

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

March 9, 2005

3:51 p.m.

MEMBERS PRESENT

Representative Tom Anderson, Chair
Representative Pete Kott
Representative Bob Lynn
Representative Harry Crawford
Representative David Guttenberg

MEMBERS ABSENT

Representative Gabrielle LeDoux
Representative Norman Rokeberg

COMMITTEE CALENDAR

HOUSE BILL NO. 171

"An Act relating to the retrospective application and applicability of the overtime compensation exemption for flight crew members; and providing for an effective date."

- MOVED HB 171 OUT OF COMMITTEE

HOUSE BILL NO. 180

"An Act relating to a special deposit for workers' compensation and employers' liability insurers; relating to assigned risk pools; relating to workers' compensation insurers; stating the intent of the legislature, and setting out limitations, concerning the interpretation, construction, and implementation of workers' compensation laws; relating to the Alaska Workers' Compensation Board; establishing a division of workers' compensation within the Department of Labor and Workforce Development, assigning certain Alaska Workers' Compensation Board functions to the division and the department, and authorizing the board to delegate administrative and enforcement duties to the division; establishing a Workers' Compensation Appeals Commission; providing for workers' compensation hearing officers in workers' compensation proceedings; relating to workers' compensation medical benefits and to charges for and payment of fees for the medical benefits; relating to agreements that discharge workers' compensation liability; relating to workers' compensation awards; relating to reemployment benefits and job dislocation benefits; relating to coordination of workers' compensation and certain disability benefits; relating

to division of workers' compensation records; relating to release of treatment records; 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; relating to attorney fees; providing for the department to enter into contracts with nonprofit organizations to provide information services and legal representation to injured employees; providing for administrative penalties for employers uninsured or without adequate security for workers' compensation; relating to fraudulent acts or false or misleading statements in workers' compensation and penalties for the acts or statements; providing for members of a limited liability company to be included as an employee for purposes of workers' compensation; establishing a workers' compensation benefits guaranty fund; relating to the second injury fund; making conforming amendments; providing for a study and report by the medical services review committee; and providing for an effective date."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 171

SHORT TITLE: OVERTIME WAGES FOR FLIGHT CREW

SPONSOR(S): REPRESENTATIVE(S) KELLY

02/24/05	(H)	READ THE FIRST TIME - REFERRALS
02/24/05	(H)	L&C, FIN
03/09/05	(H)	L&C AT 3:15 PM CAPITOL 17

BILL: HB 180

SHORT TITLE: WORKERS' COMPENSATION

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/25/05	(H)	READ THE FIRST TIME - REFERRALS
02/25/05	(H)	L&C, JUD, FIN
03/09/05	(H)	L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

HEATH HILYARD, Staff
to Representative Mike Kelly
Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented HB 171 on behalf of Representative Kelly.

TOM DANIEL, Partner
Perkins Coie Law Firm
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 171.

MIKE HAGELAND, Owner
Hageland Aviation
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 171.

MIKE BERGT, General Manager
Alaska Central Express
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 171.

BRUCE MCGLASSON, President and Owner
Grant Aviation
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 171.

RICHARD CLARK, Pilot
Hageland Aviation

POSITION STATEMENT: Testified in support of HB 171.

IGNATIUS BEANS, Safety Check Pilot
Hageland Aviation

POSITION STATEMENT: Testified in support of HB 171.

KAREN CASANOVAS, Executive Director
Alaska Air Carriers Association
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 171.

MARK JOHNSON, Pilot
Hageland Aviation

POSITION STATEMENT: Testified in support of HB 171.

MICHAEL CHARLIE, Pilot
Hageland Aviation

POSITION STATEMENT: Testified in support of HB 171.

GREG O'CLARAY, Commissioner
Department of Labor and Workforce Development

Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 180.

ACTION NARRATIVE

CHAIR TOM ANDERSON called the House Labor and Commerce Standing Committee meeting to order at [3:51:29 PM](#). Representatives Lynn, Kott, Crawford, Guttenberg, and Anderson were present at the call to order.

HB 171-OVERTIME WAGES FOR FLIGHT CREW

CHAIR ANDERSON announced that the first order of business would be HOUSE BILL NO. 171, "An Act relating to the retrospective application and applicability of the overtime compensation exemption for flight crew members; and providing for an effective date."

HEATH HILYARD, Staff to Representative Mike Kelly, Alaska State Legislature, said HB 171 clarifies legislative intent by retroactively removing flight crews from the scope of statutory overtime compensation required under the Alaska Wage and Hour Act. It will apply to work performed on or after January 1, 2000, he said.

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MR. HILYARD said the Department of Labor has had an uncodified policy to apply an exemption, but recent class action lawsuits created confusion. In the Twenty-Third Alaska State Legislature, Senate Bill 54 codified the informal policy. HB 171 will provide even better clarity, he said.

TOM DANIEL, Partner, Perkins Coie Law Firm, Anchorage, said he is an attorney concentrating on labor and employment law, and he is in favor of HB 171. He said he represents Hageland Aviation in a class action lawsuit brought against Hageland by pilots claiming overtime. The lawsuit is occurring because the 2003 law was not retroactive, and there are claims being made for the time period before 2003, when an explicit exemption for pilots was passed, he said. Since 1949, pilots have been exempt from overtime under federal law, and under Alaska law there was no explicit exemption. In the 1980s, the Attorney General of Alaska issued an opinion that pilots are exempt from overtime. In 1986, the Alaska Department of Labor sent a letter to the Alaska Air Carriers Association stating that pilots who carried passengers or mail were exempt from overtime law. For almost 20

years, air carriers have operated on the assumption that they did not have to pay pilots overtime, he said. In the late 1990s a few attorneys started seeing a possible way to sue in court because courts don't have to follow an attorney general's opinion.

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MR. DANIELS said there are three lawsuits pending against small air carriers in Alaska claiming overtime for flight crews. The 2003 law to exempt flight crews from overtime pay was not made retroactive. He said the Hageland lawsuit was initiated by a single pilot who had lost his job at Hageland and filed a complaint alleging age discrimination--not a complaint about pay. The Alaska Human Rights Commission dismissed his complaint, Mr. Daniels continued, so the pilot found a lawyer who told him he didn't have much of an age discrimination claim but he might have an overtime claim. That same pilot had already stated that he was fairly paid. His case became a class action suit on behalf of all present and former pilots of Hageland Aviation, which totals 82 people. Mr. Daniels said that 60 of those 82 pilots have affirmatively chosen not to participate in the lawsuit.

MR. DANIELS said Hageland Aviation is a true success story, and he described the start-up and growth of the company. He opined that this lawsuit threatens the viability of the business, which is one of the best in the region and pays its pilots well. Hageland pays pilots on a daily rate, which means they get paid even if weather or mechanical problems keep them from flying. This system benefits the pilot and the safety of passengers. The end result of this lawsuit, he said, is bankruptcy for a business that pays its pilots well and provides an essential service to a region, all due to a technical violation of a law that was never intended to apply, he said.

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REPRESENTATIVE KOTT asked why the date, January 1, 2000, was inserted.

MR. DANIELS said he thinks it is because the statute of limitations is two years, but moving the date back further would be fine.

REPRESENTATIVE CRAWFORD said he remembers working on this bill and there was concern that the legislation could affect court

cases, and he was assured that it wouldn't. It's bad public policy to interfere with court cases, he said.

MR. DANIELS said he was not involved in last year's legislation, and did not give that assurance.

REPRESENTATIVE CRAWFORD put it on the record that there were many legislators that understood that it would not be retroactive and that it was not a mistake or an oversight.

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MR. DANIELS said the law should be retroactive because air carriers have operated on a 20-year policy of the Department of Labor. It is unfair to them to be told they don't have to pay overtime to pilots, and all of a sudden they are being sued, he said.

REPRESENTATIVE CRAWFORD said this was a difficult vote for him and he understands that the Department of Labor and the courts came up with different interpretations. He said he doesn't think it is a good idea for the legislature to go back and change what the courts have done. He added that he generally has faith in the courts in rendering a good decision.

MIKE HAGELAND, Owner, Hageland Aviation, said the lawsuit is not for pilots, because only one pilot sued. The lawyer sued on behalf of other pilots, most of who opted out of the lawsuit within 60 days. Only one pilot has come forward to state that he wants to be part of this lawsuit. It's about the lawyers, he said, they are the ones who stand to gain.

CHAIR ANDERSON said it is also about consistency in public policy.

MR. HAGELAND said the pilots are still being paid the same way, and they are happy.

MIKE BERGT, General Manager, Alaska Central Express, said his company is a cargo carrier based in Anchorage, and the company supports HB 171. He said the company has been sued by a former pilot in July 2004 based on a loophole. The pilot is trying to seek a windfall, he added. Mr. Bergt said he didn't think the legislature intended to open a two-year window for pilots and attorneys to seek a windfall.

REPRESENTATIVE GUTTENBERG asked Mr. Bergt if he had assumed the overtime policy was in place, would he have been able to schedule pilots workably.

MR. BERGT said the company would have altered the pay scale so that overtime would have been taken into consideration, and pay would have been similar. In the end pilots would have been paid the same.

BRUCE MCGLASSON, President and Owner, Grant Aviation, said he employs about 120 people, and 44 are pilots. Grant Aviation pays its pilots the same kind of daily rate that Hageland Aviation does. It does it for safety reasons because it gives no incentive for pilots to fly in unsafe conditions. Mr. Hageland is a direct competitor, and Grant Aviation stands to gain a lot if Hageland went out of business, but he doesn't think the lawsuit is fair. He said that his company has not been sued, but because of the law, it is vulnerable to such lawsuits.

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RICHARD CLARK, Pilot, Hageland Aviation, said the company is fair, honest, and generous. He said he opted out of the lawsuit because it was unfair.

CHAIR ANDERSON asked if Mr. Clark was content with his salary.

MR. CLARK said he always has been, and the company has always been fair.

IGNATIUS BEANS, Safety Check Pilot, Hageland Aviation, said he was born and raised in Mountain Village, where Mike Hageland started his business. He said he has flown commercially in western Alaska for ten years. He has known Mr. Hageland for more than 20 years, and he is fair and honest. "When I heard about a lawsuit, I was really discouraged." He encouraged the committee to pass HB 171.

KAREN CASANOVAS, Executive Director, Alaska Air Carriers Association, said the association represents over 67 carriers in Alaska. The failure of this legislation would have a direct and profound impact on small carriers, which are critical to Alaskans around the state. The companies are abiding by the Department of Labor policy.

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MS. CASANOVAS said the lawsuits are not typically covered by insurance in Alaska. Small carriers provide transportation for Alaskans, and a class action lawsuits will put many of them out of business, she added. The Alaska Air Carriers Association overwhelmingly supports HB 171.

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MARK JOHNSON, Pilot, Hageland Aviation, said his job is the best he has ever had, and the pay is more than fair. He said in the early eighties pilots were paid by the flight hour, and it is a very dangerous way to pay pilots. The fairest and safest way to pay pilots is the way Mike Hageland pays, he said.

CHAIR ANDERSON asked if there are any witnesses that are opposed to HB 171. [None came forward.]

MICHAEL CHARLIE, Pilot, Hageland Aviation, said if the lawsuit is successful it will hurt staff and the whole economy of the region.

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REPRESENTATIVE KOTT said it is unfortunate that the bill is before the legislature, which should have addressed the problem a few years ago. Everyone would have been much happier. He added that the bill does have judicial impact, and it should be looked at in the House Judiciary Standing Committee.

CHAIR ANDERSON said, "So your motion is to move the bill out of committee. I'll object to note that I will, as chairman of labor and commerce, recommend that it be referred to judiciary and stricken from being referred to the finance committee." He withdrew his objection and hearing no further objection, HB 171 was passed out of the House Labor and Commerce Standing Committee.

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The committee took an at-ease from 4:28 to 4:30.

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HB 180-WORKERS' COMPENSATION

CHAIR ANDERSON announced that the final order of business would be HOUSE BILL NO. 180, "An Act relating to a special deposit for workers' compensation and employers' liability insurers; relating to assigned risk pools; relating to workers' compensation insurers; stating the intent of the legislature, and setting out limitations, concerning the interpretation, construction, and implementation of workers' compensation laws; relating to the Alaska Workers' Compensation Board; establishing a division of workers' compensation within the Department of Labor and Workforce Development, assigning certain Alaska Workers' Compensation Board functions to the division and the department, and authorizing the board to delegate administrative and enforcement duties to the division; establishing a Workers' Compensation Appeals Commission; providing for workers' compensation hearing officers in workers' compensation proceedings; relating to workers' compensation medical benefits and to charges for and payment of fees for the medical benefits; relating to agreements that discharge workers' compensation liability; relating to workers' compensation awards; relating to reemployment benefits and job dislocation benefits; relating to coordination of workers' compensation and certain disability benefits; relating to division of workers' compensation records; relating to release of treatment records; 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; relating to attorney fees; providing for the department to enter into contracts with nonprofit organizations to provide information services and legal representation to injured employees; providing for administrative penalties for employers uninsured or without adequate security for workers' compensation; relating to fraudulent acts or false or misleading statements in workers' compensation and penalties for the acts or statements; providing for members of a limited liability company to be included as an employee for purposes of workers' compensation; establishing a workers' compensation benefits guaranty fund; relating to the second injury fund; making conforming amendments; providing for a study and report by the medical services review committee; and providing for an effective date."

GREG O'CLARAY, Commissioner, Department of Labor and Workforce Development (DOL), said HB 180 is a composite of hard work by members of the ad hoc committee on workers compensation, DOL

staff, and various other constituencies in the state. He said 2003 workers' compensation costs were \$23 million. Legislation last year concentrated on readjustments to the adjudicatory system. "It really only dealt with about \$11 million in costs, or what turned out to be about 4.9 percent of the pie."

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COMMISSIONER O'CLARAY said testimony last year asked the department why it was not examining medical costs, which is 52 percent of the problem. In 2004, medical costs will be 61 percent, he noted. He said the governor chose to depart from the ad hoc two-year plan, and present his bill now. He noted that the ad hoc committee is a volunteer citizen's committee and has worked on workers' compensation issues for many years.

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COMMISSIONER O'CLARAY said it is important for the administration to have a bill this year because "we're in a situation where if we are allowed to go beyond this legislative session, that the rate increases and premiums that employers will be looking at next year, will force more small businesses to close their doors and put more workers on the street." He said the administration feels that it is near crisis. Of the 16,000 active businesses that are reported by DOL, "I would venture to say, I don't know of one that wasn't impacted adversely by workers' comp rates."

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REPRESENTATIVE LYNN asked about the ad hoc committee meetings, and why Commissioner O'Claray said the committee has not met lately except for this past interim.

COMMISSIONER O'CLARAY asked, "Where have they been since 1995 when this problem was continuing to loom?"

REPRESENTATIVE LYNN said, "But they did meet this time, is that correct?"

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COMMISSIONER O'CLARAY said they did, and "frankly, I was pleased." They put a lot of time in examining issues that need to be dealt with. They wanted to meet because they recognized the problems with workers' compensation insurance rates. They

worked very hard and Commissioner O'Claray said he was pleased with the progress they made, "to a point."

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COMMISSIONER O'CLARAY said, "When we received the product [from the ad hoc committee], they had apparently made a decision fairly early in the process, that they would not deal with any issues that either the labor side or the management side raised or took issue with." The main issue they decided not to deal with was medical costs. He read the last paragraph of a letter from the ad hoc committee:

We would also like to point out that there are more issues involving workers' compensation that we will be addressing in the future. These include group self-insurance, medical cost containment (the medical cost portion of workers' compensation payments in Alaska have more than doubled between 1988 and 1992, from approximately \$20 million to in excess of \$50 million), review of presumption of compensability, and review of benefits including health insurance. These issues will take further research and a great deal of discussion with various groups, but they must be dealt with to ensure that Alaska's workers' compensation system adequately protects injured workers while maintaining an equitable program for employers.

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COMMISSIONER O'CLARAY said he is pleased the committee has reconvened, but the governor was not pleased with the result - "not because they didn't work hard, but because it didn't meet his goal of trying to arrest the escalating rates." He said he informed the committee of the decision the governor made and invited members to participate in the drafting process "over the weekend."

COMMISSIONER O'CLARAY said when the ad hoc committee members began discussing strategy about their own bill, they asked the DOL person to leave the room.

REPRESENTATIVE LYNN said the governor drafted his bill in February and asked how long it was worked on before it was introduced.

COMMISSIONER O'CLARAY said "We started working on, I believe it was Sunday morning, and we worked through the night into the next day, which was a state holiday for everyone else. I believe we had an actual bill completed, that we actually presented, first to the advocates...on Wednesday. Then we had a press conference on February 21."

REPRESENTATIVE LYNN asked how many working days it took the governor to prepare his bill.

COMMISSIONER O'CLARAY said, "Well, state employee working days, at seven and a half hours a day, probably six, within a two and a half day period, because we worked around the clock."

REPRESENTATIVE LYNN asked how many days the ad hoc committee worked on its bill.

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COMMISSIONER O'CLARAY said he doesn't know, but he does know they spent a lot of time on it. "Remember, they had given us the results of their particular fruits of their labor...and we used a major portion of that information in our bill," he added. He said he got input from consultants and state underwriters as well.

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COMMISSIONER O'CLARAY gave an example of a health facility that doubled its premium rate. "Obviously their charge-out rates had to go up as well. The statute requires that employers provide that particular insurance," he added. He then gave the example of a business of less than 25 people, where premium rates went from \$5,900 to \$10,232. A small general contractor business in Sitka had premiums in 2002 of \$146,950, and in 2004 it jumped to \$314,110.

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COMMISSIONER O'CLARAY then gave an example of the Kodiak Island Borough where workers' compensation rates went from \$24,000 in 2002 to \$95,234 in 2005.

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COMMISSIONER O'CLARAY said new hires in Kodiak have been placed on a maximum of a 30-hour week to save on costs, which denies workers access to benefits.

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COMMISSIONER O'CLARAY referred to a newspaper article about the closure of an Anchorage restaurant, and the owner said that she could not afford workers' compensation insurance.

LINDA HALL, Director, Division of Insurance, Department of Commerce, Community, and Economic Development, said last year, when workers' compensation rates increased by 21 percent, she got angry calls from employers. Later, she received calls from employers telling her they were at the verge of having to cut health insurance because they could not afford to provide both that and workers' compensation. Now calls are coming in about employers contemplating closure of their businesses. "These are wrenching calls for me to deal with," she said. She said she wants to be able to tell people that the state is trying stop the increase in insurance rates.

REPRESENTATIVE LYNN said workers' compensation needs to be controlled, and the question is how.

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COMMISSIONER O'CLARAY said the governor's bill deals with the rollback of the reimbursement rates for medical costs on page 18, line 30.

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COMMISSIONER O'CLARAY said he wants to explain the rationale behind the fee reimbursement rollback to the December 1999 reimbursement rate. "The medical reimbursement schedule that the Division uses to pay claims for various procedures...whether it be surgical, whether it be pharmaceutical, whether it be hospital care, is published in a rather large...book, and it details the rate of reimbursement that is paid out." He then noted comparison to other northwestern states, and he said Oregon's reimbursement rate of \$1,500 for arthroscopy is half as much Alaska's 1999 rate. Oregon uses a Medicare-plus multiplier, and Alaska considered doing that but decided against it.

COMMISSIONER O'CLARAY said the 2004 rate for the same procedure in Alaska is \$3,800, and the 2005 rate is \$4,100. "This kind of gives you some idea of the increases in Alaska's workers' compensation charges and reimbursement rates between 2000 and 2005 - a 27-percent increase," he said.

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COMMISSIONER O'CLARAY said there is lack of real data. There are unchallengeable conclusions, he said, but does not want to wait another year for more data. The bill suggests rolling the reimbursement rates back and requires a study to be completed by 2007. That will provide the data to determine the proper schedule of reimbursement, he said.

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COMMISSIONER O'CLARAY said he hopes for assistance from the medical community. He said he is concerned about specialty surgeons deciding on their own to deny service.

REPRESENTATIVE LYNN said he shares that concern.

COMMISSIONER O'CLARAY said the workers' compensation system is a sole remedy system; an injured worker must go through this particular system, and workers cannot sue their employers.

REPRESENTATIVE LYNN said workers' compensation came to his rescue when he was an injured police officer.

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COMMISSIONER O'CLARAY said we cannot afford to let this system break down. We need to act on reforms this year, he said. The governor's bill creates an appeals panel consisting of one professional hearing officer, one layperson representing the employee, and one person representing the employer.

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COMMISSIONER O'CLARAY said the issue of predictability is important. Certain types of injuries will be awarded at a certain level, he said.

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COMMISSIONER O'CLARAY said without this, one side or other will try to push the decision to their benefit. The governor's bill uses an in-house "super panel," and from there the cases go to the supreme court. The appeals panel will be empowered to make legal precedent.

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COMMISSIONER O'CLARAY said access to the superior court delays settlement of cases up to a year and a half. The two things that the bill concentrates on is making the system more efficient and more reactive to injured workers' concerns about early settlement, and making the system more affordable for the employer.

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REPRESENTATIVE GUTTENBERG asked the administration to create an organizational chart of the new structure.

REPRESENTATIVE LYNN asked for a side-by-side comparison of the governor's bill the ad hoc bill.

COMMISSIONER O'CLARAY said yes to both.

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REPRESENTATIVE CRAWFORD said he has worked under the Oregon system, and it is not very good. People do the dangerous work for us, putting their lives at risk, and we need a workers' compensation system that takes care of these people, he said.

REPRESENTATIVE LYNN said he agrees.

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REPRESENTATIVE GUTTENBERG brought up job safety, and wondered what the state was doing.

COMMISSIONER O'CLARAY said the existing rate structure does not provide an incentive to employers to have good safety programs. He said a sawmill in Ketchikan paid well over \$400,000 to workers' compensation and it had less than \$50,000 in claims. Some businesses have zero claims, and he suggested having incentive for a great record.

REPRESENTATIVE LYNN said everyone in the room agrees that there is a serious problem with the workers' compensation situation. He quoted the bible that says, "Come let us reason together."

COMMISSIONER O'CLARAY said the governor is the kind of man that likes to come out with a solution. He said this bill is not the perfect solution; it is subject to the deliberative process. The administration is able to work on it this session.

[HB 180 was held over.]

[5:16:15 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 5:16 p.m.