

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

February 10, 2006

3:42 p.m.

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

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 51

"An Act relating to modifying the qualifications required for workers' compensation self-insurance and permitting employers in the same trade or industry to form an employer association for self-insured workers' compensation coverage; and providing for an effective date."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 51

SHORT TITLE: EMPLOYER ASSN FOR WORKERS' COMP INS

SPONSOR(S): REPRESENTATIVE(S) MEYER

01/10/05	(H)	PREFILE RELEASED 1/7/05
01/10/05	(H)	READ THE FIRST TIME - REFERRALS
01/10/05	(H)	L&C, FIN
01/18/06	(H)	SPONSOR SUBSTITUTE INTRODUCED
01/18/06	(H)	READ THE FIRST TIME - REFERRALS
01/18/06	(H)	L&C, FIN
02/10/06	(H)	L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

REPRESENTATIVE KEVIN MEYER
Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Spoke as the sponsor of SSHB 51.

MIKE PAWLOWSKI, Staff
to Representative Kevin Meyer
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on SSHB 51.

LARRY PARTUSCH, Treasurer and Government Affairs Co-Chair
Anchorage Home Builders Association
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SSHB 51.

ROBERT VOGEL, Vice President of Operations
Pro Group Management, Inc.
Carson City, Nevada

POSITION STATEMENT: Testified during the hearing on SSHB 51.

LINDA HALL, Director
Division of Insurance
Department of Commerce, Community, & Economic Development
Anchorage, Alaska

POSITION STATEMENT: Testified during hearing on SSHB 51.

PAUL LISANKIE, Director
Central Office
Division of Workers' Compensation
Department of Labor & Workforce Development
Juneau, Alaska

POSITION STATEMENT: Testified during hearing on SSHB 51.

ACTION NARRATIVE

CHAIR TOM ANDERSON called the House Labor and Commerce Standing Committee meeting to order at [3:42:40 PM](#). Representatives Anderson, Lynn, Rokeberg, and Guttenberg were present at the call to order. Representatives Kott, LeDoux, and Crawford arrived as the meeting was in progress.

HB 51-EMPLOYER ASSN FOR WORKERS' COMP INS

[3:42:47 PM](#)

CHAIR ANDERSON announced that the only order of business would be SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 51, "An Act relating to

modifying the qualifications required for workers' compensation self-insurance and permitting employers in the same trade or industry to form an employer association for self-insured workers' compensation coverage; and providing for an effective date."

3:43:11 PM

REPRESENTATIVE KEVIN MEYER, Alaska State Legislature, sponsor, began by saying that there is a sponsor substitute (SS) due to drafting errors in the original bill. He said he would begin by giving an oversight of how self-insurance currently works, while explaining the changes made by the SS. The SS, he said, allows five or more employers to "bind" themselves together for the purpose of self-insuring against their workers' compensation obligations. He stated that the original version amended AS 21.076.010, which applies to joint insurance arrangements. However, he said, this bill is intended to apply to private entities, therefore the SS shifts the proposed changes to AS 23.30.090, which governs self-insurance. Currently, a single employer is allowed to self-insure his/her workers' compensation obligations. He explained that the employer must submit an application to the Alaska Workers' Compensation Board (board) and the board can then approve or deny the application. He said that the SS allows the new association of employers to meet the same requirements of a single employer. He noted that the SS does not require the board to issue a certificate of insurance nor does it encourage small employers to self-insure, rather it allows them to do so. He noted that there are several obstacles which require careful evaluation, for small employers who wish to self-insure.

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REPRESENTATIVE MEYER said that there are many different perspectives on this issue. He offered his belief that all parties are in agreement regarding the high cost of insurance and its effect on small employers. In conclusion, he said that SSHB 51 offers a tool for small employers to "grapple" with the costs of the [workers' compensation] system.

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CHAIR ANDERSON noted that there was a handout given to the committee entitled "Self-Insured Groups" and inquired as to who prepared it.

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MIKE PAWLOWSKI, Staff to Representative Kevin Meyer, Alaska State Legislature, sponsor, replied that the aforementioned handout was prepared by Pro Group Management, Inc., and noted that Robert Vogel would be explaining the handout during his testimony.

[3:45:52 PM](#)

CHAIR ANDERSON asked if Representative Meyer had a preference on the order of testimony.

[3:46:32 PM](#)

REPRESENTATIVE MEYER replied that Larry Partusch would be the best person to explain the details of the bill.

[3:47:09 PM](#)

LARRY PARTUSCH, Treasurer and Government Affairs Co-Chair, Anchorage Home Builders Association (AHBA), Anchorage, Alaska, noted that he is also the owner of Partusch Plumbing & Heating, Inc. and Northern Sheetmetal Fabricators, Inc. in Anchorage. He stated that the AHBA is in support of SSHB 51. He explained that as a self-insured group, the AHBA would be industry-specific, which means the AHBA would be "self-placing" more than it is currently. He said that the AHBA has a vested interest in maintaining a safe work environment for all employees, including those who can't afford workers' compensation insurance. He stated that currently, the AHBA has an "assigned risk" pool, and companies are placed in this pool regardless of whether or not they "deserve" to be. This legislation would enable these companies to receive coverage under the AHBA. The AHBA, he said, would not penalize companies because of their size.

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MR. PARTUSCH stated that Pro Group Management, Inc. has a good track record. He said that 23 percent of the employees in the state are covered under self-insured programs through single employers, adding that by allowing groups of single employers to pay for insurance, the risk is spread around.

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REPRESENTATIVE ROKEBERG asked for an example of what the [insurance] premium rates have done over the past few years, along with why [Mr. Partusch] feels this would be a good idea.

MR. PARTUSCH replied that his rates have tripled over the past five years, adding that this is "better than the norm." He opined that this bill would not benefit rates immediately; however, it is a start. He added that if claims can be controlled and working environments made safer, eventually the rates may stop increasing. It is "disheartening," he said, for a business to do well over the year and have few claims, yet still be required to pay high prices for insurance.

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REPRESENTATIVE ROKEBERG pointed out that past issues have included insolvency and the ability to maintain coverage of injured and disabled workers after employment. Referring to a letter from Spinelli Homes, Inc., in committee packets, he asked if Mr. Partusch would explain how he views his financial commitments and net worth requirements, and how this would work over the long term.

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MR. PARTUSCH said that his premium for 2006 for both companies is \$289,000. If combined with the premium of Spinelli Homes, Inc., the total is close to \$600,000.

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REPRESENTATIVE ROKEBERG asked what type of assets would be made available through the association of single employers.

MR. PARTUSCH replied that he does not foresee any difficulty in generating premium. In response to a comment from Chair Anderson, Mr. Partusch said that the goal is to have all the companies in the AHBA involved. He said that this way the risk would be shared by each member in the group.

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REPRESENTATIVE ROKEBERG commented that this would require taking on the work practices of smaller employers, which may not be as good as other companies.

MR. PARTUSCH said that initially, the association would include small employers that run good companies but are penalized because of their size. He added that as this association grows, a company with negative claim history may try to improve its status in order to be involved in the association.

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REPRESENTATIVE GUTTENBERG asked if there has been any analysis on the projected changes to the workers' compensation rates.

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CHAIR ANDERSON explained that [during the previous legislative session] the workers' compensation hearing process was restructured, along with the committees responsible for assessing injuries and the appeals process. He added that these changes have not been fully enacted.

MR. PARTUSCH said that his rates didn't increase last year, compared to previous years. He stated that his company's base rate in 1999 was \$4.39 per \$100, and currently it is \$12.39 per \$100, although he is not able to say that the increase is due to the changes made to the workers' compensation law.

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REPRESENTATIVE GUTTENBERG asked how the rate increases are justified.

MR. PARTUSCH surmised that the rates are based on the history of the industry.

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CHAIR ANDERSON noted that [Mr. Partusch] is not commenting on whether or not the rates are fair or reasonable, and at this stage does not know the full process.

MR. PARTUSCH agreed that this is correct.

CHAIR ANDERSON commented that other groups have self-insured under Title 21, while this bill is drafted under Title 23, resulting in different reporting requirements. He inquired as to how this bill compares to other states, and noted that Alaska has a unique infrastructure.

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ROBERT VOGEL, Vice President of Operations, Pro Group Management, Inc., said that Pro Group Management, Inc. (PGM) is a plan administrator for self-insured groups in Nevada, and is interested in doing similar activity in Alaska. He stated that PGM began with self-insured groups in New Mexico and then moved to Nevada, where it currently manages four self-insured groups. He noted that three of the four groups started in 1995 and the fourth started in 1999, adding that the latter is a homebuilders group.

3:59:54 PM

MR. VOGEL stated that generally, self-insured groups are regulated in the same statute that regulates single, self-insured employers. In Nevada, he said, this falls under the Division of Insurance; however, some states have a separate department of workers' compensation insurance. He said that the PGM groups did not initially save money, noting that they are primarily safety driven groups. If the companies follow through with their responsibilities, he said, this will eventually provide continuity for members.

MR. VOGEL said that this type of program requires strong underwriting and initially, only 30-40 percent of the employers that apply will qualify. He explained that an employer may not qualify due to poor loss experience, not exhibiting good safety and risk management practices, or financial stability that is not "up to par" with group requirements. He said that the joint and several liability agreement is the basis of a self-insured group, adding that if necessary, the companies need to have the financial ability to provide additional funding.

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MR. VOGEL noted that [a self insured group] is different from a standard insurance company or a captive alternative which would require a substantial amount of cash upfront. Instead, members of the self-insured groups would pledge the entire company to the success of the group which helps to ensure solvency. He said that the self-insured group is an aggregate of the employers who want to form the group. He stated that the long term goal is to add additional members in order to provide the stability needed if one member of the group filed for bankruptcy, and he added that all employers who join the group will be aware that this is part of the risk.

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MR. VOGEL went on to say that the group will buy additional insurance through an "A" rated excess insurance carrier to provide protection for catastrophic injuries and the group will have a deductible. He stated that the market retention rate is around \$750,000, depending on the risk, and workers' compensation claims mature in 2-3 years on average. He explained that [the PGM] encourages groups to do quarterly actuarial reviews that are a five-year projection of losses, which will show whether enough funds have been collected to cover the claims over the five year projection. He said "If you do that on a quarterly basis, you don't have any surprises," and he added that this will allow the group to make any necessary rate adjustments. He said that the insurance group would be subject to annual Certified Public Accountant (CPA) reports, annual actuary audits, and rate reviews to ensure the protection of the members and availability of funds to pay for claims.

4:05:28 PM

MR. VOGEL said that only those employers who exhibit good safety practices can qualify. In addition, he stated that the group would need to implement safety mandates, on-site job inspections, on-site safety training, video training for all phases of specific industry, and claims training for the employers. This would ensure that employers report claims as they happen. He said "The main focus ... of workers' compensation is to be able to treat our employees fairly, ... pay their claim ... and get them back to work."

4:07:08 PM

REPRESENTATIVE ROKEBERG remarked that Nevada is one of the fastest growing areas in the United States and he opined that the homebuilders in Nevada have experienced a lot of growth in their businesses. He asked if there had been any discussion within the [Nevada homebuilders] regarding the potential "bursting of the housing bubble" and the impact of a rapidly declining market on the ability to meet obligations.

4:07:42 PM

MR. VOGEL replied that the board discusses this regularly. He said that the board does quarterly actuarial reviews and also

projects for losses that are "incurred but not reported" (IBNR). He stated that this is to ensure that all projected claims are taken care of, adding that on a fully reserved basis, the builders group has a 22 percent loss ratio. He said that the companies are offering more services with surplus funds to ensure that the amount of claims is reduced. He stated that when employees do not have another job to go to, the number of claims begin to rise. In addition, he said, PGM is in constant contact with its members so that PGM knows where its current jobs are and where the next job is, as well as the length of the job. He said that PGM works with its employers and employees to work through the job ending process to ensure that there is no carelessness. The short answer, he said, is through the actuarial projections and premium assessment collection, which have collected enough funds to pay out all of the expected claims. He said the purpose of the actuarial review is to have an independent party looking at funds that are collected and trends in losses, and then generate enough surplus to pay for claims that are unknown.

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REPRESENTATIVE ROKEBERG asked how the loss ratio for the homebuilders group compares to the other three individual insurance groups. In addition, he asked what kind of savings is estimated for the homebuilders since forming their own group.

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MR. VOGEL replied that PGM has four different independent insurance groups. He said that the loss ratio for the homebuilders is 24 percent, compared to the industry overall, which has a loss ratio of 45 percent. He stated that PGM has an auto dealers group with a loss ratio of 30 percent, a transportation group with a loss ratio of 41 percent, and a retail group with a loss ratio of 19 percent. He explained that the homebuilders' rate is 20 percent below the standard statewide rate, and he added that Nevada is an National Council on Compensation Insurance, Inc., (NCCI) state. He stated that PGM's trucking company overall rates are about 15 percent below the standard rate, the auto dealers are about 40 percent below, and the retail group is approximately 20 percent below the standard rate.

[4:12:11 PM](#)

MR. VOGEL stated that if the homebuilders had remained in the standard market, the group would have spent about 25 percent more than in the self-insured group.

[4:13:23 PM](#)

LINDA HALL, Director, Division of Insurance, Department of Commerce, Community, & Economic Development, began by saying that she has been studying [HB 51] for about one year. She opined that this issue is a public policy call.

[4:15:04 PM](#)

MS. HALL stated that she has very serious concerns about the legislation, which she has discussed with the bill sponsor. She said that she would be discussing four major points, the first of which is financial oversight. She stated that one of the basic principles of insurance regulation is solvency oversight to ensure that claims are paid. She said that the division does extensive examinations, which are required by the statutes. She said that audit teams are on the premises to look through records, and are looking for balance sheets and the types of investments made. She said that there are a limited number of investments that insurance companies are allowed to make and these are called "admitted assets." She explained that the quality and liquidity of the investment plays a role in whether or not it is allowed, and this is part of the regulatory process. She noted that the National Association of Insurance Commissioners (NAIC) has a Securities Valuation Office, which rates the quality of investments.

MS. HALL explained that the division also determines "risk based capital," which shows the capital funds available to pay the loss reserves. In addition, she said that the division does an actuarial analysis of the loss reserves. She stated that the annual statements range from 110 to 120 pages long and are standardized throughout the country.

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CHAIR ANDERSON noted that Mr. Vogel testified that Nevada does perform quarterly actuarial reviews, annual independent CPA audits, safety practice inspections, and video training. He asked if the division is concerned that there may be a bias, as PGM is a hired group and the division is a state entity.

[4:18:12 PM](#)

MS. HALL replied that the language of the bill doesn't require any of the aforementioned reports and audits. She stated that the Nevada statutes are much more detailed and require a greater level of financial and regulatory oversight.

[4:18:43 PM](#)

MS. HALL informed the committee that the division has the oversight and authority to penalize a company if the accounting is not done properly. Noting that the state has a domestic company, which is an American International Group, Inc. (AIG) subsidiary, she explained that earlier in the week AIG agreed to make a payment of \$1.64 billion, which was partially due to deceptive accounting practices. She stated that in 2005, the division fined AIG \$400,000 for similar reasons.

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MS. HALL went on to explain that the guarantee fund is a "safety net" for insolvency. In 2004, she said, a major insolvency nearly caused the guarantee fund to run out of money. During this time, there were over 600 employees with workers' compensation claims and, potentially, no money to pay them. She said that the legislature worked to find a solution which has been effective.

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MS. HALL expressed concern regarding the safety net for the self-insured group, and opined that it is inappropriate to include self-insured groups in regulated industry guarantee funds. Although some states have self-insured guarantee funds, she does not foresee there being enough groups to create a self-insured guarantee fund in Alaska. She said that although there have been very successful self-insured groups, there have also been extreme failures.

[4:22:13 PM](#)

MS. HALL went on to say that one function of the division is to oversee the practices of any person or entity performing insurance transactions. She noted that Chapter 36 of [Title 21] contains statutes controlling trade practices and frauds, which give the division oversight of marketing insurance, deceptive practices, false advertisement, discrimination, and claims

settlements. These, she said, come from insurance companies, agents, and adjusters.

4:22:53 PM

MS. HALL explained that the division currently has the authority to examine producers and adjusters and receives complaints on a regular basis. She stated that over the course of the summer, the division received complaints from injured workers who did not feel their complaints were being handled appropriately, four of which were regarding the same company. She said that the division did not receive a response to letters written regarding this issue, nor did the [Division of Workers' Compensation], which had also received a complaint. In regard to the aforementioned situation, she said the division is currently going through the files of the company in question. She stated that this type of regulatory oversight is not included in HB 51.

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MS. HALL said that she has researched other states' insurance statutes and regulations, including Nevada. She offered her understanding that Nevada is growing at a rate of 750 people per day. Florida, which also has self-insured groups, has an average growth of 1,000 people per day. She stated that Nevada and Alaska are "very different" business environments, and she is not sure Alaska has a large enough population to have a viable [self-insured] program. She commented that 30-40 percent of employers qualifying is a small number, and questioned what happens to the remaining 60-70 percent. She said this doesn't leave any place to spread the risk.

4:27:07 PM

MS. HALL said that [Title 21], Chapter 75 provides for the formation of reciprocal insurers. She said that there are currently two, the Alaska Timber Insurance Exchange and [Alaska Power Association (APA)], both of which have been operating successfully. She explained that the division has the same regulatory oversight of these entities, which are smaller and member driven. She opined that the capital requirements are minimal, as they require \$5 million, which is half of what is required of a traditional insurer. She said that \$1.5 million does not go far, with the current cost of workers' compensation claims. She stated that she would question the viability of an organization if it does not have money that is liquid to pay

claims. In conclusion, she said that she has not seen a good reason why a reciprocal [insurer] would not be effective.

[4:29:14 PM](#)

MS. HALL stated that insurance statutes were crafted to protect the public and she does not want to see an erosion of these protections. She expressed concern [that the division] would not have oversight and authority of the proposed self-insured groups.

[4:29:54 PM](#)

CHAIR ANDERSON said that insurance laws across the country are specific in regard to what constitutes an asset or a liability and how this value is determined. He asked if the current version includes these.

MS. HALL replied that it does not.

[4:30:16 PM](#)

CHAIR ANDERSON asked if the division is required to monitor assets and liabilities.

MS. HALL replied that these are included in the annual statement. She explained that insurance companies are required to list the various types and grades of assets, stocks, and bonds.

[4:30:38 PM](#)

CHAIR ANDERSON asked if there is regulation in Title 23.

MS. HALL replied that the bill does not currently contain any oversight. She said that the PGM requirements are not included in the legislation.

[4:31:05 PM](#)

CHAIR ANDERSON clarified that this is not mandated, although PGM would most likely adhere to its current practices.

MS. HALL said yes, and added that it is mandated in Nevada.

[4:31:37 PM](#)

CHAIR ANDERSON asked how one company's bankruptcy filing would affect other members.

MS. HALL replied that the joint and several liability would make the remaining members responsible for the bankrupt member. In response to another question, she stated that the reciprocals have an assessable policy which requires them to pay assessments proportionately, and she added that the reciprocals fall under the guarantee association.

[4:31:57 PM](#)

REPRESENTATIVE GUTTENBERG, referring to Page 2, subsection (d), of SSHB 51, asked if the liability is still in place once the certificate for self-insurance has been revoked.

MS. HALL replied that she was unable to answer this question, and shared her hope that the joint and several liability would continue. If it did not, she said, there would be a large number of claims that may potentially have no funding.

REPRESENTATIVE GUTTENBERG, again referring to Page 2, subsection (d), asked if this is a "fire door exit," which would allow the self-insurance association to dissolve and then reform, leaving it's liabilities behind.

MS. HALL replied that this might be possible.

[4:33:39 PM](#)

PAUL LISANKIE, Director, Division of Workers' Compensation, Department of Labor & Workforce Development, stated that the Division of Workers' Compensation currently assists the Alaska Workers' Compensation Board in determining who is allowed to be self-insured. He explained that he chairs the southern panel of the board, which performs the review and makes the determination. Due to problems that have occurred in the past, he said, there is concern regarding the amount of regulation for the proposed self-insured groups. He explained that the division does not provide the same type of regulatory oversight to the self-insured groups as it does other groups. He said that the International Association of Industrial Accident Boards and Commissions agrees "whole-heartedly" with Ms. Hall in regard to self-insured groups. He stated that the aforementioned oversight needs to be in place.

CHAIR ANDERSON said, "I hope we can work to get this into ... a type of codified structure that would work with the safety valves as a matter of public policy we have to vote on."

[4:34:32 PM](#)

MR. LISANKIE agreed, and added that while some larger companies use the argument that they are "too big to fail," this does not apply to smaller companies. He said that this places the focus on what is being done to anticipate problems.

[4:37:37 PM](#)

CHAIR ANDERSON surmised that the Anchorage Homebuilders Association (AHA) would say that there are successful models in other states, and that the AHA is "really hurting" from the high prices for workers' compensation insurance. The AHA feels [the proposed program] would work. In addition, he surmised that Mr. Lisankie is saying that he would err on the side of caution.

[4:38:20 PM](#)

MR. LISANKIE said that the division is worried about short-term and long-term disabilities. He said that he and two other individuals are required to sign documents that allow the current large entities to assure the division that they will be "good" for the next 20 years, which is already a concern. He said that a company worth close to \$76 million recently renewed and the division requested a large deposit to securitize its expected obligations.

[4:39:15 PM](#)

REPRESENTATIVE ROKEBERG asked if this is currently part of the division's regulatory authority and if the company in question was self-insured.

MR. LISANKIE replied that currently, if the board is convinced that the [individual employer] has the financial responsibility, the employer can be allowed to self-insure and the board can request the filing of security.

[4:39:55 PM](#)

REPRESENTATIVE ROKEBERG asked how [financial responsibility] would be determined.

MR. LISANKIE replied that the division requires annual reports, which include financial information. He said that if a company feels the reserves should be \$2 million, the division would accept that amount and does not perform an audit; however, he surmised that it may be appropriate to [audit] these companies.

[4:40:39 PM](#)

CHAIR ANDERSON noted that in the 1997 legislative session, Representative Kott sponsored a bill similar to [HB 51]. He requested a list of what is not mandated in the bill, but is currently required for the larger companies.

[4:41:55 PM](#)

REPRESENTATIVE ROKEBERG expressed concern with why the companies do not want to use the current reciprocal statute. He surmised that there would be some savings and added that it would be helpful to see this.

MR. PARTUSCH said that he would like to have a chance to answer these questions more in-depth at the next committee hearing.

[4:43:41 PM](#)

CHAIR ANDERSON asked for letters in support of the bill.

MR. PARTUSCH said that there are currently associations that are neutral but are interested, and therefore he stated that he would obtain [letters from them].

[4:44:15 PM](#)

CHAIR ANDERSON asked if the AHBA is one of these groups.

MR. PARTUSCH offered his understanding that the AHBA is "on board" with the legislation.

[4:44:30 PM](#)

CHAIR ANDERSON announced his intention to hold the bill.

[4:44:47 PM](#)

REPRESENTATIVE KOTT referred to a recent change in the workers' compensation [statutes] and expressed concern that the changes made had not been in effect long enough to fully understand the

effect the aforementioned changes would have on workers' compensation rates.

[SSHB 51 was held over.]

[4:45:54 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:46 p.m.