

**MINUTES**  
**SENATE FINANCE COMMITTEE**  
**April 23, 2004**  
**9:06 AM**

**TAPES**

SFC-04 # 92, Side A  
SFC 04 # 92, Side B  
SFC 04 # 93, Side A  
SFC 04 # 93, Side B

**CALL TO ORDER**

Vice-Chair Con Bunde convened the meeting at approximately 9:06 AM.

**PRESENT**

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

**Also Attending:** DOUG WOOLIVER, Administrative Attorney, Office of the Administrative Director, Alaska Court System; PAM LABOLLE, President, Alaska State Chamber of Commerce; BARBARA HUFF-TUCKNESS, Director of Governmental and Legislative Relations, Teamster Local 959; SCOTT NORDSTRAND, Deputy Attorney General, Civil Division, Office of the Attorney General, Department of Law; PAUL LISANKIE, Director, Division of Worker's Compensation, Department of Labor and Workforce Development

**Attending via Teleconference:** From Offnet Sites: STEVE CONSTANTINO, Attorney; CHANCY CROFT, Attorney; LINDA HALL, Director, Division of Insurance, Department of Community and Economic Development; KRISTIN KNUDSEN, Assistant Attorney General, Torts and Worker's Compensation Section, Department of Law; DAVE FLOERCHINGER, Attorney; CONSTANCE LIVSEY, Attorney; TRINA HEIKES, Attorney; ROBERT LOHR, Former Director, Division of Insurance, Department of Community and Economic Development; From Fairbanks: JOHN GIUCHII; JOE KALAMARIDES, Attorney

**SUMMARY INFORMATION**

SB 311-INSURANCE & WORKERS' COMPENSATION SYSTEM

The Committee heard from the Alaska Court System, the Department of Law, the Department of Labor and Workforce Development, the Department of Community and Economic Development, and took public testimony. The bill was 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 second hearing for this bill in the Senate Finance Committee.

DOUG WOOLIVER, Administrative Attorney, Office of the Administrative Director, Alaska Court System informed the Committee that the Court System's testimony, rather than commenting on the

merits of the bill, would focus on how the Court System would be impacted by the portion of the bill that would allow appeals from the Workers' Compensation Appeals Commission (Commission) to bypass the State's Superior Court and go directly to the Alaska Supreme Court. He stated that, on average, 27 of the 36 WC cases that are appealed to the Alaska Superior Court annually are resolved. The remaining nine, he stated, are further appealed to the Supreme Court. Furthermore, he commented, the Court System does not anticipate that the changes proposed in this legislation would have "much impact on the total number of cases that come to the Court System as a whole" because rather than appeals resulting from such things as agency competency, they are the result of such things as "reasonable minds disagreeing on a individual case," or that "either side could have won and the losing side decides to appeal," or that "a unique situation" might arise that must be resolved by the Supreme Court. He also noted that oftentimes, people "just want their day in Court" or "don't trust the administrative process."

Mr. Wooliver expected, therefore, that even were this legislation adopted, the number of cases being appealed would remain constant. He stressed that were it adopted, all of the appealed cases would be heard by the Supreme Court rather than the Superior Court.

Mr. Wooliver noted the argument that bypassing the Superior Court would save time in getting a final resolution to an appeal. He pointed out that for the nine cases, or 25 percent of the total average of 36 cases per year that normally advance to the Supreme Court, this would be true as those cases would skip the Superior Court action. However, he calculated that time would increase for the balance, or 75 percent, of the cases which typically do not advance beyond the Superior Court. He shared that under this legislation, those 75 percent would require more time because, he attested, the Superior Court resolves cases more quickly than the Supreme Court, as it is "a committee of one" wherein a single judge makes a determination as opposed to the Supreme Court which, as a committee of five, conducts a more deliberative process, in which opinions are drafted and deliberated. "That process by design", he shared, "takes more time." Therefore, he concluded, while 25 percent of the cases would require less time, 75 percent of the cases would incur more time. He reiterated that while the Court system is not objecting to the process, as reflected in the Court System's fiscal note #5, it is requesting additional resources including: a staff attorney with WC expertise; one additional clerk; and an administrative assistant, in order to handle the additional caseload that the Supreme Court would absorb.

Mr. Wooliver stressed that, currently, the Superior Court, as the first recourse for appeals, serves "to weed out cases." Therefore,

he communicated, were this and any future legislation to produce more appeals, they, in their entirety, would advance directly to the Supreme Court.

Senator Dyson asked whether Superior or Supreme Court case decisions are "precedent setting" and would, therefore, "guide policy and practice for the [WC] Board or Commission" in the future.

Mr. Wooliver qualified that Supreme Court decisions "set precedent in any area where they solve a dispute" while Superior Courts do not. However, he noted, the majority of the WC cases at either level "are not establishing unique new legal rules" because they are "fact specific and they're not really usually establishing useful precedent."

Senator Dyson asked for further information regarding the term "de novo" and its implications.

Mr. Wooliver explained that the Supreme Court "reviews de novo" the Superior Court's opinion in a WC case. He further explained that "it is like the Superior Court's decision never happened" as it is not deferred to. He pointed out, however, that the Supreme Court would consider and defer to an agency's decision and fact-findings, as agencies must adhere to a "substantial evidence standard." Therefore, he summarized that what is reviewed de novo are legal issues rather than factual findings.

Senator Bunde understood the term to mean, "to go back to step one and start all over again."

Mr. Wooliver, while concurring, clarified that "no new testimony" would be considered, as the information would be limited to the record that was established.

Senator Dyson asked for a definition of the term.

Mr. Wooliver responded that it is a Latin term that "basically means to re-look and reweigh all of the evidence" and, rather than deferring to a lower court's "interpretation of the evidence," determine the ruling based on the evidence provided.

Senator Dyson asked how the "new evidence" presented by a person's condition deteriorating during the time between hearings and thereby "substantiating" the WC claim," would be considered.

Mr. Wooliver stated that the Department of Law could more appropriately respond to that question. While he stated that, as a

general rule, new evidence would not be considered, he noted that there might be some "escape mechanism" in the case of a compelling situation or new evidence.

Senator Dyson asked why new evidence is not typically permissible.

Mr. Wooliver responded that this policy is similar to that of most appeals' processes, as he specified, the appeal process determines, "based on the evidence that was available at the time, whether the lower body made an error." Furthermore, he clarified that "the appeal itself is not a trial type setting" in which new evidence or witnesses are heard or the case is re-tried, but it is a review of the record to determine whether the lower court made a "legal or factual" mistake.

Senator Olson asked for an overview of the steps involved in the appeals process.

Mr. Wooliver explained that, in this legislation, the WC Board's decision would be appealed to the WC Appeals Commission within an agency, and an appeal of that determination would advance to the Supreme Court.

Senator Bunde noted that the Department of Law would further explain the process during its testimony.

Senator Olson opined that the Alaska Court System is currently "clogged" and therefore, he asked how this change in the appeals process would affect the Supreme Court.

Mr. Wooliver responded that this is a concern, as this legislation would increase the number of cases presented to the Supreme Court. He reiterated that the Court System has, in fiscal note #5, requested additional staff in order "not to create too much of a backlog." However, he stated, "in the end, we still have cases that the Supreme Court is going to have to decide that they would otherwise not have to decide."

Senator Olson asked why the Court of Appeals that was established after Statehood is not included in this process.

Mr. Wooliver responded that the Court of Appeals addresses criminal rather than civil cases. He informed that there is no intermediate court of appeals for civil cases.

Senator Hoffman asked regarding the costs associated with the aforementioned annual number of cases that are appealed, specifically the costs associated with the 25-percent of the WC

cases that advance to the Supreme Courts as opposed to the cost of the 75-percent that are settled at the Superior Court level.

Mr. Wooliver replied that the exact expense amount is unavailable; however, he stated that were this legislation adopted, all the cases would be heard at the Supreme Court level. Thus, he attested, additional staff would be required in order to handle the increased workload and not impede other Supreme Court cases.

Senator Hoffman opined that because the Supreme Court is limited in the number of cases that it could address, a decision might be made to handle more cases of one type and less of another.

Mr. Wooliver clarified that, unlike the US Supreme Court, the State's Supreme Court is unable to refuse cases, with the exception, he noted of criminal appeals, which are handled by the Court of Criminal Appeals. Therefore, he continued, were the caseload to increase, the Supreme Court would be required to address them, as there is "no option to turn them away."

STEVE CONSTANTINO, Attorney, testified via teleconference from an offnet site and informed the Committee that he had previously served as a hearing officer on the WC Board and now represents injured workers before the WC Board and the Courts. He stated that he supports the bill's proposals that address the Guaranty Fund "crisis" and the upgrade of hearing officer positions as this would attract and retain qualified individuals. However, he opposed the proposed process for handling WC claims, specifically the de novo review provision. He characterized that Senator Hoffman's question concerning the costs incurred from changing the appeals process was "on target," as Governor Frank Murkowski's Administration and business community representatives' answers to this question are, "we hope it saves costs, we expect it to save costs, and it may save costs." However, he opined, that rather than saving money, this legislation would increase costs to the State, to businesses, and to insurers. He voiced support for Mr. Wooliver's comments substantiating the Court System's increase in expenses, which, he surmised, might be "under-stated." Through experience, he attested, people trust the Superior Court system and want their review heard there. He stated that while he does not support the implication, it has been implied that the Supreme Court, in addition to not having expertise in WC cases, "gives short shrift" to them.

Mr. Constantino opined that this proposal would not streamline WC cases and that instituting "a new de novo review through a new bureaucracy would actually increase" the expense associated with WC cases. He stated that while the bill would not allow "the appellate Commission" to take new testimony, it would "allow the Commission

to reweigh the testimony" and evidence that was taken. Furthermore, he attested, any litigant, who feels that he did not get an adequate hearing, would appeal were this bill enacted. This, he attested, would result in "a dramatic increase" in the number of appeals from the WC Board as compared to the current process in which the Board makes the final decision based on evidence and testifier credibility. This legislation, he declared, would allow "the bureaucracy to reweigh the evidence and reach a different decision without ever hearing the evidence."

Mr. Constantino addressed the question regarding how new evidence might be introduced, by sharing that the Superior Court currently has the ability to conduct de novo review and take new evidence. However, he communicated that these abilities are rarely exercised due to thoroughness of the current WC Hearing Review Board's evidence. The new process, he stated, would not provide this "safety value."

Mr. Constantino declared that, "the current institutions are serving our State well." Furthermore, he argued, the objectives of streamlining the process and providing consistency in the WC decision-making, could be accomplished by requiring the WC Review panels to adhere to the law established by the Courts. Continuing, he opined that this would be a "simple matter" to accomplish were the Commissioner of the Department of Labor and Workforce Development to instruct his hearing officer designees, "who sit as one of three members on the hearing panel and who's role it is to advise the lay members on the law," to follow Superior Court and Supreme Court decisions. He stated that there would always be cases in which "disputed issues of law are decided differently by different Superior Court judges, and he continued, currently "the board participates and has a right to participate in every appeal." This ability, he declared, provides the WC Board with the ability, in disputed cases wherein two Superior Court judges rule differently regarding what the law is on a segment of WC, to "instruct the attorney general who represents the WC Board, to appeal that decision to the Superior Court and get it resolved." He asserted that "all the mechanisms are in place to achieve all the goals that the legislation is purported to achieve without any additional costs," or creation of a new bureaucracy, or without distorting the decision making process.

Mr. Constantino voiced support for Amendment #1, sponsored by Senator Hoffman, as it would upgrade the current hearing officer position. Otherwise, he declared that the current mechanisms are adequate, and that this legislation would not result in any significant savings to business, injured workers, or to the State.

Senator Bunde asked how WC attorneys are compensated.

Mr. Constantino stated that WC attorneys "are prohibited by statute from accepting money from an injured worker." Continuing, he explained that fees are paid contingently and "only if the client prevails," and that while there are provisions to allow for minimum statutory fees and reasonable fees, their amounts are controlled by the WC Board. He noted that this system would not be altered by the proposed legislation.

Senator Olson understood therefore that, with the exception of the de novo provision, Mr. Constantino is in favor of the legislation.

Mr. Constantino affirmed.

JOHN GIUCHII, testified via teleconference from Fairbanks, and voiced concurrence with Mr. Constantino's comments. He noted that either the Attorney General's Office, employer attorneys, or insurance carriers have been able to provide information regarding whether this legislation would result in employer WC premium reductions. In addition, he stressed that it would be inappropriate for Commission members, who would be appointed without Judicial Council referral as is the norm for Superior Court judges, to have more power than a Superior Court judge. He stated that the ability of the Appeals Commission "to substitute personal judgment in place of facts that the Board finds during their hearings," does not seem fair; specifically, he attested, in light of the fact that were the Supreme Court to hear an appeal, they would be limited to reviewing the actions of the Appeals Commission rather than what transpired at the WC Board level.

Mr. Giuchii voiced that while the bill's drafters profess that the provisions in the bill were drafted upon the national Model Act, there is a multitude of new language in the bill that is not reflected in the Act. Furthermore, he attested that the Model Act is mismatched and unproven.

Mr. Giuchii avowed that only two percent of the State's appealed WC cases "ever get changed." Therefore, he stated that to implement this bill to address that limited number "does not make sense." However, he voiced support for Sections 1 - 7, which address the WC Guaranty Association as well as those sections that would institute a penalty for employers who do not carry WC insurance. He reiterated that he does not support the creation of an Appeals Commission.

Senator Bunde asked whether Mr. Giuchii would support increased penalties for WC fraud.

Mr. Giuchii replied yes.

JOE KALAMARIDES, Attorney, testified via teleconference from an offnet site, and informed the Committee that he has represented injured workers before the WC Commission in excess of 27 years. He stated that according to the [unspecified] 2001 annual report, there were 28,174 reported WC injuries. This number, he attested, is consistent with the previous ten years' levels, which ranged from 28,000 to 30,000 injuries per year. Furthermore, he noted that claims filed with the Board contesting the amount paid for an injury amounted to approximately 1,198 claims, or five percent, per year. Continuing, his calculations, he proclaimed that approximately one-eighth of one percent of the actual reported injuries reach the Superior Court with approximately 25 percent of those proceeding to the Supreme Court. Therefore, he opined that were the current system, which costs the State "virtually nothing," revised as specified in this legislation, the \$566,600 expense, as denoted in the bill's accompanying fiscal notes, would amount to approximately \$15,738 per appeal based on traditional case numbers. He declared that the appeal changes proposed in this legislation are unnecessary, as the current system "resolves approximately 99-percent of the reported injuries by the time it gets to the Board."

PAM LABOLLE, President, Alaska State Chamber of Commerce, testified in Juneau in favor of the bill. She declared that WC is one of businesses largest expenses, and she stated that both the actions of the State and the design of the WC system could control the associated expenses. She disclosed that the State of California is being required to rework its WC system because it's system is so unwieldy that other states are wooing California businesses with claims that their WC expenses are more conducive to business. She stressed that Alaska must avoid a similar fate to California. In this regard, she disclosed that one Alaska State Commerce business member, with a workforce of 50, pays \$98,000 annually for WC. She avowed that State businesses do not believe the current system is fair as when there is no consistency in decisions and no predictability, "insurance companies choose to cut their losses and not appeal because of the time-consuming efforts" and the associated costs of an unknown chance of prevailing in a decision. Furthermore, she stated that WC costs get passed onto businesses via WC insurance policy premiums. She declared that the most negative affect of the problem is that the number of WC insurance carriers willing to do business in the State is being negatively affected. Therefore, she attested, it is "critical" that the system be viewed as fair, predictable, and reasonable. She declared that the previsions proposed in this legislation address these concerns.

Ms. LaBolle voiced strong support for language in the original version of the bill that replaced the layperson review panel with professionals knowledgeable in WC law. In addition, she voiced support for the de novo review process at the Appeals Commission level.

Senator Hoffman inquired to the methodology used to determine the business support position as stated by the Chamber.

Ms. LaBolle responded that a poll of Chamber members was conducted.

Senator Hoffman understood therefore that the poll was conducted with Chamber businesses rather than businesses in general.

Ms. LaBolle expressed that the Chamber, with a wide business representation, represents 700 businesses throughout the State.

Senator Hoffman asked how this legislation would provide more predictability.

Ms. LaBolle responded that predictability would be accomplished "through the precedent-setting decisions that are possible through the Appeals Commission" component in the law as it would establish case law. Currently, she noted, there is no consistency or predictability as there "are over 300 combinations for a hearing" and no consistency in decisions. She noted that, currently when a case is appealed to the Supreme Court, the judges might hear the case without information regarding decisions that have been made regarding cases with similar circumstances. This, she declared, offers no predictability.

Senator Hoffman stated that the three attorneys who testified indicate that, in their experience, this legislation would incur more appeals and thereby, more expense.

SFC 04 # 92, Side B 09:53 AM

Senator Hoffman surmised therefore, that the attorneys' position is that as more appeals and more cases go to the Supreme Court, the result might be less predictability.

Ms. LaBolle responded that the attorneys who testified represent workers rather than business entities. She countered that testimony from attorneys presenting businesses might present a differing point of view. She pointed out that "the point of law is to provide rules that everyone" adheres to and "to provide consistency to the

actions of our society." She stated that developing a professional realm in which there is consistency and understanding in regards to what rules were followed, from one court to the next, would be beneficial.

Senator Hoffman inquired as to why no business' attorneys have testified.

Ms. LaBolle responded that she is speaking on behalf of businesses and has no control regarding who testifies.

AT EASE: 9:55 AM / 9:58 AM

BARBARA HUFF-TUCKNESS, Director of Governmental and Legislative Relations, Teamster Local 959, voiced, for the record, her concern that the full Committee is not currently in attendance during this "very important testimony," as she asserted, "that this is probably one of the most important pieces of legislation, I believe, that has been introduced in the State of Alaska in at least fifty years in respect to injured workers and the potential impact." She stated that while the bill has undergone various revisions that have served to make "a very bad bill" better, Local 959 is opposed to the legislation "in its current form." Nonetheless, she voiced appreciation for the time that has been allotted to addressing the concerns of interested parties.

Ms. Huff-Tuckness assured that people are conscious of the increasing costs of WC insurance, and she shared that her remarks on behalf of Local 959, an employer as well as a workers' representative, are relative to both the perspectives of injured workers and employers. She reviewed that WC was created to assist workers injured on the job, and, she continued that, as a result of that insurance arrangement, injured workers revoked their right to take their particular claim to court. She reminded the Committee that "the basic objectives" of WC was "to provide a swift and certain income" as well as medical benefits to the victim of a work accident or income benefits to their dependents, in the case of a work-related death. The process, she continued, would provide a single remedy and reduce court costs and delays arising out of personal injury litigation.

Ms. Huff-Tuckness stated that, while some attest that "the system is broken," no statistics support this claim. She exemplified that from 1999 to 2003, the current WC Board issued 1,363 decisions and orders (DMOs) with 189 of those, or 13.2 percent, being appealed to the Superior Court and 25, or 1.8 percent, being further appealed to the Supreme Court. Furthermore, she shared; of the 25 cases the decision was "50-50 decision injured worker decision verses

employer decision." She stressed that, from a statistical point of view, the numbers do not support the claim that the system is broken.

Ms. Huff-Tuckness qualified that the first seven sections of the bill are "good improvements" that would enhance the solvency of the Alaska Insurance Guaranty and increase qualifications of hearing officers by mandating that they be members of the Alaska Bar Association. She stated that hearing officers would be "tasked to instruct the hearing panel members" as to particular points of law, "in a similar manner as a judge would instruct a jury." She stated that Local 959 supports this even though it would remove the power of the Board by instilling hearing officer authority, similar to that of the Courts, at an early level. Continuing, she noted that while the provisions of the bill might remove the power of the Board, the proposed hearing officer salary increase would serve to promote continuity, consistency, and staff longevity that would enhance the WC decision making process. She voiced support for the provision stating that the three member Hearing panel, consisting of two members of the WC Board and one hearing officer, must be present when a hearing is conducted; however, she suggested that consideration be provided to allowing a member of the panel to participate telephonically.

Ms. Huff-Tuckness also noted that the bill would separate the adjudicative and administrative functions within the department and would formally recognize a WC division within the Department of Labor and Workforce Development. She stated that it would also fine employers who do not purchase WC insurance. She noted, for the record, that the cost of Local 959's WC insurance is less expensive than its medical insurance expense. However, she noted, while businesses could opt not to provide medical insurance, they are required to pay WC insurance.

Ms. Huff-Tuckness pointed out that Local 959 does not support the Appeals Commission issue in that the Commission would, in this bill, replace the functions of the Superior Court. This, she attested, would create an additional layer of bureaucracy with an expense projected to range between \$500,000 and one million dollars to provide for the three attorneys, appointed by the Governor, to hear cases. She noted that the recommendation that the "three member quasi judicial type commission" whose members would serve five-year staggered terms, be appointed through the Judicial Review Council was rejected with the argument that this would be an administrative Appeals Commission and therefore not subject to the appointment process.

Ms. Huff-Tuckness also stated that the de novo review process at

the Appeals Commission level makes no "logical sense at all," as hearing officers have more experience in WC than the members appointed to the Commission. She argued that the Commission should be eliminated as other "very positive changes have already been made to the panel process function" in this legislation, and that an appeal of a hearing officer panel decision could proceed from the panel to the Supreme Court as opposed to proceeding to the Commission and then to the Supreme Court. However, she attested, were one million dollars available to fund this extra layer of State government bureaucracy, Local 959 would ask that the de novo review be removed from the Commission process.

Ms. Huff-Tuckness reiterated that Local 959 does not support this legislation in its current form, as it would not benefit either injured workers or employers.

AT EASE 10:15 AM / 10:16 AM

SCOTT NORDSTRAND, Deputy Attorney General, Civil Division, Office of the Attorney General, Department of Law shared with the Committee the process that occurred to develop the committee substitute before the Committee. He stated that the Department of Law, the Department of Labor and Workforce Development, and the Division of Insurance in the Department of Community and Economic Development in response to concern drafted the original legislation regarding the increase in WC rates, as well as the need to provide funds for the Insurance Guaranty Fund. In this process, he attested, it was determined that improving the process and making the system more predictable, responsive, and reasonable in order to provide insurance companies with assurances required in determining rates would assist in controlling WC expenses, without negatively affecting benefits. He noted that the option of reducing medical payments rates was also reviewed; however, he attested, the associated consequences were undesirable. Therefore, he stated, the goal was to develop a "benefit neutral bill." This bill, he declared, is benefit-neutral, with the lone exception of the cost-of-living-allowance provision for out-of-State residents.

Mr. Nordstrand pointed out that the original bill was discussed by an ad hoc labor and management group whose conclusions are presented in the March 5, 2004 letter titled "Alaska Labor-Management Ad Hoc Committee on Workers' Compensation," [copy on file] from Kevin Daugherty and addressed to the Senate President and Speaker of the House. The letter, he pointed out, states that while the ad hoc group had not addressed procedural issues before, they concurred with certain sections of the bill such as placing some administrative responsibilities, formerly vested in the WC Board, with a WC Division director, "and replacing the Superior

Court with an Appeals Commission." He noted that members of the ad hoc group included Barbara Huff-Tuckness and John Guichii.

Senator Olson asked whether the members of the ad hoc group unanimously supported the recommendations.

Mr. Nordstrand understood that it was unanimous; however, he continued, due to the fact that the Department was not a participant, he was unsure of the exact vote tally.

Mr. Nordstrand shared that the Department learned that labor continued to have concerns regarding such things as the elimination of lay WC Board members. He stated that in the original bill, professional hearing officers would hear cases, and their decisions, he noted, if appealed, would proceed to the WC Appeals Commission, and then to the Supreme Court. In addition to the concern regarding lay Board members, there was concern about the composition of the Commission. He stated that to address these concerns, representatives of the Murkowski Administration met with representatives, over a several day period, to attempt to reach a compromise.

Senator Bunde requested that Mr. Nordstrand, in consideration of time, continue his testimony after the forthcoming Senate floor session.

Senator Hoffman noted that one of primary reasons for the introduction of this legislation was to address the increased costs of WC. Therefore, he inquired as to the amount of savings that would be anticipated.

Mr. Nordstrand responded that the savings have not been calculated.

Senator Hoffman asked in the case where costs remained constant or increased, whether it would be appropriate to have a termination date associated with this legislation in order to further review it.

Mr. Nordstrand responded that were rates not lowered over time or were the participants in the system to determine that further revisions might be required, he would encourage the Legislature to revisit the process, as he continued, incorporating a termination date at this time would be "bad public policy." He stated that provisions in the bill would require the Chair of the Appeals Commission to present an annual report regarding such things as the success of moving cases more quickly and whether the kind of results that have transpired are good public policy. He encouraged Legislators to review that report to determine whether further

adjustments should be made, were this legislation enacted. He stated that the uncertainty instilled by a termination date would be a negative factor.

Senator Hoffman stated that as a businessman, rather than being worried about any uncertainty instilled by a termination date, he would be worried about WC expenses, as he reiterated that reducing the costs of the program is the goal of developing the bill.

RECESS TO CALL OF THE CHAIR 10:26 AM / 1:40 PM.

[NOTE: Co-Chair Green chaired the remaining portion of the meeting.]

CHANCY CROFT, Attorney, testified via teleconference from an offnet site and voiced that this bill "is important not only for its WC implication, but also for its impact" on the State's judicial system. He shared that the type of judicial system the State should incorporate was a "heated topic" at the State's Constitutional Convention. He reminded that a unified Court System was adopted in which rules would apply to all courts and to which a unified authority would administer the system in an efficient and un-cumbersome manner to allow, for instance, cases from a court with a heavy caseload to be transferred to one with a lesser caseload. He stated that, rather than judges being elected, they are appointed by the governor from a list of those "determined most qualified by the Judicial Council." He noted, however, that, aside from the Court System, a special Tax Court does exist within the Department of Revenue because it handles "confidential matters."

Mr. Croft continued that this legislation "is the worst solution to a problem that does not exist" in that it would allow the Governor to appoint people to an appeals tribunal who, while not judges, would have as much or more power than a Superior Court judge. He stated that this is contrary to the selection process for judges as determined at the Constitutional Convention. He declared that this would be a "real mistake." He argued against "the justification for this is to bring predictability and uniformity to Board decisions," by declaring that he has "only experienced" one situation in his numerous years of WC experience that was important enough to be appealed to the Supreme Court. Therefore, he stated that, due to limited conflict, there is no need to create a new wing of bureaucracy.

Mr. Croft declared that currently there is uniformity in the State's WC cases as a Superior Court legal ruling "is recognized as precedent and would be followed until it were changed by another Superior Court or by the Supreme Court." He characterized this

legislation as being "unprovoked bad because it is going to delay justice, its going to delay resolution of claims for injured workers." He voiced that it might be argued, "that if the tribunal could have a trial de novo, why is that any different than the Superior Court doing a trial de novo." He stated that the simple answer is that Superior Courts do not do trials de novo. He restated a previous testifier's comment that the Superior and Supreme Courts' action on an appeal was to determine whether the Board's decision was supported by substantial evidence. If that is found to be the case, he continued, the Court has to accept the Board's decision. He quoted State Statute, AS 2330122, which he attested, was adopted by the Legislature in 1982 at the request of State's business community, who "wanted finality to Board decisions and who did not want "a sympathetic court" to reweigh the evidence. The current process has, he attested, ensured finality and has established a standard from which few appeals are generated.

Mr. Croft stated that, because of the limited number of appeals of Board's decision, the Superior Court is able to currently handle appeals at no additional cost. Furthermore, he noted that because the Court's administrators could adjust workloads, the 30 to 40 Superior Court judges average one WC appeal annually. He stated that were the Superior Court removed from the WC process, no savings would result, as currently the cases, per judge, are factored in as part of the workload.

Mr. Croft informed the Committee that there is only one other state that has a system similar to that being proposed, and, he continued, the others, perhaps with the exception of one, have WC systems similar to what is currently in affect in Alaska. He voiced concern that the proposed system would cause delay by the fact that a new hearing could be requested to reweigh all of the evidence in addition to stays being granted. He attested that a State's system works well if it works promptly, as, he declared, studies have shown that "when there is a delay in determining whether people are entitled to compensation, a lot of people" might be forced to borrow money, go on welfare, lose their home, or face bankruptcy. Furthermore, he pointed out that when these WA cases finally do get a hearing, the injured worker prevails 80 percent of the time.

Mr. Croft considered Sections 1 through 7 to be good proposals in that they would assist the solvency of the Alaska Insurance Guaranty Fund, would charge a penalty to those employers who do not carry WC insurance, and would elevate pay for hearing officers. He noted that while he supports the provision in the bill that would require all three hearing board members to be present at a hearing, AS 44.62.600 and AS 44.62.635 of the Administrative Procedures Act allows for teleconference participation by Board members.

Therefore, he suggested that a language change be considered as omission of this language would result in further delays and increased costs as such things as incumbent weather might prevent a member from being present.

Mr. Croft voiced, in reference to questions regarding the WC Board's member balance, that according to Department of Labor and Workforce Development statistics, the fact that the WC Board ruled in favor of an employer approximately 40 percent of the time supports the position that the Board is balanced.

Co-Chair Green asked for further information regarding the provision requiring all Board members be present at a hearing.

Mr. Croft identified the language in question to be located in Sec, 10, subsection Sec. 23.30.006(g) on page eight, lines 14 & 15 that reads as follows.

...A hearing may not proceed in the absence of a board member.

Mr. Croft stated that this language differs from that specified for the Appeals Commission as located in Sec. 10, subsection Sec.23.30.007(e) on page nine, lines 17 & 18 that reads that "A majority of the members of the commission constitutes a quorum." as well as language in Sec. 58, Sec. 23.30.113 on page 36, lines 11 - 14 that reads "In proceedings before hearing examiners and hearing panels, the administrative adjudication procedures of AS 44.62 (Administrative Procedure Act) do not apply, except that AS 44.62.410(b), 44.62.460(a) - (d), 44.62.470, 44.62.480, 44.62.510, and 44.62.590 shall apply to proceedings under this chapter." He declared that AS 44.62.600 and AS 44.62.635 should be included in this listing.

Mr. Croft pointed out that another technical problem with the bill is that currently were an injured worker to desire to settle their claim and waive their rights, the WC Board must approve the agreement in order to protect the injured worker. He avowed that this is a good provision, as, he informed, 30 percent of injured workers do not have attorney representation.

SFC 04 # 93, Side A 01:55 PM

Mr. Croft continued; however, that language located in Sec. 12, beginning on line 19, page 13 of this legislation would, provided the worker's attorney agreed to the settlement, allow for an "automatic discharge of the liability on the part of the employer."

He stated that this is "a terrible idea," as the "it would allow insurance companies to take advantage of injured workers."

Mr. Croft continued that trial de novo is a new concept, as currently this option does not exist at the Superior Court level. Continuing, he voiced support for the bill's intent language as denoted in Sec. 8, page five of the bill; although he noted that some of the language already exists in other legislation.

Co-Chair Green asked whether Mr. Croft had testified during the Judiciary Committee hearing on this legislation.

Mr. Croft responded that he had testified before the Judiciary Committee as well as at earlier hearings.

Co-Chair Green asked for further information regarding the work group that had evolved during the Judiciary Committee hearings.

Mr. Croft responded that "a select few" had participated in the drafting of the original version of the bill; and he continued that during the Judiciary Committee hearings on the bill, "there was a delay" while labor representatives met with the Attorney General's office. He noted that this was not a public meeting or "broad based discussion or analysis of the bill." He stated that while there were "superficial changes" such as reinstatement of the Hearing panel, the bill retained the authority regarding the de novo hearing process.

Co-Chair Green asked whether the testifier preferred the original version of the bill to the Judiciary Committee version of the bill.

Mr. Croft responded that the Judiciary committee substitute is an improvement over the original version of the bill; however, he supported the "complete elimination" of the Appeals Commission rather than simply eliminating the de novo process, as he contended, the addition of the Commission would add another layer of bureaucracy and increase expenses. He insisted that there is no guarantee that the members of the Commission would be as qualified as the current system's participants. Therefore, he concluded that while the Judiciary committee substitute is an improvement over the original version of the bill, adopting this legislation "would be a big mistake."

Senator Hoffman asked whether the current WC Board feels that changes are necessary.

LINDA HALL, Director, Division of Insurance, Department of Community and Economic Development, testified via teleconference

from an offnet site, and stated that she is unaware of the Board's position.

KRISTIN KNUDSEN, Assistant Attorney General, Torts and Worker's Compensation Section, Department of Law, testified via teleconference from an offnet site, and noted that she was involved in the drafting of the bill and would be available to answer technical questions.

DAVE FLOERCHINGER, Attorney, testified via teleconference from an offnet site and shared that he has been involved in WC cases since 1977 and is in favor of the bill, as he believes "it would result in a more rapid and efficient delivery of benefits and a more rapid resolution of disputes." He opined, "that the concept of the Appeals Commission would address the problem of inconsistency rulings" by various WC panels and the Superior Courts and would result in a reduction of expenses to employers and insurance carriers. He reiterated that he is in favor of bill, as he contended that insurance carriers, employers, and employees would be provided "some predictability of outcome," were this legislation adopted.

Senator Hoffman noted that conflicting testimony has been received in regards to whether this legislation would enhance or delay the WC hearing process. Therefore, he asked the testifier whether he would support imposing a termination date on this legislation in order to readdress it were it to negatively affect the process.

Mr. Floerchinger responded that a termination date provision on the legislation would not be "advisable" as the goal of the legislation is to try and develop a body of law. He opined that while there might initially be delays, they would not be expected to exceed those currently experienced by the appeals to the Superior Court; specifically that the current system is delayed due to delays in generating and furthering records of proceedings at the Board level.

CONSTANCE LIVSEY, Attorney, testified via teleconference from an offnet site in favor of the committee substitute. She noted that she has been practicing WC cases, primarily representing employers and insurance carriers, since 1984. She also noted that she is a member of the Worker's Compensation Committee of Alaska (WCCA) Board. She stated that, as a member of the WCCA subcommittee that has been reviewing this legislation, she has kept abreast of the original bill's language and the subsequent changes that have been incorporated. She opined that the creation of the Appeals Commission would be beneficial to the process for, in her experience, the current appeal process is prone to delay and

inefficiencies, particularly at the Superior Court level where she has experienced such things as transmittal of record delays from the WC Board process to the Court.

Ms. Livsey expected that these types of delays would not exist were an Appeals Commission established, as it would address appeals in a more efficient and consistent manner. Furthermore, she contended, "the costs of appeals are disproportionately borne by employers," as she exemplified that were an employee to lose an appeal, they would not be required to pay a portion of employer's appeals costs; however, she continued, were an employer to appeal and lose, they would be required to pay a portion of the employee's costs. She stated that this places a burden on employers, and that the Appeals Commission, being more efficient and quicker, would assist in keeping the cost of an appeal to a minimum as well as resulting in more consistency. She urged the Committee to support the Judiciary committee substitute.

Senator Bunde asked whether she, as a practicing WC attorney, would support there being additional penalties in place for WC fraud.

Ms. Livsey voiced that, "there is a sense on the part of employers and insurance carriers" that it would be beneficial to increase fines and stiffer penalties, as she contended that the current provisions are not strong enough to discourage WC fraud.

Senator Bunde asked that she provide his office with additional comments and suggestions regarding how to address WC fraud.

TRINA HEIKES, Attorney, testified via teleconference from an offnet site and informed the Committee that she has been working with WC cases since 1983. Additionally, she noted that she is a member of the WCCA Board and its subcommittee that reviewed this legislation. She commented that, "industry has not put forth any input" in this bill; however, she noted that labor did negotiate with the Murkowski Administration. The committee substitute, she contended, is the result of those discussions. She stated that there are two good things about the committee substitute: the first being that while "it does not change any substantive law," it reorganizes the way in which the board operates; and secondly, it raises the experiences and qualifications of the hearing officers. Currently, she stated hearing officers are not required to be licensed and practicing attorneys or to be members of the Alaska Bar Association. This bill, she attested, requires that hearing officers be licensed attorneys who have experience before the WC Board and who are members of the Alaska Bar Association. Another positive result of this legislation, she continued, would be the creation of the WC Appeals Commission, whose members would be

required to have five-years of WC experience and be licensed attorneys. She stressed that this would be beneficial because, currently "there is not one sitting Superior Court judge" who had WC experience before being appointed to the Bench.

Ms. Heikes reviewed some of the appeals delays she has experienced in the current process, and she stressed that the creation of an Appeals Commission would reduce delays, because, she exemplified, a legal brief would not be required. She noted that developing an appeals' legal brief could cost up to \$10,000. The Appeals Commission, she declared, could simply review the record and may, if desired, request oral arguments, and then decide the case. She declared that the proposed process would be quicker and "less costly to the parties involved."

Ms. Heikes pointed out, in response to the concerns regarding de novo hearings, that AS 22.10.020, subsection (d) deals with the jurisdiction of the Superior Court in that "hearings on appeal from a final order or judgment of a subordinate court or administrative agency shall be on the record, unless a Superior Court in its discretion, grants a trial de novo." She noted, that while initially surprised that the Appeals Commission would be able to grant a trail de novo, she, upon research, found that the Superior Court currently has "the same level of discretion." She assured that the de novo process would allow sufficient time for preparation and would be decided based upon a full evidentiary basis.

In summary, Ms. Heikes urged the Committee to support the committee substitute, as it would increase the level of experience and professionalism, and would, therefore, enhance the quality of the decision-making process and quicken the appellate process. She stressed that currently when a case is appealed to the Superior Court and then to the Supreme Court, the Supreme Court "gives no deference to the opinion of the Superior Court." She stated that the current process is time-consuming and therefore, expensive.

ROBERT LOHR testified via teleconference from an offnet site and informed the Committee that while he is speaking on behalf of himself, he is a former director of the Division of Insurance in the Department of Community and Economic Development. He stated that the Division of Insurance is required to produce an annual report to notify the Legislature about the affect previous tort reform legislation has had on the cost of insurance. He shared that during his years as director, "no savings was attributable to the tort reform process," and he surmised that this legislation would likely have the same result. Continuing, he opined that "the savings from this radical reform" of the WC process would be "at

best, speculative." He stated that he has been following the bill's committee hearing process, and, noting the Department of Administration's February 9, 2004 indeterminate fiscal note, he declared that while it is argued that the proposed process would save money, "no one has yet quantified what those savings would be even on an estimated basis." He "suspected" that rather than savings, there would be "real costs" associated with the legislation. He stated that the accompanying fiscal notes, including the one from the Department of Labor and Workforce Development and the Court System, amount to \$700,000 per year. He stated that insurance companies are unwilling to calculate any savings or when they might occur. Furthermore, he stated that while "the bill might speed up the process through the Superior Court level," it would "bottleneck" and increase expenses at the Supreme Court level.

Mr. Lohr voiced support for Mr. Croft's concerns regarding the contemplation of the "special treatment of any administrative agency of appeals in the Court system," and he urged the Legislature to thoroughly investigate whether this would be the appropriate action to take.

Mr. Lohr opined that the current system produces clear precedent setting decisions at the Supreme Court level, and furthermore, he continued, confusion in this regard, at the lower levels of the process, "would not be significantly improved by this legislation. He also stated that actions should be taken to ensure that significant opportunity be provided to prosecute WC fraud, as he shared that the State's "excellent team of investigators for insurance fraud ... used to tear their hair out at the difficulty of making a case on Worker's Compensation because of the vagueness of the criminal standards for WC fraud."

In conclusion, he echoed others' testimony in support of the Insurance Guaranty Fund provision.

Mr. Nordstrand continued his earlier testimony regarding the process that was undertaken to achieve "negotiated middle ground with labor on this bill." He reiterated that a labor and management ad hoc committee met to review the bill and that their aforementioned letter denoted that the contents of the bill addressed things that they had not ere considered, but supported, such as replacing the WC Board with an Appeals Commission and allowing a WC director to assume some of the responsibilities currently assigned to the WC Board.

Mr. Nordstrand voiced surprise that some of the members of that ad hoc group had testified against the establishment of an Appeals

Commission today.

Mr. Nordstrand stated that while the bill was in the Judiciary Committee, the Department of Law met, for several days, with representatives of labor both in person and telephonically, in order to better understand what issues in the bill were or were not supported. He stated that one of the issues that surfaced was labor's concern that a layperson was not a member of the WC Hearing board. He stated that the Department understood the concern and agreed to address it. Continuing he noted that another concern was that the Appeals Commission itself might require some member balancing.

Mr. Nordstrand stated that following those meetings an Administrative "team" sat down and drafted a committee substitute containing changes and compromises to address labor's concerns. Concerns addressed, he continued, included such things as increasing the terms of office from four to five years. That draft, he continued, was presented to the ad hoc committee, who responded with a list of ten concerns [copy on file] titled "Proposed Changes Discussed at March 31, 2004 Teleconference."

Mr. Nordstrand stated that the Administration reviewed the list and was able to compromise or agree on eight of the ten concerns, which were incorporated into a committee substitute. The two that could not be agreed upon, proposed Changes Five and Nine, were incorporated into an amendment to that committee substitute. Adoption of the amendment, he continued, would result in a bill that labor would accept.

Co-Chair Green asked for clarification that the amendment incorporated language pertaining to Changes Five and Nine.

Mr. Nordstrand concurred that those two changes were put into amendment form.

Co-Chair Green understood therefore that the other eight changes were incorporated into the draft committee substitute.

Mr. Nordstrand concurred, and reiterated that the proposed amendment addressed the other two concerns.

Mr. Nordstrand referred the Committee to a handout titled "What's the Difference? Comparison in Question & Answer Format" [copy on file] that compares the current system to that being proposed in the original bill and in the Judiciary committee substitute. He stated that the Judiciary committee's desire was that the Judiciary committee substitute would address concerns and be agreeable to the

involved parties. He communicated that the lone point of disagreement was the proposed de novo review process identified in the comparison chart's column titled "Where does an appeal go?".

Mr. Nordstrand stated that following debate on the matter, the Judiciary committee determined that the de novo review process was critical to the process, and the committee substitute was reported from committee with that process included. He stated that the Administration worked hard to address the concerns and reach a solution. "All in all," he concluded, while the original bill was a clean bill, the committee substitute is a compromise bill that he is proud of. He noted that some of the changes the Administration conceded to, such as the specifics of the WC Hearing panel, were major concessions.

Senator Bunde understood that there is specific concern that the make-up of the Hearing panel might be weighted in favor of labor.

Mr. Nordstrand stated that language in the bill specifically mandates that each Hearing panel consist of one industry representative, one labor representative, and a "new upgraded" hearing officer, all of whom must be present when the hearing is conducted. He continued that the question as to whether the panel could participate telephonically would be "troubling" and contrary to the hearing panel's ability to judge, in person, the credibility of a witness. Additionally, he stated that the panel's determination of a witness' credibility is important as not to undermine "review from above." He understood that labor was agreeable with the concept of having all three members physically be in attendance. He assured that the panel would be balanced.

Mr. Nordstrand also noted that there was agreement to the fact that the Appeals Commission would consist of at least one commissioner with experience in representing employees, one with experience in representing employers, and one who could be either or both.

Senator Bunde asked how the State could more aggressively pursue the WC fraud issue.

Mr. Nordstrand replied that WC fraud is an issue of concern for the State as well as for lawyers, and he noted that the concern includes the standards that must be met to prosecute WC fraud. He stated that the Department would be happy to assist in drafting legislation to address this issue.

Senator Bunde asked whether the WC fraud issue could be incorporated into this bill.

Mr. Nordstrand responded that it would not be appropriate, at this stage of the Legislative session, to include that language in the bill, as he asserted that careful thought should be devoted to determine how to address the issue. He suggested that this be furthered during the interim between this Legislative session and the next.

Co-Chair Green inquired to the identity of the ad hoc committee members appointed during the Senate Judiciary committee hearing.

Mr. Nordstrand stated that the members included: Kevin Dougherty of Alaska Laborers; Don Etheridge with Operating Engineers Local 71; Barbara Huff-Tuckness of Teamsters Local 959; Jim Robison, former Commissioner of Labor and former WC Board member; John Guichii, IBW representative and current WC Board member; himself, Kristin Knudsen, Department of Law; Paul Lisankie, Director, Division of Worker's Compensation, Department of Labor and Workforce Development; Ed Fisher, Deputy Commissioner, Department of Labor and Workforce Development; and Linda Hall, Director, Division of Insurance, Department of Community and Economic Development.

Co-Chair Green asked Mr. Nordstrand whether he was encouraged by the outcome of the ad hoc committee meeting.

Mr. Nordstrand responded that the Administration was both encouraged that so much had been accomplished and disappointed by the fact that the labor representatives' position was "that they would oppose the entire bill" were the one issue regarding de novo review "not to go their way."

SFC 04 # 93, Side B 02:42 PM

Mr. Nordstrand stated that the Administration could not, "in good conscience, agree to the change because to agree to not allow this commission to review de novo," not as incorrectly referred to in testimony today as "trial de novo," and "review the record and reweigh the evidence, and to smooth out the edges of cases that should have been decided another way, so that there is a uniformity and a predictability of outcome on its way to the Supreme Court." He reiterated that this could not be agreed to by the Administration. Continuing, he concurred that the Administration had veered from some of the provisions of the Council on State Governments' Model Act because changes were required to align procedures with the State's system. However, he stated that one clear provision specified in the Model Act is de novo review. He stressed that de novo review "is the standard, the norm among other

states."

Mr. Nordstrand referred the Committee to a chart, provided by the Administration, titled "Workers Compensation Organization under CSSB 311(JUD)" [copy on file] which he expressed, denotes that general courts defer to agencies because of "agency expertise." Continuing, he argued that to support labor's position would "be folly" in that it would allow for the experienced and qualified members of the WC Commission to defer to other qualified people whom they "hire and fire." He stated that in the current system, Superior Court judges, while capable, "are not necessarily qualified in WC law." Therefore, he stressed that there is deference to the expertise within the agency. He concluded that this, therefore, is the source of the de novo idea as the information provided to the Court should be of the highest caliber.

Co-Chair Green asked for an explanation on how to decipher the information on the aforementioned chart.

Mr. Nordstrand explained that the information on the chart flows upward from the Workers Compensation Hearing Panel information located on the bottom of the page. Continuing, he stated that the WC process would start with the three-person Hearing Panel, and were its decision unacceptable to any of the parties, it would be appealed to the WC Appeals Commission. Continuing, he stated that were the Commission's decision also unacceptable, the appeal would continue on to the Supreme Court.

Co-Chair Green asked what occurs after Supreme Court hearing.

Mr. Nordstrand replied that the Supreme Court could either make a decision or "remand" the case back down the Appeals Commission with an order to take certain action. He noted that the Appeals Commission could also remand a case back to the Hearing panel.

Co-Chair Green asked whether the Supreme Court could remand the case back to either the Appeals Commission or the Hearing panel.

Mr. Nordstrand clarified that the Supreme Court could remand it to the Appeals Commission, whose action they would have reviewed. Similarly, he continued, the Appeals Commission could remand a case back to the Hearing panel.

Co-Chair Green asked for confirmation that in the current system, a case would proceed from the WC Board to the Superior Court and then to the Supreme Court. Continuing, she noted that the Supreme Court would, rather than deferring to the decision of the Superior Court, defer to the WC Board.

Mr. Nordstrand concurred.

In response to a question from Senator Bunde, Mr. Nordstrand stated that in the current system, the decision of the WC Board "is the final agency decision" and then it would proceed, if appealed, to the Courts. Continuing, he stated that in the proposed system, the decision made by the Hearing panel would be furthered to the Appeals Commission.

Senator Hoffman understood therefore that under the current system, were no appeal forthcoming, the WC Board's decision would be the final decision.

Mr. Nordstrand affirmed.

Senator Hoffman asked for confirmation that approximately 80 percent of the WC Board's decisions are not appealed.

Mr. Nordstrand responded that while not familiar with the exact statistics, this percentage might be true. However, he advised that under the proposed system, the decision of the Hearing panel could also be final.

Senator Hoffman voiced confusion therefore as to why the proposed system is described "as a two-tiered system."

Mr. Nordstrand responded that it would be considered a two-tiered system because there are two tiers of authority within the agency.

Ms. Hall clarified, in regards to the WC rate setting process, that NCCI Holdings, Inc., the nation's largest database of workers compensation insurance information, does not set rates, as their role is to develop loss-cost analysis which is the determination "of the amount of money required to pay claims." She stated that this determination of "only a portion of the final rate charged to employers." Continuing, she shared that the loss-cost determination is sent to the Division of Insurance who upon further analysis, "approves, approves with modification, or disapproves that determination." Furthermore, she noted that insurance carriers review the determination and either adopt it or file a deviation, as individual insurance companies are able to compute their own factors into the rate structure. Therefore the rate making process, she professed, is a computation of a multitude of factors.

Ms. Hall acknowledged testimony noting that NCCI has not provided insurance cost or premium saving projections that might result from this bill. In this regard, she commented that "typically" NCCI

provides estimates regarding the effect of benefit changes. She exemplified that "were the value of the whole person to change," then there would be an affect on the amounts paid out for injuries. She clarified, therefore, that this bill is "a system change" rather than a benefit change, and, she continued, it is not considered to be, at this point, "particularly quantifiable."

Ms. Hall continued that because the legislation did not incorporate benefit changes, it was not initially provided to the ad hoc committee. She stated that in order to address employers' increasing WC premiums, the focus of the legislation was to modify the system to make it "more efficient and more predictable" prior to making any changes to benefits. She noted that at one point, language was being considered to "tie physician fee schedules to the Medicare schedule." She stated that this approach has recently been implemented in California, and were it enacted in Alaska, she stated, the Division has determined that the resulting savings would amount to approximately \$50 million. However, she noted, this would be "a dramatic change in the way benefits would be paid," and "out of concern to its affect on injured workers," the Division removed the language from consideration. Therefore, she shared that the focus shifted to changes other than benefit changes. Continuing, she stated that this bill, while not addressing all the cost drivers, is a beginning to making changes without a complete "revamping" of the WC system.

In response to a question from Co-Chair Green, Ms. Hall stated that she could not comment on Mr. Luhr's testimony as they "have very different perspectives on this bill."

Mr. Nordstrand informed the Committee that letters of endorsement are included in Members' packets.

Co-Chair Green stated that the sheet providing the side-by-side comparison of the three bill versions was helpful. She asked whether there were continuing concerns that should be addressed.

Mr. Croft asked that the concern involving the automatic release upon compromise, were an individual represented by an attorney, be further addressed.

There being no further testimony, Co-Chair Green ordered the bill HELD in Committee.

#

#### **ADJOURNMENT**

Co-Chair Lyda Green adjourned the meeting at 02:58 PM.