

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

March 30, 2005

3:24 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Representative Gabrielle LeDoux

COMMITTEE CALENDAR

HOUSE BILL NO. 147

"An Act relating to the regulation of insurance, insurance licensing, surplus lines, insurer deposits, motor vehicle service contracts, guaranteed automobile protection products, health discount plans, third-party administrators, self-funded multiple employer welfare arrangements, and self-funded governmental plans; and providing for an effective date."

- MOVED CSHB 147(L&C) 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 147

SHORT TITLE: INSURANCE REGULATION

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/14/05	(H)	READ THE FIRST TIME - REFERRALS
02/14/05	(H)	L&C, FIN
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)
03/02/05	(H)	L&C AT 3:15 PM CAPITOL 17
03/02/05	(H)	Heard & Held
03/02/05	(H)	MINUTE(L&C)
03/16/05	(H)	L&C AT 3:15 PM CAPITOL 17
03/16/05	(H)	Scheduled But Not Heard
03/18/05	(H)	L&C AT 3:15 PM CAPITOL 17
03/18/05	(H)	Heard & Held
03/18/05	(H)	MINUTE(L&C)
03/30/05	(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
03/09/05	(H)	Heard & Held
03/09/05	(H)	MINUTE(L&C)
03/16/05	(H)	L&C AT 3:15 PM CAPITOL 17
03/16/05	(H)	Scheduled But Not Heard
03/21/05	(H)	L&C AT 3:15 PM CAPITOL 17
03/21/05	(H)	Scheduled But Not Heard
03/22/05	(H)	L&C AT 1:00 PM CAPITOL 17
03/22/05	(H)	Heard & Held
03/22/05	(H)	MINUTE(L&C)
03/30/05	(H)	L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

LINDA HALL, Director
Division of Insurance
Department of Commerce, Community, & Economic Development
Anchorage, Alaska
POSITION STATEMENT: Answered questions concerning HB 147.

DOUG WOOLIVER, Administrative Attorney
Office of the Administrative Director
Alaska Court System
Juneau, Alaska
POSITION STATEMENT: Gave an analysis of HB 180 and its impact on the court system.

JOHN BAKER, Builder
Building Specialty Inc
Anchor Point, Alaska
POSITION STATEMENT: Testified against HB 180.

MARK KLINE
Fairbanks, Alaska
POSITION STATEMENT: Testified against HB 180.

JOHN NICKS, Rehabilitation Specialist
Anchorage, Alaska
POSITION STATEMENT: Testified against HB 180.

WAYNE STEVENS, President
Alaska State Chamber of Commerce
Juneau, Alaska
POSITION STATEMENT: Testified against HB 180.

JERRY FLOCK, Citizen,
Anchorage, Alaska
POSITION STATEMENT: Testified against HB 180.

DON ETHRIDGE, Lobbyist
Alaska AFL-CIO
Juneau, Alaska
POSITION STATEMENT: Testified against HB 180.

BEVERLY ALECK, Representative
Amchitka Nuclear Workers
Anchorage, Alaska
POSITION STATEMENT: Testified against HB 180.

ACTION NARRATIVE

CHAIR TOM ANDERSON called the House Labor and Commerce Standing Committee meeting to order at [3:24:51 PM](#). Representatives Guttenberg, Crawford, Lynn, and Anderson were present at the call to order. Representatives Kott and Rokeberg arrived as the meeting was in progress.

HB 147-INSURANCE

CHAIR ANDERSON announced that the first order of business would be HOUSE BILL NO. 147, "An Act relating to the regulation of insurance, insurance licensing, surplus lines, insurer deposits, motor vehicle service contracts, guaranteed automobile protection products, health discount plans, third-party administrators, self-funded multiple employer welfare arrangements, and self-funded governmental plans; and providing for an effective date."

CHAIR ANDERSON moved to adopt CSHB 147, Version G, as the working document.

[3:25:49 PM](#)

REPRESENTATIVE GUTTENBERG objected and recalled that in the previous meeting there was a heated discussion online from people who wanted to talk about workers' compensation and that

he believed that any future meeting would include more public testimony and the ability to continue discussing the issue.

CHAIR ANDERSON opined that this would be brief.

REPRESENTATIVE GUTTENBERG removed his objection.

There being no further objection, Version G was before the committee.

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CHAIR ANDERSON stated that the discussion prompted the removal of the following provisions from the original legislation: page 15, line 6 through page 17, line 25; page 17, line 26 through page 18, line 3; page 18, lines 4-20, and finally, page 19, lines 12-15 and lines 20-28.

CHAIR ANDERSON then stated that there were also additions made to the bill. He pointed out the new Section 3, page 2, line 8 through page 3, line 21, and Section 24 page 25, lines 24-29. He then stated that this amendment addresses limitations on the use of owner controlled insurance programs and contractor controlled insurance programs. All the above-mentioned changes have been done with the approval of the Division of Insurance, the bill's sponsor.

LINDA HALL, Director, Division of Insurance, Department of Commerce, Community, & Economic Development, indicated that the two problematic sections were removed. The first one was the union health trust issue and the other concerned the regulation authority over promulgation of regulations on guaranteed auto protection (GAP) and service contracts. She then said that they also added a section on the rules that govern when owner controlled insurance programs can be used. She ended by stating that these changes are not intended to change the divisions existing statutory authority to regulate in these areas, and she made it clear that the division has a broad definition of insurance, and that they have statutory language that could subject these groups to certain kinds of regulation as it exists today.

REPRESENTATIVE GUTTENBERG requested more detail about the sections that were taken out.

MS. HALL explained that the sections that were taken out were the provisions that gave authority to promulgate regulations

that look at the GAP products and the service contracts. What remains are a variety of changes to licensing of producers to make it a more streamlined process, to clean up the our surplus lines regulations, to allow the insured deposits to be given to the guarantee association when that is due.

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MS. HALL then asserted that there have been some real abuses of health care discount plans, and the changes here will give us the authority to regulate those and it changes how we register and regulate third party administrators of health insurance contracts. She ended by stating that the bill also creates some new definitions.

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REPRESENTATIVE CRAWFORD stated that the changes that have been discussed are the ones that he wanted to see, however, he stated that this is a very quick turnaround and he indicated that he felt that he had not been enough time to read the new CS to determine if he had any questions. He then said that he had no disagreements so far.

CHAIR ANDERSON offered to go through all the sections that have been deleted or abridged.

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REPRESENTATIVE CRAWFORD said that he was currently looking at Section 3 to determine the changes that have been made.

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MS. HALL stated that the additions to Section 3 were the following: the ability to have owner controlled insurance program or "wrap up policies", where the owner purchases liability for the entire crew. However, she indicated that this ability is being extended to other occupational situations. She also said that this type of insurance is taking premium volume from an already fragile market in a state that has very few insurance companies willing to sell insurance here. She stated that these contractor insurance packages make it hard to keep enough premium volume to put together a good package. This has been the viewpoint of the Division of Insurance since 1995 and this, she said, is really just the codification of that viewpoint.

REPRESENTATIVE LEDOUX said that though she did not know if she had a real problem with the bill, she did express concern that this bill has been around since the beginning of the session and that seemed to her like it was a major issue, based on the amount of testimony that has been given and the fact that it has been indicated today that the issue had been tossed around since 1995. She complained that although what was being said today made sense, the fact that it might very well be passed out today would not allow other viewpoints to be heard and this was important to her.

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CHAIR ANDERSON indicated that there had already been several days of testimony on this bill and that the concept is not new, nor is the idea of amending the bill new at all.

MS. HALL explained that this amendment was given to the committee at the last meeting and there was tremendous public testimony. The ideas and amendments were brought forward by the insurance community in response to the testimony.

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CHAIR ANDERSON stated for the committee that he did note that he would be addressing the concerns that were brought up in testimony and that amendments would be made. He indicated that to be fair to the legislative process, he felt that ample time was given to the bill and to the gathering of public testimony, and that to give any more time would slow the process down and make it impossible to make a legislative decision.

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CHAIR ANDERSON pointed out that there is another committee through which the public can voice more concern and that it would be prudent to pass the amendment through today and move the bill out of committee.

REPRESENTATIVE KOTT moved to report CSHB 147, Version G, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 147(L&C) was reported from the House Labor and Commerce Standing Committee.

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."

[3:37:24 PM](#)

CHAIR ANDERSON stated that the ad hoc committee was still going through some negotiations and that it was not his intent to push this out without some solidarity. Everyone from doctors, laborers, insurance industry, Department of Insurance, the governors office, and the Chamber of Commerce, have indicated measurable interest in the bill. The ad hoc committee bill is being circulated and is awaiting introduction. He announced that he would like to conclude public testimony and then go through the governor's legislation.

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DOUG WOOLIVER, Administrative Attorney, Alaska Court System, stated that the court cannot take a position on the bill, but he indicated that he was here to talk about the impact of the bill on the court system, particularly the section that talks about bypassing the superior court in the appeal process and have the cases go instead from the administrative courts to the supreme courts. For the past several years, he indicated that he had seen about 30-40 cases a year, and that most of these are resolved by the Superior Court. Only eight of them are appealed to the Supreme Court.

3:40:40 PM

MR. WOOLIVER related that the court does not believe that the passage of the bill will change these [appeal] numbers, since only a tiny fraction of appeals are for workers compensation cases that are moved forward. He then indicated that there were three reasons that he felt that the passage of the bill would not impact those numbers. First, he said that there are always cases that are very close despite the facts concerning the case, and these people will try to appeal. Second, there is always a handful of novel legal cases that make it to the higher courts. Lastly, there are many people that distrust public agencies or the dispute resolution processes.

MR. WOOLIVER stated that every year there are tenacious people here that will continue to appeal, regardless of the outcome of the court decision. The expectation is that again, there will be 30 to 40 cases that are referred to the higher courts. The difference now is that they will go to the Supreme Court rather than the Superior Court. He announced that one of the stated goals here is to streamline the process and get to resolution faster. Our concern here is that this will have the exact opposite effect. He explained that if you bypass the Supreme Court, it appears that you have saved time. He then said that

for some cases that might be the case. However, there is some misconception here as far as saving time. The time spent in both higher courts is different. The superior court takes a year or so for its entire process, from the time you file to the time that your case is finished. The Supreme Court is much longer. In fact, he said, you are going to take about 20 months to resolve the case, rather than a year. Because of this, the courts and the legal community believe that this bill does not achieve the goal of faster resolution of cases. It takes time.

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MR. WOOLIVER stated that the superior courts are one person, and the Supreme Court is a body of five individuals. The resolution is done by one person and is quicker. Most of these cases will take longer if you bypass the superior court.

CHAIR ANDERSON stated that for individuals that are in support of the Governors legislation, especially chamber and business members that might have an understanding of the court system, they should address their experiences in their testimony.

REPRESENTATIVE LEDOUX stated that she recollected that there were 30-40 cases that go before the superior court each year, and she asked the witness if he could give an estimate on the number of inconsistencies that have occurred in judgments handed down.

MR. WOOLIVER answered that this inconsistency is really perceived and is relative to the observer. He asserts that in someone's eyes, the judgment is always going to be inconsistent. Most of these cases are fact specific, even the ones that make it to the Supreme Court. They don't have a lot of presidential value because they are so fact oriented. He pointed out that anyone could point out examples of times that certain judges in certain regions have ruled one way or the other in similar cases. He stated tersely that he has no way of determining what is inconsistent or not. Mr. Wooliver indicated that he was looking at Section 31.

REPRESENTATIVE KOTT asked if there was any discussion on this last year, whether from the court system or the administration.

MR. WOOLIVER recalled that there was not any discussion last year.

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REPRESENTATIVE GUTTENBERG asked, of the cases referred to the superior court, how many of these were overturned.

MR. WOOLIVER answered that a majority of these are not overturned. However, one always faces an up hill battle when dealing with appeals. With the Supreme Court, it is sometimes difficult to overturn since it concerns a minor provision. They uphold the majority of the decision but overturn the case based on a minor provision and send it back for retrial. Mr. Wooliver stated that one cannot look at the outcome, whether it be affirmed or reversed, but rather one must review each case individually.

CHAIR ANDERSON stated that, to that question, hypothetically, if a company has an employee who files a workers compensation claim and is granted the request, and then the employer challenges this action and goes through the appeals process. He asked if this was generally the scenario.

MR. WOOLIVER answered that he had not checked this.

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REPRESENTATIVE GUTTENBERG pointed out that one of the things that he has heard is that from what he understood, half the cases go either way, and that the appeal process when put into play, has the same results for both the superior court and the Supreme Court, where they are upheld, and in this context he said he cannot determine what is wrong here. He then asked how the legal practice of de novo hearings, in which the case is heard anew, is going to upset this precedent and the number of cases that are upheld by the higher courts. He then asked how many more people are going to be appealing with the passage of the bill.

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MR. WOOLIVER stated that he has tried not speculate if they would see a lot more or fewer cases. He said that he could think of reasons that would create more cases. He stipulated that if people trusted the board they would see fewer cases, and if they did not trust the board, they would see more cases particularly with the new cases created by the de novo authority. The safest route is to assume that things stay about the same as they are now.

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REPRESENTATIVE GUTTENBERG stated that it's [the legislature's] job to speculate, and therefore he appreciated that Mr. Wooliver didn't want hazard a guess.

MR. WOOLIVER stated that he found a memo to Dave Donnelly, Chief of Adjudication, which reveals several facts about 2004 appeals. The bottom line is that most cases are upheld. [The memo] breaks down the statistics of the appeal processes and the document reveals that the appeal rate is around 8 percent and the reversal rate of appealed Decision and Orders (D&O's) laid down by the court system is around 16 percent.

REPRESENTATIVE LEDOUX pointed out that he indicated that there 30-40 workers' compensation cases that reached the superior court and she asked how many total workers compensation cases go before the panel each year.

MR. WOOLIVER answered that he recalls that number being 20-30,000 claims, though there were several other people here that would be better at answering this question.

REPRESENTATIVE LEDOUX said that the number of appeals each year compared to the number of actual workers compensation claims that make it to the appeal process is very miniscule.

MR. WOOLIVER agreed, and said it was a tiny percentage.

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REPRESENTATIVE GUTTENBERG, referring to Section 10, subsection (c), paragraph (2), subparagraph (B), on page 7, line 2. He then asked if there was any kind of review of an appointee's background, or is this a standard appointment.

MR. WOOLIVER answered that the bill calls for gubernatorial appointments.

REPRESENTATIVE LEDOUX said that she could not understand, from reading the test, whether the body of the board, minus the chair, has to also be a member of the Alaskan Bar Association.

CHAIR ANDERSON answered that no, he did not think that they all had to be attorneys.

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JOHN BAKER, builder, Building Specialty Inc, indicated that he has been a builder for 40 years and originally came here from Minnesota because of the problems that state was having with workers compensation rate. He said he sees the same problem happening here in Alaska. The rate has gone from 12 dollars for every hundred dollars spent on salary to \$28.86 per hundred dollars paid in salary. He then stated that it is rumored that an increase to \$40 per hundred in wages. He said that he and others like him cannot charge out these rates to people since they cant build their homes at this rate. Home appraisers are not coming in at the rates that are conducive to conduce banks to give out loans to people. Because of this, he said, we don't have the people working that we usually do. This makes it very hard to make ends meet for workers and their families. There are other things too. He mentioned that raises can't be given when they are deserved.

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MR. BAKER said there are also people who are paying people straight cash (\$20-25) without any additional workers' compensation being paid on top of that, which makes it hard to compete with those who charge the additional cost of insurance (\$40-50 range). The aforementioned invariably increases the bid amount. He said that he wanted to keep all his people employed, insured, and the whole operation legal, but increasing rates are making it very difficult to compete and stay in business.

CHAIR ANDERSON surmised that the rates of workers' compensation are so high, that a reduction is necessary in order to maintain business.

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MR. BAKER responded by saying that he understood the need for the insurance but when it gets to the point when workers are hurt and the local economy is hurt, then it's not a good thing to continue to see the rates increase to the point that businesses go out of business.

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CHAIR ANDERSON asked how much Mr. Baker's workers' compensation rates have increased in the last few years.

MR. BAKER answered that 12 years ago, the rate was at \$12 a hundred, and right now it's around \$28.88 per 100 dollars. He then indicated that there was a \$2.25 rate jump in the past couple of weeks.

CHAIR ANDERSON asked how many men were working in the operation.

MR. BAKER said that he had 10 men working. He then said that by having this many men, his workers compensation went from \$30,000 to a little over \$80,000 a year. He said this rate hike has taken the fun out of doing business.

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MR. BAKER indicated that the general contractors have projects that are long whereas the subcontractors are only there for a few weeks and they can get by with this rate. With large projects, the costs are too high and can knock people out of projects that they would like to be a part of.

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REPRESENTATIVE GUTTENBERG asked what the committee should consider in trying to drop the rate.

MR. BAKER said that one of the things he would like to see a flat rate system because it puts the rates within reach of businesses, though he doesn't know what the cost would be. He then pointed out that no matter what, someone is going to have to pay for the insurance. He then said again that a flat rate would boost the lower rate up to be more in parity with higher rates. As an example, he said that the average lower rate that is \$1.83 and the rate on his end is up around \$30. This is, he says, at least 300 times the amount that the average business owner pays in the state of Alaska.

REPRESENTATIVE KOTT, referring to a previous statement, he asked about the appraisal process and how the appraisal never seems to meet the same costs that your building process entails. He stated that he would assume that these appraisers would take into consideration the costs of labor and materials

4:03:00 PM

MR. BAKER said that unfortunately that is not the case right now. This is a result of the appraisers basing their evaluations on current and historical prices of houses in the

surrounding areas. There is always a discrepancy between appraisal and actual cost to build the home. Because of this, it is hard to get people into the housing market when they cannot afford the house.

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REPRESENTATIVE KOTT asked if he was familiar with statistics that were published by the Department of Labor and Workforce Development concerning cost increases and its association with increases with medical costs. The average increase in medical costs is about around 32 percent and this makes keeping insurance costs down is dealing with medical costs. He indicated that this is dictated by new technology.

MR. BAKER said that three weeks ago, it was mentioned that the a state of Oregon slashed the costs of worker compensation but this has resulted in the fact that doctors there have stopped taking cases that are worker compensation claims due to loss of income.

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MR. BAKER supposes that if rates do continue to go up, it will result in cheating on the part of employers. He said that people are going to stop hiring and instead will pay cash by the hour for work and avoid paying workmen's compensation. These employers will find people who are willing to work for cash.

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MR. BAKER stated that men will continue to get hurt and these doctors are going to have people coming in without insurance.

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REPRESENTATIVE LEDOUX asked if he had any stats for your areas concerning the number of home starts between 2000-2004.

MR. BAKER indicated his company did light commercial and remodeling and that that rates have gone up, from \$12.80 to \$30.00. The costs have gone up 100 percent for workers' compensation.

REPRESENTATIVE CRAWFORD, after sharing the fact that he is an ironworker and property owner, stated that his insurance on property insurance has gone up significantly. He indicated that

the rate went up from \$197 to \$860, although nothing had changed about his policy and he had not posted any new claims. He then asked if the rate that Mr. Baker was paying a few years before was an artificial rate due to Freemont being in the marketplace.

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MR. BAKER said that he could not tell you if its artificial or not, but knew what people were willing to pay out. He indicated that workers are on jobs for three months each time, and if you multiply the high rate times the number of men you have working, it's too much. He then said that what was going to happen was that without a cap on insurance, people would stop backing away from paying the insurance. He said he saw this where he lived and said again, that it is very hard to compete against.

REPRESENTATIVE CRAWFORD asked what would happen if they put more money into enforcement.

MR. BAKER said that's a hard question. He indicated that men have a right to work no matter what, but it was not a level playing field and he said that enforcement was not the answer. Lowering rates is the key. This is the reason contractors cheat. Its not because they are trying to make more money, but trying to keep costs nominal, and to do that, they throw out the insurance.

MARK KLINE, citizen, Fairbanks, read the following statement:

The reduced fees mentioned in section 25 may quite possibly reduce the quality of healthcare available through the already existing law. When studies were done during the Clinton administration, it was found government regulation of healthcare in order to control cost decreased the quality of it. If the incentive of capitalism is lessened, the quality goes down hill. If you allow the employer to regulate cost by controlling fee amounts with their preferred providers, the amount mutually agreed upon will be passed to whomever the employee chooses as a physician. As a result of this action, employees won't have access to certain doctors unwilling to reduce their rates to the predetermined amount set by the employer's preferred provider.

By limiting access because of fee reduction, section 25 could also effectively reduce cost of

medical procedures, but simultaneously will decrease chances of successful completion of a portion of surgeries. The exposure to a number of medical procedures by some of the prospective preferred providers will likely be more affordable, but at what cost to the employee? Can the employer's preferred provider guarantee satisfaction equivalent to surgeons of the highest level of proficiency? It has been statistically shown surgeons who have essential credentials, but a limited current and repetitive exposure to a given surgery are much more likely to have an unsuccessful outcome than those who have both attributes. Under the current law, employees have access to the doctors with extensive and current experience in addition to credentials, although sometimes quite expensive. If this portion of HB180 is passed into law, they will not have this access. An employee wishing to utilize the more proficient, but expensive surgeon most likely won't be able to afford the cost difference they would be burdened with.

In addition to quality reduction issue, I contend the majority of the cost problem employers are having is because of the lack of appropriate pursuance of safety, causing a rather significant quantity of injuries and illnesses. The estimated rate nationally is 5 injuries per 100 employees. However, Alaska is 7 injuries per 100 employees, making us 40% higher than the national average, according to the Bureau of Labor Statistics. This higher incidence could likely cause increased prices of insurance premiums, not to mention possible safety inadequacies decreasing the quality of the work environment. Not only is the state of Alaska higher, it has been higher than the national average for some time, dating back to the year 1996. Apparently, it has been going on for some time. Thus, the problem is not just the high cost of insurance premiums, but rather lack of safety boosting worker compensation costs with high premium prices following.

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I personally was employed by a company who provided jobs for roughly 35 individuals in Fairbanks. Over the course of one year's time in 2003 and 2004, the company generated close to 400,000 dollars in worker's

compensation. In the following year, cost dropped a significantly large amount by starting a pilot safety program, studying safety hazards and recent accidents, and taking necessary steps to correct existing safety problems. Because of this action, employees had a safer work environment, and employers decreased their loss relative to worker compensation. Their ballooning cost was primarily because of the large quantity of injuries, leading to paying higher premiums, not just because of the high cost of healthcare. This company's name is Lynden Transport Inc., a business known for their excellent service in transportation here in Alaska. They now diligently pursue safety at all times.

They however, are not the only company taking the necessary action to ensure safety and keep cost down. The oil industry as a whole has the lowest incidence of injuries here in Alaska, demonstrating a genuine concern for safety.

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Along with the quantitative injury problem increasing cost, section 16 of the bill reduces the amount of permanent impairment capitol an employee is entitled. Not only does it reduce this amount, it could encourage some employers who have little or no interest in safety to reduce their efforts even further in preservation of the working environment. They could afford to take more chances because of the lessened amount of penalty they would be subjected to.

In the comparison table of maximum allowable rates for medical procedures provided by the Alaska Department of Labor and Workforce Development, dated March of 2005, I would like to mention the cost of living here may not have been taken into consideration. Comparing rates in Oregon and Idaho to Alaska without an adjustment relative to the cost of living difference is a misrepresentation of the actual cost gap. Both Oregon and Idaho costs of living are much lower than here.

The table also does not factor in the annual 3% increase in the cost of living here, nor does it show the actual annual increase in charges. The

percentage of increase in charges for Arthroscopy for example as well as the rest of the other procedures spans over a five-year period. Arthroscopy shows a 27% increase. The actual annual increase is only a little over 5% (\$180.00) for this procedure. This amount needs to be reduced even further by 3% (\$108.00), because 3 of the 5% of the cost is justified by the cost of living increase occurring every year. This leaves only 2% (\$72.00) profit above and beyond the cost of living. If adjustments were made to the other procedures in the table, one would likely find the same result. The increases would also be minimal. I would also like to point out any costs incurred beyond the amount set in the table are written off, according to information received from a hospital here in Alaska.

Along with exclusion of cost of living, I would also like to point out there are states whose cost of living are much higher than Alaska. If one were to do a comparison study in this direction, one may likely find our procedural rates are not quite so high after all. New York is a good example.

REPRESENTATIVE KOTT asked if Mr. Kline thought that the reason they have these safety programs is to reduce the workers' compensation claims or if they are offered a percentage of reduction costs by having a safety program in place.

[4:19:21 PM](#)

MR. KLINE answered that the reason they started the safety program was to reduce their overhead and healthcare costs, which it did so greatly.

[4:19:50 PM](#)

CHAIR ANDERSON expressed the desire for people to not read submitted letters and instead give additional comments about House Bill 180.

JOHN NICKS, rehabilitation specialist, Anchorage, expressed apology to those employers that have incurred premium increases that have gone up so expeditiously despite the overall costs rising only 6 percent. He then asked who was monitoring the insurance companies in terms of premium increases. He then stated that he could not see the intelligence behind fixing

workers compensation by reducing benefits to injured workers. He then indicated that he wanted to speak to several sections in the bill.

[4:21:26 PM](#)

MR. NICKS then stated that in Section 14, he thinks that it would be important to remove the language that imploring that the employer can stipulate the eligibility of benefits of workers at any time. The problem that I hear from injured workers now, and most certainly if the bill does pass, is that they are encouraged to pursue the dislocation benefit instead of using and facilitating the rehab and reemployment benefits really are, and how they can benefit from these other benefits.

[4:22:56 PM](#)

MR. NICKS then added that there needs to be someone that can advise workers about all benefits, rather than leaving this task to a claims adjuster. Another section is Section 15, which adds another disqualifier to the disposition of dislocation of benefits. He then added that from his viewpoint, it sounded like a permanent settlement of retraining, masquerading as a benefit. Accepting a job relocation benefit should preclude them to future access. He ends by stating that there is huge difference between permanent impairment and disability. Professor Stephen Hawking is a good example.

[4:24:59 PM](#)

MR. NICKS then indicated that Section 16 also had provisions that he was concerned with, primarily a conflict of interest. Any rehabilitation specialist who works for a company hired by an insurance company and/or employers must be excused from being selected or assigned to write the re-employment plan.

[4:25:52 PM](#)

MR. NICK then ended by stating that both employers and employees are paying too much. He then indicated that his health insurance went from \$900 a month to \$1800 a month. There has to be a discussion on why the rates are being raised and what level of profit is being guaranteed.

[4:26:44 PM](#)

WAYNE STEVENS, President, Alaska State Chamber of Commerce, read the following statement:

Certain workers' compensation structures and current escalating rates are an ever-increasing burden on Alaska's businesses. The ASCC strongly urges the State Legislature and Administration to provide the environment for stable, fair, and competitive marketplace for both the insurer and insured. The SAC encourages the legislature to diligently work toward a solution to the Workers' Compensation Insurance crisis and make meaningful insurance and regulatory reform during the first session of the 24th Legislature.

MR. STEVENS then added that on a personal note, the Chamber's insurance premium cost in 2003 was set at around \$1554. This rose to \$2774, creating a 78% increase with no claims history. He then said that this was office work and not laborious endeavors such as construction.

MR. STEVENS indicated that he believed that the key components of the needed reform are the following:

- Stabilize medical costs
- Use of preferred providers and generic drugs
- Adhere to nationally recognized standards of medical care
- Create a new appeals commission to resolve appeals faster
- Streamline vocational rehabilitation

MR. STEVENS continued by stating that these reforms are not all that is needed to restore stability and balance to the Alaska system, but that they were a very important start. We believe they are an important first-step toward workers' compensation system health. They will fairly protect injured workers and the economic well being of Alaska businesses.

[4:29:12 PM](#)

MR. STEVENS continued to state that the reform legislation does not roll back any injured worker benefits—rather it focuses on cost reduction within the system, helping eliminate inefficiencies with the system so local businesses can flourish.

MR. STEVENS ended by giving his support efforts to make substantive reform to Workers' Compensation. He said the following would help get proper reform:

- Recognize that there is no one single answer to solve the problem.
- All parties involved must make concessions to make this work.
- Provide an adequate safety net for workers hurt while on the job, but not put the healthy worker out of work when the business they are employed by can no longer afford the premiums for Workers' Comp insurance.

[4:30:04 PM](#)

REPRESENTATIVE GUTTENBERG stated that he assumed that the Chamber of Commerce had workers' compensation and wondered if he had called the company and asked them for an explanation when the rates when went up.

MR. STEVENS explained that when the rates went up, they went up for everyone, that it was the cost of the overall system. This cost was shifted to all parties. He said that this was partly due to the insolvency problems that were occurring at the time, or the rising medical costs that were a result of the uninsured. He ended by stating that everyone in the system, no matter what their claim status is, must bear the costs.

REPRESENTATIVE CRAWFORD asked if he thought that there should be more attention given to enforcement to make sure that the uninsured have less impact on the system and that employers are paying the rate that has been assigned to the jurisdiction they are located.

[4:32:00 PM](#)

MR. STEVENS stated that he did not know if this level of system control and enforcement would solved the financial crisis that was occurring. There are ways to spend some money on enforcement but there are other things that can be done.

REPRESENTATIVE LEDOUX asked if the Chamber of Commerce supported the Governor's bill, more specifically the section concerning the setting up of a different appeals system.

MR. STEVENS said that group is not focusing on the parts of the bill but instead, we are trying to stress that it is up to the legislature to solve it.

[4:33:27 PM](#)

CHAIR ANDERSON supplemented this question and asked how many people were in the chamber.

MR. STEVENS said that there were 500 people.

CHAIR ANDERSON then asked that of the 500 Chamber member employers, how many employees each of these employers have in their employ.

MR. STEVENS answered that there were large employers with thousands of employees and small employers with only two or three employees.

[4:34:05 PM](#)

CHAIR ANDERSON stipulate that for the argument, he would suggest that there are 50,000 employees total. He then said that according to the testimony given earlier, you have had input given by people from within the chamber, not detailing how to fix it, but that the rise in rates has been disproportionately high and that it could not be attributable to accidents or claims, or lawsuits, or overcharging by medical practitioners.

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REPRESENTATIVE KOTT stated that a portion of the increase that the presenter experienced had to do with the risk factor associated with the industry.

[4:35:09 PM](#)

REPRESENTATIVE LYNN indicated that the presenter had indicated earlier that he was not so worried about specific sections of the bill but that one section is concerned with roll backs in medical and asked if there were going to be enough doctors to take care of the people on worker's compensation.

MR. STEVENS answered that if contractors rolled back prices to 1990 prices, there would be fewer steel workers. This is not a perfect bill, and we don't fix the problem, there will be ancillary problems such as businesses shutting down, people

leaving the state because of the lack of attention to the problem.

[4:37:21 PM](#)

REPRESENTATIVE LYNN agreed and said that this has to be addressed this year and he agreed that if medical care providers don't get the money that they want, they are not going to take care of the problem on their end.

REPRESENTATIVE CRAWFORD pointed out that there is no free lunch. Someone is going to pay for the increase somewhere in the chain. He made the observation that the crisis in insurance extends further than just to worker's compensation, that it extends to auto, home, and health as well. He said that he does not see any movement towards going after those areas. He stated that the bill before the committee right now denies many people benefits that they have right now. He ended by iterating that there is a problem here but it would take a lot more than what is offered in the bill before the committee.

[4:39:29 PM](#)

MR. STEVENS agreed and stated that crises abound throughout the legal, medical, and insurance industry. He then stated that it would take changes in all of these to make a difference and create a system that works. He then suggested that, referring to Representative Crawford's statement, that it does not make any sense to ignore the plight of the worker and job security, since this is how they are insured an income. If they don't have jobs, then the rest of the financial environment becomes a moot point.

REPRESENTATIVE KOTT asked if the presenter believed it fair that the State Chamber of Commerce get tossed into this huge insurance pool with other employers around the state and experience substantive increases that have nothing to do with claims paid.

MR. STEVENS answered that he did not agree with this at all. He then stated that cost equalization did not make sense and that ironworkers and secretarial workers did not operate in the same environment. Ironworkers have higher risks, work higher off the ground, and there are many licenses that are required to work in this industry. Office workers do not have this type of hard work environment.

4:41:22 PM

REPRESENTATIVE KOTT asked how long the chamber been paying worker's compensation.

MR. STEVENS answered that this had been going on at least since he had been there.

JERRY FLOCK stated that he did not want to offend anyone present or in the state offices and that he wanted his testimony to be heard and learned from. He began by stating that he did not think that the problem had to do with how the laws regarding workers' compensation were written, but how they are enforced. [Mr. Flock then proceeded to play a third party conversation which seemed to be about collecting money owed to the state for company violations and enforcement of workers' compensation laws].

MR. FLOCK indicated that this tape recording because it shows how the laws are not being enforced. He stated that the state of Alaska had paid \$10,500 to him for workers' compensation, and added that this was his employer's responsibility. Yet he needed more help which was legally due to him, he did not get it. He emphatically stated that his problems with dealing with injuries, and the problems with getting compensation were indicative of the problems that are being experienced by many in the state, state agencies, social security, workers' compensation, and the state judicial system.

MR. FLOCK stated that in conclusion, he wanted to make it very clear that the problems with workers' compensation have been going on for more than three years and that the legislators are not dealing with the problem, and that this is the problem. He ended by stating that he has outstanding medical claims that are in his opinion, the states responsibility and that this claim is not disputed by his supporters. He then asked the legislature not to pass the bill.

DON ETHRIDGE, Lobbyist, AFL-CIO, pleads that this bill not get passed, and that his group was having some problems with several sections of the bill. He then stated that before he came to the meeting, he had spoken to Barbara Huff, who indicated that they were still in the process of meeting with the Governors staff and the ad hoc committee has pledged to continue working on this and are trying to find ways to save money.

4:50:02 PM

MR. ETHERIDGE indicated that there is also a commitment from labor to stay at the table until this is fixed. Mr. Etheridge said that although [labor's] chief concern is the worker and more importantly, the injured worker, [those in the labor industry] understand the employer's viewpoints as well. [Laborers] have the same rising costs in their health trusts as well. He related that "we" definitely want a bill here and are committed to fixing this. A good bill means as much to workers as it does to employers. Mr. Etheridge requested that the legislation be held until it satisfies everyone.

CHAIR ANDERSON asked since the special session last year produced no agreeable resolution, he asked if Mr. Stevens had come up with a product that ad hoc and labor could agree on and endorse.

MR. ETHERIDGE answered that if the ad hoc committee supports it, that his group as well as himself, does as well. However, the Governor did not use their input and came up with a bill on their own.

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CHAIR ANDERSON pointed out that some are not supportive of the ad hoc bill, yet say they are supportive of labor. Yet Mr. Stevens, who represents labor, indicated that he would support the ad hoc bill, though the bill did not have the Governor's support. He then asked if they tried to move it out by this Friday, would he then support the bill.

MR. ETHERIDGE said no, at this time he would not support this. His concern what would happen in the next committee. He further stated that he would like to have the work on the bill done in this committee, since it is a labor and commerce committee. He then said that there also needs to be some assurance that it wont be held back or sent back. He then stated that the bill sponsor basically tries to get it through the committees; basically the bill is being pushed around until everyone has their hand in constructing and debating the bill. This is contrary to what the Department of Labor is wanting.

[4:55:21 PM](#)

REPRESENTATIVE LYNN asked what the current status of the ad hoc committee meeting is with the Governor's people.

MR. ETHERIDGE indicated that he did not know what the current status could be, but at 3:30, when he came to this committee meeting, they were still meeting, and the information from the people in the meeting suggested that new proposals had been submitted by the Governors office. Once they finished their meeting, there were going to go into a meeting of their own to discuss the new proposals.

REPRESENTATIVE LYNN indicated that he wanted to work with the absolutely latest bill and that he would like to work with the latest bill if it's still in ad hoc committee.

REPRESENTATIVE KOTT asked when was the ad hoc committee formed.

[4:57:40 PM](#)

MR. ETHERIDGE said that they formed in 1981, when as now, there was a problem with workers' compensation laws. They figured out that they needed an ad hoc committee, since the main group was not getting anywhere.

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REPRESENTATIVE KOTT then asked if the Department of Labor had a suit (meaning the general makeup of the committee).

MR. ETHERIDGE indicated that there are five members from organized labor, small and large businesses, and from both management and worker sides.

REPRESENTATIVE KOTT asked if, during the course of the previous summer, did the Governor's administration provide input into the process of their proposal development.

MR. ETHERIDGE answered that the ad hoc people were present at the meetings, but they did not bring forth any ideas of their own. Instead what our ad hoc people did was to start with last years failed legislation, and went through it section by section and then from that point, they asked for more additional information from the Department of Labor. Some of these requests have been followed up, and others have not.

[4:59:50 PM](#)

REPRESENTATIVE KOTT asked if it was a fair characterization to suggest that every substantive piece of workers' compensation reform has come from the ad hoc committee.

MR. ETHERIDGE answered yes, that was correct; this included the 1988 overhaul.

REPRESENTATIVE KOTT asked that the big names of the ad hoc committee be revealed.

MR. ETHERIDGE announced that Kevin Daugherty, the counselor for the Alaska District of Council Laborers, and Dick Catanaugh, of the ABC, is the chair for the management side.

REPRESENTATIVE KOTT asked if HB 180 had any cost savings whatsoever, or for that matter, reduce, or at least hold the line on costs.

MR. ETHERIDGE answered that he did not believe it would. He said that there would likely be an increase in medical rates since injured workers will continue to use the emergency room instead of clinics, since medical care providers will continue refusing workers' compensation cases. The other concern is an increase in health trust costs, which would be increased due to shifts in causality from work to home, when workers are asked where an injury took place.

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REPRESENTATIVE KOTT pointed out that these gentlemen [from the ad hoc committee] are known by him, and that they represent pretty hard-core views and this characteristic helps create dialog, where it will not only benefit injured workers but also to benefit businesses that are paying high rates. He then said that he was encouraged that the ad hoc people were meeting with the court system and he hoped that these parties could look at this bill and do something to fix the workers' compensation problem.

[5:03:42 PM](#)

MR. ETHERIDGE indicated that the Department of Labor wanted to see something done with the bill and that they were committed to the process.

REPRESENTATIVE LEDOUX pointed out that the section of the Governor's bill which sets up a new appeals commission was not duplicated in the ad hoc committee's bill. She then asked if anyone had pushed to have this in the ad hoc bill.

5:05:20 PM

MR. ETHERIDGE said that the ad hoc committee did establish a super panel that included the two most senior labor and management people and one of the paid hearing officers to sit as a panel to make decisions for the group long after it had been appealed to a higher group. The Governor was asking for precedent setting cases and the ad hoc committee decided to deal with it this way.

5:06:19 PM

REPRESENTATIVE ROKEBERG said, in reference to concerns about health trusts that were addressed earlier, asked what type of cost containment in managed care techniques are being used and what, if any, are the application implications of these same techniques, to the workers' compensation problems.

MR. ETHERIDGE said that the majority of the trust raised contribution rates. During the negotiations most of them raised contribution rates. Some of them cut back benefits and others had to do drastic cuts to help curtail costs, since they had gone from \$10 million to \$900,000 in reserves. He then indicated that they had built the reserves back up and the benefits are back but the rate increase is still in place.

REPRESENTATIVE ROKEBERG stated that he appreciated the candor of Mr. Etheridge, but I don't share Representative Kott's opinion about the ad hoc committee. I believe that this committee has been usurper of legislative power and its out responsibility to the state of Alaska to do the law making. By depending on the ad hoc committee we do the constituents a disservice. We are not doing our job.

CHAIR ANDERSON stated that on this note, he has decided that on Friday, the committee would go over each of the bill and hopefully we can come to a conclusion. He announced that he did not intend on going along with the decision made by the ad hoc committee, though he had respect for the group's efforts. Input needs to be had from groups ranging from tort reform and medical disputes, like the one Mr. Flock is experiencing.

5:09:04 PM

MR. ETHERIDGE stated that for clarification 4 of the members of the ad hoc committee were also the owners of businesses and members of the chamber of commerce.

REPRESENTATIVE LEDOUX asked if the ad hoc committee was making any effort to work with the medical care providers.

MR. ETHERIDGE indicated that they have brought in the medical community and attorneys that were interested in talking to the committee.

CHAIR ANDERSON announced that several witnesses have to call back when there is more time. He said that the last witness that will be testifying will be Beverly Aleck, Amchitka Workers who has given the committee several emails, faxes and letters regarding her subject matter.

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BEVERLY ALECK, representative, Amchitka Nuclear Workers, indicated that she had been connected with the situation here [Aleutian Islands] and its atomic test site for a number of years. She said that the documents that she sent along to the committee are actually requests to either amend the bill before you or maybe a special legislative act could be invoked. Listening to the complex problems here, and taking into consideration the extent of the claims that the Amchitka workers have filed already, numbering up to \$125,000 to \$200,000, it is clear that the situation in Amchitka should not be an issue of the insurance underwriter.

CHAIR ANDERSON asked that she be more focused here as time was limited and stated, knowing her history and her interest in workers' compensation coverage for the Amchitka worker, that the odds of it being added to the present bill were difficult and tenuous at best, since we already have the bill structured for the most part.

MS. AFLECK continued by stating that ratifying the Memorandum of Understanding (MOU) between the State Workers' Compensation Board and the United States Department of Energy (DOE). This letter says that the DOE will agree to indemnify an agreement with a DOE contractor. She indicates that her group has one contractor that is associated with the claims. She then mentioned that a contractor from the state of Nevada, called Bechtel Nevada. Her documents show that this contractor did agree to file, following an order that called to reimburse and pay the claim.

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MS. AFLECK announced that the problems here are insurance litigating attorneys. The thing that would make the procedures simpler is to have Bechtel Corporation instead of clients having to fight insurance attorneys. The funding for the this seems to be coming from the Alaska Guaranteed Fund, and this funneling is inappropriate and she suggested that this be looked at and an inventory be made on this fund.

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CHAIR ANDERSON stated that this needed to be taken care of in a separate bill but that it was important.

[5:16:05 PM](#)

REPRESENTATIVE ROKEBERG pointed out that he did not have the packet that Ms. Aleck had passed onto the committee and that this issue was important to him, as his father was involved in this Amchitka project [concerning nuclear testing on the Aleutian Peninsula]. He then asked that the material be forwarded immediately to his office.

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at

[5:16:57 PM](#)