

ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE

March 25, 2010

1:34 p.m.

MEMBERS PRESENT

Senator Joe Paskvan, Chair
Senator Joe Thomas, Vice Chair
Senator Kevin Meyer
Senator Con Bunde

MEMBERS ABSENT

Senator Bettye Davis

COMMITTEE CALENDAR

SENATE CONCURRENT RESOLUTION NO. 16

Creating and relating to the Economic Development Planning Commission.

- HEARD AND HELD

SENATE BILL NO. 258

"An Act prohibiting health care insurers that provide dental care coverage from setting a minimum age for receiving dental care coverage, allowing those insurers to set a maximum age for receiving dental care coverage as a dependent, and prohibiting those insurers from setting fees that a dentist may charge for dental services not covered under the insurer's policy."

- MOVED CSSB 258(L&C) OUT OF COMMITTEE

SENATE BILL NO. 303

"An Act relating to a subcontractor's, contractor's, and project owner's liability for workers' compensation, to sole proprietors and partnerships without employees, and to managers or managing members of limited liability companies, and excluding certain persons from liability for securing the payment of workers' compensation benefits to employees; and providing for an effective date."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SCR 16

SHORT TITLE: ECONOMIC DEVELOPMENT PLANNING COMMISSION

SPONSOR(s): LABOR & COMMERCE

03/15/10 (S) READ THE FIRST TIME - REFERRALS
03/15/10 (S) L&C, FIN
03/25/10 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 258

SHORT TITLE: DENTAL CARE INSURANCE

SPONSOR(s): SENATOR(s) HUGGINS

02/05/10 (S) READ THE FIRST TIME - REFERRALS
02/05/10 (S) HSS, L&C
02/15/10 (S) HSS AT 1:30 PM BUTROVICH 205
02/15/10 (S) Moved SB 258 Out of Committee
02/15/10 (S) MINUTE(HSS)
02/17/10 (S) HSS RPT 3DP 1NR
02/17/10 (S) DP: DAVIS, ELLIS, THOMAS
02/17/10 (S) NR: PASKVAN
03/02/10 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
03/02/10 (S) Heard & Held
03/02/10 (S) MINUTE(L&C)
03/25/10 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 303

SHORT TITLE: WORKERS' COMPENSATION AND CONTRACTORS

SPONSOR(s): LABOR & COMMERCE

03/08/10 (S) READ THE FIRST TIME - REFERRALS
03/08/10 (S) L&C, JUD
03/25/10 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

JEFF STEPP

Staff to Senator Paskvan
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Commented on SCR 16.

ERIN HARRINGTON

Staff to Representative Austerman
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Explained provisions in SCR 16.

ROB ERAL

Staff to Representative Herron
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Commented on SJR 16.

SHARON LONG

Staff to Senator Huggins
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Commented on SB 258 for the sponsor.

DR. JOHN WOHLER, DDS, representing himself
and the Alaska Dental Society
Fairbanks, AK

POSITION STATEMENT: Supported CSSB 278().

DR. DAVID LOGAN, DDS
Alaska Dental Society
Juneau, AK

POSITION STATEMENT: Supported CSSB 278().

TRENA HEIKES, Director
Division of Workers' Compensation
Department of Labor and Workforce Development (DOLWD)
Juneau, AK

POSITION STATEMENT: Neutral position on SB 303.

MICHELLE KAHLE, representing herself
No address provided

POSITION STATEMENT: Supported SB 303.

JOHN LEWIS, President
Iron Workers Local 751
Anchorage, AK

POSITION STATEMENT: Supported SB 303.

KEVIN DOUGHERTY
Alaska Laborers
Eagle River, AK

POSITION STATEMENT: Supported SB 303.

ACTION NARRATIVE

[1:34:27 PM](#)

CHAIR JOE PASKVAN called the Senate Labor and Commerce Standing Committee meeting to order at 1:34 p.m. Present at the call to order were Senators Bunde, Meyer, and Paskvan.

SCR 16-ECONOMIC DEVELOPMENT PLANNING COMMISSION

[1:35:26 PM](#)

CHAIR PASKVAN announced SCR 16 to be up for consideration.

JEFF STEPP, staff to Senator Paskvan, said this resolution is an opportunity to follow through on a recommendation mentioned in an earlier committee overview of economic development in the state of Alaska. He recalled that one thing that has been universally identified among the states is that input from the private sector is lacking. In collaborating with Representative Austerman's office the Labor and Commerce Committee has submitted SCR 16, the main goal of which is to facilitate input from the private sector in the implementation of state economic development policy. He said a committee substitute (CS) arrived in their office just a few minutes before the meeting started. But they would talk about the changes and have the CS and the fiscal note for the committee next time.

[1:38:06 PM](#)

SENATOR JOE THOMAS joined the committee.

[1:38:23 PM](#)

ERIN HARRINGTON, staff to Representative Austerman, said she had been working with Mr. Stepp on this initiative and explained that SCR 16 creates an Economic Development Planning Commission within the Legislature. It would be a 10-member task force that would work to integrate the Legislature into some of the on-going economic development initiatives in the state. In January efforts were discussed such as Alaska Forward and the Governor's Legacy Initiative. The idea is to make sure the Legislature has the opportunity to participate in those and particularly to participate in the implementation of any ideas that developed through the processes. She said her presentation addresses the expected CS.

[1:40:08 PM](#)

This commission would report suggested strategies and legislation to the Governor, the Legislative Budget and Audit Committee (LB&A), and to the Legislative Council. Their activities would sunset at the end of fiscal year 2012. They do not want to duplicate any long term economic development efforts that might be created through Alaska Forward or others, but to

just create a very specific working group within the Legislature so it can be engaged and implement them as the processes move forward.

MS. HARRINGTON said SCR 16 allows the Legislature to monitor ongoing initiatives and it creates a mechanism for it to collaborate with the private sector on issues related to economic development, and to identify where legislation is necessary. Representative Austerman's work suggested that the state isn't going to necessarily lead economic development but in many cases it has the tools to support it. It also demonstrates the Legislature's ongoing commitment to economic development initiatives.

Finally, it responds to some identified shortcomings from previous economic development efforts. She referenced a letter from Senator Torgerson which included a copy of the Alaska Forward Phase 1 Report noting that previous efforts sometimes fell apart at the implementation stage either with the administration or because legislative action was needed but there hadn't been good communication about what that might be. This tries to address that proactively.

MS. HARRINGTON said the current processes are Alaska Forward, which has been organized with the Alaska Partnership for Economic Development, and the Legacy Process which has been running out of the Governor's Office. Alaska Forward was funded with \$500,000 from the Denali Commission to support their efforts to do a statewide strategic plan related to economic development. Phase 1 is done and they are in the fundraising and kick off stage of phase 2. In phase 1 they spent only \$350,000-375,000, so they have some money left over; they'll be spending roughly twice that on the next stage.

The Legacy Process that was established by the Executive Order from the former governor has been continued in under Governor Parnell's leadership. This process is morphing and is expected to run parallel to the Alaska Forward process so that they are mutually supportive. Other regional and industry specific economic development efforts are going on in the state and are mentioned in the report. Kinds of opportunities the commission might identify are tax incentives, loan programs, and targeting economic clusters that could benefit from additional support or need an additional boost from state efforts.

She said the Commission would work to draft legislation in advance of each of the two upcoming legislative sessions so

action could be taken if appropriate. This could include restructuring of departments, tax incentive or loan programs.

1:45:40 PM

ROB EARL, staff to Representative Herron, remarked that slide 7 showed the various appointment authorities for the Commission; the Finance co-chairs have a large roll. The last two commissioners are automatically ex officio members. All members would serve until the sunset date. They just received the Alaska Forward Phase 1 report that stated the commission could start work April 30 at the earliest. The first reporting deadline would be at the beginning of the 2011 session. Phase 2 of Alaska Forward will be a summit in the spring or fall. A second reporting deadline is before the 2012 session. Then it would sunset June 30, 2012.

He said that all agencies found a lack of cohesive thinking on economic development in Alaska and think the commission could be a filter and a bridge to take that information from diverse sources and present it to the Legislature. Legislators on the commission could have access to Legislative Legal to draft legislation and could recommend policy changes to the governor.

MR. EARL said the forthcoming fiscal note will be about \$130,000 - most of it for commission staff at range 21, step C, with a little bit of travel per diem.

1:48:29 PM

SENATOR BUNDE asked if it wouldn't be more efficient to bring the report straight to the Labor and Commerce chairs.

MS. HARRINGTON responded that Legislative Legal suggested that LB&A interact with administration on issues related to the budget and agencies, and the Legislative Council, being the policy body for the Legislature, could perhaps provide a broader reach. It is open to discussion.

SENATOR BUNDE said the creation of this commission seems to anticipate proposing some legislation, and they should remove filters rather than adding additional ones. If the Legislature is not in session, perhaps Legislative Council might be the right route. He didn't understand LB&A's role in this.

CHAIR PASKVAN said they are looking for the comments of private enterprise and he thought that Labor and Commerce was appropriately involved in that.

[1:50:22 PM](#)

SENATOR BUNDE said he hears from business and enterprise people all the time and asked why these business people can't talk to their elected representatives. Wouldn't that be a lot cheaper?

MS. HARRINGTON agreed, but the concern this resolution is attempting to address is the one that has been vocalized that at times it doesn't seem that the three stakeholders in these kinds of processes are equally engaged. Sometimes in the past the administration and public have been engaged they have been told, but the Legislature hasn't been. Or the Legislature and public have been engaged but the administration hasn't. This resolution seeks to address that concern by assuring that the Legislature has a direct route of engagement in implementation of these processes.

SENATOR BUNDE said you're battling the inherent three branches of government.

SENATOR MEYER said Anchorage has the Economic Development Association that has legislators as ex officio members as well as the Anchorage Assembly.

CHAIR PASKVAN said Fairbanks has an Economic Development Authority, as well.

SENATOR MEYER said the Valley does, too; so the bulk of the population is already covered by some economic group. He shared Senator Bunde's concern about having so many commissions. What did she think about using local economic development organizations?

MS. HARRINGTON answered that was an excellent point. The Alaska Partnership for Economic Development (APED) has been the lead organization on the Alaska Forward planning process and is actually an umbrella organization of these regional Alaska Regional Development Organizations (ARDORS). The lack of integration on statewide concepts was identified and that is what led them to the development of the APED organization and the Alaska Forward move. The president of AEDC is on the APED Board, Marty Mativa from the Mat-Su RDC is actually the president of APED right now. This commission is not intended to replace the leadership of that organization and their statewide vision; it is intended to make sure they, the private sector and the groups that are going to be involved in Alaska's long term economic development and have a direct line of contact with the Legislature and, moreover, have some of the tools and support

that would be needed in actually creating legislation where it would be appropriate.

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SENATOR THOMAS said he has heard concerns that there hasn't been as much activity as one would expect when you have a Department of Economic Development. Making sure services aren't duplicated would be helpful as well as figuring out why the state isn't moving forward as fast as it should be.

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CHAIR PASKVAN recognized Commissioner Curtis Thayer, Department of Commerce, Community and Economic Development (DCCED), sitting in the audience. He said SCR 16 would be held for further work.

SB 258-DENTAL CARE INSURANCE

[1:58:36 PM](#)

CHAIR PASKVAN announced SB 258 to be up for consideration. He moved to adopt CSSB 258() 26-LS1418\R. There were no objections and it was so ordered.

[1:59:58 PM](#)

SHARON LONG, staff to Senator Huggins, sponsor of SB 258, said the committee substitute (CS) is a result of a lot of work on this bill since it was last heard. The dental professionals, the insurance industry and small business worked together to clarify the provisions of the bill and craft a compromise which satisfies the original aims of the measure. She drew their attention to a new letter from the National Federation of Independent Business Alaska removing their opposition to the bill.

[2:01:07 PM](#)

DR. JOHN WOHLER, DDS, representing himself and the Alaska Dental Society, Fairbanks, said he thought that CSSB 278() would benefit everybody involved. The bill adds an option for contracts with a dentist to limit fees on non-covered dental services under managed care. Dental insurances will benefit from increased access to providers who otherwise nationally are opting out of these contracts.

This will give dentists a lot more options within their practice to incorporate good contract language and policies. Managed care patients will be able to stay with their current dentist and it will reduce barriers to access in Alaska by keeping providers from opting out of the network.

DR. WOHLER said the CS is also going to increase the predictability of costs for services from network providers and the costs will be easier for the dental patient to follow. With this language they expect to see more dentists opting in.

He said that patients who don't have managed care will also benefit because it will reduce cost shifting. He explained that a lot of times when dentists get dental work or health care at cost (think of emergency rooms) the money doesn't go away, it is just shifted on to other paying patients. The managed care insurance companies themselves are going to benefit because they will have a larger number of participating providers that they can market to their audience and have a better product to market. They will also have an ability to market savings and increase provider participation under managed care plans for those providers who do opt in to fee scheduling for non-covered services.

Obviously, he said the dentist benefits from having the ability to join the network without having the insurance company dictate fees for services that aren't being paid a benefit. If they do already participate in a contract they have a choice to opt in or opt out of a contract that caps fees for non-covered services.

[2:05:05 PM](#)

SENATOR BUNDE asked if the recently passed federal health care bill includes dental care and if it does how would that impact this legislation.

MR. WOHLER replied that he didn't think it affected dentists.

[2:06:11 PM](#)

DR. DAVID LOGAN, DDS, Alaska Dental Society, Juneau, agreed with Dr. Wohler's comments. He said the CS represents a collaborative effort between the Dental Society and the industry. They are happy with the CS and said he would answer questions.

CHAIR PASKVAN found no questions.

[2:07:21 PM](#)

CHAIR PASKVAN closed public testimony.

[2:08:16 PM](#)

SENATOR THOMAS moved to report CSSB 258(L&C) from committee with individual recommendations and attached zero fiscal note(s). There were no objections and it was so ordered.

[2:08:54 PM](#)

CHAIR PASKVAN called an at ease for signing from 2:08-2:11 p.m.

SB 303-WORKERS' COMPENSATION AND CONTRACTORS

[2:11:25 PM](#)

CHAIR PASKVAN called the meeting back to order at 2:11 and announced SB 303 to be up for consideration. He said he was advancing this particular legislation and would be presenting it to the committee. He said:

The intent of this bill is to address responsibility and accountability, which are core values that are promoted by SB 303. I submit that this bill advances conservative principles and fundamental capitalism. It does this by requiring owners and general contractors and others to comply with the basic principle "if you break it you pay for it."

Under this, if an owner or general contractor is 25 percent at fault they are only responsible for 25 percent of the injury damages.

He pointed out that as a nation 250 years ago, we fought a war challenging the concept that "the king can do no wrong." Our nation was formed based upon the concept that our government should be responsible and accountable to its citizens for government's wrongful conduct. In Alaska, the general concept has been that immunity of our sovereign is the exception rather than the rule. In other words, governments may be responsible for their wrongful conduct to the citizens of Alaska. When wrongful conduct exists, responsibility and accountability for that wrongful conduct should attach. SB 303 removes immunity which protects the privileged from the consequences of their wrongful conduct.

SENATOR BUNDE said he is a veteran of several workers' compensation vigorous discussions, and asked if he was correct in believing that in 2004 the Legislature said subcontractors (subs) have to be responsible for workers' compensation for their employees and the generals, therefore, would not be responsible. And that Senator Paskvan's goal is to say that subs aren't responsible but the generals are.

CHAIR PASKVAN said no. "The intent is is that each employer is responsible for complying with the law, which means that they must have workers' compensation coverage."

SENATOR BUNDE remarked, "So, subs and generals will have..."

CHAIR PASKVAN answered, "All employers whether - however they might be classified - whether they're a general contractor, first tier subcontractor, second tier subcontractor - all employers would remain obligated under the law to purchase workers' compensation coverage."

SENATOR BUNDE asked if that seemed to be double coverage in some cases.

CHAIR PASKVAN replied, "The employer is covering each employer's employees. So, there is no double coverage in that regard."

[2:15:39 PM](#)

SENATOR MEYER asked if he is the general and he hires Senator Bunde as the sub, who is responsible for purchasing workers' compensation.

CHAIR PASKVAN answered the sub would be responsible for purchasing workers' compensation coverage for the sub's employees.

SENATOR MEYER asked, "So, the general is not responsible? The subcontractor would be the responsible party?"

CHAIR PASKVAN answered that the subcontractor is supposed to by law purchase workers' compensation for his employees. One of the problems now is that the system is being scammed by subs who are not purchasing it because they can bid work for less, which constitutes an unfair bidding practice. This type of problem arises when someone is provided a financial incentive to not comply with the law by not purchasing workers' compensation coverage.

SENATOR BUNDE asked if he also said that the generals would have to have workers' compensation.

CHAIR PASKVAN responded, "For the general's employees."

SENATOR BUNDE asked, "And the sub is not an employee of the general?"

CHAIR PASKVAN replied, "The sub is not an employee of the general. That is why they have simply a business contract relationship not an employment contract relationship."

SENATOR BUNDE said that current law requires subs to have workers' compensation.

CHAIR PASKVAN replied, generally speaking, yes. The intent of this bill is to remove the immunity that would apply if an employee's injury were to result from wrongful conduct of an owner or a general contractor.

SENATOR BUNDE said he thought he understood now. "The general will have to buy workers' compensation for potential employees and, in effect, the general contractor becomes the state agency that enforces his subs to buy workers' compensation, because if they don't it's going to fall back on the general."

CHAIR PASKVAN responded, "For purposes of the removal of immunity it would not be covered under the workers' compensation policy."

SENATOR BUNDE apologized for being so obtuse.

CHAIR PASKVAN added further, "If there is accountability and responsibility for wrongful conduct, the general contractor's liability coverage would be responsible to the employee of the subcontractor for that general contractor's apportioned or allocated fault."

SENATOR BUNDE said he thought he now understood that what Senator Paskvan was saying was that he, as a general contractor who employs Senator Meyer, and doesn't supervise him adequately and he doesn't have workers' compensation and there is an injury; it's going to fall back on himself because he didn't enforce state law on Senator Meyer.

CHAIR PASKVAN responded, "We're somewhat talking about two different things here. The question is whether your conduct as a general contractor is wrongful conduct. And if that conduct was wrongful, an employee of the subcontractor injured or caused injury to an employee, then your wrongful conduct would be accountable under the law."

SENATOR BUNDE quipped, "Could you title this the attorney's full employment bill?"

CHAIR PASKVAN responded, "I think that it's a citizen's right to redress grievances for wrongful conduct."

SENATOR BUNDE asked if this bill was trying to fix the problem that some subs buy workers' compensation and some don't and there may or may not be generals that knowingly or unknowingly employ these subs who don't buy workers' compensation.

CHAIR PASKVAN replied that it's broader than that in the sense that "it removes immunity that currently says there are privileged or special interests that are not accountable and not responsible for their wrongful conduct that injures someone else."

SENATOR THOMAS said the bill gets at two issues. One is that you're supposed to have workers' compensation insurance and you're supposed to post it. It is posted there in Tom Stewart Legislation Office Building. So, if a general overlooks those types of things, and in fact the subcontractor does not have workers' compensation, then they would be responsible.

The second part is in reference to Legal Service Opinion 3 that says someone could be criminally negligent and be exempt from obligation to the injured parties based on the existing statute. SB 303 changes that. He knew of an example where a general contractor actually supervised the subcontractor and indicated that a particular situation was safe because they were the ones responsible for purging a tank; the tank blew up and someone was killed. In fact, they were responsible; the sub only sent their workers in to do the work based on the general contractor's certification that the tank had been purged and it was a safe working environment. In fact, it was found that it was not.

He summarized that the bill gets at those two situations: one where no workers' compensation exists for the subcontractor and second where there is what could be considered, and often times is, criminal or negligent behavior on behalf of the general contractor beyond the ability of the subcontractor to recognize or know.

SENATOR BUNDE said in that example the losses would probably have been covered by workers' compensation, assuming the sub was obeying the law. This would give those that suffered a loss another opportunity for recovery.

SENATOR MEYER responded, "Correct."

2:24:28 PM

CHAIR PASKVAN said the question ultimately is whether workers' compensation is designed to be a full compensation system - and it is unquestionably not. For example, if you have a unmarried 25 year-old and he was killed, under Alaska's workers' compensation law the total workers' compensation benefits are reasonable funeral expenses currently set at \$5000. That is the maximum recovery a family could consider receiving for the death of their son for someone else's wrongful conduct. He said most people would find that somewhat less than moral.

CHAIR PASKVAN, finding no further questions, welcomed Trena Heikes, director for the Division of Workers' Compensation to the committee and asked her to explain what benefits are provided under the workers' compensation system and how that might differ from accountability outside of the system.

2:25:22 PM

TRENA HEIKES, Director, Division of Workers' Compensation, Department of Labor and Workforce Development (DOLWD), explained that workers' compensation is always required of any business that hires employees. The 2004 amendments didn't change that. In her 25-year history of litigating for employers on workers' compensation before taking this job she found that there has always been always been a "subcontractor under clause," which is what she thought Senator Bunde was referring to. It means if the sub doesn't carry insurance, then those above him would have to pick it up. That just transfers the burden up to insure that the employees of the subcontractor would be covered.

What happened in 2004 was that regardless of whether the project owner or the contractor above that sub paid for the workers' compensation they would were put into "the chain of potential liability" and, therefore, given employer status which exempted them from any negligence that may occur on the job site. For example, an incident happened in 2007 where two young men were killed in a crane accident. Workers' compensation death benefits were paid, but the estates could take no action against the negligent project owner because of the 2004 amendment.

MS. HEIKES said that workers' compensation would still exist, but this bill would give the employee the right to sue the third party who caused the negligence. This right is allowed everywhere else in workers' compensation law. The only exception is in the construction area because of the 2004 amendment.

She also said there would be no double recovery and explained that if the subcontractor carried insurance in that example, the project owner would get an "offset" for the amount that was paid by workers' compensation benefits in that litigation (language in another section).

MS. HEIKES gave an example of what the 2004 amendments did: she is an employee and Senator Bunde runs into her while she is driving her vehicle on a normal day. She can sue him in tort for negligence. However, if she was running errands (construction related) for her employer and the project owner or the contractor ran into her, she couldn't sue him. Her limitation would be under workers' compensation laws.

MS. HEIKES explained that was the trade off when workers' compensation was developed. Employers would pay regardless of fault, but there would be a cap on the damages - no pain and suffering or lost future wages once medical stability is reached. Under the act the worker could go to vocational training or permanent impairment.

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SENATOR BUNDE said that was his understanding - everyone would pay but you have immunity from suit, because it was a trade off. And if this legislation passes, he assumed that generals would stop buying workers' compensation if they don't have any direct employee because it wouldn't give them immunity from a lawsuit.

MS. HEIKES responded that they would still carry workers' compensation because under the Workers' Compensation Act they would still be responsible for the "contractor under" as she explained before. If their subs don't have insurance they want to make sure they are insured.

SENATOR BUNDE said, "So, everybody gets the bargain except the general then - the bargain being we're going to pay but we're immune from suit. So, we're saying okay the workers' comp's bargain is broken for some people."

MS. HEIKES replied that was one way of putting it. The other way is to say that in the construction arena those injured workers are limited and unable to seek redress for negligence that occurred in the work place.

SENATOR BUNDE asked if negligence occurred with a sub, if there would be limited opportunity to seek redress for that negligence.

MS. HEIKES replied, "If it's solely the employer's negligence, that's correct." She said she didn't follow his argument. The bargain isn't broken, because they are not employers of that individual. The law says general contractors have an obligation to make sure every sub, when he submits a bid, shows proof of insurance for workers' compensation, because otherwise he is liable. If he's not doing that it's a risk he's taking.

CHAIR PASKVAN added that in federal contracting you have to produce certificates of coverage for many types of coverage. The question is if there is a failure to comply with the law, what should happen. The focus of this bill is the wrongful conduct of a project owner or a general contractor that results in injury to an employee of the subcontractor. Ultimately, the question is whether responsibility and accountability for that wrongful conduct should be the policy of the State of Alaska.

SENATOR BUNDE said hypothetically what if he is a subcontractor and he has workers' compensation, but he does something stupid and an employee is injured. That employee gets his workers' compensation benefit, but then he cannot sue him separately because he has purchased workers' compensation.

MS. HEIKES said that was correct.

SENATOR BUNDE continued the hypothetical saying now he's a general contractor, something happens, there's an injury, they can sue him if he has done something stupid or negligent. So, the bargain is broken for generals, but not for subs.

MS. HEIKES said she thought he was confused because there is no employment relationship between that general and the employee of the sub.

SENATOR BUNDE said, "You use a technicality and break the bargain or make sure you employ everybody that works for you."

CHAIR PASKVAN added that ultimately if the general makes sure the subs comply with the law and have workers' compensation coverage, he has zero risk of paying compensation premiums. The only way they are subject to accountability for wrongful conduct is if they engage in it and it hurts an employee of the subcontractor or someone other than their employee. This does not change the exclusive remedy provision of Alaska statute in the sense of the direct employer/employee relationship. That exclusive remedy of the workers' compensation statute remains

the same; it just removes from the definition of employer those that are not true employers.

SENATOR BUNDE said he understood where he was going, but he didn't agree with it.

SENATOR MEYER asked if the administration is neutral on this bill.

MS. HEIKES answered yes.

SENATOR MEYER said in 2004 this issue had a lot of support at both the executive and the legislative level. It was part of a special session that was very emotional and contentious. One of the reasons they addressed this was because workers' compensation was too expensive for contractors or they couldn't even get it. Those costs were getting passed on and so then the project costs just got higher. He asked if that was correct, and if it is changed back, will costs go back up.

MS. HEIKES said she was in private practice at the time but remembered that the reason wasn't motivated by cost of premium, but rather by the indemnification clauses found in contracts between contractors and project owners where the project owner required the contractor to indemnify and hold him harmless for any damages arising out of it. The contractor would have to pay for the employees' workers' compensation losses but then the employee would sue the project owner. The project owner would request indemnification in that tort liability. In summary, she said, the contractor was paying both, and that was the motivation.

SENATOR MEYER said if he understood this bill correctly, they wouldn't be going back to that situation.

MS. HEIKES replied that this language just removes the language that was added in 2004.

CHAIR PASKVAN said they are also looking into the provisions that wouldn't allow indemnifications for those at the very top of the economic system to be imposed in contracts putting the obligation on those towards the bottom of the economic chain. He thought there were public policy issues if someone who is at fault requires someone else to pay for it. Significant changes have occurred to Alaska law in the last 20-30 years that deal with indemnification for "knock for knock" and immunity issues with respect to allocation of damages.

He said his intent today is to make people aware of the issues that are important and ultimately to determine that those core concepts of accountability and responsibility - conservative principles of "if you break it you pay for it" should attach as public policy of the state of Alaska. He also pointed out:

Under current workers' compensation law is the obligation of reimbursement and if you are successful in establishing accountability and responsibility and recover for that wrongful conduct, the injured employee's obligation under the law is to reimburse the workers' compensation insurer. The intent of that is to remove the burden from the workers' compensation insurer which has the sole obligation now for even others' wrongful conduct. And, you know, the question is fundamentally is whether it's fair that a workers' compensation insurer has to pay for a different entity's fault. The intent of this would be - is that if it is 100 percent of, for example, a general contractor's fault, that the injured employee of the subcontractor would obtain future lost wages, pain and suffering. You know, an estate - the spouse can recover loss of consortium - kids can get a recovery for their loss of a parent. And as part of that the injured or killed employee's estate reimburses the workers' compensation insurance carrier out of those proceeds. That is a balanced system. So, it is not in any sense a double recovery system.

That is why also in the introduction is that if someone is only 25 percent at fault, they are not 100 percent liable for damages. They are only responsible and accountable for their allocated percentage. And I think that that is part of "if you break it you pay for it," but if you are only 25 percent at fault for breaking it you only pay 25 percent. I think it's a more appropriate public policy.

SENATOR MEYER commented that he is trying to understand the bill and he is gun shy because a lot of blood has been shed already over this issue. He asked if the percentage was determined by the courts.

CHAIR PASKVAN replied that the Legislature about 20 years ago enacted AS 09.17.080 which deals with allocation of wrongful conduct. If there are multiple parties to such a litigation

allocation of fault is ultimately determined by a jury. If there is only one defendant, then obviously the only parties are the injured person and the person that is claimed to be at fault, and the allocation is simply between those two entities. Under Alaska's law, if a defendant believes that someone shares responsibility, should they be found at fault, then the defendant's obligation is to identify that potentially responsible person, join them in the litigation so that then the jury would have everyone that every party believes potentially should share responsibility before the court. Then you rely upon the good judgments of the citizens of the state to say who bears what responsibility - including the plaintiffs if there is such an allocation.

He said this bill is in no way designed to make it easier for a plaintiff to recover or to adjust in any way the amount that he would recover. In other words, if they are comparatively at fault, they cannot recover for that percentage that might be allocated to the plaintiff.

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SENATOR MEYER asked if he could assume that the jury would not find both the sub and the general 100 percent responsible giving the victim 200 percent.

CHAIR PASKVAN said it is the jury's duty to add the component allocations of responsibility up to only 100 percent. Under the original allocation of the fault statute certain limited circumstances allow two or more persons to be considered as one entity for the purposes of any particular percentage of fault. That was removed so that each legal entity that is before the court is responsible solely for their percentage.

MS. HEIKES added the 2004 amendment took out everyone who was potentially liable in a "contractor under" situation from ever having to pay for negligence.

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SENATOR BUNDE said you won't get more than 100 percent out of workers' compensation, but if this passes a person has an opportunity to sue in civil court where they could get hundreds of thousands as well as the \$5000 from workers' compensation. It allows more recovery but in a different venue.

CHAIR PASKVAN replied that it is more recovery in the sense that it would be the citizens' on a jury's determination of what is appropriate and full compensation, which might include future

lost wages, which are prohibited under the compact. It might include pain and suffering, loss of enjoyments of life. It is a system that relies upon the good judgment of the citizens.

SENATOR BUNDE recalled the judgment for McDonalds' hot coffee and didn't share his confidence.

MS. HEIKES added that this bill is the only one that prohibits a victim access to the tort fees in the litigation system because of the employment relationship on the construction site.

CHAIR PASKVAN said that is important to consider when moving forward.

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MICHELLE KAHLE, representing herself, said she supported SB 303, because it repeals and rectifies the grave errors of the Seekins amendment of 2004. She said it was painful for her to testify because her son Tyler and his co-worker were killed when the man lift they were in collapsed at the Rock Creek Mine in Nome in July of 2007. The man lift had been set there for over three days improperly and unsafe. All parties responsible for management ignored it until it was too late.

She clarified that her testimony today would not help in any litigation, but rather she felt compelled to share her pain so that some other mother doesn't have to suffer the same in the future. She said this issue has many different facets which she thought was partly the reason the Seekins amendment was passed in 2004. Prior to that, project owners and contractors carried liability insurance which protected them, but post-Seekins they still have this expense. The cost of their liability insurance has not changed.

Prior to the Seekins amendment, employees who were injured or killed due to negligence at work could bring a legal action against all responsible parties except that employer who provided the workers' compensation under which they are exempted. Post-Seekins employees have no recourse. They have to be happy with the benefits that are provided by workers' compensation alone regardless of the negligence of project owners and contractors. They are now immune from any litigation and they don't even have to buy a workers' compensation policy.

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MS. KAHLE said she wanted to give them a little background so they understand that the actions of these laws have a real

effect. Tyler was their only child; his life was priceless to them. His life was worth \$5000 according to the Alaska workers' compensation law. In the fall of 2006 he was only 19 years old and was completing his first semester in college. He came home very happy and announced that he had gotten a job opportunity in Alaska and he was going to take a semester off and go to work. They protested and wanted him to stay at home and in school, but they knew they couldn't financially help him through college and they were also afraid that he might find Alaska irresistible and stay.

He said he was either going to go to Iraq or Alaska - and he said, "Mom, you decide." She asked which option they would have picked to bring him home safely. On January 2007 he went to Alaska. He smiled and said, "What's wrong, Mom, I'm not going to Iraq." But she said, "He came home in a box just the same."

MS. KAHLE said the owner and the contractor of the project he was working on were responsible for safety compliance. On the day of the accident the project manager actually took a picture of the lift, at 2:24 p.m., precariously leveled with timbers sitting there for the last three days. They obviously felt the positioning of the lift was so dangerous that they felt they needed to take a picture of it. Yet, no one bothered to prevent her son's co-worker, Craig Bagley, from going back up in it after taking the picture. Tyler innocently entered the lift for just a ride to the ground. He wasn't even working in it. He left his safety harness and as they started to descend, it came crashing down catapulting the men to their deaths. At 10:30 p.m. Wisconsin time their phone rang. She answered it expecting their nightly call from Tyler. Instead of hearing the details of his day, she received the details of his death.

They were told that they were only entitled to a \$5000 funeral benefit; and incidentally his funeral cost \$14,000. Then they found out that all of their other rights to sue responsible parties were no longer there. They were taken away in 2004. She said, "We found in Alaska it's cheaper to kill an employee than to train them." She guaranteed them that it cost the employer and the project owner more than the \$5000 they had to pay for Tyler's funeral to train the remaining staff properly after he died. She asked what incentive there is to expend money to train employees and for management to be safe when they are required to pay for their workers' compensation premiums anyway. "Killing an employee due to negligence didn't cost them an additional cent."

MS. KAHLE said the contractor who was supervising the quality and condition of the project was not responsible for anything; the project owner was responsible for nothing. The 2004 amendment took away employees' right to sue, as well as justice. Usually when a law is changed and it takes away somebody's benefits it gives them something in return. This did nothing for the employee whatsoever; it only benefited contractors and project owners. That in itself should have been a red flag.

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She said most businesses today at the very least have \$1 million in general liability insurance. If her son had been killed getting a tour of the project instead of working there, his life would have been valued differently. Why? "Is my son's life worth less because he was killed by the negligence at work instead of in an automobile crash?" In hindsight she said she wished she would have picked Iraq because, "Evidently it's safer to go to war than to work in Alaska."

[3:01:01 PM](#)

JOHN LEWIS, President, Iron Workers Local 751, Anchorage, supported SB 303. He said the 2004 amendment changed AS 43.30.055 to provide immunity to project owners and general contractors from legal challenges by workers injured while working on the job. Prior to this change to the Workers' Compensation Act, an injured worker retained the right to pursue other companies and employers through legal action as a result of their negligence.

One of the outrageous arguments used to push the passage of this amendment was that it would prevent double dipping by the injured worker - in short keeping a worker from receiving workers' compensation benefits as well as winning in court in a civil suit. In reality, this argument was a red herring since AS 23.30.015 was already in place and clearly stated if a worker did, in fact, receive money through court action, any benefit received through workers' compensation would be repaid; therefore, eliminating any double dipping.

What this law really did was create a path for general contractors and project owners to cut corners on safety with no fear of financial loss to the victims of accidents - while at the same time allowing them the ability to sue down or sue subcontractors for the very type of accident that they themselves are now protected from by this statute. For example, the iron worker industry is one that is affected by enormous workers' compensation rates due to the extreme risk involved.

The way AS 23.30.055 is now written if an iron worker is hurt by the action of someone else, his employer would now be the one who would bear the cost. One accident could very easily raise the employer's workers' compensation rate to where they are no longer able to compete in the very competitive bidding process of steel erection. "Why should the person responsible for an injury not be the responsible person when it comes time to pay for that situation?" If you cause an accident, then you are the one who should be responsible for it.

MR. LEWIS said AS 23.30.055 as now written indemnifies everyone else who may be the true responsible party while essentially shifting the blame or cost to the employer who very well may have taken every step possible to safeguard their employees. This section of the statute was formed to provide a clear path for resolution in the event the worker was injured or killed on the job. A means to clearly identify the worker's exclusive remedies was to use workers' compensation insurance to take care of costs to regain their health. Instead it has become a message for general contractors and owners to push subcontractors to cut corners on safety to reduce their overall costs.

He didn't want to accuse anyone of intentionally cutting costs knowing they are going to hurt or kill someone, but he would say that it's easy to cut costs in the hopes that nobody gets hurt. "How many estimators do you know that would like their boss to know they save money on the job? I would venture to say all of them." In closing he respectfully asked for their support in passing SB 303 which would simply restore AS 23.30.055 as it was originally written prior to the 2004 change.

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KEVIN DOUGHERTY, Alaska Laborers, Eagle River, supported SB 303. He said he worked in 1981 on the ad hoc committee for workers' compensation, served on Governor Hickel's workers' compensation committee in 1990 and has had a couple of decades of experience working in the field. He wanted to make three points in favor of the bill. First is that Alaska's workers' compensation law has been founded on very traditional values since it was enacted in 1915. A message to the Legislature from the Governor in 1915 states those bedrock values of respecting both employees and employers. This has been the act's history until this loophole was created in 2004 and exempted people with an evasive definition of parties. This bill would close that loophole that never should have occurred.

He said he was very much aware of the special session in 2004 that Senator Meyer and Senator Bunde mentioned, but that was separate from this issue. He said SB 303 would restore that rule of basic equality for all Alaskans to have access to the courts if they are injured or if they have a son who was killed on the job.

Secondly, he said SB 303 would be an incentive for safety. In the real world of construction or any industry, you promote safety by having responsible parties be responsible for their own actions. "It's the best tool we can have. And it has worked well, I'm pleased to say, if you look at the amount of people that have died on the job or been injured." Those numbers have really come down in the past 20-30 years.

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Finally, he said, this bill really assures that the definition of "employer" should only be for true employers. It is not forthright or honest to say that someone is an employer by definition when they aren't; the public would consider artificial terms deceptive. The system of having the actual employer be entitled to the treatment of exclusive remedy was a good one and has worked for almost 100 years, since 1915. This bill would correct an injustice that occurred with the 2004 amendment.

CHAIR PASKVAN asked him to provide the committee a copy of the historical overview he referenced earlier.

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CHAIR PASKVAN said he would not close public testimony and held SB 303. Finding no further business to come before the committee he adjourned the meeting at 3:11 p.m.