

ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE

March 25, 2003

1:32 p.m.

MEMBERS PRESENT

Senator Con Bunde, Chair
Senator Ralph Seekins, Vice Chair
Senator Gary Stevens
Senator Bettye Davis
Senator Hollis French

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 86

"An Act relating to the rate of interest on delinquent taxes."

MOVED SB 86 OUT OF COMMITTEE

SENATE BILL NO. 111

"An Act relating to the submission of payroll information by contractors and subcontractors performing work on a public construction contract; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 113

"An Act relating to the frequency of examinations of certain persons licensed to engage in the business of making loans of money, credit, goods, or things in action; repealing the requirement for a state examination and evaluation of the Alaska Commercial Fishing and Agriculture Bank; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 120

"An Act relating to the state's sovereign immunity for certain actions regarding injury, illness, or death of state-employed seamen and to workers' compensation coverage for those seamen; and providing for an effective date."

HEARD AND HELD

PREVIOUS ACTION

SB 86 - See Labor and Commerce minutes dated 3/18/03.
SB 111 - No previous action to consider.
SB 113 - No previous action to consider.
SB 120 - No previous action to consider.

WITNESS REGISTER

Mr. Darwin Peterson
Staff to Senator Wilken
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Commented on SB 86.

Mr. Ed Fisher, Deputy Commissioner
Department of Labor & Workforce
Development
PO Box 21149
Juneau, AK 99802-1149
POSITION STATEMENT: Commented on SB 111.

Ms. Hali Denton, Acting Director
Division of Labor Standards and Safety
Department of Labor & Workforce
Development
PO Box 21149
Juneau, AK 99802-1149
POSITION STATEMENT: Commented on SB 111.

Mr. Don Etheridge
Alaska AFL-CIO
710 West 9th Street
Juneau, Alaska 99801
POSITION STATEMENT: Commented on SB 111.

Mr. Scott Johannes, Private Contractor
Association of Builders and Contractors
No address provided
POSITION STATEMENT: Opposed SB 111.

Mr. Charles Wieggers
Associated Builders and Contractors
32 Bonnir Ave.
Fairbanks AK
POSITION STATEMENT: Opposed SB 111.

Mr. Tim Rogers, Legislative Program Coordinator
Municipality of Anchorage

PO Box 196650
Anchorage AK
POSITION STATEMENT: Opposed SB 111.

Mr. Raymond Smith, Business Manager
International Union of Painters and Allied Trades (INPAT)
650 W. International Airport Rd.
Anchorage AK 99518
POSITION STATEMENT: Opposed SB 111.

Mr. Scott Bridges
Teamsters Local 959
520 E. 34th
Anchorage AK 99503
POSITION STATEMENT: Opposed SB 111.

Mr. Joe Smith
Gastineau Contractors
Juneau AK 99801
POSITION STATEMENT: Commented on SB 111.

Mr. Thomas Boedeker
City Manager
Soldotna AK
POSITION STATEMENT: Opposed SB 111.

Mr. Mark Davis, Director
Division of Banking, Securities and Corporations
Department of Community & Economic Development
PO Box 110800
Juneau, AK 99811-0800
POSITION STATEMENT: Supported SB 113.

Ms. Susan Cox, Assistant Attorney General
Department of Law
PO Box 110300
Juneau, AK 99811-0300
POSITION STATEMENT: Commented on SB 120.

Mr. Brad Thompson, Director
Division of Risk Management
Department of Administration
PO Box 110200
Juneau, AK 99811-0200
POSITION STATEMENT: Supported SB 120.

Mr. Joe Geldhof

Marine Engineers Beneficial Association (MEBA)
District 1 Pacific Coast Division
Juneau AK 99801

POSITION STATEMENT: Commented on SB 120.

ACTION NARRATIVE
TAPE 03-14, SIDE A

SB 86-INTEREST ON DELINQUENT TAXES

CHAIR CON BUNDE called the Senate Labor and Commerce Standing Committee meeting to order at 1:32 p.m. Present were Senators Davis, Seekins, French and Chair Bunde. He announced SB 86 to be up for consideration. He said the Department of Revenue has taken care of all of the big delinquent tax cases. SB 86 strikes a balance between creating a system that is not oppressive to the small taxpayer but does not leave any money on the table for the big taxpayer.

MR. DARWIN PETERSON, staff to Senator Wilken, said that was a fair statement.

SENATOR SEEKINS moved to pass SB 86 from committee with individual recommendations and the attached fiscal note. SENATORS SEEKINS, FRENCH, DAVIS AND BUNDE voted yea, and the motion carried.

SB 111-PUBLIC CONSTRUCTION PROJECT REQUIREMENTS

CHAIR BUNDE announced SB 111 to be up for consideration.

SENATOR STEVENS arrived at 1:38 p.m.

MR. ED FISHER, Deputy Commissioner, Department of Labor and Workforce Development (DOLWD), said SB 111 is designed to eliminate the requirement that contractors on public works projects submit weekly certified payrolls to the Department of Labor and Workforce Development. He continued:

In place of the certified payroll, all the contractors and subcontractors will be required to file a notice of intent to perform public work along with a fee of \$100. The notice would be on a form provided by the department and include identifying information about the project and the contractor and a statement that the contractor fully understands his or her

responsibilities to workers under Title 36 and will comply with those requirements. The notice of intent would inform the department that each contractor is aware of the proper prevailing rates of pay. At the end of its project, each contractor or subcontractor would file with the Department of Labor an affidavit of compliance on a form provided by the department along with another \$100 fee. That affidavit would state that the contractor has completed the work of the project and complied with the requirements of Title 36 with the regard to the payment of proper prevailing wages and resident's preference. The affidavit of compliance would provide an instrument for closure on projects and a sworn attestation of compliance with the act.

The advantage to contractors would be that they would no longer have to file the certified weekly payrolls with the department. However, in most cases, when federal money is involved, certified weekly payrolls are already being filed with the contracting agency. This would eliminate the duplication of the filing of those certified payrolls. The payrolls would still be accessible for audit purposes in the event of a complaint or an investigation. The contracting agency would not be required to audit the payrolls, although the Department of Transportation/Public Facilities already performs certain tasks to satisfy federal grants on most of its projects. Presently, many contracting agencies do not make final payment on a project until they have clearance from the Department of Labor. Under this plan, that is the plan in SB 111, the department would check its files for the final affidavits and that would make the process of issuing a clearance much more responsive. Final payment could be released to the contractor sooner. This bill would enable the department to put its resources in the field rather than in the office filing paperwork.

The expectation is that the fees will generate - and the savings from eliminating a clerical position would generate annual revenue of \$115 million.

CHAIR BUNDE said he was confused about the filing requirements and flexibility as any Little Davis Bacon project requires a weekly payroll filing.

MR. FISHER replied that is true at present because Title 36 requires that the payroll information be filed with the Department of Labor.

CHAIR BUNDE asked if SB 111 removes that requirement.

MR. FISHER replied contractors would no longer be required to file a certified payroll with the department, but they would be required to file a certified payroll with their contracting agency.

CHAIR BUNDE asked if the department has just been getting a copy of the paperwork contractors were filing with the federal agency.

MR. FISHER replied that is correct and said the certified payrolls fill about 27 file drawers every year and amount to about 20,000 pieces of paper in a month.

CHAIR BUNDE asked if a subcontractor who finishes a project in a day or two would still have to file and pay the two \$200 fees, and whether the subcontractor would get paid before the main contractor filed his paperwork.

MR. FISHER replied the intention of the bill is that the subcontractor would file payroll information. The department, upon receiving the affidavit of completion, would check its files and provide the proper release so that the subcontractor could be paid.

CHAIR BUNDE asked if that would apply if a subcontractor worked one day or less.

MR. FISHER replied that is correct as presently written.

CHAIR BUNDE asked how the \$100 fees equate to the cost of the work that would be done.

MR. FISHER replied that the fee was not designed in terms of the cost. He stated, "It's a revenue generator."

SENATOR SEEKINS pointed out the fiscal note contains a breakdown of 2300 projects with an average of five contractors per project. He asked Mr. Fisher if he could tell how large those projects were.

MR. FISHER said he couldn't, but based on Southeast Alaska only, about 15 percent of the projects have a value of about \$5,000; another 25 percent have a value of about \$10,000 or less.

SENATOR SEEKINS asked how long it would take the department to do the certification so people could get their final payment.

MS. HALI DENTON, Acting Director, Division of Labor Standards and Safety, said they don't have a solid number for that because it's not something the department has had to keep track of before. She noted, "It's intended to streamline the process...."

She said the division would be releasing the subcontractors as they filed their affidavits so they would not have to wait until the entire project is completed.

SENATOR SEEKINS asked what percentage of a contract is normally held out for final payment.

MS. DENTON said she would get back to him with an answer.

SENATOR SEEKINS said he was concerned that on a small contract, for example a \$5,000 contract, the whole amount would be withheld and none of the contractors or subcontractors could get paid until the department got to that point. He asked if the division has envisioned the final process and whether it would be based on the affidavit or whether the division would look at other documents to make sure that people had complied with the many Davis Bacon requirements.

MS. DENTON replied that the affidavit is intended to be a sworn document. The division would look at that if problems surfaced and it would be auditing the payrolls. Absent any complaints, it would just reference the affidavit.

MR. DON ETHERIDGE, Alaska AFL-CIO, said the AFL-CIO has concerns with the bill as drafted and wants to see the certified payroll requirement remain with the department. The fees should also be earmarked for the department so they can do this project right. The problem now is that the department doesn't have enough staff to follow up on complaints about certified payrolls. The AFL-CIO also wants to see a graduated fee instead of charging the same amount for a \$5,000 contract or larger one.

He explained that if you're trying to track down certified payrolls right now on the federal level, you don't know where you're going to find them. It could take forever. His members

know when they are being paid the wrong amount; now they can go to the department.

SENATOR FRENCH asked if the certified payrolls were going to stay with the contracting agency, which might be the Village of Hoonah or some other small agency.

MR. ETHERIDGE replied that is correct. It could be any department of the state, municipalities, etcetera, and that is why it would be so hard sometimes to try and track them down. He also noted that many times contractors look at the certified payrolls to make sure their competitors are staying above board.

SENATOR FRENCH asked if certified payrolls basically tell you if the appropriate wage is being paid to the appropriate individual under the Little Davis Bacon Act.

MR. ETHERIDGE replied yes.

CHAIR BUNDE asked a where the federal certified payroll goes and whether there is a central repository where people could access that information.

MR. SCOTT JOHANNES, Association of Builders and Contractors, said he saw a lot of problems with the bill. One is the Village of Hoonah. Now the state knows how to review the payrolls and once this bill goes into effect, hundreds of agencies across the state, the village of Hoonah being one, will be responsible for doing that review. They don't have anyone on staff to do that. This new system will be less efficient and the person doing it will be less qualified.

MR. JOHANNES second concern was the fee. Basically, the state is charging the contractor the fee on projects the contractors are doing for the state, so the state is charging itself and they're asking the contractor to pass it through. He surmised, "So they're going to increase the cost to themselves."

SENATOR STEVENS asked if it would be of concern to him to have contractors investigated.

MR. JOHANNES replied that until the department has certifications for everyone on the project, it is not going to be able to release the certification verifying that a subcontractor is in compliance so the subcontractor can get a final payment.

SENATOR STEVENS asked if that would be any different than it is now.

MR. JOHANNES replied yes. Currently, department staff is responsible for reviewing those and have the means to do it.

CHAIR BUNDE asked if, under the current system, subcontractors are required to provide the certified payroll under the Davis Bacon Act and, if they don't, the major contractor would be held up from payment as well.

MR. JOHANNES replied that is correct.

MR. CHARLES WIEGERS, Associated Builders and Contractors, was opposed to SB 111 for many of the reasons already expressed. He said the department is shifting this effort to the contracting agencies and some are capable but some are already overwhelmed with the administration of contracts. In addition, the department is asking to derive revenues from this bill. He was skeptical that the \$115 million the department intends to receive from the fees would be added on to the cost of construction [which the state would have to pay for].

Another concern he expressed with is the clearance of the final contract. He said if a subcontractor doesn't file, the general contractor's payment could be held up and the subcontractor might do it maliciously.

MR. WIEGERS said another concern is that it removes enforcement from the process because the department will no longer enforce Title 36 wages. It is going to rely on a piece of paper. He added, "If someone is dishonest enough and disingenuous enough to pay less than prevailing wages on a project, I wouldn't put it past them to sign a certification saying that they did."

He said he is aware of the large amount of paperwork because as a contractor he dealt with it. He suggested moving to an electronic submission to eliminate the huge volumes of paper.

MR. TIM ROGERS, Legislative Program Coordinator, Municipality of Anchorage, said he has some concerns with the bill. First, municipalities will become the record keepers for the Department of Labor and they don't have the expertise to do that. He was also concerned about the fees, especially for smaller projects around \$5,000. Two hundred dollars is a significant percentage increase on a smaller project. He also noted there is no provision for emergency work and his city is faced with a few

million dollars worth of emergency work caused by a wind storm. There is no provision allowing the municipality to get a contractor to do the repair work immediately and the municipality would have to wait for the department to say it's okay to put a contractor on the job. This could cause significant problems for the municipalities in some cases. Municipalities also have to get the department to sign off before they can issue final payment. He explained they do have significant retainage, especially on the larger projects, and are required by state law to pay interest if there is any delay on the payment. He concluded by saying they wouldn't object if municipalities were exempted from this bill.

SENATOR SEEKINS asked if municipalities are currently required to make sure their contractors are sending in the certified payroll affidavits.

MR. ROGERS replied that he couldn't answer that, but would get the answer for him.

MR. RAYMOND SMITH, Business Manager, INPAT, opposed SB 111 for the same reasons already given. He said, "The Department of Labor needs to monitor certified payroll. That's their job."

He spoke of one contract that included the Loussac Library, the East High School Teen Career Center, and Anaktuvuk Pass Housing projects. He said if he reads this bill correctly, he would have to go to the Mat-Su Valley, the school district, and to find out who the housing authority is in Anaktuvuk Pass to monitor the certified payrolls. He contended:

It's just not feasible. We have a clearinghouse here. That's where the certified payrolls are turned in. That's where interested parties can go to find them. It only makes sense, gentlemen, and we'd appreciate it if you would take a little more care in looking at this bill. I don't think it's right for the workers of Alaska.

SENATOR SEEKINS asked if INPAT monitors the payrolls now.

MR. ROGERS replied it monitors certain projects - some contractors and sometimes their own contractors.

SENATOR SEEKINS asked for an estimate of the amount of time it took.

MR. ROGERS replied that it takes about 20 percent of his organizer's time and about 7 percent of his own time.

CHAIR BUNDE asked Mr. Rogers if he was aware of any federal government clearinghouse and whether folks would have access to that information.

MR. ROGERS replied that the federal Department of Labor is and that one must write to Seattle to request copies of certified payroll.

MR. SCOTT BRIDGES, Teamsters Local 959, told members:

This bill as drafted is disruptive to workers because it seriously dilutes the practicability to enforce rights that are afforded under this body of law. By scattering compliance with Title 36 and other wage statutes, workers are placed in further jeopardy of losing earned wages to unscrupulous contractors. I don't know that any of us could accurately estimate the amount of loss to workers that exists today with the staffing levels that exist at the Department of Labor. At a time when economic pressures attack the worker at home with greater influence is greater than any other element of our society, this bill proposes to add a little more pressure to that.

The bill suggests that it would eliminate a double recording requirement. There are many practical means of overcoming that particular problem, which is not quite so monumental to the individual contractor as some might have us believe. Eliminating a clerical position at the Department of Labor, which is also suggested by those who proposed this legislation, would further cripple the DOL's enforcement capability. At this time, after I have spoken with several of the enforcement officers with the Department of Labor, they have suggested to me that they get so many complaints but they're able to enforce only those that are pretty much slam dunk cases. They simply do not have the time in their work week to handle the load that exists today.

In our state's effort to stimulate the stagnant economy, we need to be looking towards entrepreneurialism as an economic stimulus for greater growth rather than regulations of this type. With that

entrepreneurialism we're going to get that economic growth and we'll have enhanced revenues that the state so drastically needs. I appreciate the time. I think that this bill is one that in its present form should go away and I would appreciate this committee's assistance in taking a much harder look at this.

CHAIR BUNDE asked how he proposes to pay for the service so the state can continue to provide the same level of service.

MR. BRIDGES replied that eliminating one clerical position was going to be a drop in the bucket in the suggested \$115 million fiscal note. He suggested keeping the "\$100 in and \$100 out" and putting that money in the hands of the workers so they can spend it at the businesses in his community. Whatever taxes come in from those construction dollars would enhance the state's revenues even under the current tax structure.

SENATOR SEEKINS noted that Mr. Wieger's earlier reference to \$115 million was two decimal places off. The amount is \$1.15 million.

MR. BRIDGES said a clerical position would not account for much of that.

MR. JOE SMITH, part owner of Gastineau Contractors, said he has concerns about shifting the recording of certified payroll from the Department of Labor to the contracting entities. For a company that bids on Davis Bacon jobs, it's important to have an agency monitoring their competition. A contracting agency might be less inclined to dedicate the resources needed to do the job as its hands are full administering the contract. They don't have the expertise or the motivation to monitor the certified payroll, which would be especially true of small jobs.

MR. SMITH explained that \$2,000 is the lower limit where Davis Bacon kicks in so a \$200 in and out fee represents 10 percent of a job that size. A sliding scale makes a lot more sense.

CHAIR BUNDE asked if he believes this is a valuable service and if a sliding fee scale was used, whether he would be willing to pay additional funds so the state could maintain the service.

MR. SMITH replied he would.

MR. THOMAS BOEDEKER, City Manager of Soldotna, said he is chairman of the Alaska Municipal League legislative committee.

He noted the statute requires withheld money due a contractor to accumulate at a 10.5 percent interest if it's not paid within 30 days of billing. Right now municipalities are not earning anything near 10.5 percent on their investments. This bill would not let him make a final payment to a contractor that might be due because of a subcontractor or any number of other issues. Under this bill, a municipality would be required by law to pay 10.5 percent interest while it waited for the Department of Labor to resolve a dispute.

TAPE 03-14, SIDE B

MR. BOEDEKER also had concerns with the dispute resolution process itself, and asked what kind of disputes would trigger the process. He said right now the department enforces the prevailing wage law. There are a number of interpretations of what work is covered or not covered and the municipalities have neither the jurisdiction nor the expertise to deal with the interpretations the department has made. He found it difficult to believe that filing copies with the municipality only will allow the department to make its determinations. A burden would be placed on the municipality "to do all the leg work" every time an issue arises.

He also expressed concern about how long the municipality would be required to keep the records. Contractors keep records while they are active and don't organize them to be researched after a job is closed. He concluded that an amendment is needed that says if a municipality is withholding funds while awaiting the department's certification, it is not subject to retainage interest.

CHAIR BUNDE asked Mr. Fisher to look at the following issues:

- Electronic submission of the information
- A graduated fee
- The interest concerns on retained payments
- Emergency provisions
- The state's need to generate revenue
- The percentage of private versus state contracts

He asked Mr. Fisher to provide the committee with feedback on those issues.

SENATOR STEVENS also asked Mr. Fisher to look into the impact of exempting municipalities.

CHAIR BUNDE said he also wants to know how one would access the federal repository's information if this bill becomes law.

SENATOR SEEKINS said he would like to know if any other state requirements have to be met in addition to the certification of payroll before payout is made and how many reports the department currently receives on certified payrolls. He also wanted to know what the volume of the paper flow is and, as it comes in, whether the reports are filed with or without review. He further asked if the affidavit includes the same type of report that is filed weekly or whether it just states that prevailing wages were paid.

SENATOR DAVIS asked if there are one or two filings between the department and the contracting agency.

MR. FISHER said based on the bill, the expectation would be that the contractor would file a notice of intent to proceed, which would be accompanied by a \$100 fee. When the project for that particular contractor was complete, that contractor would file an affidavit saying that he/she had paid proper wages and the contractor's portion of the contract was complete, accompanied by a \$100 fee.

SENATOR DAVIS noted a clerk's position costing about \$30-\$40,000 would be eliminated. She asked where the other money in the fiscal note would come from.

MR. FISHER replied that the revenue generation would come from the filing fees. The cost savings of \$40 to \$50,000 are from eliminating the position.

SENATOR DAVIS asked whether the bill is based on the model of the Little Bacon Davis Act.

MR. FISHER responded that he just recalled they eliminated \$67,000 from the budget for the clerical position. He didn't have an answer to how the act came into being.

SENATOR DAVIS said the reason she brought that up is because SB 111 might be eliminating something that is required by the federal government.

MR. FISHER replied that he is unaware of a requirement but would ask the question and get a response.

CHAIR BUNDE held the bill and said he would share the information with the committee when it came back.

SB 113-FINANCIAL INSTITUTION EXAMINATIONS/CFAB

CHAIR BUNDE announced SB 113 to be up for consideration.

MR. MARK DAVIS, Director of Banking, Securities and Corporations, said SB 113 makes two changes; the first is to the banking code, Title 6, which governs small loan companies (loans of \$25,000 or less). Right now, Title 6 requires that small loan companies be examined every year; the rest of the banking industry is on an 18-month examination schedule. SB 113 proposes [changing Title 6 companies] to an 18-month schedule also. That does not mean a small loan company would not be examined more frequently if examiners felt it should be for some reason. It would allow the division to eliminate a banking position.

The second change is to Title 44, which deals with state government. The Alaska Commercial Fishing Agriculture Bank (CFAB) falls under Title 44. SB 113 proposes to drop CFAB's required annual qualitative examination by the division. By statute, CFAB must provide the legislature with an audited financial statement performed by outside auditors and that has always been done and is still being done. He feels the outside audit report is sufficient to let the members of CFAB know the financial condition of CFAB or whether their loans are in bad condition.

CFAB was created in 1980 and experienced some difficulties in 1985. The banking examiners were used in 1985 to examine the bank and then about two years later the legislature passed the current statute. He explained that the banking section of the division does not make money. It requires more funds to run than it generates in fees. Dropping that requirement would save an examiner's position and the time could be used to focus on other state banks, which he views as the department's primary mission. CFAB no longer has state funds; it once had \$32 million in state funds but paid those back early in 1998. CFAB is not open to the public, except for some very small loans and one must be a member to borrow money.

CHAIR BUNDE asked if it is fair to say that the CFAB examination isn't really so much a consumer protection effort as it is an effort to give it the state's imprint of quality.

MR. DAVIS said he thought that was the intent when the statute was passed as CFAB had some financial difficulties in the 80s that it worked through. It is not a regular bank and the bank examiners' function is to look at state charter banks and make sure they are sound.

CHAIR BUNDE asked if it is fair to say that the external audit that CFAB goes through every year is comprehensive and would provide members with needed information to make judgments about the quality of CFAB.

MR. DAVIS replied the portion of the CFAB statute in Title 44 requires that outside auditors provide financial statements - a full audit. By statute, the financial statements must be provided to the legislature. The division is also proposing that legislative audit functions be removed but remain in statute. That means if any problem should arise, the legislature has full subpoena power and could use the banking examiners if it wanted to. An acceptable accounting principle statement would contain much of the same information and non-performing loan or asset information would show up.

SENATOR STEVENS said he wanted a definition of what the qualitative examination actually entailed and asked who reviewed the CFAB audit if not the division. He noted, "It would be wasted time spent with me giving me an audit."

MR. DAVIS replied that by statute, CFAB is required to provide the legislature and the governor's office with an outside audit, which is unique. When it's sent to the governor's office, he assumed it would be sent to his division as it has been before.

He understood that it goes to the Division of Legislative Budget and Audit when it's sent to the legislature.

SENATOR STEVENS asked to know more about the qualitative exam and how much it cost.

MR. DAVIS responded that is language used in the statute and he doesn't know what it means. It doesn't appear in any other banking statute. The examination last year took 10 days and cost \$6,300; in FY03, it's going to cost the division about \$635,000 to do bank exams. The division will accept \$276,000 in fees and therefore lose about \$359,000. The division is trying not to lose so much money.

To reduce costs, the last administration decided not to go through every loan, but when examining an FDIC state charter bank, the division goes through every loan.

SENATOR SEEKINS said it seems to him like the audits that are currently done are not a consumer protection feature, but more of a membership assurance project.

MR. DAVIS replied that's how CFAB views it.

CHAIR BUNDE said SB 113 will not balance the division's budget and asked Mr. Davis if he would entertain the notion that the cost of doing the examinations should be borne by the people he examines on a break-even basis.

MR. DAVIS replied that would be a goal, but he needed to work on it. Overall the division makes a fair profit; the Securities section makes a greater profit. It puts \$10 to \$12 million into the general fund and provides a good service; the Banking section loses \$359,000.

SENATOR FRENCH asked if the division would save about \$6,000 per year by eliminating the examination.

MR. DAVIS said yes and that right now an examiner spends 10 days at CFAB and that time could be spent somewhere else with another entity. He said they are working at Bidcos [ph], the relatively new private financial groups of which there are two in the state. They inject money into the economy.

SENATOR FRENCH asked if the division won't gain a whole examiner's position for the entire year, but instead will get 10 days worth of work out of a person on another project.

MR. DAVIS said that is right and to put it in perspective, the state bank, which is much larger, will take the same time as CFAB. He would rather spend the time on the state bank and have the examiners available to shift to the securities section, as a lot of new securities brokers have opened for business in Alaska within the last couple of years.

CHAIR BUNDE asked if the division anticipates saving \$126,000.

MR. DAVIS replied yes and said that bank examiners are paid well and are highly skilled.

SENATOR SEEKINS said the bill changes the examination requirement to once every 18 months instead of once every 12 months. He asked Mr. Davis if he anticipates any unnecessary risk in small loans.

MR. DAVIS answered that right now there are eight licensees, seven are owned by Wells Fargo. At the present time, given that ownership structure, he didn't think there would be any risk from changing to 18 months. He emphasized that if the division needs to examine someone more frequently, like a new licensee that is having difficulty, it would do so.

CHAIR BUNDE thanked participants for their comments and said the committee would bring SB 113 up again next week.

SB 120-CLAIMS BY STATE-EMPLOYED SEAMEN

CHAIR BUNDE announced SB 120 to be up for consideration.

MS. SUSAN COX, Assistant Attorney General, explained that SB 120 would have the state limit its waiver of sovereign immunity as it pertains to injury claims brought by state employees who happen to be seamen and instead provide for worker's compensation coverage for those state employees. The Governor's transmittal letter indicates that the intent of the bill is to provide state employees who are seamen with worker's compensation coverage, similar to all other state employees. To do that, the statute by which the legislature has waived the state's sovereign immunity, thereby opening itself up to litigation in tort claims, personal injury claims, and maritime personal injury claims, must be amended.

MS. COX explained that amending AS 09.52.050 is an approach that was identified in a 1963 Attorney General's opinion and was referenced in an Alaska Supreme Court decision on a case known as the State of Alaska Department of Public Safety vs. Robert Brown in 1990. At that time, the [court] held that the Alaska Workers' Compensation Act could not be applied to be the exclusive remedy of state employees, because the state had waived its immunity without limitation for personal injury actions. If the state wanted to withdraw its consent to suit and apply worker's compensation to its state employees who are seamen, it could do so in a bill like this.

She explained from 1983-1991 most state employed seamen who worked aboard our state ferries had collective bargaining agreements that provided for workers' compensation benefits in

lieu of the Jones Act and other maritime remedies. For eight years those employees enjoyed workers' compensation coverage in lieu of litigation. In 1991, a different Alaska Supreme Court decision, another (Dale) Brown decision, said that collective bargaining agreements providing for workers' compensation instead of the Jones Act were void and therefore couldn't be negotiated as a matter of union contract.

MS. COX said the purpose of this bill is to bring the state employees who are seamen under workers' compensation and take the state out of the realm of maritime remedies and Jones Act coverage. The Department of Law expects it to ultimately save the state money. The effective date is July 2003, but if enacted, it would apply only to injuries or illness occurring after that date. So, anyone who was injured in the last three years, because of the three-year statute of limitations under the Jones Act, would still be able to bring suit under the laws that exist now.

MS. COX expects a legal challenge if this law is passed. She has looked at legal arguments pertaining to those. The Robert Brown decision from the Alaska Supreme Court and other cases from several jurisdictions point in this same direction. She added that decisions by the U.S. Supreme Court in the last five years have made it clear that if a state does not consent to be sued, the Congress cannot impose liability upon the state.

2:57 p.m.

CHAIR BUNDE asked what the volume of claims is, how it compares with workers' compensation and what the state's net gain would be.

MS. COX replied that at this point in time the Department of Law handles the litigation with ferry employees. The department expects to see a continuation of some cases for injuries that occurred in the last three years. Starting with the effective date of this law, new injuries and illnesses would go to the workers' compensation system. The state is self-insured and workers' compensation is obviously a no-fault remedy. The department would expect to see, by and large, automatic coverage of workers' compensation matters and an eventual reduction in the amount of litigation the Department of Law would have to handle.

CHAIR BUNDE asked about the volume of claims the department is dealing with. He also asked if all employees of the Alaska

Marine Highway System are seamen and whether they have to meet other criteria under this legislation.

MS. COX replied that for all intents and purposes, those who work aboard the vessels are seamen and are covered under the maritime remedies that she referred to. Office workers onshore are not necessarily seamen. The department deals with a much higher volume of claims with respect to the maritime workers in the ferry system than other state agencies.

SENATOR STEVENS asked about the Dale Brown decision and the basis for voiding the contract.

MS. COX answered in the Dale Brown decision, the Alaska Supreme Court decided as a matter of labor law, that unions could not bargain away their individual members' rights, pre-injury, under the federal law.

SENATOR FRENCH asked if this would put all state employees under the same workers' compensation scheme.

MS. COX replied that is the plan.

SENATOR SEEKINS asked if she had seen the letter from Beard, Stacy, Trueb and Jacobsen.

MS. COX replied that she saw it in the hall.

SENATOR SEEKINS asked for her opinion based on the theories of law that were set forth in it.

MS. COX said she would be happy to do that and noted she has already evaluated some of the theories because she frequently deals with that firm in her cases. Mr. Trueb has expressed an interest in a uniform approach to maritime remedies for all seamen. The Governor disagrees and she disagrees with a number of the points Mr. Trueb raised in his letter.

SENATOR SEEKINS said he was particularly interested in a couple of representations in the letter about the jurisdiction of all state courts in regard to injuries.

MR. BRAD THOMPSON, Director, Division of Risk Management, said this division acts as the self-insurer and handles the claims filed by state employees. He noted he provided members with a chart that compares maritime claims to those of other state employees. The frequency of claims in 100 full time equivalent

positions (FTE) for all state employees is 8 per 100 FTE. The Departments of Corrections, Transportation, Public Safety, and Administration have 10 per 100 FTE. The average cost of maritime workers' claims is \$197,000 per 100 claims compared to \$64,000 for workers' compensation claims.

CHAIR BUNDE said he frequently hears that commercial fishing, logging and aviation are very high risk jobs and asked if he had information on how the Alaska Marine Highway System jobs compare.

MR. THOMPSON replied that he thought the Worker's Compensation division would have a rate per 100 FTE on its annual report; he estimated it was about 10.

CHAIR BUNDE asked if the expanded number of claims is due to the fact that working on ferries is inherently dangerous or because ferry workers are more inclined to present a claim.

MR. THOMPSON replied that the remedy is different. Wages are paid to the end of the voyage and that is perhaps an incentive for frequency of claim. Workers' compensation only compensates for a time loss greater than three days. He pointed out that within the Robert Brown decision, the court clearly stated that if the state desires to limit its tort liability to the Workers' compensation Act, it may do so by legislative enactment of an exception to the waiver of sovereign immunity, which is what SB 120 is proposing.

SENATOR SEEKINS asked what is so dangerous about working on a ferry and noted the claim rate is very high.

MR. THOMPSON agreed the rate of claims is high.

MR. JOE GELDHOF, Marine Engineers Beneficial Association, said his organization represents the marine engineers on the Alaska Marine Highway System and licensed engineers on Alaska tankers. SB 120 only relates to state workers who are seamen and a small number of people in the Departments of Fish and Game and Public Safety. He said this problem has been around for years and he is not convinced it is really good to go at this time.

TAPE 03-15, SIDE A

MR. GELDHOF noted that the marine engineers and other maritime unions have worked with the state administration and with Susan Cox, who has a lot of historical knowledge, in the past. He said

significant legal problems within the bill need to be addressed before it moves out of committee. He explained in one Brown case, the court struck down provisions based on a challenge to contractual language brought by an individual mariner. The other Brown case, which preceded that one by about two years, addressed sovereign immunity and how to fix the problem, but it was based on an attorney general's opinion issued in 1963 when Lyndon Johnson was in the first year of his presidency. He said that opinion is fairly dated and suggested the current attorney general update it.

MR. GELDHOF said one theory is that sovereign immunity is imbedded in the Alaska Constitution so it would require a constitutional amendment rather than a statutory change. He thought it would be wise to get an opinion from legislative counsel and to then refer the bill to the Judiciary Committee. He noted the bill also needs a fiscal note regarding the administration of workers' compensation.

He added that real differences account for what appears to be substantially more claims coming from marine activities. For example, cooking during an 8-hour shift in a prison is fundamentally different than on a ship when the weather gets rough. He maintained:

If you take the Tustumena out to Dutch Harbor, it's probably not a stationary deck and it's long days. People are often sleep deprived.... There really are genuine differences in the maritime trades from landlubbers like me.

CHAIR BUNDE asked Ms. Cox to provide a fiscal note and said that interesting legal points were raised, but the Senate President would decide whether to refer SB 120 to the Judiciary Committee. With no further business to come before the committee, he adjourned the meeting at 3:15 p.m.