

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

Special Session

June 23, 2004

8:10 a.m.

TAPE(S) 04-72

MEMBERS PRESENT

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

MEMBERS ABSENT

Senator Johnny Ellis

COMMITTEE CALENDAR

SENATE BILL NO. 1002

"An Act providing for a special deposit for workers' compensation insurers; relating to assigned risk pools and 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 office of administrative hearings; relating to agreements that discharge workers' compensation liability; providing for administrative law judges 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 fraudulent acts or false or misleading statements in worker's compensation; and providing for an effective date."

MOVED SB 1002 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB1002

SHORT TITLE: INSURANCE & WORKERS' COMPENSATION SYSTEM

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

No previous action to record.

WITNESS REGISTER

Mr. Doug Wooliver
Alaska Court System
303 K St.

Anchorage, AK 99501-2084

POSITION STATEMENT: Informed committee members of fiscal implications of SB 1002 on the court system

Mr. Chuck Lundeen
Chief Counsel
Northwest Insurance
No address provided

POSITION STATEMENT: Supports SB 1002

Mr. Paul Richards
Alaska State Chamber of Commerce
217 Second Street
Juneau, Alaska 99801

POSITION STATEMENT: Supports SB 1002

Mr. Martin Peale, Chairman
Board of Governors
Alaska Timber Industry
No address provided

POSITION STATEMENT: Supports SB 1002

Ms. Barbara Huff-Tuckness
Teamsters Local 959
No address provided

POSITION STATEMENT: Expressed concerns about SB 1002

Ms. Lori Wing, President
Alaska Independent Insurance Agents & Brokers
No address provided

POSITION STATEMENT: Supports SB 1002

Mr. John Guichici
Fairbanks, AK

POSITION STATEMENT:

Mr. Guy Bell, Director
Division of Administrative Services
Department of Labor & Workforce
Development

PO Box 21149

Juneau, AK 99802-1149

POSITION STATEMENT: Explained the fiscal notes to SB 1002

Mr. Scott Nordstrand

Department of Law

PO Box 110300

Juneau, AK 99811-0300

POSITION STATEMENT: Presented SB 1002 for the administration

Ms. Linda Hall

Division of Insurance

Department of Community & Economic Development

PO Box 110800

Juneau, AK 99811-0800

POSITION STATEMENT: Described the insurance provisions of SB 1002

ACTION NARRATIVE

TAPE 04-72, SIDE A

CHAIR RALPH SEEKINS called a work session of the Senate Judiciary Standing Committee meeting to order at 8:10 a.m. Senators Ogan and Chair Seekins were present. Senator Stedman was also present.

^#SB1002

SB 1002-INSURANCE & WORKERS' COMPENSATION SYSTEM

MR. DOUG WOOLIVER, Administrative Attorney, Alaska Court System (ACS), informed members that the ACS takes no position on the merits of the legislation but he would testify as to the impact one provision of SB 1002 would have on the ACS and that is the

provision that pertains to appeals from the agency which would bypass the Superior Court and go directly to the Supreme Court. He maintained that the bottom line issue is that the ACS expects to hear the same number of appeals as it has heard in the past. Over the last five years, the number of cases appealed from the agency to the Superior Court has averaged 36 cases per year. The agency process itself is likely to have a very big impact on the number of appeals. The ACS does not believe the proposed changes within the agency will impact the ACS, except that the appeals will go directly to the Supreme Court. Out of the 36 cases that have come to the ACS each year, 75 percent are settled or resolved at the Superior Court level. About 9 of those cases are further appealed to the Supreme Court. The ACS believes that by bypassing the Superior Court, the Supreme Court will see about 36 cases per year, rather than 9. The Supreme Court does not have the capacity to absorb caseload increases, as the Superior Court can. The number of Superior Court judges was increased by two to 34 in 2001; that increase has allowed the Superior Court to hear more cases. In addition, the Superior Court can bring in pro tem cases. At the Supreme Court level, the same five judges must resolve all cases so absorbing a caseload increase is more difficult. The ACS has requested additional staff on its fiscal note to absorb the increased caseload.

MR. WOOLIVER said one important part of the reform that SB 1002 reflects is a possible timesaving because the cases should work their way through the agency more quickly. He noted that bypassing the Superior Court will also speed up those cases that would have first been heard by the Superior Court and subsequently heard by the Supreme Court. Cutting out the Superior Court step should save at least one year of time. He said the ACS's concern is about the 75 percent of cases that come to the court that are never appealed to the Supreme Court. The Supreme Court would be forced to hear those cases and it takes longer to resolve cases than the Superior Court for several reasons. The first reason is that a Superior Court judge is a committee of one. The Supreme Court is a committee of five; it is a deliberative body. When an opinion is drafted, it is circulated among the members, changes are suggested and it is redrafted. He repeated the ACS does not support or oppose the bill but will be making a request for extra staff for the Supreme Court next year to deal with the increased work load.

CHAIR SEEKINS announced that Senator French had arrived so the Senate Judiciary Committee had a quorum and its official meeting was now in progress. He then asked Mr. Wooliver how many additional staff the ACS anticipates needing.

MR. WOOLIVER said the court would like to hire a staff attorney with expertise in workers' compensation cases to write a legal analysis for each case. In addition, the court wants to hire a secretary and a clerk to handle the additional paperwork and transcription work.

CHAIR SEEKINS asked Mr. Lundeen to testify.

MR. CHUCK LUNDEEN, Chief Counsel, Liberty Northwest Insurance based in Portland, Oregon, told members that Liberty Northwest writes workers' compensation policies in Alaska and hopes to expand into other insurance markets in Alaska. Liberty Northwest currently insures 20 percent of Alaska's assigned risk pool, as well as 150 voluntary insureds. Liberty Northwest supports SB 1002; it views the legislation as a very modest step in a process of workers' compensation reform in Alaska. Workers' compensation rates are of concern. Losses and loss adjustment expenses determine those rates. SB 1002 will address one component of the rate picture - litigation, which is a component of loss adjustment expense. An important element of the bill is a faster, streamlined process of decision making for workers and employers. Those decisions would be published and have precedent value, which is important.

MR. LUNDEEN said he has looked at the administrative realignment from the board to the division and, although he is not completely conversant with that administrative process, he views putting people with knowledge in charge of certain functions in the department, instead of the board, will streamline the process. The anti-fraud provision that was added will be beneficial. He pointed out that the Oregon Legislature grappled with various reform issues. SB 1002 is similar to the Oregon workers' compensation system, in regard to the workers' compensation appeals commission. Oregon uses attorney administrative law judges (ALJs) at the first level. A core of ALJs under the board handles the compensability of decisions, regarding whether the claim falls within the act. Oregon also has an independent ALJ pool, which decides benefits issues, such as medical services and vocational services. Everyone in the first level is an attorney. Oregon's workers' compensation board is comprised of five members - both lay members and attorneys. He repeated that he sees SB 1002 as a modest first step. Workers' compensation should be a fast, efficient process. It is supposed to be a no-fault system, not a tort system.

MR. LUNDEEN said that he hopes that labor and management can collaborate on an ongoing basis. That is essential to a successful reform and to avoid getting to a crisis point.

SENATOR FRENCH asked what would happen to workers' compensation rates in Alaska if the total amount spent in litigation was cut by 50 percent.

MR. LUNDEEN replied:

It could certainly do that, Senator French and, additionally, I think that Mr. Nordstrand made some points on this in discussion of this bill in the regular session. It's more than just I guess what I would call the hard current costs that we can point to - that \$11 million. But as this process works its way through, as claims are resolved more quickly, as you get this body of law so that there's certainty, and I know there's some dispute about whether that exists or not currently, our view is when the system participants know what the rules of the road are, they'll settle cases or they won't file for litigation so there is this \$11 million that you can point to as a current expenditure, if you will. But I think there's much more than that. We'll tend to reduce rates as we reduce litigation over time. But I'll be happy to get back to you with some analysis.

SENATOR FRENCH asked Mr. Lundeen to make an educated calculation as to the amount of the rate reduction.

MR. LUNDEEN said that is the job of the actuaries and he would be happy to provide that information.

CHAIR SEEKINS said his concern is the length of time it takes for a claim to be fully processed and whether that process is being unnecessarily dragged out. He asked how that factor plays in to the rates.

[A short portion of the recording could not be transcribed due to tape failure.]

MR. LUNDEEN said he believes this bill will help.

CHAIR SEEKINS asked how the rates of a small employer who has a claim that has been repeatedly delayed and has additional costs pile up will be affected.

MR. LUNDEEN replied, "I think as we use losses to calculate year over year, if he has a case that's going on for three or four years and there's a reserve held on that, that would go into the rate calculation Senator, and certainly drive up his rates." He said he has seen that happen countless times in his career.

CHAIR SEEKINS asked Mr. Richards to testify.

MR. PAUL RICHARDS, Alaska State Chamber of Commerce, said he was asked to represent the Chamber since Pam LaBolle recently retired. He told members the Chamber supports SB 1002 and compliments the administration for looking at how to improve the efficiencies of workers' compensation in Alaska. He said any efficiencies, consistencies and less cost to business are supported by the Chamber. He asked committee members to move forward with this legislation.

SENATOR THERRIAULT joined the committee.

MR. MARTIN PEALE, Chairman, Board of Governors, Alaska Timber Insurance Exchange (ATIE), said ATIE was formed in 1980 as a reciprocal workers' compensation insurance company owned by policyholders. ATIE's specialty has been the logging industry and higher risk coverage. ATIE has been very successful in promoting work place safety and it returns any profit it earns each year to its policyholders as a dividend. It sets its rates conservatively high to protect its policyholders' surplus balances, knowing the dividend will reduce costs to the net basis. He said over the last 10 years, its dividend has averaged 67 percent of premiums, however for the year 2003, despite one of its best years in terms of accident frequency and severity, ATIE's profit was wiped out by assessments of the assigned risk pool, which equaled \$642,000.

Mr. PEALE said the legislature has been addressing a crisis in workers' compensation and SB 1002 is part of that. Over the last seven years, the assigned risk pool has an aggregated \$60 million in losses. ATIE has absorbed about \$2.9 million. ATIE cannot continue to absorb those assessments, as its solvency would be threatened. He explained that assigned risk pool losses continue into 2004 and the surviving insurance companies continue to face these assessments, which are out of ATIE's control. Those assessments largely result from mismanagement and lack of control in the system managed by the division. He asked members not to blame the current director for mismanagement.

MR. PEALE noted that the assigned risk pool losses over the last seven consecutive years have resulted from suppression of rates, established by previous directors of the Division of Insurance. Heavily discounted rates also contributed to the magnitude of the burden of insolvencies on the Alaska Insurance Guaranty Fund. Rates have been so inadequate that insurance companies have declined applications in the voluntary market and forced a great number of increased insureds into the assigned risk pool. He continued:

Premiums in the assigned risk pool increased three-fold in the last five years from about \$12 or \$13 million to about \$40 million. He said heavy discounting of rates has also contributed to the magnitude of the burden of insolvencies on the Guaranty Fund. Rates have been so inadequate that insurance companies have declined applications in the voluntary market and forced a great number of increased insureds into the assigned risk pool. Premiums in the assigned risk pool have increased three-fold in the last five years from about \$12 or \$13 million to about \$40 million. You've heard testimony about recent increases. Yesterday a graph was presented showing a 21.2 percent increase in the rates from 2004. We all share a concern about rate increases but this must be viewed in perspective. Rates from 1993 to 1999 were flat, if not decreased, and included a great deal of discounting. Today rates are just about back to the level they were in '93, in spite of 10 years of inflationary impacts and costs and we all know what medical costs have done.

We have followed this year's workers' comp legislation closely with obvious interest. We have worked with the administration and the director, promoting needed fixes to improve management of the system and avoid continuation of losses, which continue to be assessed against insurance companies and our policyholders. We appreciate changes, which have been agreed to working with the division. Improving the loss cost system, as provided by HB 540, was a major first step. Two other steps, collateralizing the assigned risk pool reserves to protect Alaska and a mandate that the assigned risk pool be managed at least on a break-even basis on a three year rolling basis - these provisions were in HB 357 but were stripped in the last day of the legislature and they are now being incorporated into

SB 1002 before you now. However, words were added in the mandate language at the bottom of page 4, line 31, words that say 'that are approved by the director,' which substantially changes the mandate provision. This is a change from the previous language agreed to at the director of administration. Director Hall told us this morning that will be changed. The wording will be moved so it doesn't basically say the director would be free to pick and choose what's built into the rate structure. So we appreciate that. We have revised wording we would like to submit, which does that and I'm sure the administration will.

The third amendment we have sought is known as the quarter share fix. Last year we saw a major insolvency of the Fremont. Under current statute, when an insolvency occurs, that company shares assigned risk pool losses. It's reassessed against the remaining insurance companies. For us that was about one-half of the \$642,000 in assessments our policyholders were forced to absorb in 2003. Insolvent insurers direct writing reserves are covered by the Guaranty Fund. Under SB 276, the assessment rate, which all workers' comp policies, including assigned risk policies, pays, was increased from two to four percent.

Here's what I want to emphasize. Since an insolvent insurer has collected or received its share of the assigned risk pool premiums, and the two - now four percent assessment of workmen's comp policies has been paid, we strongly believe that an insolvent insurers' share of assigned risk pool losses should travel as part of that insolvent insureds' bankruptcy to the Guaranty Fund. Why treat the direct writing reserves differently than the [indisc.] reserves in the assigned risk pool? In several discussions with the director and administration, we seem to get agreement that this quota share reallocation is grossly unfair. The state should be anxious to fix this injustice if it wants to create a more open and competitive market to benefit employers and the injured workers. The Division of Insurance should manage to avoid insolvency but, when they do [indisc.], the Guaranty Association or fund should have its place. We offer amendment language that would fix this.

As to the bulk of SB 1002 before you, we support the changes proposed by the administration in the hearing process of how it worked. We believe the process will be fair to injured workers and more expeditious. We all, I think know that any process that is not fair to the injured worker is not going to survive the test of time. Thank you for this opportunity to testify. We'd be happy to answer any questions.

8:35 a.m.

MR. PEALE referred to the graph presented to members on the previous day that shows that rates increased 21 percent and said the data from the National Council shows that in the last five years, the assigned risk pool direct losses from just claims paid have equaled 90 percent of premiums before all other costs. He pointed out that a 21 percent increase against a 90 percent loss ratio will not break the system; that would require another 20 percent.

SENATOR OGAN asked if Mr. Peale feels the system is broken and could be causing insolvencies among insurance providers at this time and if he feels continuation of the current system will compromise the ability of businesses to even obtain workers' compensation in the future.

MR. PEALE said a good number of insurance companies have already exited Alaska. He thought the division sent out questionnaires to 90 insurance companies; 27 did not respond and 20-something indicated they pulled out of Alaska. Premiums have been inadequate.

SENATOR OGAN said building contractors can only get so much for a house and that amount is dictated by market value. He noted their workers' compensation prices are skyrocketing and have various forces opposing any changes. He said workers everywhere will be hurt if employers cannot afford workers' compensation insurance. Businesses will fold, people will lose their jobs, and home prices will increase.

MR. PEASE said insurance is the process of spreading risk and providing a profit to an insurance company, based on its capital, which is at risk over a period of time. He said the market should be competitive so that a lot of insurance companies are offering policies. ATIE offers policies on a cost basis with no profit.

MS. BARBARA HUFF-TUCKNESS, Director of Governmental and Legislative Affairs for the Teamsters' Local 959, stated opposition to SB 1002. She said throughout the entire legislative process with workers' compensation [this year], Local 959 has been consistent in its concerns about the issue. She said that the hearing yesterday was her first opportunity to hear about this new 68-page bill. It is her understanding that the administration is supposed to give a demonstration of the bill to labor participants this morning. She asked to cover a few of labor's concerns:

While the bill, we believe, has been drafted, it has gone through changes. It continues to go through changes and that should be a concern for not only the members of this committee but I think the entire legislative body. We seem to be going through continued draft after draft and yet the same arguments, even with some of these changes - well now we're flipping, for example, the hearing process now instead of having the lay individuals hearing the case initially and then going to a superior court or a higher level of appeal, we now have the lay individuals that are deciding some very serious concerns with respect to the law and allowing an individual, i.e. the hearing officer or I guess it's the administrative law judge in this particular process, to hear a case. You're losing - we're concerned that by doing this you're losing continuity.

As I understood, and we didn't spend a lot of time with the most recent bill, which of course puts into the system the administrative law judge process, but now you're taking individuals and having them hear cases. There is no, I guess, specialty requirement out there or those requirements for individuals, especially the current hearing officers who probably don't even qualify for these particular positions. So now you're creating a new system under this bill. You're putting in individuals to hear cases who have little, if any, experience and you're creating a system that we believe is going to encourage - and I think the testimony has probably also added to this - encourage litigation. Now is that going to be for a year, two years, until we have everything on record out there? And then we go on to do a new administration, new individuals coming into the system and we start all over again and that is a concern

that, at least from organized labor's perspective, we do represent injured workers. We don't represent all the injured workers. In fact, I'd like to come before you and say that if we had safety programs that were working efficiently and effectively, we probably wouldn't have the number of injured workers that we do right now.

If we're talking about reducing costs, we need to start looking at what's driving those costs and I think this was in House Labor and Commerce at the end of session there were statistics that were introduced there. The driving force with workers' comp costs and those rates right now, of which organized labor - Teamsters Local and our trust - we employ over 60 employees. We pay, as an employer, those workers' comp costs as well. We are part of not only the cost bearing, but we also represent workers that are going through the system. But in looking at those numbers, the driving cost is medical. There is nothing in this bill, and I would ask anybody in this audience or anybody that's watching television today to come forward and say that this bill is going to reduce those costs because it does nothing, unless what this system ultimately ends up doing is denying those rights or benefits to injured workers. Then you're not paying those medical costs and that is a serious concern that we have with this bill.

And I'd like to run through a couple of other issues as well. There was testimony yesterday by the administration that they have taken a look at this bill. The new draft addressed concerns that we had. The de novo review was a concern, is a concern, and has continued to be a concern. It is still in this bill and the administration, in drafting this new bill, at least never talked with a representative of the Teamsters. I don't believe anybody from AFL-CIO was contacted. The first that we'd actually seen of this bill was yesterday so there was no communication. Evidently listening to some of our concerns, or maybe our written documents that have been submitted through this process, again all we're saying is we want to be a part of the process. We want to work with the employers out there to take a look at what are the driving costs or issues out there. We represent injured workers going through this process. There has

not been a complaint about the slowness of the system but yet we've heard testimony here that this is going to speed up the process. Well, if it's a complaint then yes, maybe we do need to look at how we make those changes with the system but at least to our understanding, that particular statistic has not come forward. It has not been a complaint with the folks that we represent and granted, there are a lot of non-represented injured workers in this state and again, why is that happening. I think what you really need to do is take a look at where are the injuries. What's the cost driving those and maybe improving some of the safety programs out there, which does reduce your workers' comp costs directly.

Small business - we believe that the small business owners should be concerned about SB 1002 and, specifically, and maybe there's somebody here from the administration that can talk about this. We have not had an opportunity to ask and answer questions but we do believe that under Section 6, with the small businesses lifting that surcharge cap, that the employers, especially the small business employers, will be paying more, not less. I don't know what the response from the administration is on that.

Let's see, it also permits, under Section 12(j) of this bill, conflict of interest - at least creates a potential conflict of interest for some state employees or former state employees. We also believe that there needs to be some consistency applied with respect to fraud for all parties, not a specific individual or individual claimant out there but from employers' medical, as well as employees. I believe that you do have a system that does address fraud as it's currently drafted.

There's no change in the insurance code to better protect employers against future Fremont failures and, again, I think that the previous speaker did an absolutely excellent job in discussing those issues and concerns. I believe, as do many of my co-workers, the reason that this bill was introduced to begin with was nothing more than a message out there, and we're concerned a bad message for employers that while we are going to increase your rates by 21 percent, we're also going to guarantee, through the Insurance

Guaranty Association, that we are protected from those Fremont situations - we're going to give you this bill and it's going to be a fix for all. We don't see that fix in this bill and, in fact, we aren't concerned that the only thing that this is doing is sending some bad mixed messages with respect to the workers' comp and the workers' comp system.

I can actually go on and on and on and I don't know that the committee necessarily needs to hear all of this. We had Jim Sampson - and I believe that each member of the committee did receive a copy of his letter yesterday - a couple of areas. One number that was actually disputed in this particular letter and I'd like to read it into the record, Jim talks about the workers' comp system here - the fact that Alaskans have enjoyed a very, very healthy workers' compensation climate for many years that through the joint labor and management ad hoc committee that met in the '80s, actually saved over 50 percent in workers' comp costs at over \$400 million since 1988.

Now there was a question that was raised yesterday. I did some checking to see where this particular number came from. Kevin Dougherty, who is an attorney that represents laborers, actually has that number and if anyone is interested in taking a look at how we actually came about that I'd be glad to provide that. But it goes back to I guess the climate of the time, the fact that it was a joint working relationship between labor and management that actually addressed those serious issues and concerns with respect to the cost out there of workers' compensation. We do not believe that this bill does that at all. We don't believe that this was a joint effort. We believe that it was nothing more than a pacifier, so to speak, because of all the other changes that actually, I think everybody in this room will sit and agree, actually needed to occur and it was very unfortunate that it took the Fremont incident to bring all this to everybody's attention. The fact that the insurance rates have not gone up - five years ago I remember talking with folks in the halls, looking at, again, the rates of workers' comp - the fact that they have not increased, they were not going to increase under the previous administration and yet now everybody's sitting here going we're looking at 21 percent. Well,

for the last eight years there was no increase. Take a look at - there was a chart that the administration has circulated that actually grabs out amongst the 50 states where their workers' comp rates are and a question that had been asked - Nevada, I think, was actually the lowest - I think it's at least a minus 12 percent out there. Has anybody taken a look at what the State of Nevada has done and the answer to that was no. There's been discussion with Oregon. On that chart Oregon's at a - I believe they're probably at zero. So there was no increase, no decrease for this particular period of time. But there's got to be other factors. State of Nevada - I think everybody sitting here realizes that their economy has been going very, very well. There are a lot of people that are employed. There are probably a lot of employers out there that are paying into their fund, which would tend to reduce those costs out there versus increasing. And, of course, if you have a good safety program, as all of the workers are working in the system, then ultimately that also helps reduce the cost.

Changing the system we do not believe needs to occur with respect to the hearing. There haven't been complaints. If you take a look statistically at those decisions - 50/50 with employer/employee decisions coming back. Again, it goes back to what is the issue and what is it that we're trying to fix and we don't believe that this particular bill does that.

CHAIR SEEKINS asked MS. Wing to testify.

MS. LORI WING, President of the Alaska Independent Insurance Agents and Brokers (AIIAB), stated support for SB 1002. Her organization works with a variety of employers and has watched rates increase over the last few years to the point where those rates could put employers out of business. AIIAB realizes that some of the cost increases are due to large claims and are driven up by skyrocketing medical costs but the state has to address what it can, that being the manner in which claims are being handled. She said she couldn't describe the impact that increasing workers' compensation premiums are having on employers in the state. Some of those premiums have doubled. If those employers cannot find some relief, they will be forced out of business, which will have a devastating effect on the economy. The AIIAB does not want to take away any benefits from

injured workers, but the problem of increasing rates must be addressed somehow.

TAPE 04-72, SIDE B

MS. WING said that SB 1002 is the first step and repeated support for the bill.

MR. JOHN GUICHICI, IBEW, Fairbanks, said Mr. Lundeen emphasized how labor and industry got together in Oregon and came to consensus on workable situations. He pointed out that a similarly concerted effort has been virtually absent with this legislation. He said the lay board, in the process of early determination, has been removed again. He personally thinks when these cases go before an administrative law judge without involvement of the layperson who is familiar with the workforce, delays in resolution will occur and ultimately be more costly because of probable litigation. Disputes should be resolved at the lowest level with people who are familiar with the work place; turning it over to an administrative law judge will not do that. Also absent in the bill are transition provisions with the current staff within the workers' compensation division. He questioned why those workers were eliminated in SB 1002 and said he believes it is only fair that those people are considered as they have been doing a good job. The reversal rate on their decisions is one-third of the reversal rate in other states. He said, regarding the de novo review, any decision can be overturned with little regard for the merits of the case and that is unfair. He expressed concern that SB 1002 has flaws and that people should have more than one or two days to review it. He repeated that it is imperative that labor and industry work together to come up with a satisfactory bill.

SENATOR FRENCH referred to the four fiscal notes: an indeterminate fiscal note from the Division of Risk Management; a fiscal note with a net increased cost of \$415,000 from the Department of Labor and Workforce Development; a fiscal note from Centralized Administrative Services with an increase of \$826,000 the first year and \$770,000 in subsequent years; and a fiscal note from the court system projecting increased costs of \$188,000. He questioned the large fiscal note from Centralized Administrative Services.

MR. GUY BELL, Division of Administrative Services, Department of Labor and Workforce Development, said the answer is technical in nature. He explained:

You'll notice that the funding source for the Department of Labor and Workforce Development fiscal note of \$415,000 is the workers' safety account. Included in that fiscal note is a reduction in personal services and an increase in contractual services. 100 percent of the cost of the fiscal note for the Department of Administration is in the contractual services budget in the labor and workforce development fiscal note. So, you'll notice that the funding source for the Department of Administration's fiscal note is interagency receipts so basically what we're indicating is that the workers' compensation commission, the new commission, will contract with the Office of Hearings and Appeals in the Department of Administration for the services of the administrative law judges so it's not a net increase in cost, it's just a demonstration that some of the cost of this program will actually be incurred in the Department of Administration.

SENATOR FRENCH thanked Mr. Bell for the explanation. He then asked if the labor costs and the court system costs would be general fund costs.

MR. BELL said the funding source for the Department of Labor is the workers' safety account, which has sufficient funding to cover this cost. The workers' safety account was designated by the legislature and is the result of receipts from self-insured and workers' compensation insurers, collected by the Division of Insurance. It is a component of the total rates directed to the workers' safety account for the cost of administering workers' compensation programs.

SENATOR FRENCH asked if that account is funded by the industry.

MR. BELL said that is correct.

SENATOR FRENCH replied, "That's still a cost to industry so it's not as if they're experiencing a savings. Their rates still have to reflect that cost."

MR. BELL again said that is correct.

SENATOR FRENCH asked if the \$188,000 for the court system is from general funds and the \$415,000 is from insurance surcharges.

MR. BELL agreed.

SENATOR THERRIAULT asked if the ongoing cost for the administration is \$295,000 of new expenses.

MR. BELL said there is a one-time cost of about \$140,000, which involves moving staff and office reconstruction due to the required separation of offices. The ongoing net increase in cost, outside of the court system, is estimated to be \$295,000.

SENATOR THERRIAULT asked to be reminded of the ongoing costs for SB 311.

MR. BELL said they were \$554,000, so this amounts to about half.

CHAIR SEEKINS said the Senate Finance Committee will review the fiscal notes and consider additional amendments.

SENATOR THERRIAULT asked the administration to respond to comments made by witnesses today.

MR. SCOTT NORDSTRAND, Deputy Attorney General, Department of Law, said he would defer the insurance comments to Ms. Hall but would clarify a few other comments that were made. He began:

In terms of there being no requirements that the administrative law judges have special expertise - I think that was mentioned earlier by one witness - if you look at Section 60 of the bill, this is a specific provision that in addition to the requirements to be in the administrative law judge cadre, they also must have three years of experience in this state in the field of workers' compensation law or a similar field of practice. That's the identical language that was used in SB 311 and I think most found acceptable to ensure that, in that case, a hearing examiner with sufficient qualifications. Literally all we've done is taken that hearing examiner from [SB] 311 and put those duties with the central panel to ensure independence and to go along with the flow, so to speak, of the new system. So that's one thing.

There was some suggestion that somehow when there's a new administration that the system would all start over and ... case law would run amuck ... that there would be new decisions. Remember, by operation of statute, the terms of the five folks on this panel

will be staggered with five year terms. If you look at the current workers' compensation board, you'll see, as I understand it, there are three-year terms. They're also staggered and also are appointed by the governor and confirmed by the legislature in the same way. In fact, by making them five-year terms we could, in fact, have maybe a little bit more continuity, not less or at least there is the staggering so that's important to note.

And then there was a mention about the current staff at the division and there not being transition provisions for them into this new process. We simply went with the methodology that was used in SB 203, as I understand it, and all of those folks are certainly capable and certainly can apply. The only real limitation - obviously all the folks that are presently working for the division and doing hearings have lots of experience in workers' comp - the only limiting factor will be that they'll have to be admitted to practice law and I don't want to get into the specifics but I understand there are some that are admitted to practice law in there - maybe some that aren't and if they choose to become qualified in that way they can apply for these positions like anyone else. That's exactly the same system, I think, that SB 203 contemplated because we are talking about a significant increase in pay. It's a different position. It's going from a range 21 to a 24, which is consistent with what the central panel is paying the administrative law judges so I think that's all I heard. Linda maybe wants to mention something about the insurance rate increase issues.

MS. HALL asked to address a few comments made earlier. Regarding the rate increases, she explained that over the last five years, the rate increases were as follows:

In the year 2000, the rate increase was zero but there was a benefit change that resulted in a 7.9 percent [increase];

In the year 2001, the rate increase was zero;

In the year 2002, the rate increase was 10.2 percent;

In the year 2003, the rate increase was 3.5 percent.

She pointed to a graph and explained that beginning in 1988, rates started to go up. She said a phrase was added to Section 6 of SB 1002. The legal drafters changed the language to make sure the director's approval provision applies to rates and not to the factors that are used for rate making, which are prescribed in statute. She said burdens on insurers have created an unhealthy environment; one of those burdens is the loss in the assigned risk pool and another is the reallocation to those businesses that remain. She said that she agrees the reallocation is a burden but disagrees with putting that in the Guaranty Fund. That will put a traditional insurer obligation into the Guaranty Fund for policyholders to pay. She continued:

We did just put into law the ability to increase assessments up to four percent. That goes directly to the cost of workers' comp for employers and I cannot advocate doing something else that increases the cost to employers so I have not supported that. I think we need to find ways to deal with that but not by putting it in the Guaranty Fund. That's not done in any other state. It is a specific exclusion in the guaranty fund statutes of every other state.

SENATOR OGAN questioned whether Section 6 is the bottom line and will increase costs to businesses.

MS. HALL said it could increase costs. She explained:

If we make the assigned risk pool self funding, right now there is a statutory cap and actually Section 111 of this bill removes that 25 percent statutory cap. This provision is more of a proactive statement asking that - requiring that the pool be self-funding on a three-year average. I will tell you three years ago there was a filing made by the NCCI that proposed increasing the assigned risk pool rates by 70 percent. I don't think - that was obviously not approved - could not be approved under our current statutes. I don't think anyone would ever anticipate increasing the assigned risk pool rates 70 percent but it's an indication of how severely under-funded the assigned risk pool has been. It could potentially increase, and I think would, at least for a period of time, increase rates above the 25 percent statutory cap. So there is a potential. Probably 85 percent of the pool policies are small businesses and, by small I think I've used

statistics with this group, we're talking under \$10,000 in premium. The average premium in the assigned risk pool is \$864. The average claim cost is \$19,363. That's where the discrepancy comes from is in the average premium that's very, very small. Our average claim costs in Alaska are reasonably high. They are higher than the national average.

Now that \$864 premium won't go up to pay the \$19,000 but they will go up to overall make that pool self-funding.

CHAIR SEEKINS said he was pleased to hear about the planned meeting between the administration and labor representatives.

SENATOR THERRIAULT asked Mr. Nordstrand how much of SB 1002 is a rewrite of SB 311. He pointed out that the chairman encouraged the Department of Law to meet with labor representatives in the process used with SB 311 and asked how much of SB 311 was carried forward.

MR. NORDSTRAND said a couple of the technical insurance provisions in SB 1002 are new, as well as the fraud section. He continued:

Beyond that, everything is the same with the exception of the structure for a hearing being instead of with a panel of lay members and the hearing examiner with an administrative law judge and the commission having lay members and a single attorney. The roles, the standards of review, the methods, the division of duties between the director now and the commission and the other entities essentially dividing judging from administering, all of that is identical. So it really is just that as what was described as flipping of where the lay participation happened and that's it.

SENATOR THERRIAULT said recognizing that the fiscal notes need to be reviewed by the Senate Finance Committee, he will make that referral today. He then moved to pass SB 1002 and attached fiscal notes from committee with individual recommendations.

SENATOR FRENCH objected.

CHAIR SEEKINS said he feels comfortable that the bill will be thoroughly discussed in the Finance Committee and hopes that

some consensus will come from the meeting between the administration and labor representatives this morning.

SENATOR OGAN stated that his desire for workers' compensation reform is based on the hope that the cost of doing business will be lowered. He pointed out that he remains concerned that Section 6 will increase the cost of doing business.

CHAIR SEEKINS agreed with Senator Ogan.

The motion to pass SB 1002 with attached fiscal notes passed with Senators Therriault, Seekins and Ogan in favor, and Senators French and Ellis opposed.

CHAIR SEEKINS adjourned the meeting at 9:22 a.m.

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