

ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE

March 15, 2005

1:35 p.m.

MEMBERS PRESENT

Senator Con Bunde, Chair
Senator Ralph Seekins, Vice Chair
Senator Ben Stevens
Senator Johnny Ellis
Senator Bettye Davis

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

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 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

WITNESS REGISTER

COMMISSIONER GREG O'CLARAY
Department of Labor & Workforce
Development
PO Box 21149
Juneau, AK 99802-1149

POSITION STATEMENT: Supported SB 130.

BOB FAVRETTO
Soldotna AK

POSITION STATEMENT: Supported SB 130.

KRISTIN KNUDSEN

Department of Law
PO Box 110300
Juneau, AK 99811-0300
POSITION STATEMENT: Commented on SB 130.

PAUL LISANKIE, Director
Division of Workers' Compensation
Department of Labor & Workforce
Development
PO Box 21149
Juneau, AK 99802-1149
POSITION STATEMENT: Supported SB 130.

DR. MCNAMARA
Anchorage AK
POSITION STATEMENT: Opposed SB 130.

HANK SCHAUB
Anchorage AK
POSITION STATEMENT: Supported SB 130.

MARJORIE LINDER
Anchorage AK
POSITION STATEMENT: Opposed SB 130.

JOHN MICKS
Anchorage AK
POSITION STATEMENT: Opposed SB 130.

LANCE BUSH
Anchorage AK
POSITION STATEMENT: Opposed SB 130.

JOHN REAGAN, Volunteer
Ester Fire Department
Ester AK
POSITION STATEMENT: Opposed SB 130.

JOHN GEORGE
Property Casualty Insurance Association of America
3328 Fritz Cove Rd.
Juneau AK 99801
POSITION STATEMENT: Supported SB 130.

ACTION NARRATIVE

CHAIR CON BUNDE called the Senate Labor and Commerce Standing Committee meeting to order at [1:35:27 PM](#). Present were Senator Davis and Chair Con Bunde. The first order of business to come before the committee was SB 130.

SB 130-WORKERS' COMPENSATION

CHAIR CON BUNDE announced SB 130 to be up for consideration.

The following is a verbatim transcript of testimony on SB 130.

GREG O'CLARAY, Commissioner, Department of Labor and Workforce Development (DOLWD): I am the commissioner for the department of Labor and Workforce Development. I believe that your staff requested what that I appear today to answer questions and I am happy to do that.

CHAIR BUNDE: I wanted to give you an opportunity, if there was information that you needed to cover.

COMMISSIONER O'CLARAY: A couple of things Mr. Chairman, I'll see if I can explain how the contracted consulting comes up with a fee schedule for the medical fee reimbursement schedule and as it is described to me and Mr. Lisankie can jump in and correct me if I get too far off foot. There is a difference between rating in the 90 percentile, which is what our consultant uses to come up with that fee schedule, and 90 percent of a number. You probably understand the difference; let me see if I can zero in on it.

Lets say that we have a procedure, knee surgery for example, [INDISC] doctor ten, who is the lowest. Taking the fee structure in the 90 percentile means that we would zero in on the 9th doctor, that is the 9th highest doctor, and use his billing to set the rate for that particular procedure, its not 90 percent of a whole, its the 90 percentile. Now, don't ask me how they come up with that particular rating system, but Alaska's Workers' Comp medical reimbursement rate has always been historically, one of the highest reimbursement amounts in the nation. So, if you follow me, that is how we get that particular rate. [INDISC] that testified for you Thursday in response to the Chairman's question about his potential solution. I believe that he offered a potential for a freeze in medical reimbursement rates and while we are still evaluating that in terms of the impact on trying to arrest the runaway rates. [INDISC] the 2000 rate and we have been referring to it, by the way, as the 1999 rate. Frankly, it was actually released

December 15, 1999, but it's the 2000 rate. We see some numbers that have come to us now from the Hospital Association and they were indicating that if we roll back the reimbursement rates to their particular group, that is hospital facilities, then, it's about a 37 percent cut in their existing charges. I don't think that the circumstances require us to cut that deep.

1:39:27 PM

Frankly, some of the information that the ad hoc committee requested in the process, that the department helped them glean, we've had difficulty getting from one of the carriers, Alaska Nation, who have the majority of workers' comp for the state. The information that we are requesting, I think, advocates for the doctors and hospitals were asking for it. We also need it. But, there is some difficulty because it has social security numbers attached to various information. I would offer that, if we can submit some of that data to a so-called third party neutral, we don't need the information on the names and social security numbers of those patients. We just need the data to help us evaluate where they really set medical reimbursement rates.

Getting back again to your question, the state will be interested in sitting down and working out the details with the medical communities willingness to ratcheted back the cost of workers' comp, everything is on the table.

1:44:52 PM

CHAIR BUNDY: While we certainly appreciate that, another concern of the medical community is the guidelines and I am wondering if you could share with the committee your vision of, to use a term that is bandying about here, the cookie cutter doesn't work for everyone, and obviously there would be cases where an unusual event or something would require us to go outside the guidelines, and how would doctors achieve a waiver.

COMMISSIONER O'CLARAY: I can just speak to that in general terms, first of all the guidelines that we have spoken to in the bill have been adopted by several states, and the term guidelines really speaks volumes about those particular standards of care. You must have standards of care. Frankly, standards of care are more important than setting the reimbursement rates, because, while not all doctors and chiropractors and other practitioners use the same number of visits. As an example, ratcheting back rates without a standard of care guideline will not fix the problem because you have no

handle on the amount of business, for example, that you are going to reimburse for.

COMMISSIONER O'CLARAY: I believe that the medical community can pretty much pick the standard they want to use and there have been statements made that nobody really knows if this standard of care works. But, if it's been adopted by other states, somebody knows that it works. Again, it is a voluntary standard. It doesn't say that if a doctor has a medical reason why he needs to treat differently, because your absolutely right. When it comes to treatment of humans in the medical community, you want to rely on that doctor's advice and in some cases we are now challenging one doctor with second and third opinions. I believe that you don't want to interfere with that relationship, but we still want to have some guideline to detect a practitioner going off the map, so to speak, on the number of visits that would normally be a standard.

COMMISSIONER O'CLARAY: I think that we would want to have a way of curtailing that particular proclivity. Let me see if I can answer your question a little more directly. If the medical community would be willing to have a peer review group speak to the standards of care and agree to it, it would do the same thing as adopting these standards that we put in the bill. But like lawyers, they don't like to examine themselves. I know that we've, for many years, the medical community has enjoyed this elite status of not wanting to mess with what they charge in the market place and believe me, we don't want to mess with it. We are forced to because of the escalated rates.

COMMISSIONER O'CLARAY: If the doctors want to agree to peer review, and I am talking about an in-house peer review, a group of physicians that they trust in their community, I think that would be something that we would be interested in doing, because that is really all that we are talking about doing - is trying to get a handle on the standard of care proper, or within the realm or normalcy, if there is anything like that - so that we don't end up running off the map in terms of medical costs for treating injured workers.

CHAIR BUNDE: Thank you. One other question I - obviously everything that we do down here has some political connotations. On good days that is the smaller portion, on bad days it's the bigger portion, but I have heard a couple of different views - one that the ad hoc committee information was never received. The Governor went forward without looking at the ad hoc's work - the other, that the ad hoc work was looked at and rejected out

of hand, and third that the ad hoc committees work was, to some extent, incorporated into the Governor's bill and you simply added on to it, particularly the medical. Knowing the reality of your position, could you help me understand your view of what is actually the truth.

COMMISSIONER O'CLARAY: Mr. Chair, thank you for that question. Let me go right to the heart of the matter here, A, this government did not direct the drafting of the bill until after we'd received the product of the ad hoc committee's long hours of work. We would have, had we not done anything else, we would have done the same exercise and we did with the ad hoc suggestions. We drafted them in bill language. During that process, we became aware that they had pushed aside, until next year, or some future date, dealing with the medical reimbursement situation or the standards of care.

COMMISSIONER O'CLARAY: Their particular approach, while worthwhile and well intended, did not meet the challenge of trying to arrest escalated rates. There are some good provisions in there that we, in the drafting of our bill, included. There was one such provision, however, that we rejected in our bill. It had to do with giving the review committee within workers' comp punitive ability to award damages to an uninsured employer. We thought that that particular vehicle should be reserved to the court system, not an appointed quasi-judicial board.

COMMISSIONER O'CLARAY: In the drafting of the bill, and we did not begin the drafting of the bill until after we had met with the ad hoc co-chairs in Juneau in the Governor's conference room to indicate to them that we were having to move forward to include additional issues in taking the bill draft that they gave us, and the issues that they gave us, and that we would be open to their participation in that process. We actually started drafting the bill the following Sunday morning. We worked Sunday around the clock, Monday, President's Day, Tuesday, and then Wednesday morning we had a bill that we were able to send to the legislature. Now some may scoff at that, but I can tell as one who stayed hour after hour with the drafting committee, our people worked very hard on this bill. Now, did we miss some things in the drafting? I don't believe so. Certainly, any piece of legislation that you have before you is always a work in process until it is voted on in final passage. There is plenty of room for adjustments, but the Governor did not reject the ad hoc committee.

CHAIR BUNDE: They are sending me emails saying let the ad hoc committee complete their work. They actually did complete it.

COMMISSIONER O'CLARAY: The ad hoc committee members worked very hard trying to come up with a solution. The fact that they missed the target, I don't think that they realized, nor did we, by the way, when we engaged their services, how the increase for the following year was going to be in double digits. They are not dealing with a medical. I think that is the biggest angst that we had in terms of the administration and the announcement that was published in the Anchorage Daily News about the closing of a very popular downtown restaurant spurred our concern. We absolutely could not sit still while companies were shutting their doors because of the high cost of workers' comp. We had to move.

CHAIR BUNDE: I will take some of the responsibility for encouraging the speed of your actions by having said that if the 3rd floor didn't get to it, we would. I do have a person on teleconference that has a time constraint and so with your indulgence Commissioner, I will call on Mr. Favretto.

BOB FAVRETTO, business owner in Kenai, Soldotna, and Juneau: Thank you Mr. Chairman, for the record, my name is Bob Favretto. I'm a business owner in Kenai, Soldotna, and Juneau. I spoke a couple of weeks ago representing seven different businesses in our area when I gave you some numbers of employees and premiums that indicate the escalation and the urgency behind the legislation that the Governor has introduced. I just wanted to take a minute. I get approached every day, I get phone calls, emails. Right before I got here, I spoke to somebody who came up to me to ask me what was happening with the legislation and I am going to tell you a story of things that are happening within the state in Anchorage and in Kenai.

There are small businesses now going to banks and lending institutions having to borrow money to pay their workman's comp premiums. That is very, very, very dangerous in the business world, and I wanted to tell you that today. I thought that it was important to tell you that today to help create the sense of urgency that is there for myself and the other businesses in the State of Alaska. I would strongly urge the committee to move this bill out and get it on as soon as possible because it is not something that we can just delay and wait and wait and wait and wait. We have got to move on this thing and I would urge you and the committee members to get this thing out and off to Finance.

CHAIR BUNDE: Thank you for your testimony, and I would like to assure you on behalf of the committee that I think that we all feel the sense of urgency and the need to address this issue. The results might be a little different from person to person but I am sure that we all experience the need. For the record let me point out that Senator Stevens has joined us some time ago.

CHAIR BUNDE: So I would like then, to go to Kristin Knudsen

[1:52:14 PM](#)

KRISTIN KNUDSEN: Mr. Chairman, my name is Kristin Knudsen. I am with the Office of the Attorney General and there was a specific question that was put at the last meeting of this committee by Senator Ellis asking for a further explanation of how section 36 of the bill, which contains the offset for coordination of benefits provision would work. I have prepared a table that I hope the committee has before it and, if you just let me step right through the table really quickly, I can explain how this would work, how the current system works and how this bill would impact.

CHAIR BUNDE: Can you hang on just a minute Kristin? Okay, now we have the table. For the committee's reference, it's section 36, an illustration of combined PERS and workers' compensation benefits and the operation of section 36. Please go ahead.

MS. KNUDSEN: This provision mirrors a similar provision that is in the State of Colorado. The committee wanted to know where the origin of this particular provision was. The current system, the workers' compensation rate is achieved by taking the person's wages at the time of injury, adding in the employer pension contribution to achieve a gross weekly wage. It also would add in overtime and premium pay if that were appropriate, and in this illustration I have left that out. From that gross weekly wage, a federal payroll tax, and a generated FICA number is subtracted, coming to a spendable weekly wage. This is actually kind of an idealized figure, an artificial figure, because, of course, with PERS eligible employees, they may also have, in addition, things like health benefits and other kinds of benefits that would be contributing to their gross weekly earnings.

In the middle two columns you see how a person's take home pay is calculated. Out of your gross pay you have taken out your contribution to pension benefits, to health care, to union dues,

that kind of thing. You also have taken out some payroll tax. In this particular instance, the federal payroll tax is less because it doesn't include FICA. It doesn't include social security tax and approximate net wage to take or take home pay is reflected in the 3rd to the last column. It's \$466 and then, the person's occupational disability benefit is \$348.

When their workers' comp and their occupational disability benefit are combined, you can see that the combined benefit is significantly than their take home pay and since workers' compensation and occupational disability benefits are tax-free, that means that they are achieving a tax-free combined income that exceeds what they could earn working. The way that this bill would work is that there would be a coordinated benefit that would match the spendable weekly wages under workers' comp. In other words they would get their full occupational disability benefit and then their workers' compensation payment would go up to the combination of the workers' comp and occupational disability up to the spendable weekly wage.

Now that spendable weekly wage, 100 percent of the spendable weekly wage may, and in most cases would, exceed their actual take home pay, because of the inclusion of employer contribution to the pension plan. But, at least it gets closer to what the 100 percent of their take home pay would be. Now this particular illustration is drawn from, maybe, the lower end of the wage scales, but, I have also run these all the way up to higher levels of wage scales and find that the combination of workers' compensation benefits and occupational disability benefits together combined exceed take home pay, almost all the way to the very top of the wage scale. This is a section that would apply to members of PERS and TERS to public employees for the most part.

There is a section that does allow it to be applied to people who receive, who are participants in another employer funded pension plan, or welfare plan, in those cases however, the vast majority of them, the welfare plan, or trust plan, provides for an offset of workers' comp. It would only, in those cases, apply if the trust doesn't take an offset for workers' compensation benefits.

CHAIR BUNDE: Just to make sure that I understand - using your illustration and referring to the chart in the first column, you have a \$564.25 spendable wage for your illustration, right?

MS. KNUDSEN: That is correct, that's the workers' compensation calculation of spendable weekly wage.

CHAIR BUNDE: And you're pointing out that if you combine workers' comp and disability benefits, it would exceed that by over \$200.

SENATOR ELLIS arrived at [1:59:29 PM](#).

MS. KNUDSEN: Yes

CHAIR BUNDE: What the bill is proposing is that you receive your weekly disability benefits and then workers' comp adds to that until you get to the spendable wage.

[2:00:09 PM](#)

MS. KNUDSEN: Actually yes, that would mean that you have a total that matches 100% of your spendable weekly wage up to the maximum allowable. Now, I will point out that you still have, in effect, a maximum allowable workers' compensation rate, but combined, even with the maximum allowable workers' compensation rate. Often times, you will have something that exceeds their spendable weekly wage.

CHAIR BUNDE Thank you. Do we have questions for Kristin. Is there anything else that you want to add?

MS. KNUDSEN: I would also point out that the way this bill is structured is that there is also applicable a minimum compensation rate. If, as is now the case, if an employer is thought to go below the minimum compensation rate, they would have to go to the board to seek permission to do that. I think otherwise, what I have provided in writing states how this would work and if there is any further information that I can provide to this committee, I would be very pleased to do so.

CHAIR BUNDE: Thank you and if you would stay with us in case questions come up, we would appreciate it. We don't have questions at this point. For the record I wanted to acknowledge that Senator Ellis has joined us. I would like to move now to Mr. Lisankie and Mr. Lisankie, welcome.

[2:01:26 PM](#)

PAUL LISANKIE, Director, Division of Workers' Compensation, Department of Labor and Workforce Development (DOLWD): Thank you Mr. Chairman, for the record I am Paul S. Lisankie. I am the

director of the Division of Workers' Compensation within the Department of Labor and Development.

CHAIR BUNDE: You did have an opening comment that you wanted to make?

MR. LISANKIE: If I may, Mr. Chairman, there is just a couple of things that I would like to say to punctuate the Commissioner's testimony and to address your questions. The way that the 90th percentile studies have come about is by board regulation. In 1988, the legislation that reshaped the Workers' Compensation Act provided that the board, it provided statutory authority under section 095F that all fees and other charges for medical treatment and service shall be subject to regulation of the board, but may not exceed usual customary and reasonable fees. I am leaving out some verbiage. And then it says - as determined by the board. So what the board did after 1988 was sit down and cast a regulation of the usual and customary and reasonable level at the 90th percentile of the bills that would be reviewed by the provider of the services. That standard has continued today.

[2:02:56 PM](#)

CHAIR BUNDE: How does that compare with some other western states?

MR. LISANKIE: Mr. Chairman, from what I understand, and it may be a little limited, it is not an exhaustive study, there are very few states, either in the northwest or otherwise that continue to use a usual and customary and reasonable rate based on the conclusion that it doesn't really function as kind of a control of the overall costs of the medical services provided because, it just tracks bills that are being submitted. So there are very few states that even use this approach.

The other thing that I wanted to add to the Commissioner's testimony, Mr. Chairman, is as far, in regards of the treatment guidelines, that dovetails into existing statutory authority under section 095A which has existed for many years and requires that an employer or insurer provide certain medical care, attendance and treatment as is reasonable and necessary as the standard has developed in light of the nature of the injury or the process of recovery. And so there has always been, to some greater or lesser degree, some scrutiny and potential dispute about what is required medical treatment in light of a particular claim. It is something that has always gotten some greater or lesser amount of litigation associated with it.

These guidelines, or any other guidelines, if we take the approach of this bill, sets out kind of an assumed standard that is presumed to be reasonable and required by the process of recovery and then gives a safety valve to go beyond the guidelines for particular scientifically based medical reasons. That is something that I have seen in every variant of a statute that makes recourse to guidelines. The people who have edited the guidelines in the literature that I have read and in some brief discussions that we had with them.

When Dr. Glass, who was the editor of the guidelines, was up to address the workers' compensation board this fall, he made it clear that they believe that guidelines are what the name implies and there needs to be an opportunity to depart from the treatments in the guidelines based on, give and take, with the practitioner.

CHAIR BUNDE: To move to another subject, we had asked about the Reemployment Benefit Program and for the committee's information we have a chart, I believe that everyone has a copy, and it's a little breath taking to say the least. In 2003 there were 414 people for the program, 361 were required to participate.

[2:05:40 PM](#)

MR. LISANKIE: they requested to participate, it's voluntary. I am sorry Mr. Chairman, it's requested.

CHAIR BUNDE: One-hundred and twelve settled. There were 91 still in the plan. Some 43 have completed the plan for over \$15 million. That is a lot of trips to Disneyland.

MR. LISANKIE: Mr. Chairman, it is a considerable amount of money. I just want to make clear that last year when we had a variant of this chart, it was discusses, but obviously the \$15.7 million was not spent on just the 43 people who completed the plan or the 91 people that were in the plan. A lot of those dollars are represented by settlements by people who might be eligible for that benefit who didn't take advantage of it or every once and a while someone who might not be eligible for the benefit, but still gets some settlement funds associated with their argument, that maybe they would be found eligible. So this is a global amount of every dollar that was recorded as being paid out in the name of this program including settlements.

As people point out, if someone settles, they don't necessarily spend a dime on actually getting the program benefits, but I think to turn a blind eye to those problems, which wouldn't exist unless those potential program benefits were being settled, would be to underestimate the true cost of the program. So that is the way that it is presented.

2:07:52 PM

CHAIR BUNDE: In the previous year it was \$15.7 million, in the year before that it was \$13 million, the year before that it \$12 million. So, it has been escalating up until last year since 1997. One of the concerns that I am starting to hear from people in this industry is that people are being pushed out of the program. From your view, is their either economic savings to encourage people to take a settlement versus staying in the program?

MR. LISANKIE: Mr. Chairman, from my view, I believe that one of the things that is working against people participating in plans is the amount of time and delay that it takes to get through this system. This is kind of counterintuitive when you look at the statute. In 1988 its pretty clear that the people that drafted that legislation believed that time was of the essence in providing vocational rehabilitation benefits.

MR. LISANKIE: There are very, very short time lines for all of the various waypoints and triggers under section 041 of the statute. That is the section that deals with vocational rehabilitation or 'exclusively reemployment benefits' is our terminology for it. For a variety of reasons, the system has increasingly, in my view, gotten away from those statutory requirements in trigger times and guidelines. For example, we in the division, did a little study not too long ago and we queried our information to find out how long it was taking to get a final determination of whether somebody was entitled to he benefit or not. When someone finally asks for the benefit, it triggers the process and then the system says, you know, in 14 days it is supposed to be referred and then there is an evaluation process that is supposed to be completed by a provider within three days and then its supposed to go back to the reemployment administrator for a decision. So it's roughly a 60-day process.

MR. LISANKIE: We queried our system for the year 2003 and we found that there were, by our system, slightly over a thousand requests to be evaluated for entitlement for that benefit. By the time we ran the query, which was January 31st of this year.

So, two years from the beginning of 03' and a year from the end, only 46.9 percent or approximately 504 of those thousand some odd requests had been finally determined, which is kind of hard to fathom given the way that the law is written. So that is one of the reasons, we looked further and we found that the average for those 504 that had been finally determined by January of this year. The average time was 160 days. So, it was over five months. So we became concerned that we needed to do something in this bill that would push from the other direction that would get it back in the direction of doing things quickly.

MR. LISANKIE: In attempting to respond to the letter from Mr. Robert Sullivan, that your staff gave me to take a look at, I think that if there is one thing that we fundamentally disagree with. It would be that what do we do when we see a system that the legislature says has to go fast, not going fast. Do we just keep finding reasons why it is not easy to go fast and excuse all of this and just let it float down, or do we try and stand up for the determination of the legislature back in 1988 when we heard experts that said that it was important to get vocational rehabilitation quickly? We are trying in this bill to redefine some of the things that are slowing the system down and respectfully, with regards to Mr. Sullivan's concerns, I think that's kind of the root difference between his concerns and the bill as we have presented it to the committee.

[2:12:43 PM](#)

MR. LISANKIE: I am certainly willing to address the specific sections and some of the concerns that he expressed, but I really believe that the predominant difference is that we are looking in this bill to get the system closer to what it was designed to do to get decisions made more quickly when we agree that with some of the observations that there are certain triggers that just are not becoming apparent within the time frames that the legislature envisions.

MR. LISANKIE: We are suggesting a different triggering mechanism which would be less subject to the discussion and more in terms of are you off work for 90 days or are you not off work for 90 days. The whole reason for that being that there is a 90-day process that has been in section 041 since 1988. It continues to be there to anticipate the people who request this benefit within 90 days of injury. There are a variety of reasons that keep people from either knowing about that right or asking within 90 days. So, this bill says, 'All right, we will walk away from that confusion and we will have a simple yes or no, are you off work for 90 days or are you not?'

That is my overview of what we came up with with looking at the costs and the responses that we get from our program.

2:14:17 PM

MR. LISANKIE: I would like to make one last remark before I go. We have, even before I got to the division in January of last year, there was correspondence from some people in the community of the experts that do vocational rehabilitation within the workers' compensation system and they were saying that your data is confusing at best and we think, perhaps incorrect in other ways. For example, I know that there is at least one provider that went through the trouble of adding up all of the amounts that she was paid for a certain type of activity and noting that in our reports, she supposedly got \$30,000 more than she actually got.

All I have tried to say in response to that is that I think the overall cost of outcomes of the reemployment benefits system are reported with a reasonable degree of accuracy, reasonable enough for people to make significant policy decisions, but, I would prefer that they be better. I would prefer that our computer system would be more responsive and one of the things that we are trying to do in this budget cycle is to get authorization to pursue that. I would prefer that I had better coordination with the reemployment benefits administrator so that we don't necessarily confuse people by him looking at either a different period of time in the division reports or defining some of the data in a different way, and doing it year in and year out. I am responsible for the last 13 to 14 months and I am not going to try and duck that responsibility, but this is something that has been tracking back for many years.

MR. LISANKIE: When I say that I think that the outcomes and costs are reasonably reported for policy reasons, I mean that in the broad sense that we are talking about here. If one of the providers says that they will provide \$43,000 and the system is saying that they will pay \$75,000, I certainly believe them and I would prefer that it be precise. One of the problems is that we try and tell the insurance industry how to code their payments and there are literally tens of thousands of entries every year and then they report them to us once a year. So, I cannot represent this committee or any committee that every bit of data that is recorded under reemployment benefits is coded properly, that nobody put it in the wrong column. What I can say is that this is one of the few states that tries to break down this information as closely as we do and I think that we

are head and shoulders above all of places because we try, but I don't want to impugn anyone if they say, 'Well, somebody is misreporting what I paid.' I say that I believe them.

Now if the last six years comes up a total of \$83.5 million, it is possible that a \$20,000 to \$30,000 error is not significant.

2:17:28 PM

CHAIR BUNDE: A question in this arena that I have been hearing from folks is that the eligibility requirements to get into the program are so difficult that people are not being into the vocational rehab program. Could you address that?

2:19:03 PM

MR. LISANKIE: Yes, Mr. Chairman, the eligibility criteria have not changed substantially and it basically turns on whether someone is predicted to have physical capacities, which as the phrase implies is based on what you can physically do, which are less than the physical demands of certain jobs. Those certain jobs are defined in the statute in way, if I will, that I would characterize as a kind of truncated view of your employment history based, I guess, on the proposition that you can only spend so much time trying to find out what people can and can't do and then you need to move on.

To kind of explain that, it sets out a ten-year period before your injury as the time of inquiry. So, depending on what you have been doing and how long you have been working, a ten-year time of inquiry may be more than enough to see all the reasonable possibilities of jobs that you have held or it may be, for some in my age fairly inadequate. But, that again, Mr. Chairman, is based on the conclusions of the legislature and the people that shaped that provision - that there had to be some kind of reasonably short period of time that people could focus on to determine whether the injured worker could go back to those particular jobs. If they couldn't, they are eligible even if there was a job that they held eleven years that they fully intend, or could go back to.

By the same token, if they had held some kind of relatively low paying job, and you hear about that as well, within that ten-year period, then they are not eligible for this reemployment benefit even though reasonable people might say, 'Well is really good policy to have them do a lower paying job that they held for a relatively brief period of time early in their employment carrier.'

MR. LISANKIE: So all I can say, Mr. Chairman, is that the criteria haven't really changed substantially since they were put in place and allot of people qualify and a lot of people don't and you can always talk about whether a particular person should have or should not have. And depending on which side of the bar of justice you are sitting on, in my experience, we have a tendency to focus on the one that challenges our belief system.

[2:21:43 PM](#)

One of the things that was raised by Mr. Sullivan that I briefly alluded to in my opening remarks is, right now, what the bill would propose to do in section 14, is change the criteria. That's page 12, Mr. Chairman. There is also a sectional analysis that was prepared if you prefer to just look at the summary. It begins on page 12, Section 14. Mr. Sullivan raised a couple of concerns about that that I would like to address. He expressed concern that people be allowed to stipulate eligibility and that is something that we discussed at the first meeting and I am a little taken aback by that frankly. There really isn't anything in workers' compensation or too many places existing in law where parties can avoid a dispute or end a dispute by agreeing to no longer disagree. It was frankly kind of a surprise to me over the last few years when I came to recognize, even though I have been doing workers' compensation for many years - that there was a view that based on the way that the statute was currently written that the parties, no matter how much they agree that the injured worker is eligible for this benefit, can't just stipulate to it and get on with construing the plan. So I think that this is something that was, perhaps a surprise to me, but in light of that fact, I think that the notion that it is something that you just can't stipulate through is something that is really important to get. So it was a further surprise to me to see someone whose opinions on rehab, that I am aware of - respected many of them - say that he thinks that it is a bad idea. This would be one benefit that you wouldn't want to have people agree to no longer disagree about.

[2:23:56 PM](#)

Mr. Sullivan also raised the question about the criteria, which I was beginning to address. Because time is of the essence, the trigger for whether you are entitled to ask for an evaluation is the likely hood that you will be permanently unable to go back to your time of injury employment. Over the period of time, it has gotten more and more legalistic that you have to show up with a doctor's statement that says that you can't go back to your employment. I think that is just a way of keeping overall

numbers down. Mr. Sullivan and others are correct when they said that it's not always easy to get someone, any doctor in particular, to project what your physical capacities are going to be for the rest of your life within 90 days of your injury. So that is really slowing things down - that requirement.

What is also happening is that there is a safety valve, if you don't ask within 90 days, you are allowed to go to the reemployment benefits administrator and show that you had, I think it is, unusual and extenuating circumstances to excuse your failure to ask within 90 days. Because everyone in the system understands that there are a lot of reasons that you might not be able to think about where you are going to be for the rest of your life within 90 days of your injury, what happens is, more and more people ask. They get one of these unusual and extenuating determinations made and, I think, in the last numbers I saw, there were 120 in 2003 and 117 of them were ruled 'Yes, you had unusual and extenuating circumstances.'

So, pucky people I know in the bar say that Workers' Comp. is unique in that it is the only institution in which things that are usual and routine are defined as unusual and extraordinary. I understand their view and I think that it's better that we don't undercut the law when we are not supposed to do that, but I also understand the motivation, why the board over the years has taken issue with the idea that if someone could not possibly know within 90 days. And just because it is something that occurs frequently, they shouldn't be allowed to ask.

So what we are trying to do with this 60-day, 90-day, trigger is to take that problem spot out of the road for asking for this benefit. So it will be a much simpler question, 'Are you off for 60 consecutive days?' If the answer is yes, either the injured worker or their insurer or their employer can ask for evaluation for eligibility to begin. If, on the other hand, neither of them ask and the person is off work for 90 consecutive days, then it will be just be a mandate to the reemployments administrator to start the process of an evaluation. So there won't be anymore waiting around to see if anyone ever gets to the point of thinking about the future.

Is it possible that some people will end up getting an evaluation back under this current law with the benefit of hindsight during a long period of delay, who weren't entitled to it? I would say, certainly that is a possibility, but I'd say that would be a lot more people that are ultimately going to be found to be wise to ask for the benefits that aren't asking for

it within 90 days. And then that triggers yet another system of looking back to see if it should be excused, and then it goes on and on. So I would respectfully disagree with Mr. Sullivan.

CHAIR BUNDE: I would like to ask a question about the vocational rehab benefits about aviation techs and folks like that.

[2:27:53 PM](#)

CHAIR BUNDE: We have a rather rigorous tracking or follow-up system for someone who has gone through the program to see if they are, indeed, employed in the program. Do we have such a mechanism in Voc Rehab?

MR. LISANKIE: Mr. Chairman, I would say we do not.

CHAIR BUNDE: As the lay-person here asking for your expert advice. It seems counter intuitive. It seems that logically we'd want to have that kind of follow-up system. If it works for other educational arenas, it seems as if it ought to work for this reeducation arena.

MR. LISANKIE: I agreed with that.

CHAIR BUNDE: Is there an area in this bill to achieve that end?

[2:30:52 PM](#)

MR. LISANKIE: There is nothing specific in the bill that would achieve that specific goal. I believe that we can do it internally by increasing our focus on having the reemployment benefits administrator sharpen his or her focus, in this case, his, on tracking.

CHAIR BUNDE: If it's something that should be done, I'm just wondering if we ought to add that to this bill requesting that this tracking occur so that if we've got a program that's working really well, we know about it; if it's not producing people who are employable in the area of rehabilitation in a year, we ought to know that as well.

MR. LISANKIE: I agree, Mr. Chairman, and as a matter of consternation to me for myself and others that have certain disagreements about how well the program is working. The one thing that none of us are prepared to do is give you a definitive answer about, well if we know how many people completed the plan, six months down the road, where are they working, how many of them are working and how are they doing.

CHAIR BUNDE: I'm going to ask Jane to work with your office to see where we might insert that.

Before we move on, is this a chart that you are involved with as well?

MR. LISANKIE: Yes. That looks like the chart.

CHAIR BUNDE: The comparison of maximum allowable rates for various medical procedures?

MR. LISANKIE: That is correct, Mr. Chairman. And that's the only difference from the chart that I was looking for and unable to locate the last time we were here. You had asked about Washington State and now we have a third line at the top that are the values that are in place in Washington in their state fund. That is added as a line to this format at your request.

CHAIR BUNDE: Indicating even more substantial variance between the various [coughing]. Thank you, is there anything you wanted to add to that chart or?

MR. LISANKIE: No, Mr. Chairman.

CHAIR BUNDE: Do we have questions for Mr. Lisankie? I think I have at this point answered my questions. Is there anything else you would like to add? In that case, Senator Stevens has a question.

[2:31:31 PM](#)

SENATOR BEN STEVENS: Thank you, Mr. Chairman, back to the chart, Mr. Lisankie. I'm curious as to the difference between the bright form between the maximum allowable for Alaska Care, Medicare, Medicaid and then the Workers Comp rates on the top. That gets us to the percent increase in the Alaska Workers care charged. So, that's the rate of increase that's charged between '00 and '05. Is that correct?

MR. LISANKIE: Through the chair, Senator Stevens, that's correct.

SENATOR BEN STEVENS: So then, down at the bottom in the next column, those are the rates that are allowed to be charged back to those programs in '05 or '00?

MR. LISANKIE: Through the chair, Senator Stevens, that's current. That's for '05.

SENATOR BEN STEVENS: That's '05 rates and all for the same procedures. Those go to the billable reimbursable rates for '05?

MR. LISANKIE: That's for '05, sir.

[2:32:30 PM](#)

SENATOR ELLIS: In a previous hearing, we touched on section 36, page 27, line 24 and you were going to have someone at some future point walk us through coordination of benefits and there was some unintentional misinformation at one point. Is that to happen now or at some future time?

CHAIR BUNDE: It would be appropriate to go through it now if you are prepared to speak to that.

MR. LISANKIE: Senator Bunde, that was the section that the Assistant Attorney General Knudsen can address.

CHAIR BUNDE: Kristin, are you with us?

KRISTIN KNUDSEN, Assistant Attorney General: Mr. Chairman, I am.

CHAIR BUNDE: Would you for Senator Ellis' benefit briefly recover that issue.

MS. KNUDSEN: Yes, sir - through the chair, Senator Ellis. I provided a table with some text explaining the table to the committee. Do you have that available? It's an illustration of the effect of the combined PERS and Workers' Compensation benefits under the operation of 36.

SENATOR ELLIS: Yes, I have it.

MS. KNUDSEN: What this table shows in the first two columns is how the Workers' Compensation benefit is calculated. In this case, I used somebody who had been as a basis, somebody who had been injured in 2003. How the wages at the time of injury would be reflected and what their actual - pretty close to their actual take home pay - would be and in the last two columns, their PERS occupational disability.

As you go through the second column, you see that there's a weekly salary derived from their monthly salary. Included into that or added to that would be the employer's pension contribution. Coming up with a gross workers compensation weekly wage of \$620. The Workers' Compensation Act takes out a payroll

tax in FICA according to certain tables provided by the Workers' Compensation Board. That gives you the spendable weekly wage - \$564 in this case, which is the basis for Workers' Compensation payments. For a person who is receiving temporary total disability benefits, that would be 80% or \$451 in this case.

If you look at their wages at the time of injury, this would be the fourth column from the left. You can see that when you get your paycheck, you have a gross wage and from it is taken your contributions to the pension. Also, some other benefits, but we're not including them in this, because we want to have a sort of an apples to apples kind of an arrangement here. And your payroll tax now for public employees who are members of PERS. Of course, they don't have social security taken out.

And then, you have collected here an approximate take home pay of \$466. As you can see, the \$451 Workers' Comp payment is fairly close to the take home pay. When you have combined an employee receiving Occupational Disability benefits and Workers' Compensation, both, their combined benefit in this case was \$799 a week, which far exceeds the person's take home pay.

This bill would essentially allow the occupational disability to remain unchanged. Instead, the Workers' Compensation benefit would be adjusted to the point that the combined payments did not exceed the Workers' Compensation spendable weekly wage. In this case, \$564. Now, that's still greater than their actual take home pay because of the inclusion of pension contribution, but it's much closer to at least the spendable weekly wage reflected in the Workers' Compensation Act.

The way this section is intended to operate is to address people who are receiving Public Employee Retirement System benefits or TRS benefits and also, if there is - and I would say it would be a very uncommon circumstance - someone who is a member of an employer contributed work trust fund where they have a welfare trust that provides a disability benefit that does not already offset Workers' Compensation benefits. The vast majority of such funds provide an offset for Workers' Compensation. In this case, however, PERS does not. It would not apply to any privately purchased disability benefit insurance. It would not apply to long-term disability or short-term disability elected by an employee under the Supplemental Benefits System.

[2:38:24 PM](#)

SENATOR ELLIS: So reducing this payment to coordinate with the benefits in reducing this payment, the effect of the bill would

be to reduce payments to the workers. That's intended to effect the insurance rates and help out small business? Is it a dollar for dollar translation or how do we expect this is going to help the employer?

MS. KNUDSEN: Well, it will certainly save your PERS employers who are all self-insured or for the most part, self-insured - some money. It also provides a certain parity. In the private world, the vast majority of disability benefits that are provided by either some kind of group insurance or through privately purchased disability plans do provide an offset for Workers' Comp., the idea being that the person who is disabled should not receive more than their actual take home pay. In this case, it allows the public employee who is subject to PERS to have theirs adjusted to 100% of their spendable weekly wage, but not to exceed 100% of their spendable weekly wage. In other words, that they should not take home a benefit that exceeds their spendable weekly wage.

[2:40:02 PM](#)

SENATOR ELLIS: Through the chair, I understand the effect on PERS employees, but for other employees, you said parity. Parity in what sense? Between whom?

MS. KNUDSEN: Private employees and public employees.

SENATOR ELLIS: So the effect would be to reduce public employees to the lesser benefit that most private employees receive under this arrangement?

[2:40:56 PM](#)

MS. KNUDSEN: Most private employees, if they have a disability insurance, the disability insurance would be reduced. In other words, the third column in this case would be reduced. Not the Workers' Compensation benefit. For example the state's case - the state occupational disability benefit would remain unchanged. And the Workers' Compensation payment would be reduced to match 100% of their spendable. In essence, this is returning to a system that existed back in the early '70s, if I recall correctly, when occupational disability benefits allowed a set off of Workers' Compensation.

CHAIR BUNDE: Excuse me, Kristin, I have a number of people that do want to have an opportunity to testify, so I might ask Senator Ellis to contact you directly to continue with his line of questioning.

MS. KNUDSEN: Thank you very much, Mr. Chairman, I'll do that.

CHAIR BUNDE: Thank you very much for your help, again, and I'd like to deal with the folks that are on teleconference and then we'll come back here to the folks in Juneau. I have a Dr. McNamara who is off net.

[2:42:02 PM](#)

DR. MIKE MCNAMARA: This is Dr. Mike McNamara. Can you hear me alright?

CHAIR BUNDE: The volume is pretty low. Can you speak up?

DR. MCNAMARA: Let me try this. Is that better?

CHAIR BUNDE: Much better. Identify yourself for the record and go ahead with your testimony, please.

DR. MCNAMARA: This is Dr. McNamara. I am a physician, an orthopedic hand surgeon, one of two in Alaska that is dedicated primarily to hand and upper extremity surgery. I'd like to just briefly offer some input from a physician's standpoint on your Workman's Comp bill, 130. We came up here in the Air Force as a hand surgeon, left for a short while and returned because really for the lifestyle it afforded our children. We love living here and have a thriving hand and upper extremity practice. I have a high volume of Workman's Comp. - about 20 percent of my practice, which equates to about 500 patients a year. I checked with the other hand surgeon in town, Leslie Dean. She sees about the same - maybe 18 percent of her practice or 700 patients a year.

My concern is this. That if the House or Senate reduces or rolls back the Workman's Comp rates, that ultimately the availability of care for Workman's Comp patients will be reduced and the Workman's Comp patients will have a lower priority for care in the physicians' office. If you would allow me to use Medicare as an example, albeit different, I think all of us as physicians look at some of Medicare as charity. We like to care for people who have done for us in the past and some that haven't. But regardless, many of us still see Medicare patients, but what we're seeing is that there's an increasing number of physicians and surgeons who choose not to see Medicare, because of the high degree of paperwork and the reduced reimbursements. I worry that Workman's Comp patients risk this same and if the Workman's Comp reimbursements fall to any kind of fee schedule that's near Medicare.

So, what I'd like to do is just to mention a few things that worry me - that you should know, Chairman and Senators, that affect how we care of Workman's Comp. One, Workman's Comp requires a significantly more amount of paperwork than the typical patient that's seen or even a Medicare patient. They require more visits to deal with work issues, graduated release back to work and to determine the type of work they can do, because, often, it's different. They require significantly more depositions with attorneys and third-party litigation issues, just because some are Workman's Comp. Some are controverted and have to go back and be looked at or billed differently. There are those that require additional visits to determine medical stability or partial permanent impairment. And these are all above and beyond what we do as our specialty. These are things we have to do because we're caring for Workman's Comp patients.

Lastly, Workman's Comp requires review of independent medical evaluations, which are often requested by the Workman's Comp board or by insurance companies. When we get these back, we have to spend a significant amount of time reading through these and then answering to them, which often requires revisiting the patient and redetermining what a patient can and can't do. So, all in all, this is just a significant amount of time for the physician; for the office, it translates to loss of time to see additional patients, especially a specialist. If Workman's Comp cuts its fee schedule considerably, I'm very concerned in my practice that they will no longer choose to accept Workman's Comp. Ultimately the Workman's Comp patient and the Workman's Comp board will pay the consequences, because there won't be someone to see these folks, much like is what happening with Medicare.

CHAIR BUNDE: Thank you doctor. I think you express the concerns that some of us on the committee have discussed earlier. Senator Ellis has a question for you.

[2:46:53 PM](#)

SENATOR ELLIS: Dr. McNamara, thanks for being with us today. I'm trying to understand - you know the bill speaks to guidelines and I know the medical community is very concerned about that part of this bill. I'm trying to understand what the difference is or interplay are between the guidelines or standards of care that physicians talk to me about or best practice in a certain field of medicine. Can you speak to that or I may direct this to other doctors who are with us.

DR. MCNAMARA: I'm not sure I understand your question fully. Could you please repeat that?

SENATOR ELLIS: Well, I've been around health care issues in the Legislature for a number of years and we often talk about standards of care, that this is a standard practice or a best practice in a certain field for a certain medical condition, and this bill speaks to guidelines and the doctors are concerned about that. I'm just trying to sort out the terminology and understand where we're going.

You don't have to speak to it; I can ask Mr. Jordan about that when he's available to us in the future.

DR. MCNAMARA: I think you should pass that one to Mr. Jordan.

CHAIR BUNDE: Thank you doctor. Moving on to Hank Schaub. Identify yourself for the record and go on with your testimony, please.

[2:48:08 PM](#)

HANK SCHAUB: My name is Hank Schaub. I'm in Anchorage. I own a small moving company - been in business for 26 years and the comments that I would offer for consideration are as follows: Concerns on my part - One, I'm very thankful that the Governor did step up and start the process because I think that's what it needed - something to jump start it and get people talking. In our business, we provide patients to Dr. McNamara, unfortunately; but, the thing that concerns me is the escalation of cost. An example - in our company in four years, our manpower has remained the same, but our workers' comp cost has gone from \$12,000 to last year, which was \$59,803 - for nine people - three of which were admin.

My concerns are the 25 percent risk pool charge that we get; and when we talk to the agents, the comments are very straightforward. You're in the moving industry - a high incidence of back injuries, et cetera; you're not going to get out of the pool. So, we pay and our competitors who are self-insured. My concern is that perhaps there be some consideration given to the small guy who has been around and fills the void. If it continues to rise, as it's already been explained to us, our rates will go up 14.5 percent on the next time around, which is May 1 - I think is when ours renews. What that means is I'll be paying \$70,000 a year for nine employees, which have a rate of \$1.05 per \$100. And when I calculate my classification rate as established by the NCCI, and I add my 25 percent, because I'm in

the risk pool and then I add the 32 percent, which is the - we had an accident - one individual - my cost per \$100 of pay is \$32.02. For every \$100 that I pay an employee, I pay that to the Workers' Comp. I'm looking at my hole card after 26 years and saying is it worth it to continue [indisc.] over a quarter of a million dollars worth of payroll money that we generate as a small company or should I just take and throw in the towel.

CHAIR BUNDE: Thank you for your testimony and obviously that is one of the reasons we're here - so that if people like you no longer employee people, the workers' comp issue becomes moot, because people just don't have jobs.

MR. SCHAUB: I have one other comment, if I may.

CHAIR BUNDE: Go ahead, please.

[2:51:26 PM](#)

MR. SCHAUB: That is on the Guarantee Association - pay in two percent per year retroactive and now it's jumping up to four percent to offset, I believe it was the Freemont Company, \$60 million scar that they left on the community. The question is is it our responsibility because somebody at the state level failed to follow up and monitor these insurance companies to determine that they are solvent or they're not solvent? And I'm sure somewhere in the Department of Labor infrastructure, there is somebody who is getting paid to do just that. And if they were, why are we paying for somebody else's mistake? In my case, it was \$2,584 in the last two years.

[2:52:30 PM](#)

CHAIR BUNDE: I don't believe there was malfeasance on the state employee. It was some \$20 million to fill that gap and even as well paid as state employees are, I don't think they could have taken that out of their pocket.

MR. SCHAUB: That's not the thrust of my....

CHAIR BUNDE: I would just go along and finish that this committee - the state doesn't have money. The state simply takes money from its citizens and redistributes it to pay for various services and this committee, in its wisdom, chose to fill that gap out of the earnings of the Permanent Fund so that it wouldn't have fallen as a burden on small business men like you. Unfortunately, that wisdom was not shared by other people in the Legislature and they chose not to support that and to simply pay for it by raising rates for businesses. It's in one of the areas

where reasonable people can disagree, but I suspect from your position, it's pay me now or pay me later. We can use the earnings of the Permanent Fund that belong to all of us or, of course, we could take it out of your....

MR. SCHAUB: I'm not suggesting that the funds be taken out of the Permanent Dividend Fund. If my company becomes insolvent, I'm insolvent. If their company becomes insolvent, it's a convenience for the multiple number of businesses in this community to offset their losses. Now, granted there's a requirement to take care of these people and I understand that, but we paid our dues with our premiums and there is a vehicle via the NCCI rules - called the percentage that we pay over and above our normal premiums if we have injuries. So, they get the benefit of both ways. They had it when they were in business. Now, they're out of business and we're still paying for their bills.

CHAIR BUNDE: Just one correction. It's not the Permanent Dividend Fund; it's the Permanent Fund Dividend and too many people look at it as their permanent due. In any case, we tried to solve that problem for you, but there were others in the legislative majority who disagreed with us. I need to go on now to Marjorie Linder.

[2:55:03 PM](#)

MARJORIE LINDER: Hello, this is Marjorie Linder and I'm the lady who's been reporting on the statistics, for instance how exaggerated my own eligibility evaluations have been. I'm not the only person here that is figured in. We have providers who have been said to have been paid \$26,000 for an eligibility evaluation. Another in the \$30,000 range for an eligibility evaluation. Those particular figures are observed on their face. What's happening here is that we're having a lot of fuzzy math and I feel really bad for Mr. Schaub and Mr. Favretto to be paying these kinds of high prices, possibly based on bogus numbers or, at least, numbers that don't inform as to what is really going on. We don't know how to tweak these numbers because they don't tell us anything. They're misreported and that sort of thing. It's a very difficult thing to try to solve something that you really haven't properly analyzed. So, that was Exhibit 1 - I don't know if all of you have before you. My proposed testimony for the Senate Labor and House Committee - and different exhibits. But, I have these exhibits attached and that's why I would like you to follow along with me, because there are charts attached to those.

CHAIR BUNDE: For committee members, in the packet that Jane has prepared for you there is a section labeled Marjorie Linder's handouts.

MS. LINDER: I hope you have exhibit 1, exhibit 2 attached because I've been kind of prolific. I've tried to send some down by email.

CHAIR BUNDE: Yes, we have your information.

MS. LINDER: Great, thanks so much. Okay, exhibits 2 and 3 are a chart that showed samples of different reporting practices for sample carriers for the years 2002 and 2003 and there is an incentive, as you've seen in the present law, for carriers to report settlement inducements as a rehabilitation cost. They do this to avoid paying a 6 percent assessment into the second injury fund. So, note in 2002 that the percentage of 041K that Freemont and Eagle Pacific said that they paid into from their claims costs. They said they paid 11.63 percent and 15.94 percent when the overall percentage rate was 5.07 percent. So, sometimes these figures lie and perhaps liars figure.

The total rehab - most of the rehab expenses - the majority are under this 041K category and, as I say, this helps them avoid the pay in and assessment into the second injury fund. If you notice here, too, there are different ways that the report things. Wausau, for instance, reported paying no stipend to claimants and they, in fact, had to plan writing costs, but interestingly enough, they said that they paid rehab counselors 5.1 percent of the their claims dollar to monitor rehab plans never written. So, this is just an example of how crazy these particular statistics and how unreliable and how uninformative they are for all of you.

[2:59:10 PM](#)

Exhibit 4 talks about the rehab expenses for the insured and self insured for 2002 and 2003. The important thing to notice is, unlike what you've seen today, my figures show that rehab expenses have actually gone down from 2002 to 2003. That's a little different from the numbers that were reported to you that seemed to be rounded out. So, I, in fact, have a \$42,000 decrease in the vocational rehabilitation expenses. We know, too, that those that the referrals have gone down. In 2004, the rehab administrator told me that we had about 100 less referrals. So, this is going down right and left.

You will note that the biggest cost field is 041K funds and that accounts for \$10 million in both 2002 and 2003. Now, swollen into this, again I say, are settlement inducements and these are not pay to people who could possibly be eligible for the benefit or those who are eligible for the benefit. Sometimes, these are just inducements to sweeten the pot for people who would never qualify for the benefit, never have visited our system and so, they're this is an extra legal kind of a category that has been called rehab, but please don't confuse it as a legitimate rehabilitation expense - because it isn't.

Exhibits 6, 7 and 8 here are all on one page and exhibit 6 is actually Commissioner O'Claray's explanation to Kevin Myers contained in a letter that he wrote trying to explain the what settlement costs were assigned to people who were eligible for the benefit and those that weren't. Really, it's very hard to understand these things. I've not been given a very plausible explanation and the rehabilitation benefits administrator doesn't seem to understand exactly what and where these things came from.

But, it looks 155 people who were not eligible actually received benefits - and 041K and other benefits that were reported and, yet they weren't even eligible. Some of them actually had plan costs, rehabilitation service evaluations, monitoring for these plans and yet they weren't even eligible for the benefits. It just doesn't make any sense. In other words, please do not believe anything that is thrown into the rehabilitation category and reported as vocational rehabilitation, because a lot of this is absolutely fictional to avoid payment into the second injury fund.

3:03:30 PM

Exhibit 7 is the rehabilitation benefits administrators report versus the carriers report. He can account for only one third of the benefits that are listed in the annual report under the program he administers. So, the program as written in the law, if the statistics were isolated to the legitimate program, rehabilitation would be seen as costing a lot less.

Exhibit 9 shows the distribution of PPI ratings in 2003. Now, I know one of the sections of the law is calling for this jobs dislocation benefit. It's supposed to benefit workers with under 15 percent impairment. They can get their impairment rating and a \$5,000 award. If you notice, that would mean here, I believe, that workers with PPI and rehabilitation costs reported 653 people might be able to qualify for that \$5,000.

But, only 89 percent actually were above 15 percent to 30 percent. That would be the \$8,500 and then, if you were take above 30 percent, they are supposed to get a whopping \$13,500 and only eight people would probably qualify for that benefit. We are talking about 2042 claimants who have had PPI ratings in 2003. So what I am saying is this is not a real benefit and yet, when you really look at it, what this is, is a back door settlement for people to give up rehabilitation services for ever, even in the face of injuries. If they get injured again and they come, and that injury puts them out of their work, and they come back through the eligibility process, because they have accepted this set of benefits in anther claim, they will be found not eligible for the vocational rehabilitation benefits. This is really, a pretty mean spirited and horrible thing, couched and presented to you as a benefit when it really is, yet another way to make it almost impossible for injured workers to qualify the benefits. Thank you very much.

CHAIR BUNDE I would like to go on to John Micks please.

[3:05:50 PM](#)

JOHN MICKS: Mr. Chairman, my name is John Micks, I'm a vocational councilor here in Alaska, last year I worked in as a vocational expert in 163 social security hearings. I have a unique vantage point to observe what happens to injured workers who either settle their claims or waive their vocational benefits in the workers' compensation system. Workers often opt for the governmental system as workers' compensation insurance covers their relinquished responsibility to assist these claimants to become reemployed.

I am not in favor of SB 130 or HB 180 for several different reasons. One, I would like to direct you first to section 14 of SB 130. It repeals AS.23.30.041(c). It calls for the stipulation of employee's eligibility for the reemployment benefits at any time. This stipulation will not benefit the worker like it is portrayed. The stipulation will deny the inured worker the opportunity to be informed about the retraining benefits. Often we, as councilors hear the comment, 'This is the first time I was told about how this workers' compensation benefit works.' Without this information, more injured workers may opt for the job dislocation benefits and waiver listed in 16 of this bill. The problems of those remedies will be discussed shortly.

Although the stipulation is purported to speed up the process, it stands to alter the selection by the claimant of the plan writer. The insurance companies already try to direct claimants

to rehabilitation specialists who have been working against them. To avoid this conflict of interest, the rehabilitation specialist who work's for a company to which the insurance company has referred work on the case must excuse him or herself from consideration to be the plan writer on the same case.

Two, section 15 of SB 130 deals with ways to make a claimant ineligible for the benefit AS.23.30.041(f)(2) offers another way to discourage the reemployment benefit. It reads that an employee is not eligible for reemployment benefits if the employee previously declined the development of the reemployment plan under G of this section, received a job dislocation benefit under G2 of this section and returned to work in the same or similar occupation in terms of physical demands required of the employee at the time the previous injury.

I see nothing in this bill that addresses what happens in the case of a new injury, which is not a unusual occurrence. Surly it is not the intention of this SB 130 to permanently disenfranchise injured workers from reemployment benefits in the instance of a new injury. The language 'same or similar occupation in terms of physical demands' is so broad, that it is meaningless. It is a lawyer's meal ticket. It is like arguing what is, is.

Three, section 15 alludes to (g)(2), which is the described under section 16. AS.23.30.041(g)(2) and (3) describes what they call a job dislocation benefit and the waiver, which says the injured worker can always forfeit the retraining benefit.

The job dislocation benefit appears to be a tool for inducing injured to trade in their reemployment benefits forever for an additional \$5,000 to \$13,500. The waiver allows the injured worker to forgo the benefits simply to obtain their impairment award in a lump sum and go away. Those claimants who have stipulated the reemployment benefit in section 14 would not have the information they need to make the decision to accept training, waive retraining, or elect job dislocation benefits. Under the present act, I have seen a trend by the insurance companies to convince injured workers to waive the benefit even before they know that they are entitled to it or what percentage points they are getting in impairment. The majority of injured workers have an impairment rating of 5 percent or under. They have no idea that our rating system is not like the veterans administration.

Both the waiver and the job dislocation benefit exploit middle aged workers who are afraid of retraining or are near retirement, those who are illiterate or learning disabled, non English speaking, brain-injured claimants, young workers who have the life view that they are invincible and those who are in need of immediate cash.

The waiver will be done in the dark, not before an agent of the workers' compensation board. Often, in cases in which there is a stipulation of benefits, the worker will never know, from a rehab councilor, the value of what his retraining benefits could be. In essence, this is a back-door settlement of reemployment benefits forever with no real input for an attorney. The Division of Workers' compensation and, in some cases, a rehabilitation specialist. There is no oversight, when you have the insurance companies, alone, explaining to workers what they get but not what they are giving up. The stipulations will encourage this practice.

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There are job dislocation benefit also ignores the difference between impairment and disability. There are people knocked by their jobs by a 2 percent rating and those who can still work with a 30 percent impairment rating. The job dislocation could actually encourage the benefit that it seeks to put off. When the injured slope worker earning \$54 per hour finds that he will only receive an additional \$5,000 plus his impairment benefit, he will elect the retraining benefit. Workers' compensation claimants were once working people, they have lifestyles to maintain, mortgages to pay, and children to raise. They want to work, yet preserve as much of their income as they can. The reemployment program under the workers' compensation system offers them that avenue. We need to help people learn to earn a living again, not discourage them with a benefit that just addresses immediate need, ignoring the long term consequences of not working.

A person's work is undoubtedly one of the most decisive, formative, influences on his character and personality. The question of what the work does to the worker is hardly ever asked. Not to mention question of whether the real task might not be to adapt to work that needs the worker rather than demand that the worker adapt himself to the needs of work, which means of course, primarily, the needs of the machine. Human beings need personal activity in accordance with the injunction, which ever gifts each one of you have received, use it with service to

one another, like good steward dispensing the grace of God in its varied forms.

From this we derive three purposes of human work as follows: first to provide necessary and useful goods and services, second, to enable everyone of us and thereby, perfect our gifts like good stewards. Third - do so in service to and cooperation of others so as to liberate ourselves from our inborn egocentricity. This threefold function makes work so essential to human life that it is impossible to conceive of human life without work.

CHAIR BUNDE: Have you concluded Mr. Micks?

MR. MICKS: YES

CHAIR BUNDE: Thank you very much. I'd like now to go on to Lance Bush.

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LANCE BUSH, injured Alaskan worker: My name is Lance Bush, I am an injured Alaskan worker. I worked at Fred Meyer, Northern Lights on October 19. A couple of things that I would like to mention. I agree with the man that just talked before me, this is the first time that I have heard about rehabilitation or anything like that. I never heard anything about it from workers' comp from the Fred Meyer's insurance adjuster. I am really scared. I would like to know when are we going to hold corporate Alaska, corporate America, accountable for illegal practices, bullying, intimidation, and out-right lying.

I am concerned that if we continue to relinquish our voice as a community to corporate Alaska or to corporate America, we will all become their slaves. What are we going to do about these serious problems? Let's not squabble over how we can protect corporate Alaska or corporate American, and remember who the backbone of America really is. That would be me and a bunch of other injured Alaskans that have been mistreated. We are not getting the answers that we seek, I get told that as a result of my injury, a garage door, industrial size, came down and grazed my shoulders and broke my ankle and foot in six different places. This is a life-altering injury, a serious injury, and I would like to know what they are going to do about it, because I haven't gotten any answers, and from what it sounds like, Governor Murkowski does not have me or any other Alaskan in mind. All he is worried about is protecting corporate America and Corporate Alaska. We need to quit doing that.

We have allowed corporate Alaska, corporate America to dictate our lives far to long in order protect these organization from alleged, frivolous lawsuits. We have given them the power to use those laws as loopholes against permanent, life long injuries from Alaska workers. I am concerned as an Alaskan with a life altering injury that the legislature would like to increase the protection for corporate Alaska, corporate America.

I see what is happening is that Alaskans with minor injuries that require minimal medical attention do, in fact, get adequate care. Those are the cases that corporate Alaska, corporate America, portray as being in compliance with workers' comp liability. But, the seriously injured Alaskans are swept under corporate Alaska, corporate American's rug, left to be ignored, because the liability is too costly and they do not want to take accountability. And then we become a commodity and one that can be dismissed for the better of the company. I feel that my and my family, and I am speaking on behalf of myself, my wife, and my eight children - now I know that my and my family's American dream was altered when we began to live the workman's comp nightmare and that is exactly what it has become. That is all I have to say.

CHAIR BUNDE thank you - moving on to Fairbanks - J.D. Reagan.

[3:17:38 PM](#)

JOHN REAGAN, Ester AK, Volunteer Fire Department: I am a volunteer fire fighter with the Ester Volunteer Fire Department and I work at a laborer's union Local 942 here in Fairbanks. There was another member of my union here, but he had a serious workers' comp injury in the past and he walked out kind of furious after the Disneyland comment. For myself, I would like thank the members of the legislature who have been in contact with the local fire department to try and ensure proper coverage for firefighters and EMTs, both volunteer and paid. I think we owe it to the people who give their time and who risk their lives as firefighters and EMTs. We owe them the best possible care when they are injured in the line of duty and that is workers' comp.

The second thing that I would like to point out is that there is a real problem with this bill as I understand it because, as I understand it, it will freeze medical reimbursement rates, which physicians can charge for specific injuries as Medicare does and set those fees at the 1999 level. I think this is a very bad idea because, just as in Medicare, the best doctors will simply

stop taking workers' comp patients as many doctors have stopped taking Medicare patients.

We recently had an injury in our fire department when a fire fighter blew out a knee coming off a fire truck with a hundred pounds of hundred-foot hose on his shoulder, just as they were supposed to, but the knee went out. So, the fire department doctor, under whose authority our EMTs work, recommended one of the best knee surgeons here in Fairbanks. The operation went really well and everything went fine. That knee is way back to being fixed up again just fine. The problem is that if your bill goes through doctors like that, who have all the work that they need, because they are the best in the business. They will simply stop taking workers' comp patients, just as many doctor's have stopped taking Medicare patients.

This not a smart idea because it will actually raise the cost of your program instead of lowering it. That is because the only doctors that you are going to get to treat workers' comp patients are going to be the dorky doctors who really need the business. The good doctors are not going to the workers' comp patients anymore.

That is a real bad idea because this not Medicare, where you only provide health care. This is workman's comp when you are paying for these injured people as long as they are out of work. The whole point is to get these people back to work as soon as possible, because, you mess up that knee operation, and they are out of work for another six months or a year, and you are out of a lot of money. So, the state would be a lot better off to spend a little bit more money and get the best surgeon and get the best care and that is the way that it should be. And the freeze on the medical reimbursement rate is actually going to work against you on that.

Tom Brice from Juneau, our union lobbyist, and the other folks at Local 942 here in Fairbanks, they are all scratching their heads and saying that this approach that you are taking. The freeze on medical reimbursement rates, it just doesn't make sense because it won't lower the cost of the program. Their complaint is that you had a bi-partisan ad hoc committee of people from the industry that made very good suggestions, but they seem to think that you have taken a different approach without input from the industry and an approach that doesn't make sense. That will not lower the overall cost of the program for the very reason that I have discussed. What you really what to do is get these people back to work as soon as possible and

it is in your interest to give them the best medical care and if you freeze those rates, it is going to be just like Medicare. The best doctors are simply going to say fine, we are not taking workers' comp patients anymore. Tom Brice was up here in Fairbanks for our laborers' local 942 meeting last Friday to talk about this bill and we are trying to get information to my local volunteer fire departments and other volunteer fire departments because we are really concerned with this problem. And the reason is that if we are injured, we want the best care. We don't want something like Medicare where the best doctors are just not going to take workers' comp patients because that just means that you are going to pay out a lot more money who are going to be out of work longer. That is just my comment and I hope that can this thing fixed well. Thank you very much.

CHAIR BUNDE: Thank you, I appreciate your testimony. As medical costs are some 64 percent of the problem right now, obviously they have to be part of the solution, though, it is still a work in progress and I can't tell you what the final solution will look like until we achieve it. Coming back here to Juneau, Rob Betit.

[3:22:34 PM](#)

ROD BETIT, Alaska State Hospital and Nursing Home Association (ASHNHA): Mr. Chairman, members of the committee, I am Rob Betit with the ASHNA. I think that we had a very short table that was passed out and I just wanted to make a couple of comments about that. The discussion that we've had about the positions rates and the 90th percentile really does not pertain to hospitals. We are facing a different methodology. What that table reflects basically - all of the things that you can be admitted to a hospital for are rolled into one of two choices - medical and surgical. And then you can see from the 2005 there is a combined rate for those medical, surgical things of \$7,586 a day and then for the intensive care unit and the critical care unit it is \$13,907 dollars a day.

If you calculate going back to the 2000 rate, it would mean an adjustment of about 35 percent and that is on top of a about a 20 percent discount that is already built into the rates historically each year as they are adjusted. There is about a 20 percent offset already given to the workers' comp program. So that would bring the calculations I have to about 50 percent discount. None of the hospitals could sustain that kind of discount long-term. It would be particularly difficult for rural hospitals. Looking at Kodiak, just as an example, there net income for the year was about a quarter of a million dollars and

this would have an over \$100,000 impact just for that hospital alone, based on their past experience working with worker comp claimants.

I think what we want to say is that that's not a solution that we think is workable as lawyers and CEOs have been working on this with the ad hoc committee - because they are equally interested in finding some permanent long-term fix to the problem and they are looking for another forum in which to have that discussion. But, I just want the committee to know that this particular component of the roll back of rates is just too harsh for our revenues to absorb.

CHAIR BUNDE: Is there a compromise number that you would entertain?

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MR. BETIT: I think that there is something else that they would entertain. I couldn't really tell you what that is because we would have to bring together some of our CEOs to arrive at that, but they very much want to be at the table and realize that there is going to have to be some concessions by all parties and they want to be part of that discussion.

CHAIR BUNDE: A very important point. We all have to be part of the solution or we won't have a solution. The committee would look forward to their input. Thank you very much, John George.

[3:25:12 PM](#)

JOHN GEORGE, Property Casualty Insurance Association of America: Thank you Mr. Chairman, my name is John George. I am here today representing the Property Casualty Insurance Association of America. The Property Casualty Trade Association represents over 700 companies writing insurance in Alaska, not primarily workers' comp writers, although we do have a few members that write workers' comp. But, we would like to congratulate the administration and the legislature for tackling this obviously difficult problem. I wish you the wisdom of Solomon to find a solution to it but, availability and affordability of insurance are always concerns of ours and this bill speaks to some of those.

I always liken insurance to a large pipe. You put money in one end and money comes out the other end, but there is obviously a friction loss in that pipe and that is the administrative cost in that system. The longer the pipe the more friction there is. I think that this bill does a lot of things that may shorten

that pipe and reduce some of the friction loss, and every little bit that you can save is a benefit. So there is a lot of little things that the bill does that hopefully will shorten the time to get a claim settled, will make it easier to make the claimant get a resolution early. And it is in everyone's benefit to get a claim resolved properly, but quicker. The longer it goes on, the more frustration there is. One would assume that nobody wants to be off work longer than they have to to get back to life - get treated, get going, get their rehabilitation started if they are going to rehabilitates, but get on with it. Shorten the pipe as much as they can, reduce the friction and even if it only reduces the cost a little bit, the psychological benefit to every one is probably important there, as well.

Whether you can cut 15 to 20 percent out of this, who knows? As I said, I wish you the wisdom to do that, but we do appreciate the fact that the administration and the legislature are tackling this and hopefully you will find at least some solutions. But, we would encourage you to do the things that this bill says, to streamline the system a little bit and reduce that friction loss. Thank you.

[3:27:44 PM](#)

CHAIR BUNDE: Thank you, you know it seems to be enough pressure from both ends of this equation, businesses are concerned that they will disappear and without businesses we don't have any jobs, we don't need workers and of course the injured workers are very frustrated and we wish that nobody were ever injured. But it does happen and we all have to be, as I said earlier, part of the solution. With that, we thank all who have participated, as I said, this is a work in progress, we will continue to address the issue. Those who would like to have input - we would like their input. We invite their input.

On Thursday, we have a couple of new bills that I would like to address, SB 131 and 138 when we have two previously heard bills SB 124 and HB 102 that we will bring back up and when we finish addressing those, we will continue with workers' comp. Anything more to come before the committee, if not, at 3:30 we stand adjourned [3:29:01 PM](#).