

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

April 7, 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. 139

"An Act relating to termination and oversight of boards, commissions, and agency programs; extending the termination date of the Board of Marital and Family Therapy; and providing for an effective date."

MOVED CSSB 139(L&C) OUT OF COMMITTEE

SENATE BILL NO. 131

"An Act amending the Alaska Wage and Hour Act as it relates to the employment of a person acting in a supervisory capacity; providing definitions for persons employed in administrative, executive, and professional capacities, for persons working in the capacity of an outside salesman, and for persons working in the capacity of a salesman employed on a straight commission basis."

MOVED CSSB 131(L&C) OUT OF COMMITTEE

SENATE BILL NO. 108

"An Act relating to the regulation of insurance, insurance licensing, surplus lines, insurer deposits, motor vehicle service contracts, guaranteed automobile protection products, health discount plans, third-party administrators, self-funded multiple employer welfare arrangements, and self-funded governmental plans; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 145

"An Act authorizing the making of loans for upgrade of commercial fishing tender vessels and gear."

MOVED SB 145 OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 81(L&C)

"An Act establishing an administrative fine and procedure for construction contractors in certain circumstances; increasing the amount of a civil penalty for persons acting in the capacity of contractors or home inspectors; modifying the elements of a crime involving contractor registration and residential contractors; modifying the exemptions from regulation under AS 08.18 for contractors; and exempting the administrative hearings for imposing an administrative fine on construction contractors from the hearings conducted by the office of administrative hearings in the Department of Administration."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 139

SHORT TITLE: EXTENSIONS OF OCCUPATIONAL BDS/AGENCIES

SPONSOR(s): RULES BY REQUEST OF LEG BUDGET & AUDIT

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|----------|-----|---------------------------------|
| 03/09/05 | (S) | READ THE FIRST TIME - REFERRALS |
| 03/09/05 | (S) | L&C, FIN |
| 03/31/05 | (S) | L&C AT 1:30 PM BELTZ 211 |
| 03/31/05 | (S) | Scheduled But Not Heard |
| 04/05/05 | (S) | L&C AT 1:30 PM BELTZ 211 |
| 04/05/05 | (S) | Heard & Held |
| 04/05/05 | (S) | MINUTE(L&C) |
| 04/07/05 | (S) | L&C AT 1:30 PM BELTZ 211 |

BILL: SB 131

SHORT TITLE: WAGE & HOUR ACT: EXEC/PROF/ADMIN/SALES

SPONSOR(s): LABOR & COMMERCE

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|----------|-----|---------------------------------|
| 03/04/05 | (S) | READ THE FIRST TIME - REFERRALS |
| 03/04/05 | (S) | L&C, FIN |
| 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) |
| 04/07/05 | (S) | L&C AT 1:30 PM BELTZ 211 |

BILL: SB 108

SHORT TITLE: INSURANCE

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

02/14/05 (S) READ THE FIRST TIME - REFERRALS
 02/14/05 (S) L&C, FIN
 03/31/05 (S) L&C AT 1:30 PM BELTZ 211
 03/31/05 (S) Heard & Held
 03/31/05 (S) MINUTE(L&C)
 04/07/05 (S) L&C AT 1:30 PM BELTZ 211

BILL: SB 145

SHORT TITLE: LOANS FOR COMMERCIAL FISHING TENDERS

SPONSOR(s): SENATOR(s) STEDMAN

03/16/05 (S) READ THE FIRST TIME - REFERRALS
 03/16/05 (S) L&C, FIN
 04/07/05 (S) L&C AT 1:30 PM BELTZ 211

BILL: HB 81

SHORT TITLE: CONTRACTOR LICENSE ENFORCEMENT

SPONSOR(s): REPRESENTATIVE(s) ANDERSON

01/19/05 (H) READ THE FIRST TIME - REFERRALS
 01/19/05 (H) L&C, JUD, FIN
 01/21/05 (H) L&C AT 3:15 PM CAPITOL 17
 01/21/05 (H) Heard & Held
 01/21/05 (H) MINUTE(L&C)
 01/26/05 (H) L&C AT 3:15 PM CAPITOL 17
 01/26/05 (H) Moved CSHB 81(L&C) Out of Committee
 01/26/05 (H) MINUTE(L&C)
 02/02/05 (H) L&C RPT CS(L&C) NT 5DP 1NR
 02/02/05 (H) DP: LYNN, KOTT, LEDOUX, GUTTENBERG,
 ANDERSON;
 02/02/05 (H) NR: ROKEBERG
 02/09/05 (H) JUD AT 1:00 PM CAPITOL 120
 02/09/05 (H) Moved CSHB 81(L&C) Out of Committee
 02/09/05 (H) MINUTE(JUD)
 02/11/05 (H) JUD RPT CS(L&C) NT 3DP 3NR
 02/11/05 (H) DP: GRUENBERG, KOTT, ANDERSON;
 02/11/05 (H) NR: DAHLSTROM, COGHILL, MCGUIRE
 03/02/05 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 03/02/05 (H) Heard & Held
 03/02/05 (H) MINUTE(FIN)
 03/07/05 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 03/07/05 (H) Moved CSHB 81(L&C) Out of Committee
 03/07/05 (H) MINUTE(FIN)
 03/09/05 (H) FIN RPT CS(L&C) NT 3DP 6NR
 03/09/05 (H) DP: HAWKER, FOSTER, MEYER;
 03/09/05 (H) NR: MOSES, JOULE, STOLTZE, CROFT,
 KELLY, CHENAULT

03/16/05 (H) TRANSMITTED TO (S)
03/16/05 (H) VERSION: CSHB 81(L&C)
03/18/05 (S) READ THE FIRST TIME - REFERRALS
03/18/05 (S) L&C, JUD
04/07/05 (S) L&C AT 1:30 PM BELTZ 211

WITNESS REGISTER

TOM MAHER, Staff
Senator Therriault
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Commented on SB 139 for sponsor.

BARBARA GABIER,
Division of Occupational Licensing
Department of Commerce, Community & Economic Development
PO Box 110800
Juneau, AK 99811-0800
POSITION STATEMENT: Supported CSSB 139(L&C).

JOHN SEDOR
Anchorage Society for Human Resource Management
Society for Human Resource Management, Alaska State Council
Anchorage AK
POSITION STATEMENT: Explained CSSB 131(L&C).

LINDA HALL, Director,
Division of Insurance
Department of Commerce, Community & Economic Development (DCCED)
PO Box 110800
Juneau, AK 99811-0800
POSITION STATEMENT: Commented on SB 108.

JEFFREY HART, Shop Steward
Public Employees Local 71 and
Department of Transportation &
Public Facilities Employee
Juneau, AK 99801-7898
POSITION STATEMENT: Opposed Sections 28 and 29 in SB 108.

CHRIS PACE
Juneau AK
POSITION STATEMENT: Opposed Sections 28 and 29 in SB 108.

FRANK PUSCHAK
Anchorage AK

POSITION STATEMENT: Opposed SB 108.

COLLEEN SAVOIE, Consultant
Marsh USA
Public Employees Local 71
Anchorage AK

POSITION STATEMENT: Opposed SB 108.

MARY STOLL, Counsel
Public Employees Local 71 Trust
ASEA Local 52 Trust
Seattle WA

POSITION STATEMENT: Opposed SB 108.

TIM BARRY
Staff to Senator Stedman
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Presented SB 145 for the sponsor.

GREG WINEGAR, Director
Division of Investments
Department of Commerce, Community & Economic Development
PO Box 110800
Juneau, AK 99811-0800

POSITION STATEMENT: Supported SB 145.

JERRY MCCUNE, President
Cordova Fishermen United
Juneau AK

POSITION STATEMENT: Supported SB 145.

REPRESENTATIVE TOM ANDERSON
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of HB 81.

GREY MITCHELL, Director
Division of Labor Standards and Safety
Department of Labor & Workforce
Development
PO Box 21149
Juneau, AK 99802-1149

POSITION STATEMENT: Supported CSHB 81(L&C).

MIKE PRAX
North Pole AK

POSITION STATEMENT: Opposed HB 81.

PATRICK DALTON
Delta Junction AK

POSITION STATEMENT: Opposed HB 81.

TERRY DUSZYNSKI
Building Inspector
Fairbanks AK

POSITION STATEMENT: Supported HB 81.

MARY GIRVAN
Delta Junction AK

POSITION STATEMENT: Asked question regarding HB 81.

NANCY DOBBERPUHL
Fairbanks AK

POSITION STATEMENT: Opposed HB 81.

JIM CALLAHAN
Fairbanks AK

POSITION STATEMENT: Opposed HB 81.

NELS CHURCH
Fairbanks AK

POSITION STATEMENT: Waived his time to testify on HB 81.

RANDY DOLL
Fairbanks AK

POSITION STATEMENT: Supported HB 81.

SUE ELLISON
ABC Inc.
Fairbanks AK

POSITION STATEMENT: Supported HB 81 with an amendment.

JEFF ALLING
Alcan Builders
North Pole AK

POSITION STATEMENT: Opposed HB 81.

ROGER BURGGRAFF
Fairbanks AK

POSITION STATEMENT: Opposed HB 81.

TODD LARKIN
North Pole AK

POSITION STATEMENT: Opposed HB 81.

SETH CHURCH
Fairbanks AK

POSITION STATEMENT: Supported amending Section 12 of CSHB 81(L&C).

MIKE MUSICK
Fairbanks AK

POSITION STATEMENT: Supported HB 81.

JACK HEBERT
Fairbanks AK

POSITION STATEMENT: Supported HB 81.

LISA PEGER
Fairbanks AK

POSITION STATEMENT: Opposed HB 81.

RANDY GRIFFIN
Fairbanks AK

POSITION STATEMENT: Opposed HB 81.

ALAN WILSON, Co-chair
Legislative Committee
Alaska Homebuilding Association
Juneau AK

POSITION STATEMENT: Supported HB 81.

ACTION NARRATIVE

CHAIR CON BUNDE called the Senate Labor and Commerce Standing Committee meeting to order at [1:35:06 PM](#). All members were present.

SB 139-EXTENSIONS OF OCCUPATIONAL BDS/AGENCIES

CHAIR CON BUNDE announced SB 139 to be up for consideration and that it provides the ramp down mechanism should a board be discontinued and increases sunset dates.

TOM MAHER, staff to Senator Therriault, stated that the sponsor supported the proposed amendments.

SENATOR RALPH SEEKINS moved to adopt CSSB 139(L&C), version I.

CHAIR BUNDE explained that the changes were proposed by the administration and objected so he could explain them. The first change transferred the board's statutory authority to the department and the second change added a new section (4). He withdrew his objection and CSSB 139(L&C), version I, was adopted.

BARBARA GABIER, Division of Occupational Licensing, supported the CS.

SENATOR SEEKINS moved to report CSSB 139(L&C) from committee with individual recommendations and attached fiscal note. Senators Ben Stevens, Ellis, Davis, Seekins and Chair Bunde voted yea; and CSSB 139(L&C) moved from committee.

SB 131-WAGE & HOUR ACT: EXEC/PROF/ADMIN/SALES

CHAIR CON BUNDE announced SB 131 to be up for consideration.

SENATOR SEEKINS moved to adopt CSSB 131(L&C), version F.

SENATOR ELLIS objected for an explanation.

JOHN SEDOR, Anchorage Society for Human Resource Management, said he also represented the Alaska State Council and explained the CS to the committee. He said that Section 1 adds "computer systems analyst, computer programmer, software engineer or other similarly skilled workers", which references a federal regulation saying that computer systems workers can be exempt either under the executive exemption, the administrative exemption or, specific to computer systems workers, the hourly exemption where they are paid over \$27.63 an hour for a 40-hour workweek and making over \$1,000 for the week.

He said that Section 2 requires that all exemptions must meet the two times minimum wage test. Also, various federal definitions had been clarified. He said that adding the definition of highly compensated employees (paid over \$100,000) was suggested, but was not included since it was already in federal regulations.

Section 3 deleted the supervisory capacity, which does not exist under the federal system as an exemption. Section 5 references the Fair Labor Standards Act, which is consistent with other provisions of current statute that encourage the department to look at federal regulations in determining its own regulations.

[1:43:49 PM](#)

CHAIR BUNDE noted there were no questions at this time and pointed out that it was his intent to change the two-year timeframe for establishing a claim to six months. He offered that as conceptual Amendment 1.

[1:44:37 PM](#)

SENATOR SEEKINS supported having six-months for claims, either choate or inchoate, instead of the standard two-year statute of limitations saying, "I probably would have been a little bit tougher."

CHAIR BUNDE said he just wanted to have a reasonable time in which to establish a claim.

[1:45:54 PM](#)

SENATOR ELLIS asked if he meant six months from the date of separation.

CHAIR BUNDE answered no, six months from the effective date of the bill.

SENATOR SEEKINS asked if he meant six months to bring the lawsuit or to bring the lawsuit to its final adjudication.

CHAIR BUNDE replied, "Bring the lawsuit."

SENATOR ELLIS asked if there would be any effective notice to the people affected by this bill.

CHAIR BUNDE responded that was a good question, but he thought labor organizations would make sure their members knew about it.

SENATOR ELLIS pointed out that wouldn't cover all the people they are talking about.

CHAIR BUNDE replied that he could make the same argument for people who should know now they have two years.

[1:48:17 PM](#)

SENATOR ELLIS asked who requested the bill.

CHAIR BUNDE replied that the request came from business owners and others.

SENATOR ELLIS said he supported the legislation overall, but the conceptual amendment needed more thought.

CHAIR BUNDE withdrew conceptual Amendment 1.

SENATOR ELLIS moved to pass CSSB 131(L&C) from committee with individual recommendations. Senators Davis, Ellis, Ben Stevens, Seekins and Chair Bunde voted yea; and CSSB 131(L&C) moved from committee.

SB 108-INSURANCE

CHAIR CON BUNDE announced SB 108 to be up for consideration. He stated that he was waiting for a CS to be delivered, but he would like to hear the bill anyhow.

LINDA HALL, Director, Division of Insurance, Department of Commerce, Community & Economic Development (DCCED), said she wanted to comment on Sections 28 and 29, union health trust language, in more detail. She explained that she brought this issue before the Legislature for deliberation and a policy decision. She related how she tried to clarify a provision that already exists in statute that says:

Except as otherwise provided in this title, a person that provides coverage for the cost of medical care... is subject to this title unless the person shows that they are subject to a jurisdiction of another agency of this state or the federal government with the appropriate certificate, license or document issued by the other governmental agency that permits or qualifies the person to provide coverage for medical care.

This language requires entities providing medical care to have oversight someplace and if they don't, they would have it under Title 21. In March of last year one of the unions asked her if her division regulated it. To formulate a reply, she sent letters to the five union health trusts asking for documentation of who regulates them.

MS. HALL said she received responses, which have taken a long time to go through and more information was needed still. Approximately 19,000 state employees' health benefits are provided by union health trusts and she wanted the Legislature to have some discussion and make a policy call as to whether some standards should be set to insure the viability of the trusts. She hadn't had any specific contact with people from the health trusts, but had some contact from union members. One of

the issues she thought was important to deal with was bonding limits because those are exceedingly high, but she really felt strongly about getting financial statements that show the assets and liabilities of the health trusts stating, "Frankly, I think most of them have that and if they don't they should."

She said there have been allegations that no actuary would certify various things, but in fact, that is exactly what actuaries do. She went to the point of getting an actuarial opinion to make sure she understood what an actuary does and noted that she has two of them on her staff.

They do look at the contribution rate, which is an equivalent of premium. It's not the contribution rate by the Legislature to the fund; it is the contribution that is the total money necessary to fund the benefit plan. It will be a combination of the monies funded through the GF, through the budget, and what the employees are charged in addition to the money provided by the state. And it also would include an actuarial analysis of the adequacy of reserves to make sure there is adequate money set aside to pay benefits, both current and future liabilities. I think those are critical pieces. We talked about solvency regulation of a number of entities and I think entities entrusted with the welfare of the benefits of their members provided through their state employment should have a similar kind of protection. Those are the lists in the bill of the minimum standards.

There are some additional standards that generally relate to the kinds of things we require - an outside appeals process. The complaints that come to my division, some valid, some not, as are all complaints that we get. There is an appeal process, but it's very formalized in the current practice, which is arbitration or the court system. That's very intimidating to many people. I've had people in my office in tears because they are intimidated by the process and I've tried to help them even though I don't have any regulatory authority....

I am willing to look at things that seem to be onerous. I've heard estimates and I think they're probably fairly accurate that it would cost \$40,000 to \$50,000 for an actuarial opinion. When I look at the millions of dollars that are in those trusts, it

doesn't seem to me to be a huge amount to pay. And as I said, it's my understanding that most of the trusts do this anyway, but I think it's again a policy decision of the Legislature to decide whether or not you think those standards should be statutory standards or not.

1:58:44 PM

CHAIR BUNDE said she mentioned that state employees are covered by union health plans and asked if any private people were covered by those plans.

MS. HALL replied that is one of the questions she has asked of the union health trust.

In trying to determine the exact kind of entity they are - we have some that apparently have a combination of other entities' coverage within the state employees pieces - and I can't answer that yet, until I receive the information that I've requested from those groups. The intent of the bill is not as was originally interpreted to cover some of the political subdivisions - municipalities, school districts - those types of entities at all. They are in a different category... It doesn't cover - I think it's probably not an accurate term, but private unions, so to speak - Teamsters - the Teamsters health trust would not come under this. Those are entities that are all regulated under the ERISA [Employee Retirement Income Security Act of 1974] self-insured plans and probably 60 percent of Alaskans covered by private insurance are actually covered under some type of self-insured plan that is actually governed by ERISA. These governmental plans fall outside of the ERISA regulation.

2:00:24 PM

JEFFREY HART, Department of Transportation and Public Facilities (DOTPF), said he began paying dues as a member of the Public Employees Local 71 30-years ago and has been serving as a shop steward for the past 14 years. At first, he favored some additional review over Local 71's trust fund, especially after the recent under-funding of the state PERS and TRS systems and listening to debates as to why our nation's social security system is in disarray. It would seem that additional oversight would give comfort to those who don't deal with it on a daily basis. However, he changed his support of Sections 28 and 29

because they would add extra costs and tasks to state government employees who already have a heavy workload. In addition, those sections are unnecessary because their health plan is adequate to meet participant's needs and it could be improved if needed.

2:03:52 PM

CHRIS PACE said he is a trustee with the Alaska State Employees Association (ASEA) health plan, but he is testifying on his own behalf. He wanted to clarify a few points. ASEA's recent Ditman opinion poll indicates that 75 percent of the members were satisfied with their current coverage. Additionally, it found that 52 percent were not interested in additional well-baby coverage. The plan has about 200,000 claims per year and about 40 or .002 percent of them get appealed to the Board of Trustees. The appeal procedure is similar to what is described in the PERS discussion except after the Board of Trustees hears an appeal, it would go to arbitration rather than to the Superior Court.

The board shares the same plan as the appellant and they have to be adjudicated consistently and fairly across the board. The trustees have the statutory authority to make changes in the benefit plan. The ASEA plan was taken verbatim from the state's PERS plan with minor modifications to tailor the deductibles, co-pays and out-of-pocket limits to the needs of the group.

2:07:15 PM

MR. PACE emphasized that one of the major factors ASEA been confronted with is controlling dramatically increasing health care costs. So it contracted with a PPO hospital and joined a health care coalition with other labor unions, municipalities and private employers. Some members were unhappy about being steered to an Anchorage PPO hospital.

The state website estimates that nationally up to 15 percent of spouses and dependents may not, in fact, be eligible for benefits; ASEA members were concerned with that as well as with building reserves. Currently, ASEA's plan has reserves equal to about four months of past claims experienced in addition to other amounts for incurred, but not reported, claims. The plan in SB 108 discusses about two and a half months for the same purpose. A union plan has to be more conservative with reserve levels, because it doesn't have the same financial resources a state plan has. ASEA carries stop-loss reinsurance in the event of catastrophic claims and both plans use consultants rather than actuaries to forecast trends. ASEA has an annual financial audit performed by an independent CPA and he emphasized that it

has a letter of agreement with the State of Alaska allowing it to separate from the state's plan. On request, ASEA provides the annual audit and actuarial reports to the Division of Retirement and Benefits that performs the oversight. ASEA is the largest union in the state and the trust is large.

[2:10:10 PM](#)

MR. PACE said he believes that SB 108 is attempting to create an oversight function that is already being performed by the Division of Retirement and Benefits. ASEA's administrative costs are kept at about 3 percent and the state's are about 5 percent. If this bill becomes law, that adds to the administrative costs and any added costs would have to be passed on and come out of paychecks. He summarized:

To me that's the unfortunate thing about this bill. It will only result, I think, in moving money out of employee's paychecks and into the pockets of actuaries, bond brokers and accountants. It's not going to do anything to improve the actual benefits; it won't change the appeals; it won't change the reality that we've got to go to PPOs and cost containment. It's going to add just a redundant level of state regulatory oversight to the existing oversight.

MR. PACE said he liked the consumer protection section that restricts the late-night ads for discount health insurance. Those ads really confuse some of his members who are already upset about money being taken out of their paychecks for health benefits. They keep telling the board they want to go over to the discount companies and don't understand how risky that would be.

CHAIR BUNDE thanked him for his testimony and announced that he would take teleconference testimony.

[2:12:40 PM](#)

FRANK PUSCHAK of Anchorage said he had been a state employee for 21 years and he is a trustee of one of the affected health trusts, but he is speaking in his personal capacity. Professionally, he had been a bank examiner for 28 years, having examined trust departments and trust companies. He opposed Sections 28 and 29 of SB 108 saying:

Our trust is a legal entity accountable to the Superior Court of Alaska. The trustees are elected by

the members. Under the terms of our health trust, Section 5, the minimum standard they must appeal to, are that the trustees are required to discharge their duties and administer the trust fund assets solely in the interest of participating employees and their beneficiaries and for the exclusive purpose of providing benefits to participating employees and beneficiaries and to defray rereadable expenses of the benefit plan. They are required to carry out their duties with the care, skill, and prudence and diligence under the circumstances then prevailing for a person acting in like capacity and familiar with such matters. This is called the prudent man, but it is not the prudent man standard to the person on the street; it is the prudent man standard of a person with fiduciary experience.

Our plan is subject to a number of federal statutes, which I enumerated in the last committee meeting and I included on my testimony that I submitted earlier by email. So, I won't redo that.

There have been 138,084 medical, dental and vision claims submitted since July 1 of the current fiscal year. Of that number, there have been 47 claims submitted to the Board of Trustees for an appeal. The appeal process is done by our third-party administrator, then the Board of Trustees and the arbitration, which is binding. Now, if that's not enough, since we're subject to Superior Court, the Superior Court can then override the arbitrator. While I agree that arbitration can be expensive, our trust provides the cost to be shared between the trust and the appellant. But, again, it's in my fiduciary responsibility - we just can't have everybody going off and putting things into arbitration, because I have an obligation to reduce the cost. And so we had to go to something. If there is another way that can provide the independent third-party at lesser cost, I'm open to it, but, in fact, our plan is even more accountable than the state select benefit plan. Under that plan, the commissioner of Administration is the sole arbitrator and nobody can override that.

Again, with respect to the fiduciary standard, I'm really not aware of what the state follows for fiduciary standards. Again, we have followed the

language outlined in ERISA, which is what governs the non-governmental plans. I have enclosed with my previous email a copy of our health plan compared to the state's like benefit plan and you are able to see that there are some slightly better benefits at definitely lower cost.

Our trust was formed because the state wanted to get rid of the expense and effort of administering it. Under Article 19.03 of our contract, our union relieved the state of any and all obligation to provide health insurance benefits. This bill would add additional work to the state and expense and certainly add additional expense and work to our health trust for things that are already being done at better cost. We already have consultants who advise us and help us formulating policies, plans, rates, and everything. An independent CPA firm audits our records and those records are made public. We follow the ERISA code in providing everything to our members that is required under ERISA even though they are not obliged to follow it. There's an old saying, "If it ain't broke, don't fix it." However, I do agree with the corollary that says, 'If it ain't broke, it can be improved.' and that's what I'm willing to do and I'm open to any and all suggestions from my members.

I have been a regulator for 28 years and when the bankers complain to me about having over-regulation, I would say, 'Well, Dirty Harry did stick his .44 at you and said, 'Make my day.' However, there is a point at which regulation has become onerous in the banking industry and this is another example of it. I encourage you to consider all the other parts of SB 108 in dealing with insurance, because there are a lot of scams and other things going out to the public. But, in the case of our governmental trust, they are being administered properly. The fiduciaries, themselves, when they run for election must first certify that they meet all the requirements of a fiduciary under ERISA with respect to any kind of criminal violations, convictions or whatever. Furthermore, they must also attest to the fact that they understand what they are going to do as a fiduciary and that position requires a high degree of understanding of employee benefit plans, fiduciary standards and investment policy. So, again, if it

ain't broke, don't fix it and I encourage you to let us go about doing our business as best we can, which is pretty good.

2:18:36 PM

COLLEEN SAVOIE, Consultant for Marsh USA representing the Public Employees Local 71, said she wanted to highlight a couple of items that had been discussed previously. The first one is the need for financial oversight of these plans that already have published annual audits. This bill would have an actuary that certifies to the financial condition of the plan, but actuaries are unwilling to "insure" financial solvency of any plan.

2:19:49 PM

Another issue of concern was the claims oversight because there is already a mechanism by which appeals are resolved. These trusts have a medical review, a review by the Board of Trustees and finally, arbitration. It's important to understand that the process needs to be formal so that the trust can make sure that all participants are treated equally and fairly. Finally, she pointed out again that the trustees are trained fiduciaries with ultimate responsibility to the participants of these trust funds and they have the right to bring suit in Superior Court.

2:21:06 PM

MARY STOLL said she is trust counsel to both Public Employees Local 71 Trust and the ASEA Local 52 Trust and that trusts have a very small incidence of appeals in comparison to the number of claims that are actually paid every year.

She also heard Ms. Hall reference self-funded plans that are not regulated by ERISA because they are governmental plans that are exempt under its definitions and pointed out that ERISA plans are reviewed by the both the federal court and the Department of Labor. Both of her plans follow ERISA as a guideline and she explained:

There are specifically two requirements that they cannot follow because there are Department of Labor regulations that are specific ERISA plans, one of which would be the appeals process wherein arbitration cannot be binding. You have to bring suit in federal court if you have a complaint.

The second issue would be the requirement of filing an annual report called a Form 5500 with the IRS, which government plans are exempted from. If the intent is

to cover self-funded plans that are not regulated by ERISA, the municipalities, school districts are not regulated by ERISA and I can't find a reason to distinguish between those self-funded groups from these state union groups that are self-funded.

I'm aware of no self-funded governmental plan in the State of Alaska, which has failed financially. Their concerns about this in-depth actuarial reporting seem to be unwarranted given the fact that they are already providing actuary reports to the state, that post their financial statements. That information is available to the state and they are not suffering financial at this point. They are well-run trusts with well-trained and diligent fiduciaries who are relying on the advice of advisors who carry professional diligence insurance, malpractice insurance, et cetera and are reviewed at least every other year by the trust for whether they're providing the services they are hired to provide.

I agree with Mr. Puschak that this is not a situation where it's broken; it really does not need fixing. It's adding financial burden to the trust, which is unwarranted. They already provide equal or better coverage than the state plan is providing. By imposing the Division of Insurance into the processes of the Board of Trustees, I think it would enable them from providing a plan best suits their participants. These plans don't go blithely about their plan decisions; they conduct independent and scientific surveys to determine what their participants want and I think you've heard testimony that they respond to those requests and desires by their participants and they fit it into the limited budgets that they have available to provide an excellent health plan.

Speaking to the appeals process, and again, I think Ms. Hall's testimony confirmed what we had already suspected - that the concerns are raised by a very small percentage of participants stemming from the Anchorage area PPO arrangement and from the appeals process. I can't find anything in this Senate bill, which would redress either of those two issues. There's no language in the bill that would change either the PPO or the appeals process. The bill just

adds expense and unnecessary oversight and reporting requirements.

Ms. Hall also referenced two other groups, which are non-State of Alaska employees participating in the trust. That is not the case for ASEA Local 52 Trust, but it is the case for Public Employees Local 71. Public Employees 71 has the Municipality of Anchorage employees who are represented by PE 71, Anchorage School District employees who are represented by PE 71 and the Haines Borough and City of Haines employees who are represented. Those groups would be adversely impacted by this decision, whereas they aren't even in the target of the proposed legislation, which I think, would be unfair. We also have responded, both last April and last March respectively for each trust, to a very in-depth request for information by the Division of Insurance. We complied with the request and provided in-depth information about the operations of the trust, how they do comply voluntarily with the ERISA standards, training, provided trust agreements, letters of agreement, plan booklets, discussed the fact that the annual audits at least for ASEA are posted on their website. The information is readily available. So, I'm at a little bit of a loss that there is a question as to how these funds operate at this juncture.

But, just in summary, there are numerous hopelessly ambiguous sections in this bill, which would make it virtually impossible to comply with any certitude. In addition, the bill requires verifications, as Ms. Savoie had pointed out, from actuaries, which an actuary could not undertake without becoming a co-fiduciary over the trust and I think that's highly unlikely at any cost that an actuary would undertake that position. So, based upon these concerns and representations, it's my hope that you as a committee will delete the bill of Sections 28 and 29 and I'm happy to take any questions you may have.

[2:28:20 PM](#)

CHAIR BUNDE commented that current the PERS and TRS system was referenced earlier and he hoped everyone's goal was not to cast any aspersion on the people who manage those funds currently, but to make sure the state doesn't end up with a deficit problem

like those funds have. He asked if some level of bonding would be appropriate.

MS. STOLL replied that currently the ASEA trust has a \$4 million bond in place and didn't see having 10 percent of annual claims as being necessary. She said that all year long these boards go through the process of evaluating their reserves and that the people who manage the trusts are extremely sophisticated being trained through the International Foundation of Employee Benefits. The funds are managed very reasonably.

MS. STOLL said that she wasn't aware of any self-funded governmental plan in Alaska, which has failed financially. "These funds are both doing extremely well and to coin Mr. Puschak's statement, "It's not broken, it doesn't need fixing."

CHAIR BUNDE announced that there were no further people to testify and set the bill aside to work on a CS.

SB 145-LOANS FOR COMMERCIAL FISHING TENDERS

CHAIR CON BUNDE announced SB 145 to be up for consideration.

TIM BARRY, staff to Senator Stedman, sponsor, said that this legislation was requested by a number of fishing tenders in the state. It makes a small change in the Alaska Commercial Fishing Loan Act to allow Alaskan owners of fish tenders to be eligible for loans to improve the quality of seafood products. Under the current law, the Division of Investments in the Department of Commerce, Community & Economic Development (DCCED) offers low-interest loans to fishing permit holders to upgrade their equipment in order to improve the quality of their seafood product. Fishing tenders who buy fish on the fishing grounds from fishermen and transport the product to processing plants are an important part of the seafood handling process, however they are not defined currently as fishermen and are, therefore, not eligible for the improvement loans. SB 145 is supported by the Alaska Independent Tendermen's Association, the Southeast Alaska Fishermen's Alliance and Cordova District Fishermen United.

CHAIR BUNDE asked what exactly upgrading equipment means.

MR. BARRY replied that purchase of vessels is not part of this program, but it would cover a refrigerated seawater hold, for instance.

[2:35:28 PM](#)

GREG WINEGAR, Director, Division of Investments, supported SB 145 saying it was consistent with state and industry efforts to improve quality of seafood products. The division already gives these loans to commercial fishing harvesters and the program has been self-supporting for many years. SB 145 would not require appropriations or additional staff.

[2:36:49 PM](#)

JERRY MCCUNE, President, Cordova Fishermen United, supported SB 145 saying it's important to have tenders with good equipment.

[2:37:37 PM](#)

CHAIR BUNDE asked if anyone is opposed to this bill.

MR. MCCUNE answered no.

[2:38:38 PM](#)

SENATOR BEN STEVENS moved to pass SB 145 from committee with individual recommendations and attached fiscal note. Senators Davis, Ellis, Ben Stevens, Seekins and Chair Bunde voted yea; and SB 145 moved from committee.

CSHB 81(L&C)-CONTRACTOR LICENSE ENFORCEMENT

CHAIR CON BUNDE announced CSHB 81(L&C) to be up for consideration.

[2:41:18 PM](#)

REPRESENTATIVE TOM ANDERSON, sponsor, explained that HB 81 is intended to help enforce Alaska's current laws that were changed last session regarding construction contractor licensing and registration. Section 2 gives the Department of Law (DOL) and the Division of Occupational Licensing the authority to issue administrative fines for violations. Currently, violations are prosecuted by the district attorney through the court system and many times cases never go to trial because they are prioritized below other cases like rape and murder. His intent with Section 2 was to streamline enforcement efforts and to help make government more efficient by not clogging up the judicial system with cases that are relatively minor compared to other cases it has to handle.

The bill doesn't change any of the laws affecting handymen who can work on construction projects less than \$5,000 and allows them work on projects worth more than \$5,000 with proper licensure. It also allows owner-builders to construct a single-

family duplex, triplex, four-plex or commercial building every two years. Current law states one year. This change was in response to testimony from a private home inspector who observed people abusing the current exemption by building units every year for each member of their family and then selling the units without being a general contractor.

REPRESENTATIVE ANDERSON related that he has heard complaints from several individuals about the two-year occupancy requirements in the owner-builder exemption and he thought the committee could make an amendment in that regard. He said this bill is strongly supported by several building associations.

[2:43:28 PM](#)

CHAIR BUNDE asked if his experience is that a handyman very quickly reaches the \$5,000 limit.

REPRESENTATIVE ANDERSON replied that he didn't set that limit; it is in current statute and not enforced.

[2:45:11 PM](#)

SENATOR SEEKINS asked if the \$5,000 limit was for labor only or labor and materials.

REPRESENTATIVE ANDERSON replied that he didn't know, but he thought it was an individual's portion of the contract.

SENATOR SEEKINS asked if he has a \$20,000 contract and five people did \$4,000 worth, would they be exempt from the limitation or is it the job itself.

REPRESENTATIVE ANDERSON answered by reading:

This exemption does not apply when the work is divided into contracts of amounts less than \$5,000 for the purpose of evasion of the law. For work priced at \$2,500 or more, some public liability and property damage insurance is required.

[2:46:37 PM](#)

SENATOR SEEKINS said he thought that section was confusing and asked how a person would be assessed a penalty and who would do it. He said, "I have a natural aversion to having hearing officers who are employees of the department that's bringing the action."

REPRESENTATIVE ANDERSON responded that was a fair concern and he added that the Administrative Regulation Review Committee had considered Senator Therriault's central panel in this legislative cycle and explained:

I think, though, that if we were to do that, it obviously adds a fiscal impact to the legislation and we've been really proud that there hasn't been such. I think Greg can add to that, but that's one of the rationales why we didn't just throw it in that panel.

[2:48:00 PM](#)

GREY MITCHELL, Director, Division of Labor Standards and Safety, Department of Labor and Workforce Development (DOLWD), agreed with trying to avoid a fiscal note. If the hearings go to the Office of Administrative Hearings, it would need a fiscal note. His division already has hearing officers who are trained in fair hearing procedures. They work in a different section from enforcement staff, so there is some separation. He would not let a hearing officer who has any previous knowledge of a case hear that particular case.

[2:49:15 PM](#)

SENATOR SEEKINS explained that he was concerned that all those people were getting their paychecks from the same department.

CHAIR BUNDE said he had a list of people who wanted to testify on this issue and if their concerns had been met with previous testimony, he asked them to indicate their agreement.

[2:51:21 PM](#)

MIKE PRAX, North Pole contractor representing himself, said he opposed HB 81. The sponsor claims that it closes a loophole in current law and that loop is "a bunch of onerous state regulations that are creating a noose that is strangling out society." He pointed out that the department already has the power to issue a citation on probable cause - a fairly low standard.

This bill gives them the authority to levy a \$1,000 fine on a citizen based on probable cause and then leaves the citizen to face a complicated administrative procedure. And if he doesn't fill in an application and write down his reasons for the application for review ahead of time in a timely fashion, he is even denied judicial review of the fine.

He urged the committee to hold the bill.

PATRICK DALTON, Delta Junction, opposed HB 81 that puts enforcement teeth into a poor law. Many homeowners have been victims of slothful craftsmanship, but the other side of the equation is that a lot of good independent craftsmen can't afford expensive licensing and bonding. They find it hard to survive during the long winter slump and when spring arrives and the building season starts, they face a grim choice - ignore the regulations and work without a contractor's license or simply starve. He also pointed out that without these people working, there would be an acute shortage of small homebuilders.

[2:56:09 PM](#)

TERRY DUSZYNSKI, Fairbanks building inspector, supported HB 81. He works with a lot of owner-builders and thought they should be able to continue to build small homes. He has also dealt with a number of people who are building homes for sale who really don't know what they are doing and need the education that licensure provides.

[2:57:52 PM](#)

MARY GIRVAN, Delta Junction, wanted to know what the original legislation is that established the \$5,000 limit.

CHAIR BUNDE replied that it was established last year in HB 542.

[2:58:46 PM](#)

NANCY DOBBERPUHL, Fairbanks, said that the people from Fairbanks and Delta Junction have expressed a lot of her concerns. She spoke for herself, her children, her grandchildren and any Alaskans who are tired of senseless regulations. She should be able to hire who she wants and pay them a fair wage for work she will be able to see if it's good or not. She thought HB 81 was a bad bill.

[3:01:01 PM](#)

JIM CALLAHAN, Fairbanks, said he is a "handyman" and just realized the upper limit was lowered from \$10,000 to \$5,000 last year. He also wants honest business practices and consumer protection, but at the end of the day the difference between \$5,000 and \$10,000 is that contractors will get more of the pie. He related a story of a licensed person who did shoddy work to support his position that licensing doesn't necessarily mean a person does good work.

[3:03:28 PM](#)

NELS CHURCH waived his time.

[3:04:01 PM](#)

RANDY DOLL, Fairbanks, supported HB 81 and wanted to see even steeper fines.

[3:04:26 PM](#)

SUE ELLISON, ABC Incorporated, Fairbanks, supported HB 81. ABC is a general contractor licensed for residential endorsement. She said HB 81 removed a cumbersome and time-consuming process out of criminal into civil court. She recommended removing the occupancy limitation because it puts undue stress on some people and doesn't accomplish anything.

[3:05:33 PM](#)

JEFF ALLING, North Pole, said he owns Alcan Builders and does heavy commercial construction and that he is coming at this from a whole different angle. It's been his dream to retire in seven or nine years and shortly after that he wants to perhaps build one rental unit per year or build a house for one of his kids. It could be argued under Section 5 (12) that his child is the owner-builder, but that wouldn't be the case. It could also be construed that he is acting as a contractor, which he wouldn't be if he were retired. Also, he would be allowed to build only one rental unit every two years and he would have to promise to occupy it or show undue hardship for not occupying it. He came to Alaska from Connecticut for independence and freedom and he would like to be able to exercise his ambition when he retires.

[3:07:34 PM](#)

CHAIR BUNDE said that the sponsor had indicated interest in amending that issue and would be back with a CS at a future date.

[3:08:05 PM](#)

ROGER BURGGRAFF, Fairbanks, said the public was unaware of this bill and he opposed it anyhow as being obnoxious, un-American and un-Alaskan. It would put the handyman out of business. He suggested raising the limit requiring a license back to \$10,000 or more.

[3:11:12 PM](#)

TODD LARKIN, North Pole, said HB 81 would hurt consumers if it were not amended. He charges \$30 per hour for his labor and works for two categories of people - contractors and every other kind of customer from homeowners to real estate agents. When he

is serving the homeowners and real estate agents, his time is broken up into service visits, which means he cannot get eight billable hours without working 10 or 12 hours. When he works for contractors on a temporary basis, he is able to string together 40 hours per week or more for one to three weeks at a time without interruption. This, in effect, subsidizes his rates for the other customers and allows him to keep rates at the current level. If the committee doesn't correct HB 81 he will have to raise his rates to achieve the same income. He noted that he had offered the committee a conceptual amendment in writing.

[3:14:05 PM](#)

SETH CHURCH, Fairbanks, said HB 81 needed an amendment to the occupancy provision in Section 12. If he currently had a house under construction, he couldn't sell it without a notice of completion or undue hardship. It lets the government decide if he can sell his house.

[3:16:32 PM](#)

MIKE MUSICK, Fairbanks, said he is a licensed and bonded homebuilder and supported HB 81.

[3:19:01 PM](#)

JACK HEBERT, Fairbanks, said he is a homebuilder and supported HB 81. He hated to see the old days go as he has always been a small builder, but he didn't feel that this bill changes that much. He supported it because it sends out a message that they all have to start playing by the same rules.

[3:21:24 PM](#)

LISA PEGER, Fairbanks, said she is an apartment owner and that rentals always need repairs and this would actually drive handymen away. No one will take small jobs and it would end up hurting the small business people.

[3:22:41 PM](#)

RANDY GRIFFIN, Fairbanks, opposed HB 81, especially the occupancy requirement in Section 12. He has lived in his house for years, but it isn't finished and he wondered if he would be able to sell it. He also suggested that maybe handymen could hand their customer a notice saying they aren't bonded so the customer knows that upfront.

[3:24:59 PM](#)

ALAN WILSON, Co-chair, Legislative Committee, Alaska State Homebuilding Association, noted that this bill was introduced at his request. Basically, he thought most issues would be taken

care of with the amendment that was going to be offered. It makes it easier for enforcement to cite individuals similar to parking or speeding tickets. It would simplify what is going on now and will level the playing field in the construction industry. He informed the committee that California has a \$500 limit; Oregon and Washington both require all individuals to be registered.

[3:28:21 PM](#)

CHAIR BUNDE thanked everyone for being courteous and said he would hold the bill for further work. He then adjourned the meeting at [3:28:53 PM](#).