenses for support staff. He reiterated that no increased benefits would be provided for injured workers or survivors and that cost savings would not be realized for employers.

CHUCK LUNDEEN, General Counsel, Liberty Northwest Insurance, testified via teleconference from an offnet location, that the Oregon-based company has staff located in Anchorage and writes workers' compensation insurance policies. He furthered that the company insures 20 percent of Alaska's assigned risk pool and over 125 Alaskan employers on a voluntary underwriting basis. He supports bill because it provides a "clear statement of purpose that all parties will receive impartial fair treatment in the dispute resolution process". He opined this is good for employers and workers.

Mr. Lundeen further supported the bill because it streamlines the litigation process and would produce faster results, which would also benefit injured workers and employers and reduce costs as well. He explained that the elimination of involvement of the superior court would save money. He then spoke to the "precedential value" of the decisions of the proposed appeals commission in that they would provide to all parties understanding of Alaska law.

Mr. Lundeen was uncertain whether the NCCI had reviewed this legislation, but he expressed intent to bring the matter to the organization's attention. He told of his 20 years in the insurance industry and assessed this legislation would reduce costs. He compared it to similar legislation adopted in the state of Oregon, which has resulted in reduced costs.

Senator Hoffman surmised the intent to streamline the process to save premium costs, although the addition of the commission would increase expenditures. He therefore concluded that any cost savings must be garnered from reduced benefits. He understood that judges must be impartial in interpreting the law and asked how the number of claims awarded or the amount of benefits paid would be reduced to meet the goals.

Mr. Lundeen responded that the "body of law" if adopted in this legislation would, over time, result in claims adjustors and attorneys representing injured workers would make better decisions whether to litigate or settle claims. He doubted this legislation would affect benefits or compensability standards or make it easier to deny a claim. He predicted the cost savings would be realized as a result of a streamlined process.

Senator Hoffman referenced Ms. Hall's presentation listing statistics proposing that this legislation would better align the State with the national averages and potentially result in cost savings. He asked Mr. Lundeen's comment on this information.

Mr. Lundeen replied that this bill is a portion of the process of reviewing and revising the workers' compensation system in Alaska to address cost drivers. He reiterated his prediction this legislation would reduce litigation, which is more costly. He qualified this bill is not a "cure all" but is a "positive first step".

Senator Hoffman again asked how this legislation would "reduce the claims".

Mr. Lundeen responded it would not, but rather would reduce the number of litigated claims due to consistent interpretation of the law.

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Mr. Lundeen continued that in situations of uncertainty, attorneys advise litigation. He remarked that current interpretations of the

workers' compensation laws are inconsistent.

DENNIS MURRAY, Administrator, Heritage Place Nursing Home, and former president, Alaska State Hospital and Nursing Home Association, testified via teleconference from Kenai, in support of the bill, as proposed and recommended against adoption of proposed amendments. He opined that the proposed amendments would not improve the system, noting the premium increase of 160 percent for the company. He told of a study conducted by the Association of nursing homes in Alaska that found that workers' compensation premiums had increased 100 percent. He relayed the Department of Law determined this legislation is more consistent with operations in other states.

PAUL BRENNER, Vice President, Quality Management, Central Peninsula General Hospital, testified via teleconference from Kenai, that the proposed amendments seem to remove the strengths of the bill would make it ineffective. He supported the creation of the Commission, predicting it would bring continuity to workers compensation system. He told of the significant increase in workers' compensation claims and the desire for resolution of the situation and predictability of the process.

Co-Chair Wilken ordered the bill HELD in Committee.

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ADJOURNMENT

Co-Chair Gary Wilken adjourned the meeting at 10:44 AM