

ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE
February 10, 2004
1:31 p.m.

TAPE(S) 04-7, 8

MEMBERS PRESENT

Senator Con Bunde, Chair
Senator Gary Stevens
Senator Hollis French

MEMBERS ABSENT

Senator Ralph Seekins, Vice Chair
Senator Bettye Davis

COMMITTEE CALENDAR

SENATE BILL NO. 291

"An Act extending the transition period for activities involving unstamped cigarettes; and providing for an effective date."

MOVED SB 291 OUT OF COMMITTEE

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

SENATE BILL NO. 276

"An Act relating to the Alaska Insurance Guaranty Association; relating to joint insurance arrangements and assessments to the association; relating to the powers of the Alaska Industrial Development and Export Authority concerning the association; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 273

"An Act relating to the Alaska Seafood Marketing Institute, the seafood marketing assessment, the seafood marketing tax, and the seafood product tax; and providing for an effective date."

MOVED SB 273 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 291

SHORT TITLE: UNSTAMPED CIGARETTES

SPONSOR(S): LABOR & COMMERCE

02/04/04 (S) READ THE FIRST TIME - REFERRALS
02/04/04 (S) L&C, FIN
02/10/04 (S) L&C AT 1:30 PM BELTZ 211

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

BILL: SB 276

SHORT TITLE: ALASKA INSURANCE GUARANTY ASSOCIATION
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/23/04	(S)	READ THE FIRST TIME - REFERRALS
01/23/04	(S)	L&C, FIN
02/03/04	(S)	L&C AT 1:30 PM BELTZ 211
02/03/04	(S)	Heard & Held
02/03/04	(S)	MINUTE(L&C)
02/10/04	(S)	L&C AT 1:30 PM BELTZ 211

BILL: SB 273

SHORT TITLE: ASMI BOARD/ SEAFOOD TAXES & ASSESSMENTS
SPONSOR(s): SENATOR(s) STEVENS G BY REQUEST OF SALMON INDUSTRY
TASK FORCE

01/23/04	(S)	READ THE FIRST TIME - REFERRALS
01/23/04	(S)	L&C, FIN
02/03/04	(S)	L&C AT 1:30 PM BELTZ 211
02/03/04	(S)	Heard & Held
02/03/04	(S)	MINUTE(L&C)
02/10/04	(S)	L&C AT 1:30 PM BELTZ 211

WITNESS REGISTER

Ms. Johanna Bales, Revenue Auditor
Department of Revenue
PO Box 110400
Juneau, AK 99811-0400
POSITION STATEMENT: Supports SB 291.

Mr. Mike Elerding, Owner
Northern Sales Distribution Co.
Anchorage AK
POSITION STATEMENT: Supports SB 291.

Ms. Linda Hall, Director
Division of Insurance
Department of Community & Economic Development
PO Box 110800
Juneau, AK 99811-0800
POSITION STATEMENT: Supports SB 311.

Mr. Paul Lisankie, Director
Division of Workers' Compensation
Department of Labor & Workforce
Development
PO Box 21149

Juneau, AK 99802-1149

POSITION STATEMENT: Supports SB 311.

Mr. Chancy Croft

Anchorage AK

POSITION STATEMENT: Commented on SB 311.

Ms. Laura Fleming, Director

Public Relations

Alaska Seafood Marketing Institute (ASMI)

Juneau AK

POSITION STATEMENT: Supports SB 273.

Mr. Jay Stinson, Chair

Alaska Seafood Marketing Institute (ASMI)

Juneau AK 99801

POSITION STATEMENT: Commented on SB 273.

ACTION NARRATIVE

TAPE 04-7, SIDE A

^#SB291

SB 291-UNSTAMPED CIGARETTES

CHAIR CON BUNDE called the Senate Labor and Commerce Standing Committee meeting to order at 1:31 p.m. Present were Senators Stevens, French and Chair Bunde. The first order of business to come before the committee was SB 291.

MS. JOHANNA BALES, Auditor, Department of Revenue (DOR), explained that last session a bill passed requiring a tax stamp (showing tax had been paid) on all packs of cigarettes. A transition period of 90 days was allowed during which any product brought into the state prior to January 1 could be sold until March 31 without having that stamp. However, after the bill was signed into law, the major manufacturers changed their returned goods policy. Formerly, full credit was given for all returned cigarettes no matter what the reason, but now none are being taken back. Originally, the department had assumed that 90 days was a sufficient transition time, but with the manufacturers' new return policy, distributors need more. SB 291 extends the transition period from March 31 to June 30, 2004.

The Department of Revenue supports this bill, but would not extend the period for affixing stamps on cigarettes that were not in the state prior to January 1, 2004.

SENATOR GARY STEVENS asked if she was sure the additional 90 days would be enough to sell all the cigarettes.

MS. BALES replied that 90 days should be sufficient as the normal shelf time for cigarettes is four to six months. DOR is also working with the manufacturers to get all of the distributors' products stamped as quickly as possible.

SENATOR FRENCH asked what prevents a merchandiser from getting a stamp on the cigarettes he has in stock now.

MS. BALES said the problem is one of duplicate taxation because the statute says the department must sell the stamp and the excise tax [on in-stock cigarettes] was already paid through return filings. They researched other ways of providing stamps with the Department of Law, but found that stamps couldn't be given away.

MR. MIKE ELERDING, owner, Northern Sales Distribution Co., said he had submitted written testimony in support of SB 291.

SENATOR STEVENS moved to pass SB 291 from committee with individual recommendations and attached fiscal note. Senators Stevens, French and Bunde voted yes and SB 291 passed from committee.

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^#SB311

SB 311-INSURANCE & WORKERS' COMPENSATION SYSTEM

CHAIR CON BUNDE announced SB 311 to be up for consideration.

MS. LINDA HALL, Director, Division of Insurance, Department of Labor and Workforce Development (DOLWD), said SB 311 deals with workers' compensation and that she wanted to give the committee some background first.

I have discussed on multiple occasions with most of you the financial crisis in the Guaranty Association for which we are also hearing proposed solutions in SB 276. There is additional concern with the lack of a healthy workers' compensation environment in Alaska. Many of you, I think all of you here, heard the overview of this problem at the Joint House and Senate Labor and Commerce Committee meeting a couple of weeks ago.

I would like to outline the major problems that we're encountering in that environment. One of those problems is a lack of profitability in our workers' compensation market. Between 1997 and 2002, losses in the workers' compensation line of business ranged from 99.9 percent to a high of 154 percent. At its high, this meant that insurance companies are paying \$1.54 for every dollar in workers' compensation premium they collect. It's an unacceptable loss amount. Alaska averaged 123.7 percent in losses per dollar of premium collected versus a national average of 118.8 percent in that same time period. Our carriers are losing, in Alaska, approximately 5 percent more than even the national average.

The second problem we're encountering that leads to increases in premium are the cost of medical benefits. The cost of medical benefits has increased dramatically; the cost of prescription drugs has increased dramatically. We have seen double digit increases in these costs and while I think most of us tend to accept the correlation between the rising cost of health care and the rising cost of health insurance premiums, we generally tend not to make that correlation with workers' compensation premium. Those pressures caused by increasing medical costs have the same effect on workers' compensation that they do on health insurance. That's a substantial increase. Frequency of claims has decreased over the past several years, which is a good sign. It means we have safer workplaces, fewer injured workers.

That decline in the number of claims has tended to mask the increase in the cost of individual claims, which now has resulted in, what I will term, problem three to address, which are premium rate increases. Effective January 1 of this year, we saw an average rate increase of 21.2 percent. As the cost of claims has increased, the actuarial analysis of historical claims data and projections on the cost of future claims indicated the need for a substantial rate increase, which was approved by the Division of Insurance. That rate change ranged from a 15 percent decrease to a 57 percent increase. While the average is 21.2, I think it's important to look at the span of these rate changes. We had 30 classifications out of about 400 - we had a rate decrease - we have 17

classifications whose rate increases exceed 50 percent. So, when we talk about what premium increases are, what cost claims are generating in premium increases, we need to keep those kinds of increases in mind. The current cash deficit in the Guaranty Fund has already resulted in a 2 percent assessment in the workers' compensation policies.

Proposed legislation in SB 276 would increase that further. So, the combination of the rate changes and the assessments are making workers' compensation extremely expensive for employers. The first problem I think we need to look at in our work comp environment is the Assigned Risk pool. I've talked about this briefly and I will keep that brief again, but I do want to mention it. The Assigned Risk pool is a factor in the increasingly unattractive Alaskan marketplace.

Workers' compensation is mandatory in Alaska. So, if an employer is unable to obtain coverage in the voluntary market, they can obtain coverage in the Assigned Risk pool. So, there's always a place for an employer to obtain coverage. Today, approximately 17 percent of our workers' compensation premium is in that Assigned Risk pool. That Assigned Risk pool, however, is also losing money. When the cost of the claims in the Assigned Risk pool exceeds the premium dollars that are collected, that difference is charged to the insurance companies who write insurance in the state. Currently, Alaska has the largest charge to insurance companies for their Assigned Risk pool of any state in the country. That has ranged over the last six years from four to six percent. What that represents is an off-the-top charge to insurance companies for every dollar they write going in. They are now going to pay anywhere from a four to six percent charge for funding the Assigned Risk pool.

Overall we have a workers' compensation environment that has become very expensive for employers and very unattractive to workers' compensation insurers. As these issues became apparent over the last number of months, staff from the Division of Insurance, from the Department of Labor, from the Department of Law and the Administration have met and struggled to find ways to overcome these challenges. We cannot continue to merely increase workers' compensation premiums for

employers. We must look to ways to stem the increasing cost of benefits to workers. We've looked at many options over these past months. We've looked at costs of medical care; we've talked about provider fees; we've talked about definition of compensability, value of the whole man, reemployment programs. What we will submit to you today in SB 311 makes no changes to any benefit levels. It does, however, propose a change in the workers' compensation system that we feel will bring more efficiency, consistency and predictability to the process.

We need a healthy workers' compensation marketplace. We need a stable environment that is sustainable, that will encourage current companies to do business in our state, attract new markets. We need workers' compensation insurance that is available and affordable to employers so they can continue to develop jobs and we can have economic development in our state.

This environment depends on four factors: adequate [indisc.], a self-funded Assigned Risk pool, a sound regulatory environment and a viable workers' compensation system. This bill before you is fairly unique as it is cross-departmental. We tried to find solutions together for these issues. There is certainly a very close tie between insurance and workers' compensation. I will address the insurance pieces of this bill and Director Lisankie will address the workers' compensation pieces of the bill and, again, we don't intend to read you all 58 pages today....

CHAIR BUNDE indicated that he would schedule a hearing for this bill again next week.

MS. HALL explained the insurance section of the bill as follows:

There are really six sections of this bill that deal with insurance. It begins with - I'm going to begin with section 2. Section 1 is an intent; section 2 has Department of Labor; but, section 3 and 4 go together. This is one of the things we're looking at to have more financial stake for Alaska policyholders in Alaska. This adds an increase in the deposit required of insurance companies who write workers' compensation

in Alaska. This special deposit, as it's called in the bill, will be for the protection of Alaska's policyholders, Alaskan injured workers. It would go to the Guaranty Fund should there be an insolvency.

Section 4 goes with that. It makes the Guaranty Fund the first priority over other delinquency proceedings. So, that money would specifically go back into the Guaranty Fund. Statutory requirements today, which would be doubled by this, are a minimum of \$1 million. So, we would have an additional amount of money from the insurance company who might later become insolvent to go to the Guaranty Fund.

Section 5 is dealing with the change in the composition in the board of governors of the Guaranty Association. Currently, it is a nine-member board: seven insurance companies and two public members. On the actual current board today we only have one public member I appointed in November. As we've gone through the problems with the Guaranty Association, the insurance company representatives have been invaluable board members. Their advice, their obvious familiarity with the workers' compensation system, with insurance, has been very very beneficial. However, it appears that in the situation we face, there are a number of stakeholders in the Guaranty Fund. In the instance case where the workers may have an interruption of benefits, employers who may get those obligations back, it was my intent to expand that board not by number, but by representation to give those stakeholders a seat at the table as these decisions are being made.

Section 6 is called the net worth...

CHAIR BUNDE interrupted to ask which member represents licensees.

MS. HALL replied the insurance agent member (who works with the insurance companies and employers). They are called licensees in Alaska statute. She continued:

Section 6 provides for what's called a net worth exclusion. This provision would exclude from coverage under the Guaranty Association if the net worth of the insured exceeds \$25 million. Thirty-two other states

around the country have this type of provision today. It may range from a \$10 million net worth exclusion up to \$50. This is a more middle of the road, the one most common around the country. The purpose here is to provide some type of cap on the costs of claims in the fund. It does. An employer whose net worth would exceed the \$25 million would not receive the benefit of the Guaranty Fund for their claims.

In the situation we face today in the Guaranty Fund, when all of the Fremont claims, all 700 of them, were transferred to the Guaranty Association in July, those claims are sent back to the state of residence of the injured worker by statute. As we sent claims back out to states, several of those were returned to Alaska to the Alaska Guaranty Fund by states that had this same type of provision. So, it would really bring our Guaranty Fund more on parity with those of most other states.

CHAIR BUNDE asked her to list a couple of Alaskan firms that would have a net worth of more than \$25 million.

MS. HALL said she knows of one, but didn't want to put the name in a public record.

CHAIR BUNDE said the committee would probably want some specifics as they go along.

MS. HALL said that was possible and continued:

Section 105, I addressed in my introduction purposely - the assigned risk pool - and the need to make that self-funding. It's a major component in our fragile insurance environment. This section repeals the 25 percent....

Policies in the assigned risk pool today have a cap of 25 percent difference between the rates in the traditional marketplace and the assigned risk pool. That also has an exclusion for policies under \$3,000 in premium. As I've indicated earlier, I think it's critically important that the assigned risk pool be self-funding. The losses in that pool have been even more excessive than what we're seeing in the traditional marketplace. The cap right now is lower than that in many states. We see some states - the

highest cap I've seen is 65 percent and I can't give you the state name. But we see a wide range of caps there, obviously. So we don't overly burden those employers who have their policies written in the assigned risk pool - when the burden of that assigned risk pool starts to affect our whole marketplace, I think we really desperately need to reassess that philosophy.

Approximately 6,000 of the 8,800 policies in the assigned risk pool have premiums under \$3,000. I've looked at that cutoff; I've looked at 5,000. Eighty-three percent of the policies in the pool have premiums under \$5,000. Generally, in the under \$3,000 [group], the average premium is \$864. These small employers are just as likely to have claims as larger employers and those claims can be just as costly as the claim of a larger employer. Claims have costs based on the nature of the injury. At an average premium of \$864, a single claim will offset hundreds of those small policies. That's the biggest reason today that the pool has been unprofitable. When you have those very small policies and they're not paying the surcharge, even, that the smaller, but higher premium policies are, we don't have a self-funding mechanism here. As I described in the introduction, the financial burden on insurance companies from this mechanism where they are charged anywhere from 4 to 6 percent has made Alaska a very unattractive market. It's that fragile balance where we try to do consumer protection, but we need a healthy competitive marketplace to do that and I think we need to look at these factors that are affecting that.

CHAIR BUNDE said, "My section 105 repeals that 25 percent cap."

MS. HALL replied that was correct, but there would be no cap and rates would still go through the filing process with the Division of Insurance.

CHAIR BUNDE asked her if this proposal was something like the assigned risk auto pool where a young man's premium is substantially higher than an older male's premium - the reasoning being that the older male should not have to pay higher insurance rates because the younger male would have more claims.

MS. HALL replied that was right. They are both mandatory insurance coverages, so there is a place where consumers can be sure to obtain that coverage.

CHAIR BUNDE asked if there was a cap on the automotive assigned risk pool.

MS. HALL replied no and that concluded her testimony.

CHAIR BUNDE asked Director Lisankie to address the committee.

2:00 p.m.

MR. PAUL LISANKIE, Director, Division of Workers' Compensation, Department of Labor and Workforce Development (DOLWD), said there is one change to the benefits that are payable under the Workers' Compensation Act. He explained:

Section 86 deals with cost of living adjustments to workers' compensation benefits. Currently, if someone moves, if someone resides, outside the State of Alaska, the division contracts with a company that determines the cost of living in various parts of the United States. Right now, if they are in an area of the country where the cost of living is less than - I think we're keyed to Anchorage - then the compensation rate would be adjusted down. If, on the other hand, if they live in any other part of the country where the cost of living actually exceeds that in Anchorage, their benefits would be adjusted upwards. That's under the current act. What Section 86 would do is that it would cap any upward adjustments at the amount that could be paid to someone who resided in Alaska. So, essentially what it would do is that no one would get paid more compensation than someone who is an Alaskan by dint of the fact that they moved outside. That's a subtle change, but it is the one change that I am aware of to the actual benefits.

Mr. Chairman, you alluded to the rather lengthy section-by-section analysis, which I have found helpful and hope the committee does, as well. I didn't prepare it; I don't want to take credit for it. Other people spent a lot of time putting it together.

MR. LISANKIE summarized saying that because the Workers' Compensation Act is quite lengthy and the board is responsible

or involved in almost all aspects of the system, this legislation contains a large number of what are essentially conforming amendments.

He explained that the division director gets additional powers that the position doesn't have now, in part, because nothing in the current act identifies the position of director. This bill establishes that position and puts the incumbent in the overall posture of administering the workers' compensation system.

One of the most important changes and a powerful tool that would be available to the director surrounds the area of uninsured employers. As the committee is no doubt aware, there [are] a significant number of uninsured employers in the State of Alaska who do not, for whatever reason, conform to the legal requirement that they make sure they insure for their employees' workers' compensation benefits. The division currently has a zero tolerance policy. We do attempt to investigate and when we identify someone who appears to be an uninsured employer, we take steps to further that investigation. In the appropriate instances, we file an accusation against them and require them to appear and prove whether or not they have the insurance that we believe they do not have.

CHAIR BUNDE asked if some employers also claim that they don't have to have insurance.

MR. LISANKIE replied that is correct. He explained further, if an employer is in violation of a statute, a stop order is issued. Typically, the employer either proves that employees no longer work for them and, therefore, there's nothing to stop or they acquire the necessary insurance.

What SB 311 provides is an important civil penalty provision saying that even if an employer brings his insurance current, he would face a penalty of up to \$100 per day, per employee, for the period of time they operated without the required insurance.

Lack of insurance places the health and financial health of employees in jeopardy, because neither their medical benefits nor their time loss benefits are typically going to be paid. Lack of insurance also gives those employers an unfair advantage over other employers who follow the law.

MR. LISANKIE said this bill also provides a change in the way disputed workers' compensation claims are resolved in a couple of ways. Currently, the board resolves disputed claims. It has been growing continually from a single panel of three individuals since its inception in 1959 to seven panels. Each one consists of members appointed by the governor representing industry and labor and then the panel is chaired by the commissioner of the DOLWD or their representative. Now there are 14 panel members, plus the commissioner and the last time a commissioner had time to chair a panel was many years ago. Typically, a workers' compensation hearing officer takes his place.

Panels are entitled to act based on a quorum, so it's possible to have a decision made by any two of the three. This means that now workers' compensation hearing officers are functioning as the multiple representatives of the DOLWD commissioner. Industry and labor representatives don't always sit together on the same panel and over 300 potential combinations of deciders are possible. Consequently, the current system is kind of weighted against consistency simply by the fact that there are so many different panels that are each entitled to weigh in with their own opinions about obligations, rights and legal interpretations. Different panels can make different decisions on the same issues and, "They are legally entitled to do it as far as I know. They are not doing anything wrong."

If an individual knows there have been two different decisions, he has no way of getting the question resolved. Each individual can appeal to the Superior Court, but the problem with that, as far as consistency goes, is that the court's opinion is not viewed by the board to be binding other than for that individual decision. "The current structure is weighted against predictability or consistency by its very nature. It has nothing to do with the intentions of the people that are serving."

MR. LISANKIE explained that this bill addresses that concern by replacing the workers' compensation board in two ways: first, language in section 11 establishes a workers' compensation appeals commission. This commission would fill the appellate role that is currently filled by the Superior Court judges. The initial hearing role of the workers' compensation board is replaced (in section 59) by a group of commission hearing officers, who would be hired by the commission. They would hear the initial dispute and issue a written ruling akin to what the workers' compensation board does now (the initial decision). If the parties were unhappy with the results of that decision,

their right of appeal would be to the workers' compensation appeals commission. It would not go directly to the court system. The commission would be made up of three attorneys who are appointed by the governor and subject to confirmation.

TAPE 04-7, SIDE B

2:20 p.m.

MR. LISANKIE continued to explain that the commissioners would be required to have experience in practicing law within the State of Alaska and have other requirements, as well. Their sole function would be to resolve workers' compensation disputes at the initial appellate level by rendering a written decision, which would have full force and effect as precedent on other people not involved in the individual appeal. The decisions would be published so they could be researched by others, who would know in advance whether a decision could rule in the present case. The Alaska Supreme Court will continue to be the final stop.

MR. LISANKIE said the Council of State Governments, a non partisan, non profit organization, has fostering excellence in state governments as one of its goals and in 1965 it came up with a draft workers' compensation and rehabilitation law. He explained:

That law was done with the advice and guidance of an advisory committee. The advisory committee that originally came up with it was chaired by Professor Arthur Larson of Duke Law School. The late Professor Larson, at that time, was recognized as the kind of preeminent expert in the field of workers' compensation. Even following his death, his multi-volume treatise is still consulted by all of us who do workers' compensation in the United States and is frequently cited by our Supreme Court and by anybody who is trying to interpret workers' compensation matters.

Since 1965, there has been a suggested workers' compensation and rehabilitation law which has in it this framework that is being proposed of having the initial disputes handled by a hearing officer who has to be admitted to law and practice law in the state - and then have the appeals taken to either an appeals

board, an appeal commission, an appeals tribunal, whatever you call it.

The only change that they made was in around 1970, when the federal government was passing the Occupational Safety and Health Act. They established a national commission on state workers' compensation laws, which Congress tasked with examining the laws of the various states and coming up with suggestions - kind of a state of the art or union, I guess. They rendered a report around about 1972 that had about 84 specific recommendations for what they deemed a modern workers' compensation program. But, as the Council of State Governments points out in their publications, the commission's recommendations were never put into anything that could be adopted as a statute. So, what the Council of State Governments did in around or about 1974 was they revisited their original recommended act; they changed it, as I say, strictly to provide language that would permit a state to follow the recommendations of the national commission if it wished to do so and they called it their revised workers' compensation and rehabilitation law. That law was essentially the framework for this proposal as far as having hearing officers be the first deciders and then having appeals taken to, in this case, what we have called a workers' compensation appeals commission.

SENATOR FRENCH asked what the length of a term would be for an appeals commissioner.

MR. LISANKIE replied that SB 311 proposes four-year terms, which is in the range of other Alaskan boards and commissions.

SENATOR FRENCH asked if an individual could be reappointed and if there was a limit to the time one could serve.

MR. LISANKIE replied that commissioners are not limited to one term, but there is a limitation on consecutive terms for being the chair and the bill distinguishes one of the three members as the chair.

SENATOR FRENCH asked if the commission would sit essentially as a court of appeals over the decision made by hearing officers.

MR. LISANKIE replied that is correct.

SENATOR FRENCH asked if their decisions would have the precedential effect of being binding on the commissioners.

MR. LISANKIE answered that was correct.

SENATOR FRENCH asked if the commissioners would, then, be a set of judges that would never go before the public for confirmation - the way judges do now.

MR. LISANKIE replied that they would be confirmed by the Legislature, but they would not be judges. The statute that applies to judges would not apply directly to them.

SENATOR FRENCH said the court of appeals hears hundreds of criminal cases per year and issues, maybe, 20 decisions that are sort of precedential.

MR. LISANKIE said that was correct.

SENATOR FRENCH said he is trying to figure out why SB 311 contemplates giving an appointed board more legal authority than the court of appeals has.

CHAIR BUNDE interjected that there was some concern as to whether this bill should have a Judiciary hearing and maybe that should be part of the discussion.

SENATOR FRENCH strongly agreed.

SENATOR STEVENS said it seemed that making the board more professional would lead to fewer appeals on the surface, but the cost would be much higher [for the commissioners' salaries] and he asked him to explain the zero fiscal note.

MR. LISANKIE replied that DOLWD didn't provide a zero fiscal note.

CHAIR BUNDE clarified that there are several fiscal notes and a Finance referral.

SENATOR STEVENS wanted a brief explanation of the cost.

MR. LISANKIE replied that there would certainly be a cost. Currently, the workers' compensation board is made up of volunteer members of the public who serve at considerable cost to their own lives and receive a \$50 per day stipend, whether

they need it or not. To replace that system with three full-time commissioners and staff would have a cost associated with it.

SENATOR FRENCH asked if this bill reclassifies hearing officers or does anything different with the way they are employed or retained by the state.

MR. LISANKIE replied yes; the hearing officers would be partially exempt.

SENATOR FRENCH asked him to explain what the difference would be.

MR. LISANKIE replied that the hearing officers right now are members of the general government unit and are hired through that system. The commission would be hiring partially exempt hearing officers, a different system.

SENATOR FRENCH asked if the commissioners would be non-union members.

MR. LISANKIE replied that he didn't know if partially exempt hearing officers are union members or not.

SENATOR FRENCH said that he worked partially exempt for the Department of Law as a criminal prosecutor and wasn't part of a union. Partially exempt means that one serves at the pleasure of the district attorney or the governor.

MR. LISANKIE said he didn't know enough to make a definitive statement.

SENATOR FRENCH said he [Mr. Lisankie] was the person presenting the bill and asked if it was his understanding that the administration envisions union or non-union hearing officers.

MR. LISANKIE replied that his understanding is that the partially exempt hearing officers would not be expected to be members of a union.

MR. CHANCY CROFT, Anchorage attorney, said he thought this was a very important bill and he hoped it received a lot of scrutiny. While he admired and respected Ms. Hall and Mr. Lisankie, he thought a major problem existed and explained:

I was often accused by Senator Zeigler in my days in the Legislature of doing unprovoked good and I think

doing away with the workers' compensation board and instituting a system of hearing officers dismisses the public and it would be very bad policy. I would like to spend some time talking about it and I would be glad to come next week to do that.

CHAIR BUNDE set SB 311 aside until next week.

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^#SB276

SB 276-ALASKA INSURANCE GUARANTY ASSOCIATION

CHAIR CON BUNDE announced SB 276 to be up for consideration.

SENATOR GARY STEVENS moved to adopt CSSB 276(L&C), version 23-GS2105\H.

SENATOR FRENCH objected for purposes of discussion.

CHAIR BUNDE recapped that, from the insurance point of view, Ms. Hall had told the committee about the necessity for spreading the premium as wide as possible, even requiring people who do not directly benefit from the Guaranty Fund to contribute. The proposed CS removes any additional assessment and has a letter of intent suggesting that the shortfall be made up from excess earnings of the Permanent Fund. It is the intent of the Legislature to spread the appropriations to the Workers' Compensation program over the course of five years to cover the projected shortfalls: \$5,800,000 for 2004 and \$8,800,000 in 2005. This year's fiscal note is for \$8,890,700.

SENATOR FRENCH continued his objection stating that he shared their desire to solve this problem, but the general fund and, ultimately, the Constitutional Budget Reserve (CBR) would pay for the shortfall.

CHAIR BUNDE responded that going to the general fund seemed more logical than dunning people who can't directly benefit. He said, "It may be also an illustration of a personal philosophy about how those monies in the earnings reserve really ought to be used for."

SENATOR STEVENS said he has heard from many communities that are self insured in joint insurance arrangements who would be very seriously affected by paying additional premiums and he appreciated their being taken out of the mix.

MS. HALL commented that for philosophical reasons, she had presented him with alternatives that didn't draw on state monies.

These are unpopular; they are controversial and I hear from those same people that Senator Stevens refers to. That to me is a public policy call that I think I would prefer not to comment on.... I want to have a piece in our legislation to make sure we never go back where we are. I don't want the letter again that says we're going to prorate workers' compensation claims.... I would like to keep the ability, at least of the Alaska Industrial Development & Export Authority (AIDEA) to guarantee a loan should we ever get in a situation again if there were changes to the bill.

CHAIR BUNDE said he would be happy to put the reference to AIDEA back into the bill.

SENATOR FRENCH said he maintains his objection to the proposal although he understands the chair's intention.

CHAIR BUNDE said, because two members of the committee were missing, he would like to wait until next Tuesday to pass the bill out, but wanted to vote on the adoption of the CS.

Senators Stevens and Bunde voted yea; Senator French voted nay and CSSB 276(L&C) was adopted.

CHAIR BUNDE said that he would hold the letter of intent until next week, as well.

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^#SB273

SB 273-ASMI BOARD/ SEAFOOD TAXES & ASSESSMENTS

CHAIR CON BUNDE announced SB 273 to be up for consideration. He asked Senator Stevens if he wanted to make additional comments on his bill.

SENATOR GARY STEVENS responded that the goal was to find an adequate way to fund ASMI in the future, realizing there had been substantial reductions to its funding because of reduced salmon price and catch. SB 273 is an attempt to see the funding continue for the good work that ASMI does in marketing Alaska seafood products.

A question was raised about whether the seafood marketing tax is unconstitutional and Senator Stevens referenced a letter dated February 4, 2004, from George Utermohle, Legislative Legal and Research Services, which basically answers no.

The second question raised is what ASMI would do with the additional \$2,610,000 in revenue from the proposed .3 percent tax on non-salmon species. He wanted Laura Fleming, ASMI representative to address that.

MS. LAURA FLEMING, Director, Public Relations, Alaska Seafood Marketing Institute (ASMI), said she was asked to answer several questions and would begin with the shortest answer. The .3 percent tax on other species, if it were enacted, would restore ASMI's funding to where it was three years ago and that would allow them to restore their programs to what they were three years ago and put an additional emphasis on whitefish and shellfish varieties. The current board has many representatives of whitefish interests, both harvesters and processors. Very few processors confine themselves to one species and processing whitefish varieties has been very lucrative, keeping a lot of companies, which have formerly processed salmon, on their feet. She said:

Whitefish varieties include pollock, sole, black cod and halibut and are an integrated part of all ASMI's marketing activities. They are part of the Alaska seafood basket of products that are associated with the brand. We leverage that brand equity in the U.S. and overseas. The overseas market is probably of the greatest interest to the pollock industry. We are paying for most of the activities in those markets with federal dollars, because our federal export activities are paid for through an agricultural service. We provide year-round assistance to the surimi industry and to the pollock industry in those key overseas markets. We have market representatives in those overseas markets. We do promotions that retail and do food service with restaurants.

A lot of the surimi processing and so on involves our educating the trade about availability and superiority of our products - that means the people who take the raw product and turn it into wide varieties of products that you see in their magazines. I just brought along an example [indicates pamphlet].... The

French and Germans use huge amounts of surimi. The market in France has grown three times in ten years. It's tripled in 10 years. So, it's a huge part of it.

CHAIR BUNDE asked what role ASMI has had.

MS. FLEMING replied that ASMI has had trade seminars for the big importers and exhibits at the European Seafood Exposition, the biggest seafood tradeshow in the world, where \$70 million worth of business was done last year. A lot of that business was whitefish. Also, she noted the shrinking of Atlantic cod stocks has opened up big opportunities for Alaska and ASMI. Pacific cod and pollock are being used in place of Atlantic cod, until farming operations ramp up.

ASMI organizes promotions for food service suppliers that use Alaska seafood to make their products and then brand it Alaskan in their catalogues. They also do promotions in Spain and Portugal where fish fillet sandwiches are a huge growth market.

MS. FLEMING said she is not surprised that some pollock fishermen don't know about ASMI's efforts, because even though they sell fish at the dock, they don't sell the processed product. Sometimes the product is used just as a value-added ingredient and ASMI also promotes those.

ASMI helps the Genuine Alaska Pollock Producers, a trade organization, in setting up exhibits in the U.S and Europe. Membership in that organization has a lot of crossover with the whitefish committee of ASMI. She noted a newspaper with a circulation of 8 million readers that had an article in it about the benefits of adding fishing to the diet. About 60 percent of seafood in the U.S. is consumed in restaurants and ASMI does a lot of promotions with restaurants and Sysco, a food service distribution company. For instance, there are 56 Alaska seafood items in Sysco's food catalogue; of those items, a big portion are made with Alaska whitefish varieties. "So, about 60 percent of our promotions with those Syscos of the world are with pollock and cod."

CHAIR BUNDE asked her for rough numbers on the time, effort and money ASMI puts into salmon compared to whitefish and other seafood.

MS. FLEMING replied:

We always do all-species marketing for almost all of our promotions. Some might be specifically benefiting halibut or cod or salmon, but we always bring a whole basket of products to the table. So, it's a little tricky to split out exactly the dollars, but I would say...in the past, it has been about half and half, but now the balance is shifting and the amount of money from salmon is less. So, the whitefish industry has been asking us to demonstrate that we are giving them their fair share. We have on several occasions tried to break out for them what we are doing for whitefish. So far, they have always been satisfied - all the people on our board and on our committees have been satisfied with the results we are obtaining, especially since we leverage every industry dollar and leverage a lot of value out of it....

CHAIR BUNDE asked if she is saying that if the whitefish industry is paying for a larger portion of their funds, ASMI would provide them an equal effort.

MS. FLEMING replied that so far industry has been satisfied with ASMI's promotion of the species. She pointed out that the ASMI chairman of the board fishes for whitefish and the board is the entity that tells staff what to do.

CHAIR BUNDE said this would be a good time to bring Mr. Stinson in to the conversation.

MR. JAY STINSON, Chair, ASMI, added that the apparent needs of various industries create a different dynamic from year to year and there is no hard and fixed number for what ASMI's promotions do every year. Its allocation efforts revolve around equitability within the industry and where the money is coming from. Currently, the board has 25 members, but counting ex-officios, there is a total industry representation of 80 members.

CHAIR BUNDE asked Mr. Stinson if he favors SB 273.

MR. STINSON replied that the board has long-term concerns about stable funding for ASMI and supports that portion of the bill. However, it supports a board of 15 members, not the nine in the proposed language. He rationalized that part of ASMI's charter is to represent the interests of the fishing organizations as well as to maintain a certain fiscal responsibility and a certain tension needs to be maintained.

SENATOR STEVENS countered that whatever the size of the board, representation of the whole industry is always a concern. He asked Mr. Stinson to comment on how non-salmon fishermen and processors are currently represented on the standing committees.

MR. STINSON replied that there are seven standing committees.

3:07 p.m.

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MR. STINSON continued saying that there is a Canned Salmon Committee, a Salmon Marketing Committee, an Export Promotions Committee, a Seafood Technical Committee, a Shellfish Committee and a Whitefish Committee. The committees have approximately 90 individuals representing the various aspects of the seafood industry. Current by-laws say the board has to have 12 members that are involved in commercial fishing and nothing prevents the governor from including whitefish harvesters in his appointments. Any segment that wants to be involved is more than welcome to come to the table. "Basically, we try to maintain an equitable representation, both by region and by species, in the entire Alaska fishing industry."

CHAIR BUNDE asked Senator Stevens to respond to a communiqué from a gillnetting association about its concerns with the hatchery cost recovery tax.

SENATOR STEVENS said a letter from the United Southeast Alaska Gillnetters is supportive of the 1 percent salmon tax, but opposes applying it to the hatchery cost recovery program, because of double taxation - an issue that should be discussed further.

CHAIR BUNDE encouraged him to address that issue as the bill moves through the process. He closed public testimony.

SENATOR STEVENS recapped that they had heard from Ms. Fleming what ASMI would do with additional revenue and noted at the last board meeting Executive Director Riuta indicated that whitefish was also facing problems in the future with fish farming. So, it was important to know what ASMI intended to do about that issue.

Figures from the Commercial Fisheries Entry Commission (CFEC) show that of the 6,848 non-salmon permit holders, 22 percent are non-resident. The National Marine Fisheries Service (NMFS)

report on federally licensed fisheries indicates 20 percent out-of-state addresses.

SENATOR STEVENS said the issue of the future of whitefish farming had not been discussed by Ms. Fleming, but ASMI is prepared to deal with it.

CHAIR BUNDE quipped that he assumed ASMI would not advocate for it.

SENATOR STEVENS agreed and added that he felt he could defend a nine-member board since most boards work best with a smaller number and this measure maintains and enhances funding to ASMI at previous levels. With that, he moved to pass SB 273 from committee with individual recommendations and the attached fiscal note.

Senator Stevens, French and Bunde voted yea; and SB 273 moved from committee.

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CHAIR BUNDE adjourned the meeting at 3:25 p.m.