

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

April 5, 2004

8:08 a.m.

TAPE(S) 04-34&35

**MEMBERS PRESENT**

Senator Ralph Seekins, Chair  
Senator Scott Ogan, Vice Chair  
Senator Gene Therriault  
Senator Johnny Ellis  
Senator Hollis French

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

SENATE BILL NO. 379

"An Act providing that public members of the Board of Trustees of the Alaska Permanent Fund Corporation may be removed only for cause; and providing for an effective date."

HEARD AND HELD

CS FOR HOUSE BILL NO. 230(STA)

"An Act relating to political signs on private property."

HEARD AND HELD

SENATE BILL NO. 311

"An Act providing for a special deposit for workers' compensation insurers; relating to the board of governors of the Alaska Insurance Guaranty Association; relating to covered workers' compensation claims paid by 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; relating to agreements that discharge workers' compensation liability; providing for hearing officers 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."

HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 379

SHORT TITLE: PERM FUND BOARD PUBLIC MEMBER REMOVAL

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

03/26/04 (S) READ THE FIRST TIME - REFERRALS  
03/26/04 (S) JUD, FIN  
04/05/04 (S) JUD AT 8:00 AM BUTROVICH 205

BILL: HB 230

SHORT TITLE: POLITICAL SIGNS ON PRIVATE PROPERTY

SPONSOR(s): REPRESENTATIVE(s) HOLM

03/31/03 (H) READ THE FIRST TIME - REFERRALS  
03/31/03 (H) TRA, STA  
04/29/03 (H) TRA AT 1:30 PM CAPITOL 17  
04/29/03 (H) Heard & Held  
04/29/03 (H) MINUTE (TRA)  
05/06/03 (H) STA AT 8:00 AM CAPITOL 102  
05/06/03 (H) Scheduled But Not Heard  
05/06/03 (H) TRA AT 1:30 PM CAPITOL 17  
05/06/03 (H) Moved CSHB 230(TRA) Out of Committee  
05/06/03 (H) MINUTE (TRA)  
05/07/03 (H) TRA RPT CS(TRA) 4DP 2NR  
05/07/03 (H) DP: OGG, KOOKESH, FATE, HOLM;  
05/07/03 (H) NR: KOHRING, MASEK  
05/07/03 (H) STA AT 8:00 AM CAPITOL 102  
05/07/03 (H) Scheduled But Not Heard  
05/08/03 (H) STA AT 8:00 AM CAPITOL 102  
05/08/03 (H) Heard & Held

05/08/03 (H) MINUTE (STA)  
 05/09/03 (H) STA AT 8:00 AM CAPITOL 102  
 05/09/03 (H) Moved CSHB 230(STA) Out of Committee  
 05/09/03 (H) MINUTE (STA)  
 05/12/03 (H) STA RPT CS(STA) 3DP 3NR  
 05/12/03 (H) DP: GRUENBERG, HOLM, LYNN; NR: SEATON,  
 05/12/03 (H) DAHLSTROM, WEYHRAUCH  
 05/17/03 (H) CORRECTED CS(STA) RECEIVED  
 05/17/03 (H) TRANSMITTED TO (S)  
 05/17/03 (H) VERSION: CSHB 230(STA)  
 05/18/03 (S) READ THE FIRST TIME - REFERRALS  
 05/18/03 (S) STA, JUD  
 02/12/04 (S) STA AT 3:30 PM BELTZ 211  
 02/12/04 (S) Heard & Held  
 02/12/04 (S) MINUTE (STA)  
 03/09/04 (S) STA AT 3:30 PM BELTZ 211  
 03/09/04 (S) Scheduled But Not Heard  
 03/11/04 (S) STA AT 3:30 PM BELTZ 211  
 03/11/04 (S) Moved SCS CSHB 230(STA) Out of  
 Committee  
 03/11/04 (S) MINUTE (STA)  
 03/12/04 (S) STA RPT SCS FORTHCOMING 3NR  
 03/12/04 (S) NR: STEVENS G, STEDMAN, GUESS  
 03/15/04 (S) STA SCS RECEIVED  
 03/26/04 (S) JUD AT 8:00 AM BUTROVICH 205  
 03/26/04 (S) Heard & Held  
 03/26/04 (S) MINUTE (JUD)  
 04/05/04 (S) JUD AT 8:00 AM BUTROVICH 205

BILL: SB 311

SHORT TITLE: INSURANCE & WORKERS' COMPENSATION SYSTEM  
 SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/09/04 (S) READ THE FIRST TIME - REFERRALS  
 02/09/04 (S) L&C, FIN  
 02/10/04 (S) L&C AT 1:30 PM BELTZ 211  
 02/10/04 (S) Heard & Held  
 02/10/04 (S) MINUTE (L&C)  
 02/19/04 (S) L&C AT 1:30 PM BELTZ 211  
 02/19/04 (S) Heard & Held  
 02/19/04 (S) MINUTE (L&C)  
 02/26/04 (S) L&C AT 1:30 PM BELTZ 211  
 02/26/04 (S) Heard & Held  
 02/26/04 (S) MINUTE (L&C)  
 03/04/04 (S) L&C AT 1:30 PM BELTZ 211  
 03/04/04 (S) Moved SB 311 Out of Committee  
 03/04/04 (S) MINUTE (L&C)

03/05/04 (S) L&C RPT 1DP 1DNP 2NR  
03/05/04 (S) DP: BUNDE; DNP: FRENCH; NR: SEEKINS,  
03/05/04 (S) STEVENS G  
03/12/04 (S) JUD REFERRAL ADDED AFTER L&C  
03/26/04 (S) JUD AT 8:00 AM BUTROVICH 205  
03/26/04 (S) Heard & Held  
03/26/04 (S) MINUTE (JUD)  
04/05/04 (S) JUD AT 8:00 AM BUTROVICH 205

**WITNESS REGISTER**

Mr. Robert Storer  
Alaska Permanent Fund Corporation  
PO Box 25500  
Juneau, AK 99802-5500

**POSITION STATEMENT:** Presented and supports SB 379

Mr. Mike Barnhill  
Department of Law  
PO Box 110300  
Juneau, AK 99811-0300

**POSITION STATEMENT:** Answered questions about SB 379

Mr. Scott Nordstrand  
Deputy Assistant Attorney General  
Department of Law  
PO Box 110300  
Juneau, AK 99811-0300

**POSITION STATEMENT:** Supports the proposed CS to SB 311

Mr. Kevin Dougherty  
Alaska Laborers Union  
Anchorage, AK

**POSITION STATEMENT:** Discussed the Laborers Union's support of specific provisions in the CS to SB 311 and its support for the proposed amendment

Ms. Pam LaBolle  
Alaska State Chamber of Commerce  
217 Second Street  
Juneau, Alaska 99801

**POSITION STATEMENT:** Expressed criticism that the Chamber was not part of the ad hoc group but expressed support for the proposed CS to SB 311

Mr. John Giuchici  
Fairbanks, AK

**POSITION STATEMENT:** Supports the proposed CS to SB 311 only if amended

Ms. Nichola Lienhart  
VECO  
Anchorage, AK

**POSITION STATEMENT:** Supports the proposed CS to SB 311

Mr. Doug Wooliver  
Alaska Court System  
303 K St.  
Anchorage, AK 99501-2084

**POSITION STATEMENT:** Took no position on SB 311 but discussed its impact on the court system

Mr. Chancy Croft  
Anchorage, AK

**POSITION STATEMENT:** Supports sections 1-5 of the proposed CS but expressed caution about other provisions in the bill

Mr. Eden Larson  
ABC Alaska  
Anchorage, AK

**POSITION STATEMENT:** Supports the proposed CS to SB 311 but not the proposed amendment

Mr. Todd Larkin  
Staff to Representative Holm  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Presented CSHB 230(STA) for the sponsor

Mr. Myrl Thompson  
No address provided

**POSITION STATEMENT:** Asked questions about CSHB 230(STA)

**ACTION NARRATIVE**

**TAPE 04-34, SIDE A**

**CHAIR RALPH SEEKINS** called the Senate Judiciary Standing Committee meeting to order at 8:08 a.m. Senators Ellis, French, Ogan and Seekins were present. He announced the committee would begin with SB 379.

**SB 379-PERM FUND BOARD PUBLIC MEMBER REMOVAL**

MR. MIKE BARNHILL, Assistant Attorney General with the Commercial Section of the Department of Law (DOL), presented SB 379 and explained that this bill would authorize the dismissal of Alaska Permanent Fund Corporation (APFC) board members only for cause and lists the kinds of causes as inefficiency, neglect of duty, misconduct in office, or conviction of a misdemeanor or felony involving moral turpitude. SB 379 provides for due process for board members, which includes a hearing before the governor or a governor's designee, after which the governor or designee will prepare a statement.

MR. BARNHILL pointed out that SB 379 is modeled after AS 16.05.280, which pertains to the Board of Game. The bill will provide insulation for board members from partisan politics during a change of administration and provide for continuity in the board, especially important when managing a \$28 billion fund. He deferred to Mr. Storer for a more detailed analysis of the policy reasons for this change.

MR. ROBERT STORER, Executive Director of the APFC, informed members the APFC board is comprised of six members: two cabinet members, one of which must be the commissioner of revenue; and four appointed members. Board members serve staggered four-year terms, so that one member's term expires every June 30. He estimated that 19 boards in Alaska have protection for board members from removal for cause, including the Alaska State Pension Investment Board. At least on two occasions, governors have replaced five of the six board members upon taking office. APFC believes continuity among the board is important and does not want to run the risk of such a turnover again. He believes it takes at least a few years for a board member to get "their hands around" all of the asset management issues involved in managing a large institutional fund. APFC is looking at sophisticated management approaches that require one to two years of study. He has found that continuity during transition enables new board members to learn more quickly because they are able to leverage the experience of the existing board members. He noted that with a new governor [under SB 379], the board has the potential for two new members immediately, and then a third replacement six months later when that member's term expires. The APFC believes SB 379 is necessary for the long term success of the fund so that continuity and institutional memory are available and so that new board members can leverage that experience.

SENATOR OGAN referred to the language on page 1, line 8, and asked if either the misdemeanor or felony must involve moral

turpitude or whether any misdemeanor conviction would be cause for removal.

MR. BARNHILL said both must involve moral turpitude.

SENATOR FRENCH asked if anyone has ever been removed from any state board for conviction of a felony or misdemeanor.

MR. BARNHILL said he anticipated that question and asked anyone with institutional memory but no one could recall any board member ever being dismissed for cause for any reason. He noted that Mr. Storer thought one board member was dismissed for cause but did not know whether that was for committing a crime.

MR. STORER said his recollection was from a discussion he had some years ago with Jim Baldwin, Assistant Attorney General, and the board member discussed was clearly not related to the APFC or the Alaska State Pension Investment Board.

SENATOR FRENCH asked the reason behind restricting the crimes to those of moral turpitude and opined that most crimes involve questions of moral turpitude. He recounted that a dispute recently occurred in Anchorage over whether a teacher who had been found with narcotics in his home should be removed from the classroom, which the teacher eventually was.

CHAIR SEEKINS pointed out that language is standard contract language among large business corporations.

MR. BARNHILL reminded members that language came from the Board of Fisheries statute, which has been on the books since 1992.

CHAIR SEEKINS said he does not have a problem with that language and believes the bill is a great step forward. He complimented Governor Murkowski for his efforts with the legislation and for not replacing the APFC board. Having been an APFC board member, he agreed that continuity is very important and that members should be of high moral character. He believes SB 379 reflects the practice of the current governor.

SENATOR OGAN maintained that the people elect a governor who reflects the political philosophy of the majority of the people. The governor routinely appoints cabinet members whose philosophies parallel his own. And, while the governor is the CEO of the state, he shudders to think that a corporation would wipe the slate clean every four or eight years, but that opportunity is his prerogative and perhaps there is a good

reason for the change. He hypothesized that the governor might decide that the state should invest in a pipeline using a portion of the permanent fund and that board members who support that philosophy need to be appointed. He said this legislation could tie a future governor's hands and he is not convinced the legislation is necessary.

CHAIR SEEKINS pointed out that commissioners and Board of Fisheries members are confirmed by the legislature. He then asked if an investment in the pipeline using the permanent fund would not be allowed without legislative approval because the legislature controls the asset allocation formula.

MR. STORER said the legislature controls the limits that can be applied to equities and other types of investments, either through statutory limitations of certain asset classes or by changing the statutory list of the types of investments. He noted, in response to Senator Ogan's hypothetical example, the permanent fund board would still be driven by the prudent expert list - fiduciaries must follow a process to make an informed decision. He added:

What I was speaking to was the types of sophisticated investments when you look at now that require years of investments. If I can take that hypothetical question, investing in a pipeline may or may not be within the fiduciary ability of the board in the decision making process so, let's say the board determines that it is outside their fiduciary responsibility, absent legislative direction, and the governor says thou shall invest in a pipeline and the board says no, we can't, we've looked at it and here are the reasons why. Under the current system the governor could replace the board members and put in a board that's less sensitive or has less experience in the magnitude of what it takes to be a fiduciary of a large public fund. I was speaking earlier towards more of the sophisticated investments that we are looking at but there are political implications on both sides of that fence in the hypothetical question.

SENATOR FRENCH asked Mr. Barnhill to explain whether the language on lines 10-13, about the opportunity to be heard at a public hearing, is standard language.

MR. BARNHILL said that language also comes from the Board of Fisheries language.

SENATOR FRENCH asked if a board member would have the right to appeal a decision.

MR. BARNHILL said there is no right of appeal but, presumably, once the governor or his designee issues a written decision, the decision could be the basis of a lawsuit.

SENATOR OGAN asked if the lawsuit would be for defamation of character.

MR. BARNHILL replied that anything can be the basis of a lawsuit. He noted the aggrieved board member could seek reinstatement if the member could demonstrate a violation of due process. The court would fashion the remedy.

CHAIR SEEKINS commented, "When I look at it, the history of it until now, on a change of governor there's just been a wholesale change. I don't think that's a good policy."

SENATOR FRENCH felt the governor should have the option of removing any board member that has been convicted of a misdemeanor or a felony without having to consider whether that crime involved moral turpitude, even if the crime is shoplifting. He proposed amending the bill to remove the words involving moral turpitude.

In response to Senator French's concern, MR. BARNHILL gave with a few examples of felonies involving moral turpitude:

- Murder in the first degree
- Murder in the second degree
- Manslaughter
- Assault in the first degree
- Assault in the second degree
- Kidnapping
- Sexual assault in the first, second, or third degree
- Incest
- Unlawful exploitation of a minor
- Robbery in the first or second degree
- Extortion
- Coercion
- Theft in the first or second degree
- Burglary in the first or second degree
- Arson in the first or second degree
- Criminal mischief

- Forgery
- Falsifying business records
- Receiving a bribe
- Perjury
- Escape
- Promoting contraband

He felt finding a crime that does not involve moral turpitude would be challenging.

SENATOR FRENCH asked if assault in the third degree is on the list.

MR. BARNHILL said it is not.

CHAIR SEEKINS asked the will of the committee.

SENATOR THERRIAULT said he would like more time to look at the list of crimes.

CHAIR SEEKINS announced that he would hold SB 379 in committee.

#### **SB 311-INSURANCE & WORKERS' COMPENSATION SYSTEM**

CHAIR SEEKINS informed members that the Department of Law and some representatives of labor have done a lot of work on SB 311 and produced a draft committee substitute (CS), labeled 23-G2.

SENATOR THERRIAULT moved to adopt version 23-G2 as the working document before the committee.

CHAIR SEEKINS noted without objection, version 23-G2 was before the committee. He then announced his intention to ask Mr. Nordstrand and Mr. Dougherty to provide the committee with an explanation of the changes made in the bill since the last meeting. He noted he is aware of one proposed amendment that the committee will address after it reviews the changes made to the CS.

MR. SCOTT NORDSTRAND, Deputy Attorney General of the Civil Division, Department of Law, distributed a handout comparing the existing workers' compensation program with the proposed program.

MR. KEVIN DOUGHERTY, Alaska Laborers' Union, told members he had not spoken with Mr. Nordstrand for a few days so he did not feel up to speed on the changes made to the bill.

CHAIR SEEKINS said he spoke with Mr. Jim Sampson on Friday night to explain the protocol about how he planned to proceed with the legislation. He asked Mr. Nordstrand to begin with the explanation of the changes.

MR. NORDSTRAND asked to explain the process that has occurred so far on SB 311. He noted the handout has three columns comparing the original workers' compensation act with the original versions of SB 311 and HB 450, as proposed by the governor, and the proposed committee substitute (23-G2). He then said the Governor's Office asked representatives from the Department of Law, Ed Fisher, the Deputy Commissioner of the Department of Labor and Workforce Development, Linda Hall, Director of the Division of Insurance, and Paul Lisankie, Director of the Division of Workers' Compensation, to meet with representatives of labor who were appointed by Mr. Sampson - Barbara Huff Tuckness, Don Etheridge, Kevin Dougherty, John Giuchici, a member of the Workers' Compensation Board, and Jim Robison of the AFL-CIO, to attempt to compromise on a new workers' compensation system for the State of Alaska. He continued:

The essential sticking point, I think it's safe to say for all parties, was that under our proposed system, there would not be lay board members hearing cases. I think most of the disputes involve that issue, at least at that time. And so what we did was we met and we then came back, the Administration went back, rewrote the bill, and integrated a new - we sort of took our system and the old system and meshed it in a way and that's what's on the top sheet here. You can see this is the proposed CS essentially. I think the easiest thing to do without going through each system - the current, the proposed, and then this one is just walk through this so you can see what it is that this will do.

At the top of the chart is the commissioner of labor and workforce development. The commissioner would have, within the Department of Labor, two separate entities dealing with workers' compensation; one would be the director of the division of workers' compensation and the division itself. As you know, we've talked before, there is no division of workers'

compensation in the current act, there is no director in the current act. The board does everything so this is a new concept and this list of authority for the director of the division is an attempt to separate the administrative function in workers' comp from the adjudicative function - the advocacy from the deciding, so to speak. That hadn't been done in our system in the past.

So you can see that the director has a certain list of authority there and that was all part of what the existing workers' comp board has now. That's been segregated off as an administrative function for the director.

On the other side, on the left, you see the workers' compensation appeals commission and our original commission still exists here from the original bill with a couple of changes. One, we've changed the term of office to five years. That was proposed by labor. We thought that was a good idea. It actually might encourage more folks to apply if they could vest in PERS or something after one term so we thought that would be a good idea. We also agreed to have one of the members designated as a person who is experienced in employee representation and one employer. It's sort of like the current workers' comp panel theory, and then one undesignated. It could be either. It could be both. It doesn't matter as long as they meet the minimum criteria under the statute, which requires a certain level of experience in workers' compensation and having practiced law for five years. And then much of the rest of this is the very same as from our original bill. It didn't change.

Underneath that, this is where the meshing shows up. We created what we call a workers' compensation hearing board. Now this is not the workers' compensation board, as we know it now. It has no administrative functions. In fact, there's no reason for it to ever meet as a group. It is simply a panel from which hearing officers will be drawn to sit in the familiar one labor, one industry, one hearing officer configuration under this plan, just like the existing system with some modifications. And the same folks who are on the board now would be transferred over on to this board and it would just continue on.

The difference is that this hearings board, or these panel members, when they're setting up - pretend Kris is the hearing examiner, I'm an industry member, there's a labor member over here. The labor and industry member would not be in the business of deciding what the law is. They would not be in the business of deciding what evidence should come before the particular panel. They would not be in the business of presiding over or conducting the procedure of the hearing. And frankly, from our discussions with labor, that's basically the way it works now anyway. This is just essentially codifying the existing circumstance. And so the hearing officer would do that, would sit with these panels, and actually we reached agreement that the type of hearing officer, which we've changed in this bill to hearing examiner, and we just changed the name because there's actually a thing in state government known as a hearing examiner that fits where we needed them to be on the range and step salary structure, but anyway, the hearing examiner will sit with these folks and they, too, will have to be a member of the Alaska Bar, as we had suggested in the last bill and certain other requirements, to make sure we have high quality hearing examiners available to sit on these boards.

That was all acceptable to labor. We haven't talked about anything here yet that was unacceptable. The only thing at the end of the day that we could not agree on, the one issue in a 60-some whatever page bill, was the relationship between the hearing panel and the commission. Essentially that's what you have in front of you in the form of that amendment. What we've done in the CS is this is the Administration's position of what this bill should look like. This is our best compromise we could reach to achieve the results that we desire.

CHAIR SEEKINS distributed the proposed amendment, which reads as follows.

23G-2  
4/2/2004  
(1:51 PM)

**A M E N D M E N T 1**

TO: Proposed CSSB 311(JUD)(23-G2)

Page 38, lines 2-4:

Delete "testimony presented by a witness who appears in a hearing. When credibility is disputed, the hearing panel's determination of credibility must be supported by specific findings."

Insert "a witness. A finding by the hearing panel concerning the weight to be accorded a witness's testimony, including medical testimony and reports, is conclusive even if the evidence is conflicting or susceptible to contrary conclusions. The findings of the hearing panel are subject to the same standard of review as a jury's finding in a civil action."

Page 41, line 4:

Delete ", hearing panel,"

Page 41, lines 5-10:

Delete "Unless not supported by specific findings, a hearing panel's findings regarding the credibility of testimony of a witness who appeared in the hearing is binding on the commission, but all other findings, including the weight to be accorded medical testimony and reports, may be set aside by the commission. The findings of the hearing panel, if not set aside by the commission, are conclusive."

Insert "When reviewing decisions of a hearing panel, the commission shall use the same standard of review as that established by the Alaska Supreme Court in workers' compensation cases."

MR. NORDSTRAND explained that the DOL representatives drafted the proposed amendment because he received from the labor representatives a list of 10 changes to the bill that they wanted. The group reviewed those changes and, at the end of the day, they could not reach agreement on two of those issues, which are included in the amendment. He indicated, "So you have the distinction in view between labor and the Administration, as we know it, on the workers' compensation bill."

MR. NORDSTRAND described the distinction and the Administration's position as follows.

The relationship issue here really is, should the commission have the power to review the determinations of a hearing panel - this new hearing panel, de novo, not that they must, but should they have the power if that were to be appropriate in a particular case.

There also is a provision here that has to do with what deference will be given to the - you can see the very first part of this amendment has to do with credibility of witnesses. It's sort of the flip side of this. What deference do you give and on the other side of that is what power does the hearing panel have. It's kind of the same question.

The reason we believe that de novo review is essential - there's a couple of reasons. First of all, we've heard some discussion, I think, through the process of the origination of this bill started, I guess, with the Council of State Governments' draft legislation. Point one is, and we've tried to stay close to some of the concepts here. Point one is in this bill, it was recommended that there be de novo review within the agency by an appeals board. That's key to this concept - review in the agency, not at the court level, there shouldn't be de novo review there but within the agency. That particular view was based upon, originated in the National Commission of Workers' Compensation Report in 1972 that also said the very same thing - within the agency, there should be de novo review to essentially even out the discrepancies between decisions to make for greater predictability.

There is a concept, and I think you've probably heard of it, that courts generally should defer in some way to agency expertise because those are the experts. The courts aren't the experts in everything and therefore there should be some deferral to the decisions below. We think that's an accurate concept and we think that should apply to the courts. We think within the agency, now think about this, we're going to put, theoretically, the best workers' compensation lawyers we can find on this commission. These hopefully will be the best and the brightest in the system. Those are the experts. It would not make sense for them to defer

their views to those who, in fact, in the case of a hearing examiner, are the folks who work for them. It's simply to us not a matter of deferring to expertise below, it's a matter of letting all of the experts come with the best result out of the agency, which would then be reviewed.

Let me say just one last thing. The reason this is essential, and this issue is essential, we could not compromise on it is the whole point of this bill in large measure is to create greater predictability in outcomes in the workers' compensation system. We have now combinations of panels that could be dozens, depending on how you structure them, you know, a hearing officer and 14 different panel members. They can reach ... inconsistent results, regardless of the fact that there is a body of case law from the Supreme Court that they can rely upon. All questions are not answered, as we know. And so they reach differing results in different cases, with similar facts, and it frustrates the system - insurers, employers, and others, in trying to get what will be the result in a particular case. Uncertainty breeds, I think, increased rates in insurance. Over time it simply must. Certainty breeds predictability and a predictability in rates. And so, we think that without some control, some ability to reign in the odd case that may be off the mark, that we will lose the ability to create that silo effect we're looking for of having a relationship between the Supreme Court and the commission and these ... originally hearing officers, but now board members or panels.

I think we went as far as we could go and we're left with this one issue, Mr. Chairman. We really can't compromise on that in our view and that's all I have. If there are questions...

CHAIR SEEKINS asked Mr. Nordstrand to describe the exact changes made in the proposed CS.

MR. NORDSTRAND asked members to take a look at the chart. The Division of Workers' Compensation will continue to run the system, in terms of record keeping and enforcement functions.

While awaiting transmission of a copy of the chart, MR. DOUGHERTY told members that the process left a lot to be desired

and has caused the labor representatives to be cautious. He only received the proposed CS this morning. He said:

And I think if we were to contrast the system that we are working under now compared to the ad hoc committee, which operated for 23 years, and on that ad hoc committee process we had employers from the oil industry, construction, airline industry, the list goes on and on, and we had labor as well, that committee gave us the opportunity to reflect and make sure we didn't make mistakes that hurt good employers and hurt good employees who would be covered by the system so this is not the best way to do it. I will accept that that may be the [indisc.] and we can live with it. I think we all need to be very cautious this morning and as we proceed forward. I don't want to detract from the fact that we may be there - that's fine. If we come to an agreement I think we've made a lot of progress and I'm thankful for that.

CHAIR SEEKINS said he has no intention of throwing caution to the wind.

MR. NORDSTRAND told members the group had one full-day meeting where DOL took input and turned it into an original CS that was presented to the labor group. That group came back with two typewritten pages of ten proposed changes to be considered. The entire group then met again and considered all ten issues. According to John Guichici, the only two issues that could not be agreed upon were the proposed changes numbered 5 and 9. Those two changes are now the substances of the proposed amendment.

CHAIR SEEKINS said people from the Alaska State Chamber of Commerce, VECO, and ABC of Alaska want to weigh in on the proposed CS and that both John Guichici and Jim Sampson were listening online. He then said he would review the sections and would ask the members of the ad hoc group whether all agree.

He began with the first item on the chart regarding who runs the system. Hearing no comment, he moved on to the second item on the chart, regarding who makes the regulations.

MR. NORDSTRAND told members that item 2 remained unchanged from the original SB 311.

CHAIR SEEKINS affirmed there was no disagreement on that point. He then moved to item 3, regarding who investigates and accuses uninsured employers and who decides the case against uninsureds.

MR. NORDSTRAND again said no changes were made to that item from the original bill.

MR. DOUGHERTY agreed.

CHAIR SEEKINS moved to item 4, which pertains to where an injured worker or confused employer would go for general information.

MR. NORDSTRAND said that item did not change from the new Division of Workers' Compensation and was agreed to.

MR. DOUGHERTY agreed.

CHAIR SEEKINS asked about item 5, which is where the notice of injury gets filed.

MR. NORDSTRAND said it would be filed in the new division and all agreed to that.

CHAIR SEEKINS asked about item 6, who does the informal dispute resolution.

MR. NORDSTRAND said Division of Workers' Compensation staff would do it and all agreed.

CHAIR SEEKINS asked about item 7, which pertains to who decides if a medical examination is needed before a hearing.

MR. NORDSTRAND said the director of the division would do it, which is the case in both bills, and all agreed.

MR. DOUGHERTY said he believes that is the case but would like more time to double-check.

MR. NORDSTRAND said nothing mentioned in the 10 proposed changes had anything to do with item 7.

CHAIR SEEKINS moved to item 8, regarding who schedules a hearing.

MR. NORDSTRAND said the only difference in the original bill and the proposed CS is the name change from "hearing officer" to "hearing examiner" and that was agreed to.

MR. DOUGHERTY affirmed that is correct.

CHAIR SEEKINS asked about item 9, regarding protective orders.

MR. NORDSTRAND said all agreed to item 9, which MR. DOUGHERTY affirmed.

CHAIR SEEKINS asked about item 10, regarding who decides a worker's claim or employer's petition.

MR. NORDSTRAND replied, "As you know, originally it was a hearing officer. In the new bill it would be a hearing panel with the two members plus the hearing examiner and that was agreed to."

MR. DOUGHERTY commented, "The answer is yes, but obviously we need to have the [amendment]. The one-page [amendment] would assure that that hearing panel had the proper respect. With that I think we're there."

CHAIR SEEKINS questioned the agreement on item 11, regarding who the board members are.

MR. NORDSTRAND said it goes from no board under SB 311 to a workers' compensation hearings board, which would be comprised of the same members of the current workers' compensation board. He added that all agreed on that item.

MR. DOUGHERTY said that is the case as long as the [amendment] is adopted.

CHAIR SEEKINS asked about item 12, regarding the requirement that all hearing officers be attorneys.

MR. NORDSTRAND said there was no change between the CS and SB 311 and all agree, which Mr. Dougherty confirmed.

SENATOR FRENCH asked if the model act allows grandfathering in of existing [hearing officers] when a new regime is instituted, whether the ad hoc group discussed that matter and why this legislation did not follow the model act.

**TAPE 04-34, SIDE B**

MR. NORDSTRAND explained that the bill has a transition provision that allows the chair to essentially relax the requirement that hearing examiners be members of the Alaska Bar for a period of up to 18 months. Therefore, if existing hearing officers apply to become hearing examiners, the fact that they may not be members of the Alaska Bar will not be held against them. He noted the ad hoc group compromised on that item. DOL's original proposal was to allow that requirement to be relaxed for 12 months while the labor group requested two years.

SENATOR FRENCH asked if the hearing examiner would have 18 months to pass the Alaska Bar.

MR. NORDSTRAND clarified that the hearing examiner would have to be a bar member within 18 months of the effective date of the bill.

CHAIR SEEKINS moved to item 13, which pertains to how hearing officers are paid.

MR. NORDSTRAND said item 13 was changed. DOL's original proposal was that hearing officers would be partially exempt and excluded from PERA, so they could not organize in a union. The ad hoc group compromised so that hearing officers would be excluded from PERA but be in classified service. The pay range did not change.

MR. DOUGHERTY affirmed that is correct.

CHAIR SEEKINS asked if the workers' compensation act contains provisions about impartiality and disqualification.

MR. DOUGHERTY responded:

There were some but, of course, the prior SB 311 only concerned hearing officers at that level so what we did when we added the hearing panels and the workers' compensation hearings board, we put in a provision that talks about how to tell when there's a conflict for a lay board member, which we don't have now. That was agreed to by labor as well.

MR. DOUGHERTY affirmed that is correct.

CHAIR SEEKINS moved to item 15, relating to whether the director of the Division of Workers' Compensation can be a party in a case.

MR. NORDSTRAND said the director can and that is a vast improvement over the current system under both SB 311 and the CS.

MR. DOUGHERTY agreed.

CHAIR SEEKINS asked about item 16.

MR. NORDSTRAND said originally the hearing officer would have been the sole deciding officer so would have decided the law. Under the new panel system, the hearing examiner will decide what the law is and instruct the lay board members, similar to the way a judge instructs a jury.

MR. DOUGHERTY affirmed that all agreed to that item.

CHAIR SEEKINS referred to item 17.

MR. NORDSTRAND explained that at a hearing, under SB 311, the hearing officer would decide the facts. Under the CS, the three members would decide the facts.

SENATOR THERRIault asked if that is similar to the judge and jury system in that the judge directs how the law is to be interpreted but the other members come in when there are questions of facts.

MR. NORDSTRAND said the easiest way to envision the new set up is to recognize that the only distinction between the hearing panel and a normal jury would be that when the jury goes to the jury room to deliberate, under the CS the judge would go with it and vote as one of three.

CHAIR SEEKINS asked about item 18: If an employee wants something that the workers' compensation law doesn't cover, must we still have a hearing on the merits?

MR. NORDSTRAND explained that right now there is no good way to stop short of a hearing on a lot of cases where there might be a legal impediment to going to a hearing. Under SB 311 and the proposed CS, summary judgment would be a possibility. The only distinction between the two is who decides. Under SB 311, the hearing officer would decide; under the proposed CS the hearing

panel would decide. He noted that labor agreed to the hearing panel.

MR. DOUGHERTY affirmed that is correct.

CHAIR SEEKINS took up item 19: What if a person wants reconsideration?

MR. NORDSTRAND said reconsideration was a good idea added to the original bill. That provision is identical in the committee substitute and no one objected, which Mr. Dougherty affirmed.

MR. NORDSTRAND then addressed item 20 and said there is no difference in where the appeal goes. The only difference is whom one could appeal from. A person could appeal from the hearing panel rather than the hearing officer. He added on the issue of de novo, the group did not reach agreement.

MR. DOUGHERTY stated, "Yes, so as Mr. Nordstrand just said, the de novo issue was hanging out and not agreed to but it is critical that the one-page [amendment] before you - we understand that that was part of the agreement that we came to, that we had to do that one pager."

CHAIR SEEKINS moved to item 20.

MR. NORDSTRAND said item 20, whether the appeal decision is binding on the board, is the same in both versions and was agreed upon, which Mr. Dougherty confirmed.

SENATOR FRENCH asked how the model act handles that question.

MR. NORDSTRAND said he did not know the exact answer but the model act does have an appeals board from which original hearings are appealed. He said he could not conceive of any other way to do it than to have the hearing panel have control and precedent over those below.

SENATOR FRENCH indicated that under the current system, the Superior Court decision is not binding; only Supreme Court decisions are. He continued, "So as the appeals commission is an intermediary court, the way the system works now, is you don't have binding decisions and I think the model act does not envision binding decisions either by the appeals commission. That's my reading of the model act."

MR. NORDSTRAND asked if it would not be binding within the agency.

SENATOR FRENCH said that is correct.

MR. NORDSTRAND offered to look at that but said he cannot fathom a system that could function effectively that way. He said that Superior Court decisions are not binding because they are not reported or consistent and no single point of view can emerge since there are 30 or 40 Superior Court judges. He said it is practical for one commission that sits unified to say this is the law for everything below, much the way the Supreme Court says that to the Superior Court.

CHAIR SEEKINS brought up item 22: An employee can't get a lawyer to appeal, but the case is novel. Can the division help?

MR. NORDSTRAND responded under both SB 311 and the CS, the director can act on the employee's behalf to resolve this novel question. That is not the case in the present system.

MR. DOUGHERTY said all agreed on that issue.

CHAIR SEEKINS moved to item 23, the next level of appeal.

MR. NORDSTRAND said the next level of appeal is to the Supreme Court, which is unchanged.

MR. DOUGHERTY said that is correct.

CHAIR SEEKINS moved to item 24: If an insurer wants second injury fund reimbursement, who decides who pays?

MR. NORDSTRAND said this change owes its existence to hearing panels - it was changed from the director to the hearing panel without objection.

MR. DOUGHERTY agreed.

CHAIR SEEKINS asked about the reemployment benefits administrator.

MR. NORDSTRAND said in both SB 311 and the committee, the reemployment benefits administrator is a partially exempt employee of the director.

MR. DOUGHERTY affirmed he had no objection.

CHAIR SEEKINS asked about item 26, which is whether an employee needs approval to settle her case.

MR. NORDSTRAND explained that the employee would not need approval by the workers' compensation board if an Alaskan attorney represents the person and no one objected.

MR. DOUGHERTY affirmed that is correct.

MR. NORDSTRAND said one other issue was an area of compromise that is not on the chart. The bill contained intent language that was an area of consternation. DOL was attempting to codify what it thought was fair and reasonable workers' compensation intent language. Labor objected and requested that DOL simply restate that language used in prior uncodified legislation (1988 amendments) as the intent language. DOL took the language from those amendments and put that in.

MR. DOUGHERTY said that is correct.

CHAIR SEEKINS said it appears the issue of de novo has not been agreed upon. Before addressing the proposed amendment, he decided to take public testimony and asked testifiers to comment on the proposed CS and the proposed amendment.

MS. PAM LABOLLE, President of the Alaska State Chamber of Commerce [the Chamber], told members the Chamber has not seen the proposed CS or the chart, and was not included in the discussions. She noted the Chamber represents 700 businesses and that the three parties most concerned with workers' compensation issues are business, labor and a third party. She protested the fact that this bill was taken out of the public process and that all of the agreements were made between two of those parties. She told members that on Friday afternoon, she and Thyes Schaub of the National Federation of Independent Businesses (NFIB), were invited to a briefing during which Mr. Nordstrand explained what had been negotiated and decided. She remembered at the hearing on SB 311 last week, both Senators French and Ellis expressed concern that the meetings would include all stakeholders. When she called to find out what was going on, she was told the meeting was in progress and was assured the Chamber would be brought into the loop. It was, but after the fact.

MS. LABOLLE expressed concern that this process is becoming the preferred method of operation among the labor unions. It marginalizes the parties that the unions don't want to discuss

the issues with by taking it out of the public process. She noted the issues are determined by the labor unions and whomever the labor unions want to negotiate with and then brought to the legislature. She cautioned that process is getting away from the legislative system of public negotiation, decision making, record keeping and documentation.

MS. LABOLLE said one item that the Chamber feels was a significant compromise was that the hearing panel will change from a fully professional, unbiased combination of people to determine issues to lay people. She said business didn't mind giving up its lay representative on the board but now it's back to the original system. She said she has yet to see a document but, from what she can tell, the Chamber agrees with the positions put forth by Mr. Nordstrand and believes DOL did a pretty good job of representing what would have been the Chamber's position. She maintained that the Chamber agreed with the original SB 311.

Regarding the de novo issue, MS. LABOLLE said the Chamber supports the Administration's viewpoint. She repeated the Chamber essentially agrees with what has been done but would not have agreed with the lay panel. However, she emphasized that the Chamber is very dissatisfied with the process.

CHAIR SEEKINS said he is partially to blame. He noted that SB 311 is the Governor's bill and during the original presentation before the committee, many points of disagreement became evident. The committee did not want to work through each of those points of disagreement individually so he asked the Governor to work with others and bring a proposed CS before the committee that would not consume as much committee time. The public process will start now. He pointed out the committee was not involved in the original drafting of SB 311. He instructed the Governor and the members of labor who had the greatest points of disagreement to bring the committee a CS that the committee could work from. He noted:

I understand that there's been an ad hoc process and that this process has gone on for all these other years. I can understand how people should work on that. That is not a function of the committee. The function of the committee to me was to bring to us for consideration a bill that came - that we would be able to work on without having to decide all the disputes between these two major parties but, without any opportunity for you to comment - no. You'll recall

that the Chairman called you and said I have a CS, I have a proposed amendment and I need you to be able to provide testimony on that as well. The Chairman didn't ignore the State Chamber of Commerce and you know that. Nor would I try to ignore other business groups that are out there. I think their input is very important and now we're in that process. We're not railroading this bill. We're not intending for it to get out of committee today as we go forward but we're much closer than we were before without the committee having to do a lot of the work. And that was the intent of the Chair when I asked those people to get together and, within a week, bring us back a CS that we could work with without taking up a lot of our time. So I don't think that there's any intent for us to go outside of any public process. We're now diving headfirst into it, in my opinion.

MS. LABOLLE said she appreciated the chair's point of view and position, however there are three major players in the arena of workers' compensation, it seems strange to her that only two of those were notified and involved in the ad hoc group.

CHAIR SEEKINS said he appreciates Ms. LaBolle's point.

9:15 a.m.

MS. LABOLLE repeated that the Chamber agrees with most of what was determined and is willing to move ahead because it wants the workers' compensation system to be reformed. The Chamber does not want to see the bill delayed and would prefer that the bill move ahead as quickly as possible.

CHAIR SEEKINS said he wants to do that but does not want to throw caution to the wind. He asked that she bring up any points of value to the business community.

MS. LABOLLE said she hopes to see the proposed committee substitute, the amendment, and the chart shortly.

MR. NORDSTRAND offered to provide Ms. LaBolle with a copy of the CS.

CHAIR SEEKINS continued taking public testimony.

MR. JOHN GUICHICI of Fairbanks told members the heart of the reform of the workers' compensation system in this bill is the

creation of a three-person appeals committee that will bypass the Superior Court, where many people feel the decisions are inconsistent. However, the bill actually goes a lot further than that in that it reduces the role of the three-person hearing panel that hears disputed cases. The reality of creating a three-person appeals commission to deal with the 36 appeals each year on average that the Superior Court hears at a cost of \$1 million to the state, does not seem worthwhile. He said he has spent a lot of time talking to employer attorneys, insurance carriers, Representatives and assistant attorneys general, and no one can give any estimate of premium reductions or savings to employers. Usually when a reform of this nature is proposed, someone is able to identify some savings. Language in the bill that is problematic is addressed in the amendment. It would guarantee that any decision of the hearing panel that does not favor the carriers would be advanced to the appeals commission with no weight given to the hearing panel's decision. Once the appeal is at the commission level, the testimony of a witness who appeared before a hearing panel would be binding on the commission. All other findings, including depositions from claimant doctors and medical reports, may be set aside by the commission, the critical point being that rarely does the claimant have a live medical witness, as that is costly. The live witness for the carrier usually doesn't have an active practice. Those witnesses are hired and paid for by the carriers to express their opinions.

MR. GUICHICI informed members that this proposed bill also removes the standards of review that courts are held to, which is unfair to the claimant. This new system will not be good for the State of Alaska, injured workers or the employers without the amendment. The only ones who will benefit from the proposed CS are a few carrier attorneys who want to see their work percentages increase. They currently win over 60 percent of the cases. He said he does not like the bill at all without the amendment as he believes it will come back to bite employers, injured workers, and the state.

MS. NICHOLA LIENHART, VECO Corporation, stated support for the proposed CS as described by Mr. Nordstrand. The bill would increase both the efficiency and fairness of workers' compensation hearings, which will benefit both employers and employees. VECO believes it is important to bring consistency to decisions.

MR. DOUG WOOLIVER, Alaska Court System, told members the court system takes no position on SB 311 but he would explain the

impact of one section of the bill on the court. That section provides for direct appeals to the Supreme Court. He said as mentioned earlier, an average of 36 cases come to the court system from the workers' compensation board each year. About 27 of those are resolved at the Superior Court level. The remaining 25 percent go on to the Supreme Court. The court system does not believe the changes the bill makes are likely to have any impact on the number of cases that come to the court for a few reasons. First, the court system already hears a small percentage of the total workers' compensation claims, and a small percentage of the board's decisions are appealed to the court system. People appeal for a variety of reasons. Some appeal on the basis of merit, as they believe the appeals commission simply got it wrong. The Supreme Court applies a deferential standard of review; reasonable minds will always differ on what was supported and reasonable. Second, every year the court system sees a handful of novel legal issues. Those issues will continue to come to the Supreme Court because that is the body that can finally resolve those issues. Third, a certain number of people who do not trust administrative agencies and will appeal any decision to get out of the agency setting. Finally, a small number of people are simply tenacious and will not give up until their cases are heard in court. He said one reason some people appeal directly to the Supreme Court is to cut down the delay in the court process. That will be the result of this bill in about 25 percent of the cases. For each one of those cases, a considerable amount of time will be saved because the Superior Court process will be bypassed. The court system's concern is the other cases that are currently heard by the Superior Court. If they are bypassed, they are likely to take more time because a Superior Court judge can decide a case more quickly than the Supreme Court. The Superior Court judge is a committee of one. The Supreme Court is a more deliberative body with a panel of five people. Opinions are drafted, circulated for comment, and redrafted. He explained that the court system's fiscal note reflects its desire to add staff to the Supreme Court to not only resolve the workers' compensation cases more quickly but to enable the Supreme Court to address its increased caseload in a timely fashion.

MR. WOOLIVER commented that in the original version of SB 311, the court system assumed it would not see new cases but it was concerned about the lack of balance on the appeals commission between labor and employers. Its concern was that the lack of balance might lead to an increased caseload in the court system. He noted the proposed CS provides for some balance on the appeals commission and alleviates that concern.

9:30 a.m.

SENATOR THERRIAULT asked if part of Mr. Wooliver's concern about an increase in the court's caseload will be mitigated by the fact that there will be a narrowing of the interpretation of the law early on in the system. He explained that right now there is no narrowing in the administrative process. One takes a case before one of 30 or 40 Superior Court judges so the narrowing does not occur until one gets to the Supreme Court. That way, people will know exactly how the law is going to be applied.

MR. WOOLIVER replied that over time that may be the result but it will be hard to tell initially. He reminded members that only a certain percentage of cases that are fact-specific are appealed because people have the right to do so. Therefore, even if the commission helps the Supreme Court narrow the legal issues, that must be balanced by the concern that a new system will initially lead to more appeals.

MR. CHANCY CROFT, testifying on his own behalf, told members he is an attorney who has only represented injured workers for the past 25 years with one exception. He owns two businesses and employs on average 10 people per year. He suggested that he may be the only witness who has policies with the two largest workers' compensation carriers in Alaska. He made the following points.

There are some provisions in this bill that are needed and even desirable and I urge the committee to separate those out and to pass them immediately. There are others that are going to make a difficult situation worse that could be solved by administrative action but instead you are being asked to assume the responsibility for what could be done very quickly and efficiently by the administration. You have heard a lot about the price of uncertainty in the workers' compensation system and how a tribunal appointed by the Governor without any review of its members by the judicial council will somehow provide certainty. But you have not been given one single case in the last five years, for that matter even longer, which is - because of the uncertainty had caused an impact on premiums and the board took it up to the Supreme Court to get a decision on it - not one.

So you are being asked to spend a million dollars to solve a problem that basically doesn't exist and could be resolved by the administration if it wanted to. Every time somebody appeals to the Superior Court or to the Supreme Court, and I've handled more than 50 cases in the Alaska Supreme Court, there's a provision for the board to participate. They get a copy of all of the proceedings. And if there is an important issue, they can go to the Supreme Court to get it resolved if that's necessary. The last time that was done, to my knowledge, was in Frasier. I know about that because that was my case. It's more than 10 years ago and the board did present a brief in that case. But I don't know of any other case in the Supreme Court where the board has presented a brief, and certainly in the last five years, and you haven't been presented with any indication that it was important enough for the board or the administration that they told the board to file a brief in that case or take that case on up to the Supreme Court.

As far as obtaining any predictability out of Superior Court decisions, the commissioner of labor and workforce development could simply say to his appointees, the hearing officers, follow the opinions of the Superior Court in any case in which there is a Superior Court decision unless those decisions conflict, and in the one where there is now a conflict, appeal that decision to the Supreme Court. So this could be resolved without a million dollars, hiring a dozen or more people.

But my concern is that the solution is going to cause delay. It's going to cause a delay in a system that only works if it works quickly. Workers' compensation premiums are going up and so something needs to be done. One of the reasons they're going up is that medical costs are going up. This year nationwide medical costs will go up 14 percent and that is one of the reasons why the cost of workers' compensation is going up. In Alaska, medical costs are 50 percent of the payout in workers' compensation benefits. For the first time in our history it's been going up each year for the last 10 years but in 2002, the latest year for which we have statistics, for the first time it went over 50 percent. Two-thirds of the claims now basically involve medical benefits only, not time

lost, not permanent impairment, not rehabilitation, not anything else like that but medical benefits only. In the last 10 years, the cost of providing medical benefits has increased 75 percent. In the last five years alone, it's increased 50 percent. The cost of providing medical benefits is now approximately \$4,000 a claim on average just to provide medical benefits. This bill does absolutely nothing about that even though people that had been involved from the employers' point of view had asked that that be addressed. It's not in any place in this bill.

The second issue is the insolvency of some companies triggered in some part by 911, where there were small companies that were impacted by the claims or the awesome reinsurance because of 911 and, in other cases, by allowing insurance companies, as California did, from coming in and offering premiums at too low a rate. Now that's a dangerous thing to say - no, no, no. We're going to insist that you charge employers more premiums and California didn't do that. It said okay, whatever the lowest bidder is, that's the premium in effect. And so a lot of the companies that have gone bankrupt have been California companies - Superior and Paula and recently Freemont.

Superior and Paula didn't affect us. It had a big impact on California but our rates of workers' compensation are somewhat artificial here. They are not measured against actual experience. We're a small state and so we're kind of the tail that gets wagged by the dog. We do have one advantage. We have a company, and have for 25 years, Alaska National Insurance, that is the largest work comp carrier in the state, has been for years, writes a tremendous amount more than - you have to add up the next three or four, maybe ten, to get the volume that Alaska National writes. Alaska National is doing quite well. In 2001 and 2002 it paid out a dividend that was the highest in its history. I say more power to them. They're tough adversaries. When they tell you they're going to fight you they do. When they tell you they're going to pay, you can count on the check. They're highly competent and they're doing quite well in the existing system.

But there is this problem with the fact that Freemont, which was writing 20 or 25 percent, maybe even as high as 27 percent when it stopped writing here - the policies in Alaska, was doing it on the cheap. And you could tell it was doing it on the cheap because you couldn't get the claims adjusted. Nobody should have been surprised that Freemont was going to go under because you could not get a hold of an adjuster to get a claim resolved, even when they got a defense attorney. The defense attorney couldn't get a hold of the adjuster. It was a terribly run company. It had banked on building up a huge volume of workers' compensation cases so it got its premiums and it was going to make its money, like everybody does, in the stock market and with its investments. And when the stock market tanked, Freemont, it was inevitable that it was going to go under because it had written policies at a rate that it could not sustain itself without tremendous investment anyhow.

So I urge you to do the first five sections, pages 2 through 4, Sections 1 through 5, of the Guaranty Association and then the two that are kind of technical, 6 and 7, that relate to the workers' compensation board, to get the Guaranty Association healthy again here. I don't think we have much choice and I think it's important to do that and I don't think we should wait on these other things to do it.

But there's one thing that's not fair in that. I don't represent insurance companies and I don't care usually which insurance company pays as long as my client gets paid. But there's a real unfairness about what the administration is proposing here. To those companies that write premiums in Alaska, like Alaska National ... [END OF TAPE]

**TAPE 04-35, SIDE A**

MR. CROFT CONTINUED:

... of the benefits that are paid out are paid out by self insurers, the biggest of which is the State of Alaska. If it were an insurance company, it would be the second largest insurance company in the state given the volume of its clients. The Municipality of Anchorage and the Anchorage School Board are also

self-insured. Big companies are self-insured, British Petroleum and the like, and what happens with self-insurance is the cream of the insurance premiums are removed. That goes to - they often have low incidence rates, low severity rates, that's the cream of it and so what's left for Alaska National and the 160 or 70 other workers' compensation carriers is the tougher ones. And what does that do? That impacts small businesses who cannot become self-insurers, generally. And yet when it comes to saving the Guaranty Association, which ensures that all injured workers are going to get their benefits but, equally important, that the employers that have been insured by a defaulted insurance company that has now been declared insolvent in California are not going to be forced by people like myself and other attorneys to pay benefits to injured workers where those companies, those small businesses felt that they were going to be covered by insurance and had in good faith bought a policy of insurance, if there isn't money in the Guaranty Association to make those payments, you can bet employers are going to wind up being sued to make those payments.

So I urge you to consider that the self-insureds should contribute to the insolvency of the Guaranty Association on the same basis, the same percentage, that all of the work comp carriers who've been standing up there and taking the tougher cases and making sure that small businesses can get insurance to make sure that the burden doesn't fall entirely on them when insurance companies go bankrupt. Now that is an example - insurance guaranty is an example of a model act because throughout the nation, there are states that have adopted an insurance guaranty act. There is no model workers' compensation act. There is not an act like the Uniform Child Support Enforcement Act or the Uniform Commercial Code or any of that that applies like a workers' compensation act would. There is no such thing as a model act. The Council of State Governments for more than 30 years has been saying here is a good act. No state, at least checking it on the Internet yesterday, has adopted all of those recommendations. Alaska has adopted many, is above half the states but is below about 20 in adopting all of the 19 recommendations and the reason is businesses

have continually objected to the model act because they say it's going to make it more expensive.

So I don't think there is a model act. The intent, and the reason the intent, people wanted to keep the intent in Section 8 on page 5, is that it says quick, efficient, fair and predictable delivery of services. I don't think this bill is going to be quick. It is going to cause delay. It puts in a whole new level of litigation in this case, trials de novo, so that there is no predictability by injured workers and I think it's a bad idea. But I have taken some time. There are other people wanting to testify.

I have about 10 sections of the bill that I think are particularly bad. Let me tell you just one that I was extremely disappointed that labor signed off on. It's on the second - it's on the third page, the bottom. An employee wants to settle her case, does she need approval. Under the present system yes but under the two systems that are proposed, the original bill and the committee substitute, if you're represented by an attorney, you don't have to have approval. I haven't checked it this morning, but the latest case decided by the Alaska Workers' Compensation Board, unless there was one that came in this morning, was decided at 3:32 Friday afternoon. It's a case called Adepoju out of Fairbanks. Mr. Adepoju had a long history of a workers' compensation claim. He finally agreed to settle for a lump sum settlement, which he wrote. He didn't agree with a lot of it but he's signing it and he wanted the board to approve it. The board said well, we think there's some real problems here because he's waiving all of his right to any future medical benefit. The board exercised its authority to order an independent medical evaluation, not a hearing officer but the board did it. They sent him to Bruce McCormick, a neurosurgeon in San Francisco, whose report came back - this guy's got problems and is likely going to need medical treatment in the future. And Friday afternoon, the board said we are not approving that compromise in release because it's not in his best interest.

What does that have to do with this section? Mr. Adepoju was represented by an attorney and that's why it's a good idea to have the board look at these

because otherwise there's going to be a real erosion of the employee's negotiating position. When a check for \$20 or \$30 or \$40,000 is dangled in front of them, they haven't gotten any compensation for a year or two, they've gone to the hearing panel and the hearing panel said yes but the tribunal said no, we're going to do a trial de novo, they're about to lose their house or have lost it, they don't have money for the kids to go to school that year, they can't pay the utilities and so are they going to settle their claim for \$20, \$30,000 to simply make ends meet? Yes. And that's why Arthur Larson, if you want to talk about model suggestions, is so opposed to any lump sum settlement but it would be a travesty to allow it whether you're represented by an attorney or not without board approval.

I don't want to take time from other people. I'm willing to testify later because there are many sections - I haven't even gotten to the ones that I think are most important.

CHAIR SEEKINS asked Mr. Croft to provide a [written] review of the other sections, which would be distributed to all members.

MR. CROFT said one question he has is why would there be no judicial review for the appeal commission, when Title 43 requires all of the judges for the tax court to undergo judicial review. This would be the first time in Alaska's history where the state has given the authority to someone who is not a judge to make binding precedent. He offered to testify again at a later date.

SENATOR OGAN asked Mr. Croft if he had any suggestions in relation to his statement that this bill will do nothing to remedy the rise in medical costs.

MR. CROFT said that Judy Peterson, who was the president of the WCAA board of directors, provided some suggestions from the business sector in November to remedy increasing medical costs. Those suggestions relate to the approval of payment of medical benefits and what types of treatments are authorized. He opined that area is difficult in that costs can't be kept so low that people can't get medical treatment. However, on the other hand, simply paying whatever amount is charged is unacceptable. Until the question of medical costs is addressed, there will be no big savings in any workers' compensation bill.

CHAIR SEEKINS thanked Mr. Croft and called Ms. Larson to testify.

MS. EDEN LARSON, president and CEO of Associated Builders and Contractors of Alaska (ABCA), told members ABCA is comprised of 161 companies that employ about 5,000 workers throughout Alaska. She pointed out her testimony is largely anecdotal in that she heard earlier today that the system is not broken. According to her membership, the system is very broken in that employers find it very difficult to encourage their insurers to appeal. ABCA supports a restructuring of the workers' compensation system. It feels the proposed CS is a step in the right direction. Regarding the amendment, the ABCA believes the CS provides for accountability and checks and balances for the hearing panel in that it requires it to determine credibility based on documents of fact. The ABCA will not support the CS if the amendment is incorporated.

CHAIR SEEKINS said he would set the bill aside at this time for further consideration. He encouraged all interested parties to review the proposed CS, labeled 23-G2, 4/2/04. He asked anyone interested in viewing the amendment to call his staff. He then took up CSHB 230(STA).

**CSHB 230(STA)-POLITICAL SIGNS ON PRIVATE PROPERTY**

MR. TODD LARKIN, staff to Representative Holm, recapped that CSHB 230(STA) will allow people to put political signs on their private property in certain areas. He stated:

In an effort to comply with federal law and retain highway funds, the state's been very restrictive in its handling of signage. The state has traditionally restricted all political signage within 660 feet within the edge of road right-of-ways in the state. After several conversations with the Federal Highway Administration, we discovered that...our restrictions were excessive and may not be necessary in order to retain those same highway funds. And so, HB 230 seeks to give those free speech rights back to private property owners inside of this 660 foot margin that was established by the Federal Highway Beautification Act of, I think, 1974. So that's what we're discussing, is whether or not you can put a political sign on your private property in this rather large margin. There's more specific language in the bill. I

don't know if we're taking questions now or we're just introducing so I'll leave it at that.

SENATOR OGAN said it has been his experience that the Department of Transportation and Public Facilities (DOTPF) doesn't enforce the 660-foot ban unless a sign is actually in the right-of-way, and not even then sometimes. He thinks it is a good idea to work on the law because probably everyone who has ever run for office has been cross-vetted with the existing law.

CHAIR SEEKINS noted that he has seen some selective enforcement in the Fairbanks area. There being no further questions of the sponsor, he took public testimony.

MR. MYRL THOMPSON, representing himself, said he would like some clarification. He noted a comment that many signs are posted "24-7" in the Mat-Su Valley. He said he is not sure how that should be addressed. He continued:

On the part of this that talks about the conjoining signs, I'm just wondering that if the signs are ½ inch apart are they considered adjoining signs, because I know a number of instances where that is the case, where there's sign after sign after sign and sometimes on private property, sometimes actually on the right-of-way. And under the current relevance clause, which I believe is (i) under (d), what if the sign would say something like 'Jesus wants you to vote Republican.' Would that be included here? The subject matter, I guess you could argue, would be relevant to the second coming or another instance may be 'Mohammed Supports Closed Caucuses'.

CHAIR SEEKINS interjected and said that current relevance is a term of art.

MR. THOMPSON asked what would distinguish that.

CHAIR SEEKINS said he would say whether or not it is a political advertisement.

MR. THOMPSON questioned what would happen if someone put up such a sign.

CHAIR SEEKINS said he doesn't know that that would be considered to be a political advertisement. If it fell within the definition, it would fall under the statutes.

MR. THOMPSON said he believes it would be a loophole.

CHAIR SEEKINS disagreed and asked Mr. Thompson if he had any suggestions to improve the proposal before the committee.

MR. THOMPSON said he wonders about the need for the legislation.

CHAIR SEEKINS directed Mr. Thompson to the sponsor and thanked him for his testimony. He then announced that CSHB 230(STA) would be brought up again as the committee was out of time.

SENATOR OGAN asked that the language on page 2, line 15, be clarified at the next hearing. He questioned what "per side" means.

MR. LARKIN replied the displayed face is one side of the sign. Therefore, both sides of a sheet of plywood could be painted but could not exceed that total size.

SENATOR OGAN suggested saying 32 square feet.

MR. LARKIN said, in response to Mr. Thompson's question, "Mr. Chairman, (i) - the gentleman had a question on that, they're not separable really. One refers to the next and so you get a much clearer definition when you take them together, as far as what kinds of signs you're talking about."

SENATOR THERRIAULT said when those two are read together, it ties it to an upcoming election.

CHAIR SEEKINS agreed. He then adjourned the meeting at 10:05 a.m.