

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

March 4, 2005

3:27:45 PM

MEMBERS PRESENT

Representative Tom Anderson, Chair
Representative Pete Kott
Representative Gabrielle LeDoux
Representative Bob Lynn
Representative Norman Rokeberg
Representative Harry Crawford
Representative David Guttenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 31

"An Act relating to the presumption of coverage for a workers' compensation claim for disability as a result of certain diseases for certain occupations."

- MOVED SSHB 31 OUT OF COMMITTEE

HOUSE BILL NO. 33

"An Act relating to the effect of regulations on small businesses; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 7

"An Act relating to the calculation and payment of unemployment compensation benefits; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 31

SHORT TITLE: WORKERS' COMP: DISEASE PRESUMPTION

SPONSOR(S): REPRESENTATIVE(S) ANDERSON

01/10/05 (H) PREFILE RELEASED 12/30/04

01/10/05 (H) READ THE FIRST TIME - REFERRALS
01/10/05 (H) L&C, HES, FIN
02/09/05 (H) L&C AT 3:15 PM CAPITOL 17
02/09/05 (H) Heard & Held
02/09/05 (H) MINUTE(L&C)
03/04/05 (H) L&C AT 3:15 PM CAPITOL 17

BILL: HB 33

SHORT TITLE: EFFECT OF REGULATIONS ON SMALL BUSINESSES

SPONSOR(s): REPRESENTATIVE(s) MEYER

01/10/05 (H) PREFILE RELEASED 12/30/04
01/10/05 (H) READ THE FIRST TIME - REFERRALS
01/10/05 (H) L&C, JUD
02/16/05 (H) L&C AT 3:15 PM CAPITOL 17
02/16/05 (H) Heard & Held
02/16/05 (H) MINUTE(L&C)
03/04/05 (H) L&C AT 3:15 PM CAPITOL 17

BILL: HB 7

SHORT TITLE: UNEMPLOYMENT COMPENSATION BENEFITS

SPONSOR(s): REPRESENTATIVE(s) CRAWFORD, GUTTENBERG

01/10/05 (H) PREFILE RELEASED 12/30/04
01/10/05 (H) READ THE FIRST TIME - REFERRALS
01/10/05 (H) L&C, FIN
02/18/05 (H) L&C AT 3:15 PM CAPITOL 17
02/18/05 (H) -- Meeting Canceled --
02/23/05 (H) L&C AT 3:15 PM CAPITOL 17
02/23/05 (H) Heard & Held
02/23/05 (H) MINUTE(L&C)
03/04/05 (H) L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

JON BITTNER, Staff
to Representative Anderson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 31 as staff to Representative Anderson, sponsor.

REBECCA BOLLING, R.N., President
Alaska Nurses Association (AaNA)
Ketchikan, Alaska

POSITION STATEMENT: Testified in support of HB 31 and in opposition to SSHB 31.

DAVID KESTER, Commercial Insurance Broker
Ribelin Lowell Alaska, USA;
Board member
Workers' Compensation Committee of Alaska (WCCA)
Anchorage, Alaska
POSITION STATEMENT: Testified in opposition to HB 31.

ERIC TUOTT
Alaska Professional Fire Fighters Association (APFFA)
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 31.

MIKE PAWLOWSKI, Staff
to Representative Kevin Meyer
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented HB 33 for Representative Meyer,
sponsor.

CHRISTOPHER KENNEDY, Senior Assistant Attorney General
Environmental Section
Civil Division
Alaska Department of Law
Anchorage, Alaska
POSITION STATEMENT: Answered questions regarding HB 33.

CONNIE MARSHALL, Regional Advocate
Region 10
Office of Advocacy
U.S. Small Business Administration
Seattle, Washington
POSITION STATEMENT: Testified in favor of HB 33.

ACTION NARRATIVE

CHAIR TOM ANDERSON called the House Labor and Commerce Standing Committee meeting to order at [3:27:45 PM](#). Representatives Kott, Guttenberg, Crawford, Rokeberg, Lynn, and Anderson were present at the call to order. Representative LeDoux arrived as the meeting was in progress.

HB 31-WORKERS' COMP: DISEASE PRESUMPTION

CHAIR ANDERSON announced that the first order of business would be HOUSE BILL NO. 31, "An Act relating to the presumption of

coverage for a workers' compensation claim for disability as a result of certain diseases for certain occupations."

CHAIR ANDERSON pointed out that there was a sponsor substitute for HB 31.

JON BITTNER, Staff to Representative Anderson, Alaska State Legislature, noted that two changes had been made to HB 31 [by the sponsor substitute]. The first change was the addition of the words "notwithstanding AS 23.30.100(a)" which were added to page 2, line 13. He explained that this language was included to address a concern that current statutes might conflict with the coverage for retired fire fighters. The second change was on page 2, subsection (c), which was rewritten to narrow the coverage for presumption regarding blood borne pathogens to peace officers, emergency medical personnel, and rescue personnel. He explained, "This change was made to address the concern that the coverage for blood borne pathogens was too broad."

REPRESENTATIVE CRAWFORD referred to his testimony on this bill at the previous committee meeting in which he spoke about his wife contracting hepatitis while working in an operating room. He commented to Chair Anderson:

I was very happy to see that [in HB 31], you had the presumption for nurses because I think that ... the first responders that you're talking about, they're going to hand those same people with the same blood-borne pathogens over to the medical personnel. So I liked your first bill much better than I like your substitute.

CHAIR ANDERSON responded that he recognized the need to add [medical personnel], but the problem was that soon every other personnel in the hospital would want the same treatment. He voiced concern that if the bill covered all medical personnel the bill wouldn't pass.

REPRESENTATIVE CRAWFORD reiterated that he would like all the emergency room nurses to be covered as well.

[3:33:58 PM](#)

REPRESENTATIVE GUTTENBERG asked for clarification of the difference between a first responder and a nurse.

3:35:08 PM

MR. BITTNER replied that a first responder is defined as a paid employee of a first responder service, a rescue service, an ambulance service, or a fire department.

CHAIR ANDERSON explained further that the intent on page 2, line 22-29 is to "encapsulate personnel who are first responders in an emergency outside of a hospital setting."

3:35:49 PM

REPRESENTATIVE GUTTENBERG wondered whether the bill would accomplish the intended goals in the "real world."

REPRESENTATIVE LEDOUX asked, regarding page 2, line 23-29, if volunteer fire fighters are generally included under workers' compensation.

MR. BITTNER answered that under HB 31, volunteer fire fighters would be covered in the bill as denoted on page 2, lines 22-23, "applies to fire fighters covered under AS 23.30.243."

REBECCA BOLLING, R.N., President, Alaska Nurses Association (AaNA), commented:

The original version of [HB 31] provides an important protection of health care employees infected with a blood-borne pathogen during the course of their employment. What I'm here to talk to you today about is the sponsor substitute to this bill, which limits the coverage of workers' [compensation] benefits for blood-borne pathogens to only fire fighters, peace officers, and emergency responders. It deletes this same coverage for all health workers. ... It is as if the care of the patient stopped at the emergency room door. I can assure you that the ... care of patients with blood-borne pathogens continues on through the emergency room door for many hours, days, and ... sometimes for many weeks. The reason the presumption of coverage is needed is that nurses have had the experience of being stuck with a contaminated needle for HIV-positive patients, subsequently converting from being HIV-negative to HIV-positive, and then have their employers turn around and hire private investigators to try and prove that it is their

lifestyle that caused the infection, not their work. And this is not an isolated [incident].

MS. BOLLING continued:

This week, HB 31 was announced at a national nurses meeting for the American Nurses Association. It drew the attention of the American Nurses Association national delegates as well as our president, Barbara Blakeney, who responded by stating that the sponsor substitute had the appearance of being discriminatory, given that health care workers are predominantly female. If the committee is concerned about potential impacts to workers' compensation premiums as a result of this bill, we ask you to research how similar legislation has impacted other states. For example, Nevada passed a law in 2001 that provides the presumption of blood-borne pathogens for all health care workers. In a preliminary investigation of the [workers' compensation] rates in Nevada, we found that the rates had not gone up in the three years since this law was passed. HB 31, in its original version, is good legislation and good policy for Alaska. The ... presumptions offered should be afforded to all health care workers who face accident exposure to blood-borne pathogens and not just those on one side of the emergency room door or the other.

[3:42:32 PM](#)

DAVID KESTER, Commercial Insurance Broker, Ribelin Lowell Alaska, USA; board member, Workers' Compensation Committee of Alaska (WCCA) commented:

My opposition to [HB 31] stems around the fact that there already exists in the Alaska Workers' Compensation Act adequate presumption of compensability in workers' compensation once a preliminary link has been established between work and the condition. And thus this legislation is redundant and duplicative. Redundancy only creates confusion within the [compensation] system, and that confusion in turn will only increase costs, and therefore this bill is not needed. In addition, this bill could be construed to support a claim for compensation for disability regardless of whether there was a clear connection based on medical evidence to employment.

With this in mind, this bill has the potential to place a very heavy financial burden on municipalities, boroughs, towns, villages, and the citizens of Alaska who pay property taxes to support the cities, boroughs, and towns.

REPRESENTATIVE CRAWFORD asked Mr. Kester to explain the phrase, "once a preliminary link has been established between work and the condition" and referred to his wife's case of contracting hepatitis as an example.

MR. KESTER responded that such a case would be presumed compensable until the employer proved otherwise; the burden of proof lies on the employer.

REPRESENTATIVE ROKEBERG commented that there was an analysis by the National Council on Compensation Insurance, Inc (NCCI) in the committee packet that said, "Due to the retroactive coverage provided by this proposal, the overall cost could be significant. Since coverage for such claims may not have been contemplated in previous loss cost filings, such retroactive costs would be unfunded." He asked Mr. Kester to comment on the "issue about the retrospectivity and then the effect on the loss cost underwriting."

MR. KESTER replied that he was not familiar with the analysis but said:

If I understand it correctly, the National Council has determined that because there is going to be an increase cost which is not currently contemplated in the workers' compensation rates, that that will in itself create a burden upon the system ... and that one be able to get corrected until ... these costs start entering into the rate-making formula.

[3:48:26 PM](#)

REPRESENTATIVE GUTTENBERG asked Mr. Kester, "Is your cost savings based upon the ability to more easily and more successfully challenge claims?"

MR. KESTER answered, "I don't believe so."

REPRESENTATIVE GUTTENBERG expressed his concern for "people whose claims have been denied and they simply don't have the ability to aggressively pursue them."

MR. KESTER replied that, under the existing act, if a person can establish a connection between his/her condition and the workplace, the person has met the presumption.

REPRESENTATIVE ROKEBERG asked Mr. Kester to explain what the appeal rights are under a workers' compensation claim.

MR. KESTER responded that if a person's claim has been denied, the person can go before the Alaska Workers' Compensation Board for a hearing. He explained that the hearing panel would consist of a hearing officer, a representative from management, and a representative from labor. The panel would hear the case and make a decision. If the person is not satisfied with the panel's decision, the person may appeal to the superior court, and continue to the supreme court if needed.

[3:52:25 PM](#)

ERIC TUOTT, Alaska Professional Fire Fighters Association (APFFA) stated that APFFA has about 500 members in Anchorage, Fairbanks, and Juneau, but the bill would represent fire fighters throughout the state, including volunteer fire fighters. He said,

On a day-to-day basis we are asked to go into situations where we do not have any idea what kind of things we're going into, whether it's toxins in the air, or if we're going in to help a patient, we have no idea of their previous medical history.... We don't have the luxury of knowing what ... we're going into. ... If we [were] to contract one of these diseases or one of these heart conditions or cancers down the road, [the presumptive disability] gives us an avenue to go back and ask the [Worker's Compensation Board] to presume that we got it as a direct result of our occupation. Presently ... you can still go through the hoops of workers' comp but the sad fact is, in a lot of our cases, these diseases are terminal, and we don't have a whole lot of time to jump through these hoops, asking for workers' comp. One example we have [at the] Anchorage Fire Department right now is one of our long time veteran fire fighters has contracted Hepatitis C. He's not exactly sure where he got this, but in the course of 30 years on the line, it's almost certain that he got it as a result of his occupation. However, his insurance is

asking at which point in [his] career ... did [he] get this ..., and the sad fact is, we don't know. Because he's not sure, ... his personal insurance company refuses to cover him, saying it's a workers' comp issue; workers' comp on the other hand is saying [that he needs to prove exactly when he contracted it.] So we're kind of in a catch-22.

MR. TUOTT commented that there have been cases in the Lower 48 and in Canada in which employees have cancer and the workers' compensation boards ask the employee at which fire he/she contracted the disease. He pointed out that after 30 years of exposure [to toxins], the fire fighters cannot determine the particular incident that caused their diseases. He continued:

I've heard a lot of commentary on the amount of claims that we might see [if HB 31 was passed] ... but our associates in Washington state, the Washington State Council of Fire Fighters, told us that in the two years since they enacted this legislation in Washington, they've had six total claims with about 7,000 fire fighters being covered. I'm assuming that the number of claims that we will have, because of the number of fire fighters and the number of personnel that's covered by this, will be much less than six claims.

[3:57:35 PM](#)

MR. TUOTT explained that the Hepatitis C cases are the ones that seem to last the longest because most of the cancer, respiratory, and lung diseases are terminal within months or a few years. He noted, "We don't have a whole lot of information about the cost of the cancer because the guys die just as quickly as they get it. I guess that's why this is so important to us."

REPRESENTATIVE ROKEBERG stated concern that the basic health care should be taken care of by a health insurance policy. He asked Mr. Tuott if the health care costs are the primary concern of the fire fighters. He mentioned that another benefit of workers' compensation includes retraining.

MR. TUOTT replied that most of the workers' compensation cases he was familiar with involved retirees. He noted that he hadn't seen retraining become an issue.

REPRESENTATIVE GUTTENBERG asked, "When your members are caught in a turf war between medical carrier and the workers' comp, who has to pay the bill?"

MR. TUOTT replied that the employee pays the bill. He explained that the man with Hepatitis C has exhausted his personal savings, and he can't work every day because he is sick, so the department might terminate him.

CHAIR ANDERSON closed public testimony.

[4:03:07 PM](#)

REPRESENTATIVE CRAWFORD commented that he preferred the original version of the bill.

REPRESENTATIVE ROKEBERG noted that he had some concerns about the NCCI analysis regarding the "affectability issue."

[4:06:21 PM](#)

REPRESENTATIVE LYNN moved to report SSHB 31, labeled 24-LS0225\F, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, SSHB 31 was reported from the House Labor and Commerce Standing Committee.

HB 33-EFFECT OF REGULATIONS ON SMALL BUSINESSES

[4:07:34 PM](#)

CHAIR ANDERSON announced that the next order of business would be HOUSE BILL NO. 33, "An Act relating to the effect of regulations on small businesses; and providing for an effective date."

MIKE PAWLOWSKI, Staff to Representative Kevin Meyer, Alaska State Legislature, presented HB 33 on behalf of Representative Meyer, bill sponsor. He noted that [there was a proposed committee substitute] in response to the committee members' questions from the previous committee meeting. He said:

The key changes made to HB 33 in CS Version I really involve the trigger mechanisms and the definition of small business. Several members of the committee raised the concern that asking agencies to determine the adverse effect prior to conducting any economic

effects statement ... really didn't make any sense. ... We've changed the standard in the bill on page 1, lines 5-12 to the standard of ... govern the conduct. And while broader, we feel it's a lot clearer standard for the regulatory agencies to consider. An agency will only go through the process set in HB 33 for new regulations or when a person files a petition under the existing provision in state law that allows a person to file a provision. This gets to the root of the question that was asked, "Why would you consider regulations that no one had a problem with?" We had a periodic review in the bill that would look at the regulations every five years. ... It should be a process that's initiated for new regulations or when someone raises a concern on a previous regulation.

MR. PAWLOWSKI continued:

Additionally we have changed the definition of small business. I believe Representative Crawford in the previous hearing had talked to us a bit about how the standard of under 100 employees and sales revenues of \$6 million was a bit of an arbitrary definition. We agreed with that and looked back to state law and went with the standard of ... less than 50 employees. We removed any reference to revenue largely because small business and business in general doesn't report revenue figures to the state government; there's no reason that government needs to know about that, whereas the [Alaska Department of Labor and Workforce Development] keeps very good statistics on employment. So the information would be readily available to an agency conducting the review under this. We have also included a more extensive group of exemptions on page 3, starting on line 5. And this was really in response to the concern that Representative Rokeberg raised, that in increasing costs, businesses are often the ones the bear the cost of the regulatory process, and we were creating a loop that really wouldn't have any added benefit to small businesses, the beginning of which we've exempted from the process any regulation adopted by a board or commission whose members are subject to confirmation of the legislature.

[4:11:12 PM](#)

REPRESENTATIVE KOTT moved to adopt the proposed committee substitute for HB 33, labeled 24-LS0239\I, Bannister, 3/2/05, as the working document. There being no objection, Version I was before the committee.

MR. PAWLOWSKI returned to the issue of changes made for CSHB 33:

Page 3, starting on line 5: removing regulations adopted by boards or commissions. The idea there was that there're several boards and commissions in this state, and they are confirmed by the legislature with members from industry on the board. So to ask people who represent the industry to go through this type of exercise seemed to be redundant, and so we removed that. And then looking at several different agencies and departments in the state whose regulations really didn't need to be subject to the type of review we were talking about in this bill. Those are the broad sweeping changes we made in response to the committee's questions. We really feel that it's made the bill quite a bit better. Representative Meyer asked me to express that his main concern is to create an added benefit for small businesses. ... The bill has been passed in 37 other states.

[4:13:00 PM](#)

REPRESENTATIVE GUTTENBERG asked Mr. Pawlowski to explain what HB 33 does.

MR. PAWLOWSKI replied:

What this bill does is set a process in the regulatory process where, when looking at a new regulation or upon petition, a regulatory body asks itself the four questions on page 2, starting on line 3. They look at and identify the number of small businesses that would be subject to the proposed regulation. They look at the projected record keeping, recording, [and] other administrative costs that a small business would be required to incur in order to comply with the regulation. They do a statement of the probable effect and they describe any alternative methods of achieving the same purposes. Then in [subsection (c) on page 2, lines 15-21] they perform a regulatory flexibility analysis, and what this is is essentially the regulatory agency looking at ways they could

achieve the same regulatory goal with less onerous requirements on small businesses. The cost to small business often is in complying with regulation, and this is where an agency can ask itself, "Is reporting monthly or quarterly appropriate for this type of regulation and this type of business class." The staff time that it takes in the business to meet the requirements of the regulation takes resources and money away from hiring new employees, spending it all on growing the business. And now under this process the agency spends time thinking about better ways to do business, so perhaps you could report once a year rather than monthly or quarterly. And it invites that type of dialogue. That's what this bill does; ... it puts an emphasis on small businesses who might not have the time, inclination, and/or ability to be involved in the regulatory process in the first place.

[4:14:41 PM](#)

REPRESENTATIVE GUTTENBERG commented, "When [regulations] are being written, there's an opportunity for public input. And business has that opportunity as does the public in general." He asked how many times regulations have been rewritten or deleted in regulation review. In addition, he said: "I'm trying to find out where this works into the process where ... it really is something that works better for business. Because in many instances, you'll be pitting business against business."

[4:17:21 PM](#)

MR. PAWLOWSKI responded:

We have continually worked with the administration. The letter in your packet from the state Chamber of Commerce, I think, is fairly clear in that the concept ... is a broad one that they support. ... We do know that this started in 1980 when the Regulatory Flexibility Act was passed at the federal level, and federal agencies have been following this for ... 24 years now. ... In 2004 reduced compliance costs saved small businesses in this country over \$19 billion. And so there's a long track record of this being something that works. ... Every state is different; that's why we continue to tweak and work with this piece of legislation.

REPRESENTATIVE ROKEBERG commented that he had concerns regarding the changed definition of a small business. He stated that he thought 50 employees was much too small.

MR. PAWLOWSKI responded that in the committee packet there is a breakdown by business class by the Alaska Department of Labor and Workforce Development. He noted that 50 was an arbitrary number.

REPRESENTATIVE ROKEBERG asked how current statutes define small businesses.

MR. PAWLOWSKI replied that it varies; the federal definition is 500 employees or less, but, he commented, "At that level, I think you include almost every single employer in the State of Alaska."

REPRESENTATIVE LEDOUX commented that if the people running the agencies aren't doing "commonsensible" things right now, there's almost no regulation or statute that [the legislature] could pass that would change attitudes. She stated, "I would think that ... they'd be making sure that ... the regulations are consistent with health, safety, economic welfare, and so forth."

[4:20:46 PM](#)

MR. PAWLOWSKI agreed and said that this is part of the difficulties: "You can never legislate common sense." He continued:

You pass a statute that is explicit in what it says, and the agency does its best to implement regulation that meets the goals of that statute. The end of that process and the beginning of that process is always focused on the statute. What this does is build in an aside that says, "As you're working through that process, consider these other things," and adds another level of dialogue to the process."

CHAIR ANDERSON provided an example to demonstrate what would be included in an economic effect statement, as defined on page 2, lines 3-14 of CSHB 33. He also applied the example to the regulatory flexibility analysis as written on page 2, line 22 through page 3, line 2.

MR. PAWLOWSKI commented that the statute would only identify the issue while the department would promulgate the specific regulation to deal with the issue. He stated:

Through these economic effect statements and through these regulatory flexibility analyses, when these regulations do come before the regulatory review committee at the legislative level, there is a thought process that the legislature can look back to in considering why the end product and the regulation came out. And so if anything, it's also a supportive record for the legislature to use in their oversight of regulation.

REPRESENTATIVE LEDOUX opined that it might be better to only require certain "troubled" agencies to follow these guidelines, but if an agency seemed to be running well it could be left alone.

MR. PAWLOWSKI noted that he thought this was an appropriate statement. He explained that this was part of the reason that the bill would only apply to new regulations or to regulations that someone has complained about.

[4:27:31 PM](#)

REPRESENTATIVE CRAWFORD stated that he had been told that for insurance purposes in Alaska statutes, a small business has 2-50 employees. He commented that maybe these numbers were solely for insurance purposes.

REPRESENTATIVE KOTT commented that his impression was that the bill would establish a small business bureaucracy. He said, "It suggests what various departments should look at and should consider, but at the end of the day there's nothing that mandates or instructs them to do anything. ... I just don't see any teeth in it."

MR. PAWLOWSKI responded that the first version of the bill contained judicial review over the economic effects statements and regulatory flexibility analyses. He said:

When the Regulatory Flexibility Act was passed in 1980, it too had no teeth. It was amended in 1996 to include the provision of judicial review and I think part of the logic behind that is [that] judicial review is something that you bring along after there

has been a chance to implement this. But if you open the door for lawsuits and challenges at the very beginning, then you don't give agencies a chance to get up to speed. And I think that's the primary concern in adding that level of teeth that was in the original bill.

4:30:42 PM

CHRISTOPHER KENNEDY, Senior Assistant Attorney General, Environmental Section, Civil Division, Alaska Department of Law, stated that the Department of Law had been working with Representative Meyer to refine HB 33, a process which was not yet complete because more input was needed from a wide variety of agencies. He presented the committee with an example of matters that are under discussion with the sponsor:

First there's the issue of emergency regulations. The process in this bill could add some time to the steps that are needed to approve changes in regulations or to approve new regulations. The extra time could come in two places: first in waiting for the [Alaska Department of Commerce, Community, & Economic Development] to respond with comments that it's required to provide on regulatory proposals, and the second increment of extra time could come in preparing the required analyses ... on page 2 of the CS. We feel the delay would likely be of limited significance in a lot of instances with ordinary regulations projects. But it is ... not likely compatible with the quick responses that are needed in true emergencies. And so we are going to be discussing with Representative Meyer and his staff the possibility of exempting the emergency regulations process from this bill.

MR. KENNEDY continued:

Also under discussion is the list of ... categorical exemptions that you see in its current form on page 3 of the CS. We keep thinking of more and that's just because state government is large and no one has a complete grasp on the full range of regulations that exist. Some of the examples that are on the table ... for including in this list in the future are, for example, the regulations directly issued by [the Alaska Department of Fish & Game], such as the

anadromous stream catalog.... We just don't know what the role of the small business analysis would be in a regulation of that type. In a slightly different vein, there are the regulations that are issued by [the Alaska Department of Natural Resources] under the Forest Resources and Practices Act, and there we foresee some tension if there's some discussion of discriminating between mill owners based on the number of employees they happen to have. Another possible exemption is fire marshal regulations.... Many other states with acts like this have a very long list of exceptions. Instead of exceptions we could have a shorter list of key agencies to which this process would apply.... And the administration would be minimal to discussing approaching it from the other direction, from the direction of either pilot project or more limited piece of legislation aimed ... only at agencies who issue regulations that are of particular concern in their impact on small businesses.

[4:35:29 PM](#)

MR. KENNEDY continued:

Another area under discussion with Representative Meyer's office is the concept of limiting coverage of this bill to significant regulatory changes. Often after a large regulations project there's a follow-on set of amendments to correct errors or to make technical adjustments. And we see little benefit in putting that type of amendment through a ... small business impact review, and we hope to continue working with Representative Meyer on ways to refine the bill to exclude technical amendments. ... [But] it's difficult to define what a technical amendment is, so it's going to take some work.

CHAIR ANDERSON stated that the idea of the bill is good, and asked Mr. Kennedy if the committee should hold the bill.

MR. KENNEDY said that he had no objection to the committee passing the bill on, and he would continue his dialogue with Representative Meyer through the next committee.

REPRESENTATIVE GUTTENBERG asked Mr. Kennedy how far he thought the bill was from being finished.

MR. KENNEDY replied that the process of preparing for today's meeting brought in comments from agencies, and he could see from the comments that some of the agencies are only now hearing about the bill. He said that it may be a matter of weeks for the additional comments to be assembled. He noted, "The time needed to work on the bill would be shortened if the scope of the bill was narrowed [such as] if we were to decide on two or three agencies to which this bill would apply rather than to all agencies in state government."

REPRESENTATIVE GUTTENBERG asked if Mr. Kennedy had any input into the fiscal note.

MR. KENNEDY answered that he did not.

REPRESENTATIVE GUTTENBERG pointed out that the fiscal note that he was looking at for \$417,000 didn't describe its purpose.

MR. KENNEDY stated:

I really can't answer any questions about the fiscal note other than to observe in general that obviously some staff support in the [Alaska Department of Commerce, Community, & Economic Development] would be necessary and then much smaller increments of staff effort from the participating departments.

REPRESENTATIVE GUTTENBERG pointed out that the fiscal note says, "See individual department fiscal notes for fund sources and detailed explanations". He asked if those individual fiscal notes were available.

MR. PAWLOWSKI responded the fiscal notes were not available. He commented that the bill had evolved rapidly and therefore sometimes the agencies were working off of older versions of the bill.

REPRESENTATIVE ROKEBERG asked Mr. Kennedy if he had ever been involved in the process of regulation writing, and if so, if he thought that the enactment of this legislation would have any impact on that process.

MR. KENNEDY replied that he had been involved in the regulatory process by assisting both the Alaska Department of Environmental Conservation (ADEC) with the initial development of regulations and the Alaska Department of Law with the review of regulations after they had completed the public comment process. He noted

that he does not foresee the bill making a major change in the way that ADEC currently approaches regulations. He said that ADEC has a practice of [giving substantial public notice] of regulatory proposals, and then preparing a responsiveness summary to the comments that it receives on the proposals. This way a detailed document is already being written in response to all of the suggestions. He said that in the case of ADEC, HB 33 would slightly change the form of the work product that ADEC is already creating; the department would need to separate out the comments made regarding small business impact. He continued:

It would not make a major change in the way [ADEC] approaches its regulations. I really can't speak to whether that would be true in the case of some other agencies that do not prepare responsiveness summaries for their regulations. Those agencies might need to do quite a bit more work than they currently do and whether that would change their whole thought process is something somebody closer to their process would have to answer.

[4:44:12 PM](#)

CONNIE MARSHALL, Regional Advocate, Region 10, Office of Advocacy, U.S. Small Business Administration (SBA) explained that her job is to be a direct link between state and local governments, small business groups, small business owners, and the SBA office in Washington D.C. She stated:

My chief concern is to help identify regulatory concerns that small businesses have by monitoring the impact of federal and state policies at the grassroots level. It's my goal to see that programs and policies encourage fair regulatory treatment of small businesses, that they are the ones developed to ensure future growth and prosperity.... The Office of Advocacy enforces the Regulatory Flexibility Act [RFA], much like what you're talking about, on the federal level, in order to lessen the regulatory burden on small businesses. More than 93 percent of businesses in every state are small businesses. Small businesses with less than 20 employees ... spend roughly \$7,000 each year per employee to comply with federal regulations. That is 60 percent more per employee than large firms spend. And that's just the cost of federal regulations. ... Small businesses also have to pay cost of state regulations. Under the RFA,

advocacy has shown time and time again that regulations can be reduced and the economy improved without sacrificing important goals such as environmental quality, travel safety, and workplace safety. By working with federal agencies to implement the RFA, in 2004 our office saved small businesses nationwide over \$17 billion in foregone regulatory costs. Those savings can be used to create new jobs, buy new equipment, expanse access to health care, or just simply to maintain their competitiveness in the marketplace.

MS. MARSHALL continued:

While some states have state regulatory flexibility legislation that mandates state agencies to perform an economic impact analysis before they regulate, many do not. For that reason we helped draft a regulatory flexibility model legislation and introduced a report on that to the states two years ago. We found that there are five critical elements that any successful state regulatory flexibility law should have: [First], you decide on what your small business definition is, we don't tell you. Second, a requirement that state agencies perform the economic impact analysis before they regulation.... Third, a requirement that state agencies consider less burdensome alternatives that still meet their goals. Fourth, the judicial review ... so that the law has teeth. And last, a provision for state government to periodically review all of its regulations. To be effective we would hope that there would be few if any exemptions from the law.... Even the best regulatory flexibility initiative has little value if everything is exempted.

[4:49:02 PM](#)

MS. MARSHALL continued:

So in order for regulatory flexibility to really work, you need to have the governor on board and ... to train and educate your state agencies to understand this responsibility. It just becomes part of their workplace. And then just continually involve small business community, as many of you have already suggested. During the time of tight state budgets,

you may be wondering how much it costs. ... Implementing a regulatory flexibility system, we believe, can be done at little or no additional cost.

MS. MARSHALL gave two examples of states that had recently implemented [legislation similar to HB 33], and yet had no additional costs. She explained that last year 17 states introduced regulatory flexibility and seven states signed the legislation into law, and in 2003 12 states introduced such legislation. She pointed out that governors in two states signed legislation into law, and two other governors signed executive orders to implement RFAs. So far this year 12 states, including Alaska, have introduced regulatory flexibility. She commented:

One of the many reasons this legislation has been so successful over the last two years ... [is] because policy makers across the country are realizing that regulatory flexibility is an economic development tool. There are over 23.7 million small businesses in the United States and they are the job creators. Small firms create between 60 and 80 percent of all of the new jobs in our economy. ... According to the federal definition of small business which ... is 500 employees or less, almost 97 percent of Alaska's employers are considered small, and employ almost 60 percent of all of your non-farm sector employees.

[4:52:53 PM](#)

MS. MARSHALL commented:

Sometimes, because of their size, small businesses' importance to the economy can be overlooked. Because of this it's also very easy to overlook the negative impacts of regulatory activities. The intent of your legislation is to compel regulatory agencies just to consider small businesses when regulations are developed, and particularly consider the disproportionate impact those regulations might have. I believe this legislation is needed.

REPRESENTATIVE ROKEBERG asked Ms. Marshall what form of the judicial review other states apply.

MS. MARSHALL stated, though a judicial review is not included in HB 33, Alaska already has statutes that entitle any interested

person to a judicial review. She said that of the five critical elements she had recommended earlier, Alaska already has two.

REPRESENTATIVE ROKEBERG commented that he likes redundancy in statutes.

CHAIR ANDERSON closed public testimony.

REPRESENTATIVE GUTTENBERG stated that he was not going to vote to move the bill from the committee at this point. He said, "I think there's considerable amount of work left to do on it before it leaves here." He voiced concern about the lack of information on the fiscal notes, and pointed out that the letter from the Alaska State Chamber of Commerce was "very tepid." He noted, "I think everybody sees this as a work in progress and I don't think it's ready to be moved out."

REPRESENTATIVE ROKEBERG commented, "I do take exception to the 50 number in terms of definition. What we've tried to do in this committee over the years is try to make a consistent ruling in our state statutes about what is defined as a small business. I don't think it serves the public interest at all to have different definitions. ... I believe that our goal should be a certain consistency, whatever that is."

[4:57:24 PM](#)

REPRESENTATIVE CRAWFORD reiterated that the number 50 is arbitrary.

CHAIR ANDERSON noted that there was an objection by Representative Guttenberg.

REPRESENTATIVE GUTTENBERG opined that the bill was not complete and there was a lot of further work to be done on it. He reiterated that the committee did not know anything about the fiscal notes.

MR. PAWLOWSKI pointed out that he and Representative Meyer would both be happy to continue to work on the bill. He said, "The goal is to produce a good piece of legislation that has real value for the state."

REPRESENTATIVE ROKEBERG moved to adopt Conceptual Amendment 1 which would change the definition of a small business to "a current statutory definition that would not be less than 100

people." There being no objection, Conceptual Amendment 1 was adopted.

CHAIR ANDERSON announced that CSHB 33, Version I, would be held over.

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at [5:01:27 PM](#).