

**ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE**

March 17, 2006

3:33 p.m.

MEMBERS PRESENT

Representative Pete Kott
Representative Bob Lynn
Representative Norman Rokeberg
Representative Harry Crawford

MEMBERS ABSENT

Representative Tom Anderson, Chair
Representative Gabrielle LeDoux
Representative David Guttenberg

COMMITTEE CALENDAR

HOUSE BILL NO. 477

"An Act relating to charitable gaming."

- HEARD AND HELD

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."

- MOVED CSSSHB 51(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 227

"An Act relating to the Alaska Small Loans Act; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 477

SHORT TITLE: CHARITABLE GAMING

SPONSOR(S): REPRESENTATIVE(S) KOTT

02/13/06 (H) READ THE FIRST TIME - REFERRALS

02/13/06 (H) L&C, FIN
02/24/06 (H) L&C AT 3:15 PM CAPITOL 17
02/24/06 (H) -- Meeting Canceled --
03/17/06 (H) L&C AT 3:15 PM CAPITOL 17

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
02/10/06 (H) Heard & Held
02/10/06 (H) MINUTE(L&C)
03/06/06 (H) L&C AT 3:15 PM CAPITOL 17
03/06/06 (H) Heard & Held
03/06/06 (H) MINUTE(L&C)
03/15/06 (H) L&C AT 3:15 PM CAPITOL 17
03/15/06 (H) <Bill Hearing Postponed to 3/17/06>
03/17/06 (H) L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

MIKE O'HARE, Staff

to Representative Kott
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Spoke on behalf of the sponsor of HB 477,
Representative Kott.

JEFF PRATHER, Gaming Group

Juneau Office
Tax Division
Department of Revenue
Juneau, Alaska

POSITION STATEMENT: During hearing of HB 477, answered
questions.

LARRY MEYERS, Deputy Director

Tax Division
Department of Revenue
Anchorage, Alaska

POSITION STATEMENT: During hearing of HB 477, answered questions.

ROBERT LOESCHER, Vice President
Juneau ANB Camp 2
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 477.

STEPHEN BORCHERDING, General Manager
Gold Cache Bingo
Anchorage, Alaska

POSITION STATEMENT: Expressed concerns with HB 477.

JACK POWERS
Anchorage, Alaska

POSITION STATEMENT: Expressed concerns with HB 477.

GREGORY PETERSON, General Manager
Alaska Indoor Sports Distributing
Ketchikan, Alaska

POSITION STATEMENT: Testified in opposition to HB 477.

LIEUTENANT JAMES HELGOE
Division of Alaska State Troopers
Department of Public Safety
Sitka, Alaska

POSITION STATEMENT: Expressed concerns with HB 477.

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

POSITION STATEMENT: Presented SSHB 51 on behalf of Representative Meyer, sponsor.

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

POSITION STATEMENT: Testified during hearing on SSHB 51.

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

POSITION STATEMENT: Testified during hearing on SSHB 51.

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

POSITION STATEMENT: Answered questions during hearing on SSHB
51.

ACTION NARRATIVE

REPRESENTATIVE PETE KOTT, ACTING CHAIR called the House Labor and Commerce Standing Committee meeting to order at [3:33:18 PM](#). Representatives Kott, Lynn, Rokeberg, and Crawford were present at the call to order.

HB 477-CHARITABLE GAMING

[3:33:50 PM](#)

ACTING CHAIR KOTT announced that the first order of business would be HOUSE BILL NO. 477, "An Act relating to charitable gaming."

REPRESENTATIVE LYNN moved to adopt CSHB 477, Version 24-LS1696\G, Luckhaupt, 3/3/06, as the working document. There being no objection, Version G was before the committee.

[3:34:26 PM](#)

MIKE O'HARE, Staff to Representative Kott, Alaska State Legislature, speaking on behalf of the sponsor, paraphrased from the following written testimony [original punctuation provided]:

This bill is an effort to ensure that crimes within the charitable gaming community are investigated and prosecuted fully and passionately.

Many of these charities effected by these crimes are discouraged by the results of investigations and lack of prosecutions of these cases in the past.

HB 477 changes Alaska Statute 05.15.010, requiring the Department of Public Safety to investigate theft and the Attorney General to prosecute these crimes.

This requirement will hopefully deter criminal activity associated with charitable gaming and keep it

clean, and all of the charities will get their rightful share of the proceeds.

HB 477 also adds provisions to the existing charitable gaming statutes AS 05.15 that will enable permitted charitable gaming organizations and operators to present to the state biennial instead of the annual reports currently required by law.

Currently both the State and gaming operators must expend considerable resources each December to process and prepare permits.

Changing to biennial reporting will be much more efficient for everyone. The permittee currently expends considerable resources to prepare each annual permit application.

The State spends considerable resources examining each permit application. The State loses neither revenues, nor enforcement capability with this change.

HB 477 also amends AS 05.15.090 to include in the department's detailed report containing a summary of all reports required of permittees and operators. This report must also include information concerning any investigations or prosecutions undertaken by the department of Public Safety or the Department of Law as required under amended AS 05.15.010.

HB 477 also removes the Alaska Administrative Code AAC 160.580(e)

This code refers to the allowable number of bingo games and limitations on the number of bingo sessions as well as a one hour break between bingo sessions.

This section was originally enacted to prevent the "Bingo Wars", where competing organizations would raise pay-outs in order to compete with other games.

This 60 minute break is inconvenient, expensive and inefficient

Players must sit and wait for an hour
Bingo is a social event in many communities

This mandatory halt disrupts the process as the stoppage is in no way connected to the schedules of the people that gather together to play.

Removing this section will allow operators to adjust to the tempo and schedules of their customers.

With regard to the Hour break - utilities are being run..the lights and the heat are still on, staff must wait while still getting paid, etc

The removal of this section will increase the enjoyment for those participants in bingo and reduce the costs associated with providing the service. Any reduction of costs would benefit those charities that deserve the proceeds.

MR. O'HARE then informed the committee of the three fiscal notes from the following departments: Department of Revenue, Department of Public Safety, and the Department of Law.

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REPRESENTATIVE LYNN related his belief that changing from annual reports to biennial reports means that it will take twice as long to determine whether something improper is occurring.

MR. O'HARE related his understanding that the permittees will be required to submit an annual summary report to the Department of Revenue (DOR).

REPRESENTATIVE CRAWFORD turned to the elimination of the 60-minute time-out, which will result in more gambling and more revenues for the operators. He expressed his opposition to anything that expands gambling.

ACTING CHAIR KOTT offered his understanding that currently operators can expand the number of sessions and games, and therefore he didn't believe this change would cause a great degree of expansion.

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JEFF PRATHER, Gaming Group, Juneau Office, Tax Division, Department of Revenue, explained that the sessions are limited to 35 games or \$5,000 in payouts. There can be no more than 4 sessions in a 24-hour period.

ACTING CHAIR KOTT surmised then that no matter the length of the break between sessions, the gambling can't be expanded beyond the aforementioned restrictions.

REPRESENTATIVE CRAWFORD related his understanding that the elimination of the 60-minute time-out allows the use of a bingo gaming machine. He inquired as to the pros and cons of such.

MR. PRATHER said that he didn't know anything about bingo gaming machines being available between sessions. Mr. Prather related his understanding that there are electronic bingo paper machines, which are machines for which one can have numerous cards that the machine can track.

LARRY MEYERS, Deputy Director, Tax Division, Department of Revenue, explained that the traditional game of bingo is often played with paper, and therefore the hour break would allow closure of the game before the next game. However, electronics has sped up the process such that a player can purchase more games with electronic bingo paper. Mr. Meyers mentioned that there has been some effort to bring in new types of machines that would allow continuous play.

ACTING CHAIR KOTT asked if those machines allowing continuous play would have to be approved by the department.

MR. MEYERS replied yes. He informed the committee that the department is constantly seeing new types of products that it must review in order to determine whether they meet the intention and the purpose of the gaming statutes.

ACTING CHAIR KOTT opined that with technology, bingo sessions have become shorter over the years. However, the aforementioned restrictions remain.

REPRESENTATIVE ROKEBERG related his understanding that Section 9 only annuls 15 AAC 160.580(e), and therefore the other aforementioned restrictions will remain in regulation.

3:50:30 PM

REPRESENTATIVE LYNN reiterated his concern regarding the change from the annual to biennial report.

MR. MEYERS said that annual reports make the job easier for the department, although it's more paperwork. With the biennial

report, the department will have to rely on reports from permittees and any action against an operator or his/her bond will have to wait until the final report is filed, which could take up to two years. The aforementioned makes the regulator's job a bit more difficult, especially if there is a complaint. A similar situation will exist with the report from the certified public accountants (CPAs). Therefore, the biennial report may result in the department and other law enforcement not being able to act in as timely a fashion when there are problems.

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ROBERT LOESCHER, Vice President, Juneau ANB Camp 2, informed the committee that ANB Camp 2 has charitable gaming permits under which it operates in Juneau. Mr. Loescher related support for HB 477. In regard to biennial reports, he explained that currently during the last week of December the charitable gaming entities have to re-file the entity's permit application and put together the year-end report. For charitable organizations, which consist of volunteers, the aforementioned is a "pressurized time." The department receives all the reports and applications at once, which he indicated places pressure on the department as well. Therefore, biennial report was suggested. He highlighted that the biennial reports don't negate the quarterly reports the department receives from every charitable gaming organization nor does it eliminate the 1 percent fee to the state. In fact, the fees would be paid two years in advance under the current legislation. The impact on the department would also be lessened by staggering the year in which the re-filing would occur for the applicant. In conclusion, Mr. Loescher opined that this legislation would help charitable gaming by keeping the costs down while maintaining the quarterly reporting and the 1 percent annual fee as well as the permit application fee two years in advance.

3:58:00 PM

ACTING CHAIR KOTT asked if the quarterly reports are similar to the full reports.

MR. LOESCHER explained that the quarterly report includes all the aspects found in an annual summary report. The quarterly report delineates the revenues gained and the activities of the charity during that quarter. The annual report is merely a summary of the four quarter reports. He opined that under the biennial report, the department will have more time to deal with the reporting from the charities than under the current yearly

reporting scenario. Mr. Loescher viewed this legislation as a benefit to the state.

ACTING CHAIR KOTT surmised then that under HB 477, the charitable gaming entities would submit a two-year report, which would be a compilation of the previous eight quarters. If there was an anomaly in that quarterly report, the department could analyze and review it.

MR. LOESCHER confirmed Acting Chair Kott's understanding.

REPRESENTATIVE LYNN questioned why the annual report is required if the quarterly reports are the same.

MR. LOESCHER explained that the annual report combines the quarterly reports in a summary and is helpful for the department in regard to reporting to the legislature about how much revenue it's making.

REPRESENTATIVE LYNN commented that he would like to talk with the administration about these reporting requirements later.

[4:01:33 PM](#)

MR. LOESCHER noted that he worked with the sponsor's staff and the department in regard to the necessary conforming statutory changes, which are encompassed in Version G. He then went on to relate the difficulty in investigating theft or embezzlement within charitable gaming as well as the difficulty in being able to prosecute the perpetrators and recover losses. Therefore, the law should include provisions that allow charitable gaming officials to go the Department of Public Safety (DPS) and local law enforcement for investigation and prosecution, when appropriate. As a result of the inability to investigate and prosecute cases, fidelity bond coverage is very limited and thus the entity may only recover partially or not at all. Therefore, Mr. Loescher requested that the legislature provide a provision in the bill that would allow DPS and local law enforcement to investigate, and when appropriate, prosecute cases of theft and embezzlement.

MR. LOESCHER, in response to Acting Chair Kott, recalled that recently a key employee of ANB who managed the gaming operations embezzled over \$50,000. All relevant information was given to local law enforcement, but to date there has been no action from local law enforcement or the state. Moreover, the fidelity bond company has only been willing to offer a small amount against

the loss. Mr. Loescher surmised that local law enforcement hasn't taken any action because this type of crime is a "low priority." Furthermore, there is nothing in current statute that provides DPS, the attorney general's office, or district attorney authority to become involved.

ACTING CHAIR KOTT asked if this type of crime would fall under the jurisdiction of the state or local authorities.

MR. LOESCHER opined that it falls under the jurisdiction of the state because charities are enabled, authorized, and permitted by state statute.

ACTING CHAIR KOTT inquired as to how many of these offenses Mr. Loescher is aware. He expressed interest in determining how many cases would be turned over to DPS to investigate in order to determine the amount of time this would require of the departments. This legislation, he highlighted, mandates that DPS investigate these cases and the Department of Law prosecute the offenders.

MR. LOESCHER estimated that perhaps there would be two to three such cases in a five- to seven-year period. However, when it happens a lot of money is usually involved. He related his understanding that the charities are willing to gather information for the local police, but these cases don't seem to proceed past the local law enforcement level. Those involved haven't found any way to sue, which is why the state is being requested to assist the charities dealing with theft and embezzlement.

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MR. LOESCHER reiterated the difficulties with regard to the one-hour break that in charitable gaming include incurring the cost of the facility and the employees during that break. Moreover, it's an inconvenience to the customers. Furthermore, the reason to have this regulation has diminished. Mr. Loescher recalled that the one-hour break was a rule that was the result of a departmental task force several years ago and thus he opined that the department wouldn't be easily convinced to delete this rule. Therefore, the legislature is being asked to do so.

[4:17:47 PM](#)

STEPHEN BORCHERDING, General Manager, Gold Cache Bingo, Anchorage, Alaska, paraphrased from the following written testimony and verbal additions [original punctuation provided]:

I am writing this letter to express my concerns about HB 477 and ask that you reconsider its introduction and/or your support for this bill. I can not foresee any significant benefit to the charities or the regulators of this industry in its three basic sections. My concerns are as follows:

Public Safety Requirement

The Department of Revenue is already tasked with, and is required to investigate any complaints by the industry or its consumers. HB 477 requires all complaints of theft or embezzlement to be handled by the Department of Public Safety, and would eliminate the investigative powers and duties of the Department of Revenue, specifically the gaming unit, with regard to theft.

Theft and embezzlement are already under the jurisdiction of public safety. The department of revenue does not have jurisdiction over these criminal acts, but it does have the ability to investigate the claims, build cases, utilize its judgment and, based on its expertise in this area, present its findings to the proper authorities. Under HB 477 any complaint of theft or embezzlement, whether justified or not, will be immediately turned over to a department that does not have the expertise or the resources to properly investigate these claims.

Additionally, section 5 of HB 477 provides for essentially a "blotter report" of ongoing investigations. Since the power of reasonable judgment by the Department of Revenue is removed, any and all complaints, justified or not, about organizations, individuals, or operations will show up on this report. Ongoing operations and individuals may be victimized by erroneous complaints, bad publicity, or unscrupulous competitors.

I am a huge proponent of keeping gaming free of corruption, so I believe in keeping the investigative powers in the hands of the experts.

Biennial Reporting

The industry itself, for the most part, has made it clear that we are not in favor of loosening regulations or restrictions. We have continually shown through our actions that we not only support tighter regulations, we actually help the Department of Revenue draft and implement them. HB 477 not only loosens some restrictions, it may actually promote, or open the door to large scale corruption. Biennial reporting creates holes in the system that may be exploited.

According to the Department of Revenue, the majority of issues investigated by the Gaming Unit are as a direct result of current reporting requirements. The Gaming Unit's investigations or audits of reports are the best tool they have for deterring illegal activity. More importantly, according to the Gaming Unit these reports are used quite often to assist permittees with their various gaming activities. The Gaming Unit routinely uses its reports to help educate permittees on the rules and regulations, resulting in a cleaner and more profitable industry.

In addition, HB 477 does not make provisions or change other Statutes that may also be affected by biennial reporting: Licensing, operator contracts, odd year applications, reports by self directed or MBP organizations, biennial State gaming reports, as well as the formidable amount of regulations that will have to be re-written.

The proponents of this bill have insisted that biennial reporting will relieve the Department of Revenue of some of its burden. The bill, however, only seems to apply to operators. There are only 22 operators in Alaska, and there are 1,200 total permittees. I do not see the significant relief of burden. In fact, this legislation would create more of a burden, according to the Department of Revenue. And one of the things that was brought up on the previous testimony was that quarterly reports are the same as the annual report, that is not completely true. The annual report is an audited report by a CPA, the quarterly reports are not. So, the annual

report may show differences that the quarterly reports ... may not show.

I do not believe this section will relieve the Department of Revenue of any of its work load and will more than likely create additional work, especially in the area of auditing. It will open up an avenue for large scale corruption, especially in the hands of an unscrupulous operator and it will hinder the department's ability to assist struggling charities. And that's one of the parts of the department that these reports help The Department of Revenue has done a wonderful job of helping those charities, through reading their reports, to be able to stay in compliance and become profitable. The other thing I would like to address on that section is that not all charities are required or permits are required to file quarterly reports, as was stated earlier. Only permittees that have hit ... \$50,000 a quarter are the only ones that are required by law to turn in a quarterly report. If they don't do \$50,000 or if they don't report, now we're talking about two years where a charity would not have to report because they could just simply claim that we weren't doing \$50,000 a quarter whether they were or were not. So, a two-year scenario opens up several holes that I'm not very comfortable with being in this industry.

One Hour Session Break

First of all this is not a statute. It is a regulation. And this particular regulation was introduced and adopted at the request of the industry. (An example of our commitment to self-regulating) This regulation was put in place to prevent the exploitation of the Bingo session payout limitations of \$5,000 per session.

Bingo halls, in the past would routinely offer \$10,000, \$15,000, \$20,000 or more sessions and claim that they were simply running sessions concurrently. In addition to side stepping the spirit of the law, these concurrent sessions created an auditing nightmare for the non-profits and the State. The competition to offer these large scale sessions and the inevitable price wars that resulted from them, nearly destroyed Bingo operations in Anchorage.

It is my understanding that this section of the bill was included under the auspices that remote community Bingo halls suffer because players do not want to wait around for an hour to play again. In the 16 years I have been in this industry and throughout my extensive travels to various villages and remote bingo halls, I have never heard this complaint. If anything, I would feel that the one-hour break between sessions gives you an opportunity to make more money, either through your snack bar sales, vending, pull-tab sales, and so on and so forth.

The proponents of HB 477 and specifically section [9] are pushing another agenda that opens the door for an unprecedented expansion of Gaming. If this section passes, it will move us one step closer to the use of Class II electronic bingo machines, (SLOT MACHINES) that could be played under the umbrella of concurrent Bingo sessions, 24 hours a day, 7 days a week. It is my understanding that machines of this nature are already in Alaska, warehoused and ready to go and the Department of Revenue has been continually pressured to approve their use. Section 9 moves these machines a little closer to the warehouse exit door. PLEASE DO NOT BE FOOLED BY THE RHETORIC.

My opinions on this bill were formed after numerous conversations with my peers and others in the industry and as a result of my extensive experience in Alaska's Charitable Gaming Industry. Although I do not represent all of the organizations. I do, however, represent and speak on behalf of the several native non-profit organizations that I am tasked with managing.

Please help stop HB 477. I thank you for your consideration.

[4:26:42 PM](#)

JACK POWERS paraphrased from the following written testimony:

I want to start by saying that I support Steve Borcharding's testimony 100%. Between his organization and mine we probably represent the largest MBP and operator in Alaska. On that subject,

I would be interested to find out from the Department of Revenue exactly out of the 22 operators--how many large operators exist in the state? By large I mean operators that are fully bonded and have contracts with over four permittees. I would venture to guess that there are very few.

But back to HB 477; as far as involving the State Troopers at the front end of gaming investigations. This bill, in essence, would make it possible for anyone to claim anything and the troopers would have to investigate. They would have no choice. A simple phone call from an "anonymous" caller would require an investigation if this passes, regardless of whether the claim seems credible or not.

Not to mention that the key regulator involved in gaming, the Department of Revenue, may not even be in the loop before an investigation is initiated by a secret call or email to troopers. The Department of Revenue are the experts in gaming. On the other hand the State Troopers are not as informed about gaming laws and individuals in the gaming industry as the department--so it seems that this bill puts the cart before the horse.

Moreover, the bill supposedly intends to 'clean up gaming' with these provisions, but then at the same time loosens all the reporting requirements upon which prosecution would depend. There is nothing to stop an unscrupulous individual from intentionally not reporting via quarterly reports and then have two years before the department could catch any mistakes.

Some are saying that the annual audits are just too time consuming and expensive for most charities. Well, they would be just as expensive if done "biannually" rather than annually. The auditor would charge by the amount of work, so two years worth of audits would cost twice as much.

Also, I see removing the hour break in between bingo sessions as a mistake in many ways. Bingo players use that hour in various ways--they grab a bite to eat, play pull-tabs or socialize with friends. Without the hour break I can see business running bingo non-stop, 24 hours a day. It opens the door to setting up bingo

machines which could be set up anywhere. I can see bingo machines set up next to pull-tab kiosks in the middle of the mall.

While I appreciate the intent of HB 477, because of the manner in which it is written, it will create more issues than it will solve.

MR. POWERS then turned to Mr. Loescher's testimony and said that he doesn't know of any operator who hasn't received the permit, even a temporary one, to operate. With regard to the annual report, Mr. Powers characterized it as easy since it's merely a compilation of the quarterly reports. Moreover, the annual report isn't due until March, which provides plenty of time for CPA review. He mentioned that the annual report, unlike the quarterly report, must be accompanied by an independent CPA review. In conclusion, Mr. Powers opined that running a full-scale operation such as a bingo hall necessitates having independent operators, comptrollers, and cameras in the ceiling as it's a fairly large business.

[4:34:00 PM](#)

ACTING CHAIR KOTT inquired as to how one could have bingo games 24 hours a day 7 days a week under HB 477 when there will continue to exist restrictions with regard to the number of sessions, prizes, and games that can be played.

MR. POWERS replied that up to 35 bingo games per session and four sessions a day are allowed. Therefore, if one offered 35 blackouts/coveralls, which can last up to an hour, could result in play for 35 hours. In response to comments regarding the age of the clientele at bingo halls, Mr. Powers related that a younger crowd is coming on Friday and Saturday nights. He asked, "Wouldn't you rather have young people sitting in a nice clean, drug-free bingo hall with no alcohol than being up around the corner at a bar?"

[4:37:17 PM](#)

GREGORY PETERSON, General Manager, Alaska Indoor Sports Distributing, related his belief that the Gaming Unit does a great job enforcing the rules and regulations of the gaming industry, and therefore no change is necessary. Therefore, any mandate to review or investigate should remain within the Gaming Unit. Furthermore, the Department of Revenue should review licenses and permittees on an annual basis because this is one

of the few cases in which the Gaming Unit can review for compliance. He characterized it as a "good solid process" that shouldn't change. Mr. Peterson highlighted that this legislation only covers operators, of which there are only 22 while there are 1,200 permittees. With regard to the reporting, he opined that the quarterly reports are very general for which there is no reconciliation process or bank statements provided whereas annual reports require a more rigorous process that is more than a compilation of quarterly reports. Mr. Peterson opined that he doesn't want to "go backwards." He stated that the gaming industry has always been in favor of tighter regulations, while this legislation loosens existing regulations from which the gaming industry wouldn't benefit. He then turned to the proposal to remove the one-hour break between sessions and characterized it as creating a "loophole" to expand gaming in the state. Furthermore, in the 10 years he has worked with the permittees across the state he said that he has never heard any complaints about the one-hour break. In conclusion, Mr. Peterson urged the committee not to pass HB 477 from committee.

[4:41:24 PM](#)

LIEUTENANT JAMES HELGOE, Division of Alaska State Troopers, Department of Public Safety, directed the committee's attention to the new language in Section 1 of HB 477, which is of concern. As written, it would make the Division of Alaska State Troopers the investigating agency for all thefts and embezzlement by a permittee, operator, employee, or consumer regardless of local police jurisdiction or the credibility of the complaint. Therefore, DPS, he related, believes it would be better to have existing local law enforcement agencies along with Department of Revenue task force to investigate such alleged criminal misconduct. The Department of Public Safety would investigate when asked and when there is no local law enforcement agency.

[4:43:07 PM](#)

REPRESENTATIVE ROKEBERG inquired as to whether a local jurisdiction can enforce state law.

LIEUTENANT HELGOE replied that local law enforcement agencies enforce state statute on a regular basis.

[4:43:46 PM](#)

ACTING CHAIR KOTT noted that there was no quorum to take action on the legislation. He then closed public testimony and announced that HB 477 would be held over.

[4:45:22 PM](#)

HB 51-EMPLOYER ASSN FOR WORKERS' COMP INS

ACTING CHAIR KOTT announced that the final 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."

MIKE PAWLOWSKI, Staff to Representative Kevin Meyer, Sponsor, noted that during the last bill hearing, the members adopted committee substitute (CS) 24-LS0233\S, Bailey, 3/3/06, as the working document and the members were waiting for testimony from the director of the Division of Insurance. He said that letters of support from the State Chamber of Commerce and the Alaska Chapter of the National Electrical Contractors Association had been added to members' packets.

[4:47:07 PM](#)

LINDA HALL, Director, Division of Insurance, Department of Commerce, Community, & Economic Development, said that one of the basic principles of insurance regulation is financial oversight to ensure that claims are paid. She stated that while [Version S] includes more detailed requirements, she still has concerns regarding the bottom line repercussions of insolvency. She said that Mr. Pawlowski had indicated adding a new term "tangible net worth," and she stated that there is no definition [in current statute]. She explained that insurance regulation limits the types and value of assets in determining an insurer's financial position, adding that the quality of assets and liquidity is a concern.

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MS. HALL said that she feels the \$5 million net worth aggregate is "excessively low." She noted that the Department of Labor & Workforce Development's projection, which is adjusted for inflation, is approximately \$10 million. She said that the CS also requires a solvency bond, which she is not sure is

practical. She noted that she has spoken to a bond underwriter who is active in the Alaska bond market, and was informed that this would be very difficult to obtain because the individual employers who would be members of the association have not been required to provide audited financial statements in the past. She stated that requiring the association to be the principle on the bond would require a corporate signer who is willing to indemnify the bonding company, and she opined that it would be difficult to find an employer in the association willing to take on this responsibility.

[4:50:41 PM](#)

MS. HALL expressed concern that the bill places primary financial responsibility on the association, and added that in general, trade associations do not have the financial assets to provide the workers' compensation benefits. In regard to the termination of membership, she said that Version S does not address what happens to the liabilities for the time the employer was a member of the association. She said that there is a section which deals with insufficient assets and the circumstances in which an association would be considered insolvent; however, there is no provision dealing with what happens afterward. She stated that the 36-month time period for retention of the security deposit is not a sufficient length of time, as some workers' compensation claims can take up to 20 years to close. She suggested that it may be more appropriate to condition the release of the deposit upon termination of liabilities as determined by actuarial analysis.

[4:52:45 PM](#)

MS. HALL went on to say that Version S would not allow the statutes controlling unfair discrimination, misrepresentation and false advertising, and unfair claims settlement practices to apply to the self-insured associations. She stated that while the division currently licenses adjusters who handle workers' compensation claims, Version S does not require the third party administrator be licensed as an adjuster, and therefore would not provide any oversight of the claims handling practices. She added that there is no complaint process or authority to require accountability for the handling of claims.

[4:54:16 PM](#)

MS. HALL noted that the majority of the bill is based on Nevada statute and regulation, although some significant provisions

have not been included. These include: The indemnity agreement includes the association; annual assessments must be at least \$300,000 or an amount determined by the director to be satisfactory based on an annual review of actuarial solvency; each member of the association must have a tangible net worth of at least \$250,000 and a minimum premium for workers' compensation insurance of at least \$10,000; the director would approve annual assessments; provisions are made to assess other self-insured associations for the claims obligations of an insolvent association. She noted that in the Nevada regulations, there are provisions regarding the assessment of other self-insured associations for claims obligations once a member becomes insolvent. She said "I'm still concerned, if one of these self-insured groups becomes insolvent, somebody's going to have to pay, and I think we ... need to talk about who that is."

[4:55:56 PM](#)

MS. HALL stated that AS 21.75 provides for the formation of reciprocal insurers, which she feels would achieve the objectives of the proposed self-insured association program. In conclusion, she stated that while she is pleased to see the efforts to include more accountability, she continues to have reservations about the viability of the small plans when there is potential to have insufficient funds with which to pay the claims of injured workers. She urged the committee to consider the possible effects of the bill. She said that the bill has been crafted by an Alaska trade group in an attempt to find a viable alternative and remain responsible; however, the bill would apply to any group who decided to participate. She added that other groups may not have the same principals of accountability that may be looking for a way to "skimp" on workers' compensation costs.

[4:58:00 PM](#)

REPRESENTATIVE ROKEBERG asked if Ms. Hall could provide her written concerns to the members.

MS. HALL said yes and added that her office would also provide a comparison of the current and previous versions.

REPRESENTATIVE ROKEBERG asked if the net worth requirement would remain at \$5 million if a reciprocal was formed.

MS. HALL replied that there is no net worth requirement. She said that there are capital and surplus requirements for reciprocal, which begin at \$1.5 million and are required to have \$1,375,000 in capital and surplus.

[5:00:18 PM](#)

REPRESENTATIVE ROKEBERG asked where the \$5 million figure came from.

MS. HALL replied that this amount is from the current workers' compensation statutes and is the minimum requirement for an individual employer to be considered for a self-insurance certificate.

REPRESENTATIVE ROKEBERG, referring to Ms. Hall's testimony, asked if the amount would be twice as much if adjusted for inflation.

MS. HALL replied that her testimony was based on information received from Director Lisankie. She expressed her understanding that this was promulgated in 1983.

[5:01:21 PM](#)

REPRESENTATIVE ROKEBERG, in regard to the issue of insolvency, asked if there is any link between this and the guaranty funds.

MS. HALL said no, and added that she does not think there should be. She suggested implementing a method for determining what would occur in case of an insolvency, as someone would be required to pay. She stated that when the guaranty fund runs out of money to pay for claims, the responsibility is then placed on the individual employer; however, if the individual employer is bankrupt, there is little course of action for the injured employee.

[5:03:01 PM](#)

REPRESENTATIVE ROKEBERG asked if there are currently other provisions under certified self-insured or reciprocal.

MS. HALL replied that there are no provisions under Title 23 for certified self-insured, and she added that the reciprocals fall under the guaranty association.

REPRESENTATIVE ROKEBERG asked if the reciprocals pay into the guaranty fund.

MS. HALL said yes.

[5:03:35 PM](#)

REPRESENTATIVE ROKEBERG asked if there are any provisions in the bill that provide for assessments of the guaranty fund.

MS. HALL said no, and opined that unless the division is dealing with a "level playing field", it would be unfair to include self-insurers in the same guaranty fund as the insured market.

REPRESENTATIVE ROKEBERG agreed with this and asked about the joint and several liability.

MS. HALL explained that in the CS, the joint and several liability agreement is between the members and does not extend to the association; however, the association is required to pay for the workers' compensation benefits for the members' employees. She noted that in the Nevada statutes and regulations, the association is included in the joint and several liability agreement.

[5:05:15 PM](#)

REPRESENTATIVE ROKEBERG asked for an example to further clarify how this works.

MS. HALL offered her understanding that joint and several liability means that, if an association has five employers and one employer files for bankruptcy, the remaining employers must then take over the bankrupt employer's obligations to the group, in addition to their own. She said that one of the "prime concepts" of this type of arrangement is that each member agrees to be responsible for the other members and take on the financial responsibility of the other members. She stated that if the association is not included and yet is responsible for payment, the five members are not required to pay for the obligations of the association.

[5:06:27 PM](#)

REPRESENTATIVE ROKEBERG asked if the bill is written to make association responsible.

MS. HALL replied that she is not sure how the financial responsibility would take place.

5:07:01 PM

REPRESENTATIVE CRAWFORD asked if the bill contains a provision to protect the group against individual bankruptcy.

MS. HALL surmised that this was the intent of the solvency bond; however, this may not be practical. She stated that bankruptcy is a financial risk and not an insurance risk, therefore it is not typically the subject of insurance. She said that the self-insured association can purchase excess insurance, which is required by the bill.

5:08:36 PM

REPRESENTATIVE ROKEBERG asked if there is a way to prove with documentation that solvency bonds are available.

MS. HALL replied that she does not know.

5:09:50 PM

ACTING CHAIR KOTT asked how "the director may issue a self-insurance certificate" as specified on page 1 of the CS versus page 5, which reads "the director shall issue a self-insurance certificate."

MS. HALL expressed her understanding that the sponsor would like to change the "shall" on page 5 of the CS to "may."

ACTING CHAIR KOTT asked if Ms. Hall would prefer "may" to "shall."

MS. HALL replied that "may" would allow some discretion, which would be preferable. She added that the discretion would need to be based on factual information.

5:11:51 PM

PAUL F. LISANKIE, Director, Central Office, Division of Workers' Compensation, Department of Labor & Workforce Development, in regard to an earlier question, said that the \$5 million net worth amount is in the current board regulations. He stated that the board requested that the regulations be updated, and in response to this, he plans to suggest raising this amount to \$10

million to reflect the passage of time and inflation. He said that current regulations require security bonds to be a minimum of \$300,000 and this would change to \$600,000 if adjusted for inflation.

ACTING CHAIR KOTT asked if there is a definition of "tangible net worth" in the current regulations or statutes.

MR. LISANKIE replied that there is a definition of "net tangible assets."

[5:14:08 PM](#)

ACTING CHAIR KOTT asked if there is a difference between "tangible net worth" and "net tangible assets."

MR. LISANKIE replied that he would hesitate to say no.

[5:14:39 PM](#)

MR. LISANKIE, in response to a question from Representative Rokeberg, said that the board regulations give the entity that is required to post the security several options regarding what is utilized to post a security. He stated that these options include: a letter of credit, purchasing a security bond, and a certificate of deposit.

REPRESENTATIVE ROKEBERG asked if this is this equivalent to what the CS refers to as a "security deposit."

[5:16:19 PM](#)

MR. LISANKIE said it may be, and added that the CS gives the director a fair amount of leeway to decide what is a sufficient security. He referred to the testimony from Ms. Hall and said that the bonds that are collected are retained to cover liabilities after the employer is no longer a self-insured employer, and he noted that this is not always utilized by the workers' compensation board. He opined that this is a "weakness" in the division.

REPRESENTATIVE ROKEBERG asked if this is the \$300,000 in current regulation.

MR. LISANKIE replied that the \$300,000 is the security for an on-going operation. He said that there is a provision that allows the board to retain a similar security bond in the event

that the employer ceases to be an independent insurer. He stated that this is not currently required, which he does not believe is a "good" thing. He said that the regulations were developed for large entities, and opined that the belief at that time was that a large entity was not at risk of becoming insolvent. He said that he does not believe this to be correct, and remarked that if a large company loses enough money it can "fall just like anybody else."

[5:18:43 PM](#)

REPRESENTATIVE ROKEBERG asked if, in regard to the length of time and amount [of the security deposit], the CS is more "forward thinking" than the current regulations.

MR. LISANKIE replied that this aspect is an improvement from what is currently being done with large self-insurers.

ACTING CHAIR KOTT closed public testimony.

[5:19:24 PM](#)

ACTING CHAIR KOTT asked if the annual audits are reported back to the division.

MS. HALL surmised that the audits are sent to the director of the division, although this is not specifically stated in the CS.

REPRESENTATIVE ROKEBERG agreed with this, and remarked that it would be good to specify where the audits are sent.

MR. PAWLOWSKI pointed out that the audits are required when the certificate is granted, and added that the CS contains a provision which allows the director to audit the books at the expense of the association. He added that the CS gives the director regulation authority, and said that the sponsor looks forward to working with the director to develop the system correctly.

[5:23:06 PM](#)

ROBERT VOGAL, Vice President of Operations, Group Manager, Pro Group Management, Inc., said that the annual audits are handled by the group which is subject to the audit. He stated that the CS does not specify this and said that this "could be cleaned up." He explained that the aforementioned audits are intended

to ensure that the correct classification, correct payroll, and assessments are collected. He said that if the company is deficient, it will be sent a bill from the association, and if the company has over paid, it will receive a refund.

MR. PAWLOWSKI pointed out that page 10, lines 4-25 is the annual statement of financial condition.

5:24:41 PM

REPRESENTATIVE ROKEBERG asked Mr. Vogal if he is aware of any provisions from the Nevada structure that are not included in the CS.

MR. VOGAL replied that the sections that are not included are part of the Nevada administrative code, not in the regulations. He stated that the CS sets out the framework for the director to adopt regulations to implement the provisions.

MR. VOGAL, in response to a question, said that if a self-insured group is insolvent, the director can require the group to assess it's members for the additional assets. He stated that the solvency bonds are generally available through excess carriers. He said that this is an additional protection that is used until the group has enough assets. He stated that currently, of the groups that PGM manages, the highest retention is \$750,000. He said that the builders group has a \$500,000 retention, adding that most excess carriers will not go below this amount. He explained that the intent of the self-insured group is to grow and add strong, solvent members. He said that this would result in less impact if one member filed for bankruptcy. He added that if there is enough regulatory oversight, there will be enough collected in advance to cover the projected liabilities.

5:29:32 PM

REPRESENTATIVE ROKEBERG made a motion to adopt Amendment 1, which read [original punctuation provided]:

To page 1 line 14 insert "tangible" following "a" before "net worth."

There being no objection, Amendment 1 was adopted.

REPRESENTATIVE ROKEBERG made a motion to adopt Amendment 2, which read [original punctuation provided]:

To Page 5 line 5 replace "shall" with "may" to make consistent with page 1 line 1.

There being no objection, Amendment 2 was adopted.

The committee took a brief at-ease.

[5:31:22 PM](#)

REPRESENTATIVE ROKEBERG moved to report CSSSHB 51, Version 24-LS0233\S, Bailey, 3/3/06, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSSSHB 51(L&C) was reported from the House Labor and Commerce Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at [5:31:58 PM](#).