

ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE

March 24, 2005

2:06 p.m.

MEMBERS PRESENT

Senator Con Bunde, Chair
Senator Ben Stevens
Senator Bettye Davis

MEMBERS ABSENT

Senator Ralph Seekins, Vice Chair
Senator Johnny Ellis

COMMITTEE CALENDAR

SENATE BILL NO. 137

"An Act providing that an institution providing accommodations exempt from the provisions of the Uniform Residential Landlord and Tenant Act may evict tenants without resorting to court proceedings under AS 09.45.060 - 09.45.160."

MOVED SB 137 OUT OF COMMITTEE

SENATE BILL NO. 140

"An Act relating to spyware and unsolicited Internet advertising."

MOVED SB 140 OUT OF COMMITTEE

SENATE BILL NO. 2

"An Act relating to prerequisites for obtaining and recording a lien for payment of the contract price for labor or materials supplied for the construction, alteration, or repair of a building or improvement."

HEARD AND HELD

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 137

SHORT TITLE: EVICTING INSTITUTIONAL PROPERTY USERS

SPONSOR(s): SENATOR(s) SEEKINS

03/08/05	(S)	READ THE FIRST TIME - REFERRALS
03/08/05	(S)	L&C, JUD
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)

BILL: SB 140

SHORT TITLE: BAN INTERNET SPYWARE

SPONSOR(s): SENATOR(s) THERRIAULT

03/10/05 (S) READ THE FIRST TIME - REFERRALS
03/10/05 (S) L&C, JUD
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

BILL: SB 2

SHORT TITLE: LIEN REQUIREMENTS

SPONSOR(s): SENATOR(s) GUESS

01/11/05 (S) PREFILE RELEASED 12/30/04
01/11/05 (S) READ THE FIRST TIME - REFERRALS
01/11/05 (S) L&C, JUD
01/27/05 (S) L&C AT 1:30 PM BELTZ 211
01/27/05 (S) Scheduled But Not Heard
03/24/05 (S) L&C AT 2:00 PM BELTZ 211

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
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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

WITNESS REGISTER

JOE MICHEL

Staff to Senator Seekins
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Introduced SB 137 for the sponsor.

DAVE STANCLIFF

Staff to Senator Therriault
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Introduced SB 140 for sponsor.

SENATOR GRETCHEN GUESS

Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of SB 2.

GREY MITCHELL, Director

Division of Labor Standards and Safety
Department of Labor & Workforce
Development

PO Box 21149

Juneau, AK 99802-1149

POSITION STATEMENT: Commented on SB 2.

BARBARA HUFF-TUCKNESS

Alaska Labor Management Ad Hoc Committee

POSITION STATEMENT: Opposed SB 130.

PAUL LISANKIE, Director

Division of Workers' Compensation
Department of Labor & Workforce
Development

PO Box 21149

Juneau, AK 99802-1149

POSITION STATEMENT: Supports SB 130.

KEVIN SMITH, Executive Director

Alaska Municipal League Joint Insurance Association (AMLJIA)

POSITION STATEMENT: Supports SB 130.

ACTION NARRATIVE

CHAIR CON BUNDE called the Senate Labor and Commerce Standing Committee meeting to order at [2:06:53 PM](#). Present were Senators Davis, Ben Stevens and Chair Bunde.

SB 137-EVICTING INSTITUTIONAL PROPERTY USERS

CHAIR CON BUNDE announced SB 137 to be up for consideration.

JOE MICHEL, aide to Senator Seekins, sponsor, said that the university and certain other institutions are exempt under the Uniform Resident Landlord Tenant Act, AS 34.03.330. Despite the exemptions, lower court decisions have interpreted the statutes governing evictions to require a court action to evict a resident that refuses to leave one of these exempt facilities.

At the university, housing privileges are not revoked without notice or without considerable administrative process. The process may include hearings and an appeals process to the Superior Court. Only on rare occasions do students insist on remaining in housing after their lease termination. Even then significant efforts are made to avoid confrontation.

He said that SB 137 clarifies legislative intent versus lower court opinions.

CHAIR BUNDE said there were no questions.

[2:09:32 PM](#)

SENATOR BEN STEVENS moved to pass SB 137 with individual recommendations and attached fiscal notes. Senators Ben Stevens, Davis and Chair Bunde voted yea; and SB 137 moved from committee.

SB 140-BAN INTERNET SPYWARE

CHAIR CON BUNDE announced SB 140 to be up for consideration.

DAVE STANCLIFF, staff to Senator Therriault, briefly recapped previous testimony outlining the magnitude of the problems and expense involved in dealing with spyware. He said the best features of other models were incorporated in this bill.

SENATOR BETTYE DAVIS said one of her constituents from the Environmental Summit wanted to see SB 140 pass while she was in town, because her computer was affected by spyware.

SENATOR BEN STEVENS moved to pass SB 140 from committee. Senators Davis, Ben Stevens and Chair Bunde voted yea; and SB 140 moved from committee.

[2:13:17 PM](#) Recess [2:13:25 PM](#)

SB 2-LIEN REQUIREMENTS

CHAIR CON BUNDE announced SB 2 to be up for consideration.

SENATOR BEN STEVENS moved to adopt CSSB 2(L&C), version Y, for discussion.

CHAIR BUNDE objected for discussion purposes.

SENATOR GUESS, sponsor, explained that the change can be found on page 2, lines 17 through 19. The Department of Labor and Workforce Development (DOLWD) requested another exemption, their wage claim and wage assignment process.

CHAIR BUNDE removed his objection and the CS was adopted.

[2:14:41 PM](#)

SENATOR GUESS said SB 2 came from constituents. Right now a person does not have to show that they had an agreement with the owner of a property before filing a lien and the onus is on the owner to try to undo the lien. She tried to balance the importance of taking care of labor with what an owner has to do in responding to a lien. SB 2 asks that either a contract or other documentation showing there is a contract for the work be presented when a lien is filed. If you don't have that, you can get a court order that shows the existence of lien. Often laborers go to the DOLWD that goes through a process that says you should have been paid. The department requested the amendment to protect its ability to file a lien against employers after it had investigated claims of non-payment in wages. Her goal was to stop the frivolous liens.

[2:16:46 PM](#)

SENATOR STEVENS asked if language saying "wage claim" or "wage assignment" is boiler-plate and would the Department of Labor now be able to go after a contractor for assignments of a wage.

SENATOR GUESS replied that the department's process determines that a wage needs to be paid, but Mr. Mitchell would explain that.

[2:18:31 PM](#)

GREY MITCHELL, Director, Division of Labor Standards and Safety, explained:

It's simply a terminology issue. A wage claim is the same thing as a wage assignment, essentially. The people at Legislative Legal, when they were wrangling, wanted to include both terms. So an assignment basically means that someone has assigned their wage claim to the Department of Labor and Workforce Development, which means that we have the authority to act on their behalf.

[2:19:26 PM](#)

CHAIR BUNDE asked if someone has child support to claim, would they use this vehicle.

MR. MITCHELL replied that it applies just to wage claims assignments.

SENATOR STEVENS asked if a garnishment is not considered an assignment.

MR. MITCHELL replied that's true.

[2:20:11 PM](#)

CHAIR BUNDE asked if this bill applies to a situation where someone who is undercapitalized builds a building, doesn't pay the suppliers, leaves town, files bankruptcy so he's not available to pay his bills and the supply company puts a lien on the home.

MR. MITCHELL replied that he wasn't sure since it's not a labor-related question, but he thought the supplier would have to come forward with a contract or judgment to file a lien.

[2:20:51 PM](#)

CHAIR BUNDE said the contractors' bonds are \$10,000, which hasn't been changed in a long time and he asked if now would be a good time to discuss changing it.

MR. MITCHELL replied that that would be up to the committee.

CHAIR BUNDE asked Senator Guess if she thought this was a good time to review the bonding amount and if her bill covered his concern about builders who are undercapitalized and the homeowner gets the lien because of it.

[2:21:31 PM](#)

SENATOR GUESS replied that she hadn't considered it, but would be more than willing to. In this bill, they would have to show an agreement with the property owner, not with the middle person. She promised to give it and the bond requirement more thought.

[2:22:34 PM](#)

SENATOR GUESS said for the record, she asked to postpone the hearing so she could meet with the laborer's community and the Homebuilders' Association who have no problems with the bill.

CHAIR BUNDE set SB 2 aside for the time being.

SB 130-WORKERS' COMPENSATION

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

BARBARA HUFF-TUCKNESS, Alaska Labor Management Ad Hoc Committee, referenced its letter in the committee packets. The Ad Hoc Committee wanted her to explain 13 concerns regarding SB 130.

[2:24:16 PM](#)

Many of the Ad Hoc ideas are in SB 130, many other items are included also that it has great concerns with. The first is reimbursement of medical costs. The administration proposes to roll back rates to 1999 rates. "We do not believe this is reasonable." Medical costs are the largest driving factor in workers' comp costs.

The Ad Hoc Committee requested information from both insurance companies regarding the medical costs in November and have not received that information and, therefore, can't make a reasonable recommendation and deferred the issue until next year. Language in SB 130 would impact the medical community in such a way that physicians might decide to no longer serve injured workers.

[2:26:28 PM](#)

The second letter had to do with the ACOM guidelines. The committee decided it needed more information on this issue as well. What little information it has received came from California that recently adopted ACOM guidelines. There are problems with how insurance companies are applying the guidelines and denying medical claims. Either they are not being clearly defined or are not being addressed at all.

[2:28:01 PM](#)

The third item is voc rehab and it is another issue the committee did not receive information on. It is a huge cost factor within the workers' comp system. Members discussed turning it into a return to work program, but didn't receive available information.

[2:29:20 PM](#)

Item four addresses the return to work program that she mentioned in conjunction with the voc rehab. The committee was looking at it in conjunction with deleting the second injury fund. It did not believe the fund services the employer and believes that there needs to be a truly responsive return to work program for injured people.

[2:30:03 PM](#)

CHAIR BUNDE asked her to flesh that out.

[2:30:13 PM](#)

MS. HUFF-TUCKNESS responded that some states actually have a return to work program. Some employers within the state of Alaska have established a return to work program or modified work within their own corporate structure. Some states have formalized those programs with their workers' comp programs.

[2:31:29 PM](#)

She went on to item 5 that did not have much discussion in the Ad Hoc Committee. But there is some concern that this would actually increase costs to the Workers' Comp program even though it addresses hiring attorneys to represent the injured workers. The committee has not seen any statistical information that would prove that one way or the other.

[2:32:46 PM](#)

The sixth item deals with the commission and the de novo review. The committee has concerns with replacing the superior court with a new layer of bureaucracy. A less costly idea the Ad Hoc Committee had is having a super-senior workers' comp board consisting of two labor and two management with a Workers' Comp hearing officer. They would hear the appeals of decisions from the Workers' Comp Board and would have the ability to decide questions limited to specific issues of law. The senior members of the board would have more knowledge of the law and would follow the intent of the statutes without adding the cost of the bureaucracy.

[2:35:08 PM](#)

CHAIR BUNDE asked about item 7, the fraud statute.

MS. HUFF-TUCKNESS didn't think the fraud language went far enough. The department has never followed up on fraud that had proof. Ad Hoc wanted greater enforcement.

[2:38:06 PM](#)

She said the temporary seasonal definition, item 8 in the letter, affects employers around the state, but affects construction workers the most. She noted that Ad Hoc language in the letter was fair for the injured worker as well as the business.

[2:38:54 PM](#)

She said she looked forward to working with the committee and administration.

[2:40:17 PM](#)

PAUL LISANKIE, Director, Division of Workers' Compensation, Department of Labor and Workforce Development (DOLWD), had no further remarks.

CHAIR BUNDE asked him to comment on the fraud provisions in item 7 of the Ad Hoc Committee letter. He also asked to know if the return to work program was successful in other states.

[2:41:43 PM](#)

SENATOR DAVIS said she wanted to know if other states had set up a commission to bypass the superior court.

MR. LISANKIE replied that he has looked at other states' statutes and some have an executive branch committee that hears appeals of workers' compensation matters. He is not sure any have precisely the type of proposal the Ad Hoc Committee envisioned. That is more of a reconsideration by a different group of the same board that made the original decision as opposed to sending the decision to separate entity like an appeals commission. The major difference is that under SB 130, the appeals commission would take the place of Superior Court and he believed that would be somewhat quicker.

[2:43:56 PM](#)

KEVIN SMITH, Executive Director, Alaska Municipal League Joint Insurance Association (AMLJIA), said it represents 140 different municipalities and school districts in Alaska. It permits those

public entities to self-insure as a group when they may not have the resources to self-insure as individual entities. He said:

As far as risk financing mechanisms go, being able to self insure as a group is a fairly efficient way to do this. Essentially, to pay the cost of losses and pay the cost of reinsurance and pay the cost of overhead, that's about what goes into calculating rates. So, there's no shareholder profit necessary as you get in a commercial insurance arrangement. The AMLJIA has a \$300,000 self-insured retention. So, for every workers' compensation loss that we have, we have to fund enough to cover at least the first \$300,000 of the loss. Above and beyond that, we purchase reinsurance or insurance for insurance companies to make sure that if somebody is seriously injured, that there's adequate resources to cover it.

But despite the efficiencies in the system, itself, the costs continue to rise for the public sector in Alaska just as they have risen for the private sector in Alaska. The Workers' Compensation system from our perspective is broken and needs to be fixed. The cost has gotten to a point where a number of municipalities can't afford to purchase the insurance any more. With the PERS TRS problems on their plate, lack of municipal assistance and revenue sharing, increased fuel costs, utility costs, the increased demands essentially on the public coffers with less resources have forced me to cancel at least 10 municipalities in December from coverage for Workers' comp for property and for liability and I have canceled several more since then.... It's a serious situation.

He said that SB 130 is a step in the right direction for containing the increasing costs for Workers' Compensation. Some of the positives are the ability to stipulate to agreements when both parties are represented without getting board approval, streamlining the voc rehab process and having a preferred provider list for employers that is voluntary for employees. Generic drugs are a good thing and guidelines for medical care is a positive step. Some offset for PERS and TRS or occupational disability is another good idea as well as phasing out the second injury fund.

[2:47:40 PM](#)

CHAIR BUNDE asked what the public entities who are going without workers' comp doing.

MR. SMITH replied that some of them are bending state law, but most are scrambling to find the resources to get back into the program. "A number of the communities have gotten to the point where there's not a lot of employees getting hurt."

[2:49:29 PM](#)

CHAIR BUNDE reflected that no one is happy with the current situation and he hopes to find something to make it better.

COMMISSIONER GREG O'CLARAY, Department of Labor and Workforce Development (DOLWD), thanked the chair for having hours of testimony on this issue.

CHAIR BUNDE said he hoped to have a CS next week. He adjourned the meeting at [2:52:16 PM](#).