

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

April 6, 2005

8:37 a.m.

**MEMBERS PRESENT**

Senator Ralph Seekins, Chair  
Senator Charlie Huggins, Vice Chair  
Senator Gene Therriault  
Senator Hollis French  
Senator Gretchen Guess

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

SENATE BILL NO. 128

"An Act relating to consideration by the Local Boundary Commission of a requested borough incorporation."

HEARD AND HELD

SENATE BILL NO. 135

"An Act relating to the crimes of assault and custodial interference; and providing for an effective date."

SCHEDULED BUT NOT HEARD

SENATE BILL NO. 130

"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; assigning certain Alaska Workers' Compensation Board functions to the division of workers' compensation in the Department of Labor and Workforce Development and to that 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: SB 128

SHORT TITLE: BOROUGH INCORPORATION

SPONSOR(S): SENATOR(S) THERRIAULT

03/03/05	(S)	READ THE FIRST TIME - REFERRALS
03/03/05	(S)	CRA, JUD
03/21/05	(S)	CRA AT 1:30 PM BELTZ 211
03/21/05	(S)	Moved SB 128 Out of Committee
03/21/05	(S)	MINUTE (CRA)
03/22/05	(S)	CRA RPT 3DP 1NR
03/22/05	(S)	DP: STEVENS G, WAGONER, KOOKESH
03/22/05	(S)	NR: STEDMAN
04/06/05	(S)	JUD AT 8:30 AM BUTROVICH 205

BILL: SB 130

SHORT TITLE: WORKERS' COMPENSATION

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

03/03/05 (S) READ THE FIRST TIME - REFERRALS  
03/03/05 (S) L&C, FIN  
03/08/05 (S) L&C AT 1:30 PM BELTZ 211  
03/08/05 (S) Heard & Held  
03/08/05 (S) MINUTE (L&C)  
03/10/05 (S) L&C AT 1:30 PM BELTZ 211  
03/10/05 (S) Heard & Held  
03/10/05 (S) MINUTE (L&C)  
03/15/05 (S) L&C AT 1:30 PM BELTZ 211  
03/15/05 (S) Heard & Held  
03/15/05 (S) MINUTE (L&C)  
03/17/05 (S) L&C AT 1:30 PM BELTZ 211  
03/17/05 (S) Heard & Held  
03/17/05 (S) MINUTE (L&C)  
03/22/05 (S) L&C AT 1:30 PM BELTZ 211  
03/22/05 (S) Heard & Held  
03/22/05 (S) MINUTE (L&C)  
03/24/05 (S) L&C AT 2:00 PM BELTZ 211  
03/24/05 (S) Heard & Held  
03/24/05 (S) MINUTE (L&C)  
03/29/05 (S) L&C AT 1:30 PM BELTZ 211  
03/29/05 (S) -- Meeting Canceled --  
03/31/05 (S) L&C AT 1:30 PM BELTZ 211  
03/31/05 (S) Moved CSSB 130(L&C) Out of Committee  
03/31/05 (S) MINUTE (L&C)  
04/01/05 (S) L&C RPT CS 2DP 1NR 2AM NEW TITLE  
04/01/05 (S) DP: BUNDE, STEVENS B  
04/01/05 (S) NR: SEEKINS  
04/01/05 (S) AM: DAVIS, ELLIS  
04/01/05 (S) JUD REFERRAL ADDED AFTER L&C  
04/05/05 (S) JUD AT 8:30 AM BUTROVICH 205  
04/05/05 (S) Heard & Held  
04/05/05 (S) MINUTE (JUD)

**WITNESS REGISTER**

Mr. Darroll Hargraves, Chairman  
Local Boundary Commission  
Department of Community & Economic Development  
550 West Seventh Avenue  
Anchorage, Alaska 99501-3510  
**POSITION STATEMENT:** Testified in opposition of SB 128

Mr. Bob Hicks, Chairman  
Local Boundary Commission

Department of Community & Economic Development  
550 West Seventh Avenue  
Anchorage, Alaska 99501-3510

**POSITION STATEMENT:** Testified in opposition of SB 128

Mr. Paul Lisanki, Director  
Division of Worker's Compensation  
Department of Labor & Workforce Development  
PO Box 21149  
Juneau, AK 99802-1149

**POSITION STATEMENT:** Commented on SB 130

Ms. Linda Hall, Director  
Division of Insurance  
550 W. 7<sup>th</sup> Ave Suite 1560  
Anchorage, AK 99501

**POSITION STATEMENT:** Commented on SB 130

Mr. Rod Betit, President  
Alaska State Hospital and Nursing Home Association  
426 Main Street  
Juneau, AK 99801

**POSITION STATEMENT:** Commented on SB 130

#### **ACTION NARRATIVE**

**CHAIR RALPH SEEKINS** called the Senate Judiciary Standing Committee meeting to order at [8:37:25 AM](#). Present were Senators French, Huggins, Therriault, and Chair Seekins.

#### **SB 128-BOROUGH INCORPORATION**

[8:38:00 AM](#)

MR. DAVE STANCLIFF, staff to Senator Therriault, introduced SB 128. The adjustment in statutory language is constitutional.

[8:39:39 AM](#)

MR. STANCLIFF informed currently when a group of people propose a boundary change, the Local Boundary Commission (LBC) may or may not consider it, but if the government proposes a boundary change, the LBC must consider it.

[8:41:15 AM](#)

MR. STANCLIFF researched the intent back to the founders of the Alaska Constitution.

[8:43:03 AM](#)

MR. STANCLIFF quoted from Senator Vic Fisher:

"The borough, as visualized here, is even more than just a unit of local government; it is also a unit for carrying out what otherwise is carried out as state functions. We (indisc) visualize that the state will force boroughs to organize since we feel they should be set up on such a basis that there would be enough inducement for each to organize."

[8:45:18 AM](#)

MR. STANCLIFF asserted SB 128 does not restrict the ability of the LBC to consider any local change brought before it.

[8:47:09 AM](#)

MR. STANCLIFF aired government should originate with the people, and especially with regards to borough formation and boundary changes.

[8:48:38 AM](#)

MR. DARROLL HARGRAVES, chairman, Local Boundary Commission, testified against SB 128. The members of the LBC are not interested in working fulltime to advocate anything. They respond to petitions and legislative mandates. It is not their purpose to look for borough planning and forming. The precedent has been set in establishing boroughs and cities and should be protected.

[8:51:23 AM](#)

MR. HARGRAVES continued some people resist borough formation. Most of the population is in a local borough that was mandated by the Legislature. Delegate Barry White expressed optimism that the State of Alaska would offer incentives for borough formation.

[8:54:13 AM](#)

The eight boroughs of Fairbanks, Mat-Su, Anchorage, Kenai Peninsula, Kodiak Island, Sitka, Juneau and Ketchikan take in nearly 7 out of every 8 Alaskan citizens.

[8:55:38 AM](#)

The 1972 Legislature mandated that each second-class city with at least 400 residents should be reclassified as a first class city.

[8:57:32 AM](#)

MR. HARGRAVES added the LBC has concerns that SB 128 is unconstitutional.

8:58:25 AM

SENATOR GENE THERRIAULT advised Mr. Hargraves there would still be two methods of borough formation, the difference being elected officials are involved in the process.

9:00:03 AM

CHAIR SEEKINS asked Mr. Hargraves to clarify his opening remarks.

MR. HARGRAVES explained the LBC typically does not wage campaigns in regards to legislative matters. The LBC does not typically seek to organize boroughs. The LBC responds to petitions by having hearings. In this case, the LBC opposes SB 128 as it is seen as a negative for statewide policy.

CHAIR SEEKINS asked whether the LBC has ever initiated a borough formation.

MR. HARGRAVES replied no. Requests always come to them in the form of an initiative or a local option.

9:02:28 AM

CHAIR RALPH SEEKINS expressed concern with Mr. Hargraves' use of the words "typically" and "for the most part."

SENATOR GRETCHEN GUESS asked Senator Therriault the process for when two communities want to form a borough and asked how SB 128 would contribute to the process.

SENATOR THERRIAULT said there are currently citizen groups in the Delta Junction area who are using the Title 29 route.

SENATOR GUESS asked whether SB 128 would prohibit anyone from forming a borough.

SENATOR THERRIAULT answered no. The April 5<sup>th</sup> opinion from Ms. Tamara Cook says, "The bill does not prohibit the Local Boundary Commission from considering a borough corporation requested of it by any entity if it chooses to do so."

9:05:04 AM

SENATOR HOLLIS FRENCH asked the option for the LBC should a member of the Department of Community & Economic Development (DCED) come to them and suggest a location for borough formation.

MR. STANCLIFF answered the commission would have total discretion.

SENATOR THERRIAULT referenced a 1959 attorney general opinion that quoted a section of statute that was repealed. "Since the commission may consider any local government boundary or any proposed local boundary change, it exercises other powers as prescribed by law. It shall present proposed local government boundaries or local government boundary changes to the Legislature during the first ten days of every session." In previous statute it differentiated between a local boundary and a local boundary change. No borough has ever been formed under Title 44 as a local boundary change. That methodology has never been used in the State of Alaska.

[9:08:04 AM](#)

SENATOR CHARLIE HUGGINS asked Mr. Hargraves whether he was involved in the Valdez initiative.

MR. HARGRAVES answered the LBC has not received a petition from Valdez. Some communities in that area have petitioned to become a borough.

SENATOR HUGGINS asked for clarification that the LBC is not currently working on anything that would include Valdez.

MR. HARGRAVES asserted the LBC is not currently working on anything to do with Valdez.

[9:10:18 AM](#)

CHAIR SEEKINS asked whether Mr. Hargraves knew of any activity regarding the Valdez area.

MR. HARGRAVES answered local municipalities are always looking at the expansion of boundaries but that doesn't become LBC activity. There is an old petition that was presented to the LBC but he couldn't say what has been done. Nothing is in front of the LBC today in regards to Valdez.

[9:12:17 AM](#)

BOB HICKS, vice chair, LBC, testified in opposition of SB 128. Local political decisions do not usually create proper boundaries. Boundaries should be established at the state level. Article 10 Section 12 of the Alaska Constitution implements that policy. It creates the LBC and it devotes three sentences to creating the legislative review process. The last sentence

provides for local option elections as an alternative method to the legislative review.

[9:14:59 AM](#)

MR. HICKS continued the Alaska Supreme Court has ruled twice on this in the past and they said the Section 12 legislative review method coexists with all the other processes established by law. Section 12 is independent of the other processes. SB 128 amends the present statute to say that a boundary change may not be construed to include borough incorporation for purposes of petitions originating from any of three legal sources. That is different from the way it was originally advertised in the press releases. He wondered why SB 128 doesn't address all boundary changes.

[9:17:17 AM](#)

MR. HICKS maintained SB 128 is susceptible to two different interpretations. One is that the LBC cannot consider a borough incorporation request. Government originates with the people. SB 128 disenfranchises every political subdivision in the state from requesting boundary incorporation. SB 128 limits the borough incorporation process now only to the local option election. The Alaska Supreme Court has repeatedly recognized the constitutional policy that local political decisions do not create proper boundaries. SB 128 will repeal the legislative review method. SB 128 will leave all future boundaries solely to local elections. For these reasons, SB 128 will be declared unconstitutional.

[9:19:53 AM](#)

SENATOR FRENCH asked Mr. Hicks his interpretation of the word "change" in Section 12.

[9:22:41 AM](#)

MR. HICKS said creation of a borough results in a boundary change in the same way that the two Alaska Supreme Court decisions say that dissolution of a corporation results in a boundary change under Section 12. A boundary change exists as soon as an organized borough is created.

[9:25:01 AM](#)

SENATOR GUESS referenced Ms. Tamara Cook's memo, which stated "The bill does not prohibit the LBC from considering borough incorporation requested of it by any entity if it chooses to do so." She asked Mr. Stancliff whether there was anything in the current statute that instructs the commission on which petitions to consider.

MR. STANCLIFF said the latitude constitutionally clearly rests with the constitution to set the conditions and the standards and the criteria. There is nothing in the Legislature that suggests a stronger directive. He advised he has detailed email communications from LBC staff.

[9:27:32 AM](#)

CHAIR SEEKINS asked for copies of the communication. He held SB 128 in committee.

CHAIR SEEKINS announced a brief recess at [9:28:59 AM](#).

CHAIR SEEKINS reconvened the meeting at [9:38:14 AM](#).

### **SB 130-WORKERS' COMPENSATION**

[9:38:38 AM](#)

MS. LINDA HALL, director, Division of Insurance (DOI), introduced herself and offered to answer questions.

SENATOR GRETCHEN GUESS asked whether there was any reason to believe the changes in SB 130 would result in reduced rates.

MS. HALL answered she had asked for analysis from the National Council on Compensation and there were indications of a 5 to 7 percent savings.

[9:41:57 AM](#)

MS. HALL commented she has taken many calls from employers in panic over raised insurance premiums. It is disheartening to listen to employers who are deciding whether they can afford to stay in business.

[9:43:09 AM](#)

SENATOR GUESS asked Ms. Hall to review how workers compensation insurance rates are determined.

MS. HALL answered the National Council on Compensation collects data and is the preliminary filer of rates in 39 states. The data is collected from all insurance companies and the aggregate data is updated and put together along with Alaska experience by itself. The loss cost is one component based on claims cost and what the losses cost. The average overall rate is based on the overall costs in Alaska. They also look at trending of anticipated changes of the various things that go into medical costs. Those become the filing the National Council on Compensation makes with the Division of Insurance.

[9:46:24 AM](#)

MS. HALL continued the analysis is not a total science. The second component of rate making is a loss cost multiplier. The DOI approves that for each individual company. From 1999-2003, workers compensation lines for all insurers averaged in Alaska were unprofitable.

[9:48:39 AM](#)

MS. HALL hoped the 2004 rate changes would positively affect the unprofitable market because that is a huge part of what is driving insurance companies from Alaska.

SENATOR GENE THERRIAULT said he has often heard that insurance companies are raising rates in order to compensate for September 11<sup>th</sup>.

MS. HALL responded the losses suffered on September 11<sup>th</sup> sparked a load called a "terrorism rate", which is done in all the states.

[9:50:40 AM](#)

MS. HALL continued Alaska historically has more highly hazardous occupations. Fishing vessel claims are typically filed under the federal system under the Jones Act. In general the cost of claims in Alaska are 50 percent higher than the national average. When claims numbers go down it masks the fact that insurance costs are going up. Medical costs in Alaska are significantly higher than the norm. The National Council on Compensation estimates the Alaska fee schedule can range from 250 percent of what many states have capped.

[9:52:40 AM](#)

Prescription drugs have become a major component of the cost of claims. The work force is getting older and they take longer to recuperate. Hospital stays are longer than they were ten years ago.

SENATOR THERRIAULT asked Ms. Hall why she said medical claims never close in Alaska.

MS. HALL confirmed that is not the norm around the country. The medical benefits in Alaska are open always.

[9:54:40 AM](#)

MR. PAUL LISANKI, director, Division of Worker's Compensation, Department of Labor and Workforce Development (DOLWD), explained Alaska keeps the medical benefits open indefinitely following

the recommendation by the National Commission on State Worker's Compensation Insurance. They recommended there be no limitations on medical benefits tied to the passage of time.

[9:56:32 AM](#)

MR. LISANKI advised the United States Department of Labor took the essential recommendations of the Commission and they track year to year each state that follows the recommendations. There is an annual publication, which he offered to submit to the committee.

SENATOR GUESS asked Ms. Hall whether insurance company investments impact the workers compensation.

MS. HALL said she did not know. She has noticed it is more acceptable to an insurance company to have an underwriting loss if they are making money in market.

[9:59:01 AM](#)

SENATOR GUESS asked whether the definition of "reasonable rate of return" changes with a director change.

MS. HALL answered the DOI would not base rates on investment income. They look at various components of individual multiplier, which would include their level of profit.

SENATOR GUESS said listening to the business community it seems as if there have been dramatic changes in rates due to loss ratios.

MS. HALL said in actuality the rates were not only level but also decreased in the mid 1990s. The rate decreases were national and they reflected a variety of practices we don't see today. One of those is called "schedule crediting" where insurance companies competed for companies with good safety records.

[10:04:18 AM](#)

SENATOR GUESS asked whether self-employed companies were included in the data of the National Council on Compensation.

MS. HALL answered no.

SENATOR GUESS asked whether they were included in the rate making.

MS. HALL answered no.

SENATOR HOLLIS FRENCH commented there is nothing in SB 130 that says cost reductions to the insurance company must be passed on to small businesses, yet the Division of Insurance seems to be charged with making that happen. He asked Ms. Hall when she could begin to see cost savings occur and then when would she be able to issue a ruling to insurance companies regarding rates.

[10:06:08 AM](#)

MS. HALL replied the 2004 data will be filed end of July 2005 and will determine the 2006 rate. There will be a long wait before an effect is seen.

SENATOR FRENCH asked whether SB 130 should contain an accelerated rate-setting mechanism.

MS. HALL said she is not sure how that would be done. There is a data collection process that requires time. There are timelines in statute for both a beginning and an end so that the DOI is allowed time to get the rates done. It is a fairly complex process.

[10:08:47 AM](#)

SENATOR FRENCH expressed concern that a law passed in July 2005 takes until January 2007 for the small businesses to see relief.

MS. HALL replied that is a distinct possibility.

SENATOR GUESS asked whether the problem is due to the fact there are only large companies and small companies in Alaska, and no medium-sized companies. The large companies are mainly self-insured.

MS. HALL deferred the question to Mr. Paul Lisanki.

MR. LISANKI said 22 percent of employees in Alaska are working for an employer who is self-insured.

[10:11:01 AM](#)

SENATOR GUESS commented SB 130 proposes to phase out the second injury fund. Future claims will be paid through workers compensation. She asked whether that would result in an increase in rates.

MS. HALL said the second injury fund assessment would continue so long as there are claims to be reimbursed. That could put the

cost back into the system and could potentially provide for a one percent increase.

[10:14:29 AM](#)

MR. LISANKI said the Division of Worker's Compensation internally estimates the contribution to the second injury fund will go down from 6 percent to 5 percent.

CHAIR SEEKINS asked Ms. Hall to comment on insurance reform.

MS. HALL said she has not heard talk of insurance reform. She offered to provide statistics on loss data and loss ratios. Alaska loss ratios was higher than the national average from 1998-2003. She doubts that insurance companies are making a profit on workers compensation.

[10:16:25 AM](#)

CHAIR RALPH SEEKINS asked why Alaska is higher than the national average.

[10:18:56 AM](#)

MS. HALL said she does not have the answer. Rates last year were back to 1992.

[10:20:24 AM](#)

MS. HALL commented California has done major reforms that appear to be effective but they don't have the rate regulatory to control rates.

[10:22:00 AM](#)

SENATOR FRENCH said it is hard to believe medical costs were cut by 30 percent between 1992 and 2000. There has to be some other reason rates are back to 1992 in the face of increasing costs.

[10:23:33 AM](#)

MS. HALL offered to share a 15-page analysis from the rating organization on various components that make up claim costs.

SENATOR THERRIault commented a combination of things like the boom years in the stock market allowed insurance companies to use that profit to cover losses and inadequate rates.

[10:26:05 AM](#)

CHAIR SEEKINS asked Ms. Hall whether there were structural cost controlling changes in SB 130, which could have an effect on premiums.

MS. HALL said the majority of SB 130 deals with the workers compensation system, which is not her area of expertise.

[10:28:30 AM](#)

CHAIR SEEKINS asked if the costs associated with workers compensation go down, whether that becomes a part of the DOI's ratemaking process.

MS. HALL answered yes.

SENATOR GUESS asked the number of providers Alaska has for workers compensation.

MS. HALL explained the DOI lists 96 licensed to write workers compensation but only five are active. Three of them have 60 percent of the market.

[10:30:44 AM](#)

SENATOR CHARLIE HUGGINS asked Ms. Hall to comment on controlling insurance costs.

MS. HALL said the environment was in a crisis, bordering on a train wreck. Alaska has limited markets. Alaska is in a position where the insurance companies support an assigned risk pool. If there is a deficit in the assigned risk pool that burden goes back to insurance companies. If the insurance companies decide to pull out, the state would have to form a state fund or not have mandatory workers compensation.

[10:33:34 AM](#)

MS. HALL referenced California where two years ago 25 percent of the businesses were uninsured. As rates escalated businesses opted out leaving injured workers at huge risks.

[10:35:32 AM](#)

MR. ROD BETIT, president, Alaska State Hospital Nursing Home Association (ASHNHA), commented on SB 130. ASHNHA is concerned that SB 130 would impose unacceptable medical practice guidelines on physicians. ASHNHA requested to roll back to 2004 rates be replaced with a freeze at 2005 rates. ASHNHA requested a hospital representative be included on the Review Committee. ASHNHA requested an independent actuary do any financial analysis provided to the Review Committee.

[10:38:45 AM](#)

CHAIR SEEKINS advised Mr. Betit the committee would consider the advice offered by ASHNHA.

10:42:05 AM

CHAIR SEEKINS recessed the committee at 10:42:41 AM until 0800  
Wednesday April 7, 2005.