

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

March 7, 2011

3:20 p.m.

**MEMBERS PRESENT**

Representative Kurt Olson, Chair  
Representative Craig Johnson, Vice Chair  
Representative Mike Chenault  
Representative Steve Thompson  
Representative Lindsey Holmes  
Representative Bob Miller

**MEMBERS ABSENT**

Representative Dan Saddler

**COMMITTEE CALENDAR**

HOUSE BILL NO. 87

"An Act relating to penalties for antitrust violations."

- MOVED CSHB 87(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 164

"An Act relating to insurance; relating to health care insurance, exemption of certain insurers, reporting, notice, and record-keeping requirements for insurers, biographical affidavits, qualifications of alien insurers assuming ceded insurance, risk-based capital for insurers, insurance holding companies, licensing, federal requirements for nonadmitted insurers, surplus lines insurance, insurance fraud, life insurance policies and annuity contracts, rate filings by health care insurers, long-term care insurance, automobile service corporations, guaranty fund deposits of a title insurer, joint title plants, delinquency proceedings, fraternal benefit societies, multiple employer welfare arrangements, hospital and medical service corporations, and health maintenance organizations; and providing for an effective date."

- MOVED CSHB 164(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 155

"An Act relating to public construction contracts."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 87

SHORT TITLE: ANTITRUST VIOLATION PENALTIES

SPONSOR(s): REPRESENTATIVE(s) OLSON, HOLMES

01/18/11	(H)	PREFILE RELEASED 1/14/11
01/18/11	(H)	READ THE FIRST TIME - REFERRALS
01/18/11	(H)	L&C, JUD
02/28/11	(H)	L&C AT 3:15 PM BARNES 124
02/28/11	(H)	Scheduled But Not Heard
03/07/11	(H)	L&C AT 3:15 PM BARNES 124

BILL: HB 164

SHORT TITLE: INSURANCE: HEALTH CARE & OTHER

SPONSOR(s): LABOR & COMMERCE

02/18/11	(H)	READ THE FIRST TIME - REFERRALS
02/18/11	(H)	L&C, FIN
02/21/11	(H)	L&C AT 3:15 PM BARNES 124
02/21/11	(H)	Heard & Held
02/21/11	(H)	MINUTE(L&C)
02/23/11	(H)	L&C AT 3:15 PM BARNES 124
02/23/11	(H)	Heard & Held
02/23/11	(H)	MINUTE(L&C)
02/28/11	(H)	L&C AT 3:15 PM BARNES 124
02/28/11	(H)	Scheduled But Not Heard
03/07/11	(H)	L&C AT 3:15 PM BARNES 124

BILL: HB 155

SHORT TITLE: PUBLIC CONSTRUCTION CONTRACTS

SPONSOR(s): LABOR & COMMERCE

02/11/11	(H)	READ THE FIRST TIME - REFERRALS
02/11/11	(H)	L&C
02/25/11	(H)	L&C AT 3:15 PM BARNES 124
02/25/11	(H)	Heard & Held
02/25/11	(H)	MINUTE(L&C)
02/28/11	(H)	L&C AT 3:15 PM BARNES 124
02/28/11	(H)	Heard & Held
02/28/11	(H)	MINUTE(L&C)
03/07/11	(H)	L&C AT 3:15 PM BARNES 124

**WITNESS REGISTER**

JAMES WALDO, Staff

Representative Lindsey Holmes  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented HB 87 on behalf of a joint prime sponsor, Representative Lindsey Holmes.

CLYDE (ED) SNIFFEN, JR., Senior Assistant Attorney General  
Commercial/Fair Business Section  
Civil Division (Anchorage)  
Department of Law (DOL)  
Anchorage, Alaska

**POSITION STATEMENT:** Provided comments and answered questions during the discussion of HB 87.

LINDA HALL, Director  
Division of Insurance  
Anchorage Office  
Department of Community & Economic Development (DCCED)  
Anchorage, Alaska

**POSITION STATEMENT:** Testified on the changes in the proposed committee substitute (CS) and answered questions during the discussion of HB 164.

JENNIFER SENETTE, Staff  
Representative Kurt Olson  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Testified on Amendment 1 to HB 155, on behalf of the House Labor & Commerce Committee, chaired by Representative Kurt Olson.

MAX MIELKE, Business Manager  
Plumbers & Pipefitters Local 262  
Juneau, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 155.

MATHEW MIELKE  
Juneau, Alaska

**POSITION STATEMENT:** Testified during the discussion of HB 155.

JON SMITH, Member  
Alaska Council of Carpenters Local 2247  
Juneau, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 155.

MARVIN YODER, Deputy Administrator  
City of Wasilla

Wasilla, Alaska

**POSITION STATEMENT:** Testified in support of HB 155.

SHANE LINSEY

Wasilla, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 155.

LORI DAVEY, Member

Board of Supervisors

South Goldenview Rural Road Service Area

Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 155.

NANCY M. PETERSON, Public Works Director

City of Unalaska

Unalaska, Alaska

**POSITION STATEMENT:** Testified in support of HB 155.

SHIRLEY MARQUARDT, Mayor

City of Unalaska;

Vice President, Alaska Municipal League (AML)

Unalaska, Alaska

**POSITION STATEMENT:** Testified in support of HB 155.

BRET HELMS, Training Director

United Association of Plumbers and Pipefitters, Local 375

Fairbanks, Alaska.

**POSITION STATEMENT:** Testified in opposition to HB 155.

ZEBULON WOODMAN, Member

Laborers Local 942

Fairbanks, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 155.

JEAN TRAINOR, Member

Alaska Public Employees Association (APEA)

Fairbanks, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 155.

JIM LAITI, Business Representative

Plumbers and Pipefitters Local 375

Fairbanks, Alaska

**POSITION STATEMENT:** Testified during the discussion of HB 155.

JASON ALWARD, Business Agent

International Union of Operating Engineers Local 302

Anchorage, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 155.

RON AXTELL, Representative  
Laborers Union Local 942  
Wasilla, Alaska

**POSITION STATEMENT:** Testified during the discussion of HB 155.

KEITH MONTGOMERY, Business Representative  
Carpenters Local 1281  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 155.

JOHN GARRETT, Member  
Sheet Metal Workers Local 23  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 155.

BRONSON FRYE, Member  
Painters and Allied Trades Union, Local 1959  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 155.

LARRY BELL, Representative  
International Brotherhood of Electrical Workers (IBEW) Local  
1547  
Wasilla, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 155.

SHAWN CROSS, Apprentice  
International Brotherhood of Electrical Workers (IBEW) Local  
1547  
Eagle River, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 155.

**ACTION NARRATIVE**

[3:20:09 PM](#)

**CHAIR KURT OLSON** called the House Labor and Commerce Standing Committee meeting to order at 3:20 p.m. Representatives Olson, Miller, Thompson, and Holmes were present at the call to order. Representatives Chenault and Johnson arrived as the meeting was in progress.

**HB 87-ANTITRUST VIOLATION PENALTIES**

[3:20:26 PM](#)

CHAIR OLSON announced that the first order of business would be HOUSE BILL NO. 87, "An Act relating to penalties for antitrust violations."

[3:20:33 PM](#)

JAMES WALDO, Staff, Representative Lindsey Holmes, Alaska State Legislature, introduced himself.

[3:20:56 PM](#)

REPRESENTATIVE HOLMES moved to adopt the proposed committee substitute (CS) labeled 27-LS0331\I, Bannister, 2/16/11, as the working document. There being no objection, Version I was before the committee.

MR. WALDO explained the proposed CS would update the penalties for antitrust violations for Alaska. Currently the maximum penalty for an antitrust violation is \$20,000 for a natural person and \$50,000 for an organization. This bill would increase the maximum penalty for antitrust violations to \$1,000,000 for a natural person and \$50,000,000 for an organization. The federal penalties are set at \$1,000,000 for an individual and \$100,000,000 for a corporation. He suggested that the level selected would act as a deterrent. The first section relates to the criminal violation, and would increase the offense from a misdemeanor to a class C felony.

[3:23:51 PM](#)

MR. WALDO related that proposed Section 2 was added in the proposed CS, to allow the attorney general to seek civil penalties. This would provide an extra tool for the Department of Law (DOL) to pursue antitrust violations, which while not frequently used is available to the department.

CHAIR OLSON remarked that he and Representative Holmes have worked with Mr. Sniffen on the language for this bill.

[3:24:59 PM](#)

CLYDE (ED) SNIFFEN, JR., Senior Assistant Attorney General, Commercial/Fair Business Section, Civil Division (Anchorage), Department of Law (DOL), said that the proposed CS would update the antitrust provisions to add a civil penalty provision. Currently, the DOL does not have a civil penalty in its

antitrust statute. He pointed out that the criminal violations are more difficult to prosecute due to the necessity to prove beyond a reasonable doubt when making the case. In multi-state actions, states with the strongest penalty provisions end up with more of the settlement money. The state has made good arguments but it would have been nice to have had more authority so it could have argued for a "bigger piece of the pie." The amounts are on the high side compared to other states, but not to federal statutes. In 2007, the federal statutes were amended to increase the penalty to \$10,000,000 for individuals and \$100,000,000 for corporations.

MR. SNIFFEN recalled some states are working to increase their penalty provisions. He referred to a chart in members' packets, which outlines the penalty statutes for other states. Most states were hoping that they could amend their statutes to be in line with federal statutes, he said.

[3:28:09 PM](#)

REPRESENTATIVE MILLER asked whether the only penalties are fines, except for imprisonment of not more than a year. He surmised that a corporation could not be imprisoned.

MR. SNIFFEN answered that a state can imprison corporate officials, and violations by corporations can be felonies. The federal government has imprisoned corporate officials, which can be difficult, but can occur.

[3:29:21 PM](#)

REPRESENTATIVE CHENAULT asked whether the penalties of \$1,000,000 and \$50,000,000, respectively, were reasonable since none of the other states' penalties were near that amount.

MR. SNIFFEN agreed, except for the federal penalties which are set at \$10,000,000 and \$100,000,000. He offered his belief that many of the other states enacted their laws in the 70s and 80s. Some are outdated. Alaska would definitely be on the high side compared to other states, he said.

REPRESENTATIVE CHENAULT expressed concern that the state would strive to match the federal government.

[3:30:41 PM](#)

REPRESENTATIVE JOHNSON referred to the chart previously referred to, noting that Kansas has a \$5,000 per day penalty and he wondered how the penalty is implemented, from inception until the time it is resolved, since the penalties could accrue pretty rapidly.

MR. SNIFFEN related it is difficult to determine the start and stop dates. He explained the DOL likes to avoid that method of imposing a penalty since it can be difficult to determine when it should start or end. Typically a penalty provision would commence as soon as the violation is detected and if it goes to court the jury often will often decide the start and when the penalty is abated. He elaborated that determining the dates can lead to considerable discussion and debate. He said sometimes it can be argued that violations start or stop when a memo is written to someone in the company. He further related that the per day penalty provision can create a factual question whereas a flat amount, in particular, a large one, leaves it to the court to decide based on the facts and the goal of deterrence.

REPRESENTATIVE JOHNSON asked whether it would be a deterrent to have a \$5,000 per day amount.

MR. SNIFFEN agreed with the logic, that it would provide an incentive to settle, but he said it also depends on the company since it may result in the attitude of simply the company's cost of doing business. In other instances a flat rate of a \$50,000,000 fine can also an incentive.

[3:33:45 PM](#)

CHAIR OLSON asked if he was familiar with the San Diego based Sempra Energy litigation with the State of California, which arose out of the Energy Crisis of 2000-2001.

MR. SNIFFEN said he was unsure.

CHAIR OLSON stated it was a price fixing case and the state settled out of court. He thought the damages collectively reached nearly \$2 billion. He said the damages were thought to have been \$32 billion and if so, this bill might be on the light side.

[3:35:06 PM](#)

CHAIR OLSON, after first determining no one else wished to testify, closed public testimony on HB 87.

REPRESENTATIVE CHENAULT asked whether someone could address the Department of Law's fiscal note.

MR. SNIFFEN said he prepared the fiscal note and HB 87 has no additional fiscal impact.

REPRESENTATIVE CHENAULT asked if the DOL would not be used.

MR. SNIFFEN related that the DOL currently handles these types of cases. He was unsure this would create more work, but the bill would allow for additional penalties and allow the department to have better recoveries.

REPRESENTATIVE CHENAULT expressed general concern on zero fiscal notes. As bills pass additional costs are incurred, he said.

CHAIR OLSON noted the bill has another committee of referral, which he thought was the House Finance Committee.

[3:37:10 PM](#)

REPRESENTATIVE JOHNSON asked how many cases of this type the DOL is currently handling.

MR. SNIFFEN answered that the DOL just resolved a multi-state case involving the drug Ovcon, manufactured by Warner Chilcott pharmaceuticals. He stated he has another case under consideration that probably is not worth pursuing unless the state had provisions such as this in place to allow for significant recovery. He summarized that there are a few cases, not many.

CHAIR OLSON corrected an earlier statement. The next committee of referral is the House Judiciary Standing Committee.

[3:38:20 PM](#)

REPRESENTATIVE CHENAULT moved to report the proposed committee substitute (CS) for HB 87, labeled 27-LS0331\I, Bannister, 2/16/11, out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHB 87(L&C) was reported from the House Labor and Commerce Standing Committee.

[3:38:56 PM](#)

The committee took an at-ease from 3:38 p.m. to 3:41 p.m.

[3:41:17 PM](#)

**HB 164-INSURANCE: HEALTH CARE & OTHER**

CHAIR OLSON announced that the next order of business would be HOUSE BILL NO. 164, "An Act relating to insurance; relating to health care insurance, exemption of certain insurers, reporting, notice, and record-keeping requirements for insurers, biographical affidavits, qualifications of alien insurers assuming ceded insurance, risk-based capital for insurers, insurance holding companies, licensing, federal requirements for nonadmitted insurers, surplus lines insurance, insurance fraud, life insurance policies and annuity contracts, rate filings by health care insurers, long-term care insurance, automobile service corporations, guaranty fund deposits of a title insurer, joint title plants, delinquency proceedings, fraternal benefit societies, multiple employer welfare arrangements, hospital and medical service corporations, and health maintenance organizations; and providing for an effective date."

[3:41:23 PM](#)

REPRESENTATIVE JOHNSON moved to adopt the proposed committee substitute (CS) for HB 164, labeled 27-LS0444\M, Bailey, 3/4/11, as the working document. There being no objection, Version M was before the committee.

CHAIR OLSON objected for purpose of discussion.

[3:41:44 PM](#)

LINDA HALL, Director, Division of Insurance, Anchorage Office, Department of Community & Economic Development (DCCED), referred to the changes in the CS. The majority of changes were added to clarify the bill. She turned to page 50, which adds a provision to ensure clarity. She referred to page 9, subsection (b), which read, "Notwithstanding the definition of 'group market' in AS 21.54.500..." She said the Division of Insurance (DOI) wanted to be certain to avoid any ambiguity as to whether individual policies could be sold to a group under certain circumstances.

[3:43:41 PM](#)

MS. HALL referred to page 62, proposed Section 93 of Version M, which was added. She read, "Unless another form of payment is

agreed to by the policy holder or beneficiary, an..." which requires an insurer to pay with a negotiable bank check. She pointed out publicity by life insurance companies of "checkbooks," which provided a means of distributing proceeds from life insurance. She stated this is an appropriate way of distributing proceeds as it allows the beneficiary to contemplate and determine what to do with the funds. The policy holder or the beneficiary would need to agree to something other than a negotiable check. The DOI would adopt regulations for disclosure, based on a model. This would allow the policy holder or beneficiary to determine how to receive the funds rather than receive a lump sum. This is especially useful during stressful times.

MS. HALL related that proposed Sections 86 and 87 were deleted. These sections dealt with insolvencies and loss reimbursement, and money deposited to the guarantee fund. The industry expressed concern as to how this would impact Alaska as compared to other states. Thus, the DOI asked these proposed sections be deleted from the bill.

[3:46:02 PM](#)

MS. HALL referred to the final substantive change is in proposed Section 62 and 77, which refer to the individual and group rate filings. She previously discussed the DOI having the ability to review health insurance rates prior to them being used. The language has been adjusted to match the file and use language for other insurance rates. She related that rates must still be filed and the DOI would have an opportunity to review them. Rates would go into effect 45 days after filing, if not disapproved. She stated an effective date of January 1, 2012, was added to allow insurers time to adopt the changes.

[3:47:03 PM](#)

REPRESENTATIVE CHENAULT referred to the "checkbook" issue. He asked if that provision would only be in effect if the party knew he/she was the beneficiary and would need to agree to the one-time payout or another method of payment.

MS. HALL responded that either the policy holder or the beneficiary would have to agree. The policy holder could designate the method up front, whereas the beneficiary could only exercise the option later.

REPRESENTATIVE CHENAULT asked whether beneficiaries could opt for a lump sum.

MS. HALL answered yes.

CHAIR OLSON removed his objection.

[3:48:55 PM](#)

REPRESENTATIVE JOHNSON made a motion to adopt Conceptual Amendment 1, which read [original punctuation provided]:

AMENDMENT

To: CS HB 64(LC)(27-LS0444\M)

By: Rep. Olson

Page 1, Line 9: Following "corporations," delete "and"

Page 1, Line 9: Following "organizations" delete ";" and insert ", and alternate forms of payment to policy holders;"

Page 12, Line 20: Delete "or coverage"

Page 28, Line 28: Delete "3.7 percent on"

Page 38, Line 23: Delete "30" and insert "45"

Page 38, Line 25: Delete "becomes" and insert "may become"

Page 49, Line 14: Delete "30" and insert "45"

Page 49, Line 15: Delete "becomes" and insert "may become"

REPRESENTATIVE HOLMES objected for the purpose of discussion.

[3:49:31 PM](#)

MS. HALL explained Conceptual Amendment 1. She stated that Conceptual Amendment 1 would address inconsistencies the DOI found in HB 164. The first two relate to the title, adding a reference to proposed Section 93, the retained asset account. The next 2, page 12 and 28 are technical changes. The changes on page 38 and page 49 are the two rate filings for consistency purposes, changing the time to 45 days and changed language, "become effective" to "may become" effective so insurance companies can make changes out farther than 45 days to allow an option so their rates won't automatically become effective.

[3:50:48 PM](#)

REPRESENTATIVE JOHNSON asked whether rates ever are reduced and if 45 days is appropriate.

MS. HALL answered that health insurance rates have not, but some rates do decrease.

REPRESENTATIVE JOHNSON commented that the rates are not going down so he wondered, "Why not do it now?"

REPRESENTATIVE HOLMES removed her objection. There being no further objections, Conceptual Amendment 1 was adopted.

[3:52:36 PM](#)

MS. HALL referred to a letter dated March 4, 2011, from the National Association of Professional Surplus Lines Offices, Ltd. (NAPSLO) regarding surplus lines. She stated several statements were made in the letter. She agreed the state is not required to share the taxes. The state is changing the way in which it collects taxes on surplus lines coverage. Most of the premise of the nonadmitted and reinsurance act is that the states will regulate their own risk, collect the taxes, and allocate those to the states in which the risk is located. She also referred to statements about taxing authority being given to an agency. She responded to that by stating the legislature has already given taxing authority to the DOI. The DOI levies taxes on insurance premiums so that is not a new authority being given to an agency. She pointed out that this is not a "policymaking power" but authority to participate in a clearinghouse. The bill specifically states the agreements are solely to allow for the mutual collection and allocation of premium taxes, which is more an administering function than policymaking. She said, "This is not a tax increase. Our policy holders today are taxed at the premium tax rates of each of the states where they may have some type of risk located." The DOI is not changing the tax method. In fact, the DOI's surplus line tax is lower than most states. The DOI is changing the method and who collects it, and how it is allocated. The changes to the surplus line tax in an attempt by the federal government to streamline the process. The bill would make Alaska statutes conform to the federal Nonadmitted and Reinsurance Act that will become effective on July 21, 2011 so the state is not in violation of federal law, which specifically preempts state statutes. She said, "This is not something the DOI dreamed up all by itself." This particular type of legislation to authorize entry into this

type of interstate agreement is pending in 17 states. Another compact legislation, which is more complicated than this approach is pending in eight states. Competing legislation is under discussion in five states. Eleven states are currently studying the issue. Thus, a number of approaches are being taken to implement the federal law, she said.

[3:56:30 PM](#)

CHAIR OLSON remarked that the proposed committee substitute would bring the state into compliance.

MS. HALL answered yes.

[3:56:50 PM](#)

REPRESENTATIVE JOHNSON referred to the letter in members' packets that was previously mentioned. He then referred to the next to the last paragraph, which read: "NAPSLO respectfully requests that should Alaska wish to determine as a matter of public policy to share taxes,..." He asked who makes the determination. He asked whether the DCCED or the legislature makes that determination. He explained that the NAPSLO is asking for clarity so their brokers would clearly understand. He asked whether a system currently exists so that brokers will understand what is happening.

MS. HALL responded that the proposed CS clearly states the state will allocate to the states where the risk is located unless the states have not entered into a mutual agreement. If the other state has not entered into a mutual agreement, Alaska will keep the tax, she said. She remarked that she thinks it is fairly clear. She referred to the proposal that was attached to the letter. She said the specific provision in HB 164 that pertains to allocation and allocation formulas was deleted. She was unsure of how those provisions were interpreted, but this CS identifies the state will share the taxes back to the state in which the risk is located, in the same way the taxes are currently paid directly to those states. The state is not forfeiting something. The federal law makes states collect 100 percent of the tax. Thus, the state currently collects only the portion of the risk taken in Alaska, which is the only portion that is taxed. With the changes in federal law the state is required to tax 100 percent of the policy for someone whose home state is Alaska. She offered her belief that there would not be significant multi-state risks. Under federal law, the state

would collect 100 percent and allocate back the amount paid in the individual state.

REPRESENTATIVE JOHNSON asked whether she was comfortable that brokers and policyholders can clearly understand these provisions and changes in the CS.

MS. HALL answered yes, she is very comfortable with the clarity in this bill.

[3:59:51 PM](#)

CHAIR OLSON added that Nonadmitted and Reinsurance Reform Act (NRRRA) has been in every trade publication for the past few months and has been reviewed in a number of ways. The vehicle that appears to have the most support is the manner in which the DOI is addressing the NRRRA.

[4:00:24 PM](#)

REPRESENTATIVE CHENAULT stated he was looking for the fiscal note, which he thought would be a positive fiscal note. He asked for clarification on the amount of money that is collected on behalf of other states.

MS. HALL responded that Alaska does not currently collect for other states, just Alaska's taxes. Thus, Alaska is not collecting for others.

REPRESENTATIVE CHENAULT recalled that Alaska would collect 100 percent.

MS. HALL agreed that Alaska would collect 100 percent and then allocate the taxes back to the states. In further response to Representative Chenault, she explained that the broker or the clearinghouse proposed in HB 188 would be tasked with making the allocation.

[4:01:54 PM](#)

CHAIR OLSON commented the allocation would only apply to states outside of Alaska. He asked Ms. Hall to hazard a guess as to the percentage collected.

MS. HALL responded that the DOI collects approximately \$50,000,000 in premium tax, with approximately \$3,000,000 as surplus lines premium tax. The DOI's tax auditor estimates,

given that the DOI does not collect statistics, approximately \$500,000 is multi-states risks. She concluded that \$500,000 of \$50,000,000 is a pretty nominal amount.

[4:02:49 PM](#)

CHAIR OLSON, after first determining no one else wished to testify, closed public testimony on HB 164.

[4:04:11 PM](#)

REPRESENTATIVE JOHNSON moved proposed CSHB 164, labeled 27-LS0444\M, Bailey, 3/4/11, as amended, with a zero fiscal note. There being no objection, CSHB 164(L&C) was reported from the House Labor and Commerce Standing Committee.

[4:04:37 PM](#)

The committee took an at-ease from 4:04 p.m. to 4:07 p.m.

#### **HB 155-PUBLIC CONSTRUCTION CONTRACTS**

[4:04:37 PM](#)

CHAIR OLSON announced that the final order of business would be HOUSE BILL NO. 155, "An Act relating to public construction contracts."

[4:08:03 PM](#)

REPRESENTATIVE JOHNSON made a motion to adopt Amendment 1, labeled 27-LS0249\B.3, Bannister, 2/22/11, which read as follows:

Page 1, line 5:  
Delete "\$75,000"  
Insert "\$50,000"

Page 4, lines 8 - 9:  
Delete ", except for a school district of a municipality or a regional educational attendance area"

REPRESENTATIVE HOLMES objected for purpose of discussion.

[4:08:44 PM](#)

JENNIFER SENETTE, Staff, Representative Kurt Olson, Alaska State Legislature, stated that Amendment 1 would reduce the threshold from \$75,000 to \$50,000. The second change is in proposed Section 8, on page 4, lines 8-deleting except for a school district. Initially, the draft inadvertently exempted school districts, but it was not the sponsor's intent to exempt school districts. Thus, Amendment 1 will correct that error and brings school districts under the umbrella so they are subject to the provisions of the bill, including the proposed \$50,000 cap.

REPRESENTATIVE HOLMES removed her objection.

There being no further objection, Amendment 1, was adopted.

[4:10:26 PM](#)

MAX MIELKE, Business Manager, Plumbers & Pipefitters Local 262, stated that he is a 56 year Juneau resident. He said he is the Business Manager for the Plumbers and Pipefitters with about 100 members. He stated that he strongly oppose HB 155. He related that in the 80s and early 90s members had a tough time. He said that at times a plumber might be laid off for several months and small contracts helped members survive. He said this is not a union versus non-union issue. He also said he was glad to see the amendment added for the school districts. He characterized the bill as a form of right to work legislation and "is a start to the race to the bottom."

[4:13:03 PM](#)

REPRESENTATIVE MILLER asked whether there was any figure his organization would feel comfortable with given that the Little Davis-Bacon applies to contracts over \$2,000.

MR. MIELKE answered that several carpenters are working in the union hall on small projects, probably under \$12,000. He stated that during his career the small projects kept members going. He expressed concern on the limit.

[4:14:28 PM](#)

CHAIR OLSON clarified that the \$2,000 figure was set in 1935 and has not been adjusted since then. He recalled that if the figure was adjusted for inflation the amount would be about \$32,000.

MR. MIELKE offered that construction work has not changed that much. He maintained members' work for small projects provides the "bread and butter" for contractors.

[4:15:13 PM](#)

MATHEW MIELKE stated he grew up in Juneau. He said his father worked in the construction industry but has also worked in the industry. He agreed with his father's testimony. He further said small jobs have made a difference to him. He offered his belief that he often would not have been able to "put food on my own table if it wasn't for a \$5,000 job that my boss got." He was unsure how low the minimum limit for Little Davis-Bacon would affect him. He feared he would be unemployed, drawing unemployment, and someone from out of state would be awarded the bid on a job. He expressed concern that raising the contract limit from \$2,000 to \$75,000 before the Little Davis-Bacon Act (LDBA) would apply would attract Lower 48 contractors who will low bid contracts, perform subpar work, and leave. He said, "They don't really care if they get a bad reputation for it." The current requirement for LDBA allows local trained and skilled workers to work on construction jobs. The workers do good jobs, maintain their reputations, and are proud of the work they perform in the communities in which they live. He stressed that this is very important to him. He concluded by saying, "I look around the room and I don't really fit in here..."

CHAIR OLSON commented that everyone fits in this room. He remarked that at least one person sitting at the table has employed union and non-union people.

REPRESENTATIVE CHENAULT agreed.

[4:17:37 PM](#)

JON SMITH, Member, Carpenters Local 2247, stated that he was raised in Dillingham and has lived in Juneau the past 11 years. He spoke in opposition to HB 155. He shared some quotes he found. He read, "The proponents of prevailing wage legislation wanted to prevent government from using its purchasing power to undermine wages of its citizens. It is believed that government should set an example by paying the wages prevailing in a locality for each occupant hired to government contracts and building code projects." He said that rings true to him since it sets an example by paying the prevailing wage of the area as the standard. He related that it is not inexpensive to live in Alaska. It is especially expensive to live in rural Alaska. He

grew up working construction and liked working the Little Davis-Bacon jobs because he knew what he'd be paid. It said it was important to him growing up and working in the construction industry. He read, "The purpose of the Davis-Bacon Act is to protect its employees and government contractors from substandard wages and to promote the hiring of local labor rather than the cheap labor from distant places." He characterized the Little Davis-Bacon Act (LDBA) as the "level playing field." He further related that when out of state contractors come to Alaska on a Title 36 project, they are aware of the specific labor costs, whether the labor is union or nonunion labor. Removing the requirement for Little Davis-Bacon means an out of state contractor will bring in his own crew and pay whatever wage he wants to pay. He offered his belief that most Alaskans cannot afford to work for less. The standard of living is less in the Lower 48 so the wages are less. In closing, he said the cost of a \$50,000 is just that, but the Department of Labor & Workforce Development (DLWD) will have a certified payroll, and wages are set. He said if this bill passes the same project will cost \$50,000, but the DLWD will not have a certified payroll, and the employees would not be guaranteed a good wage. The contractor will still bill out \$50,000 but the workers could be set at the minimum wage.

[4:21:09 PM](#)

MARVIN YODER, Deputy Administrator, City of Wasilla, asked to speak in support of HB 155. He recalled prior testimony. He offered his belief that this bill would affect mostly state and local government. He reviewed the Governor's proposed budget and very few projects for his community are listed under \$100,000. He predicted the percentage of people affected would be low. He acknowledged that an out of state contractor might mobilize for a \$50,000 contract in Anchorage or Fairbanks, but he did not think it was likely contractors would bid on projects in Fort Yukon for the same cost. He related he has frequently worked in bush Alaska on small projects. He pointed out that it is not just the wages people are concerned about but the paperwork required. He said it should be good for the small rural communities to bid on the small projects. He concluded that this is not a big change, considering it represents 70 years of inflation. It makes it much easier for municipal or state government to have this threshold and efficiency.

[4:23:43 PM](#)

SHANE LINSEY expressed his concern with the language in HB 155. He asked, "If it's not broke why fix it?" The state has done well with its finances and has about a \$12 billion surplus. He offered his belief that this bill would not benefit the state, but would allow lower wages to be paid while lowering the quality of work. He said, "As the saying goes, you get what you pay for, and this Davis-Bacon allows an even playing field for all the contractors when they are bidding on these contracts." He stated his opposition to HB 155.

[4:24:39 PM](#)

LORI DAVEY, Member, Board of Supervisors, South Goldenview Rural Road Service Area, stated that her rural road service area is 17.5 miles off the Rabbit Creek and Goldenview area of Anchorage hillside. She offered the South Goldenview Rural Road Service Area's support for HB 155. She stated her fellow board member, Robert Johnson, is also with her today. She related the struggle the road service area has had grappling with requirements on any project of \$2,000 or more when the Little Davis-Bacon Act (LDBA) "kicks in." She related that \$2,000 of materials is a very low threshold for road improvement projects. A culvert replacement or pothole material can easily go over \$2,000 and trigger the Davis-Bacon rates, she said. She further related that the Little Davis-Bacon provisions significantly raise the cost of any roadwork. The rate has been in place without any adjustment since 1935, that even the basic rate of inflation would raise the rate to \$32,000, using an average inflation rate of 3.78 percent. She stated that Little Davis-Bacon wages are much greater than the prevailing wage. She said that her road service area pays almost double wages. It adversely impacts residents since they cannot fix as many roads. These funds directly impact property taxes. She explained the residents pay 1.8 mils per hundred thousand dollar valuation on their homes. These are not just big companies affected by the Little Davis-Bacon provisions, but homeowners. The increased threshold and more clearly defining the difference between maintenance and construction, residents will be able to maintain and improve our roads more cost effectively. The basic buying power with inflation corrections will double and more roads will be able to be improved. She urged members to pass HB 155 to better utilize public monies, create efficiencies, and accomplish more road work.

[4:26:49 PM](#)

NANCY M. PETERSON, Public Works Director, City of Unalaska, stated her strong support for HB 155. She stated that she is a manager of rural public construction projects and supports raising the threshold for the application of the Little Davis-Bacon Act. She related that many small projects have increased in cost to the point the projects are no longer viable and do not get built due to the wage requirement. She also has worked with small contractors who chose not to bid on projects due to the added reporting requirements for the jobs. She has served on the Alaska Municipal League (AML) public works and infrastructure legislative subcommittee for the past eight years. She has listened to small communities and villages discuss projects that were lost due to the extra wage costs required. These communities have limited resources. When project costs increase from \$15,000 to \$20,000 can affect whether the project is feasible. Many of the rural projects are "quality of life projects" rather than the projects driven by life safety issues. These projects are good projects but cannot be justified when costs escalate. She recalled testimony from a prior hearing in which one speaker mentioned the small number of projects this bill would affect based on the number of state projects under \$75,000 in its database. She asked members to also consider all the projects that were not built because the cost of the project increased so communities could no longer support them. She offered her belief that HB 155 would create new opportunities for all of Alaska's communities. She strongly urged members to pass HB 155.

[4:29:24 PM](#)

SHIRLEY MARQUARDT, Mayor, City of Unalaska; Vice President, Alaska Municipal League (AML), offered her strong support for HB 155. She stated that AML is on record with its resolution of support for the bill including the \$50,000 threshold. She explained at the last AML membership meeting, its membership voted to increase the threshold for Little Davis-Bacon wages from \$2,000 to \$50,000 on public construction projects and an exclusion for maintenance contracts be added. She said she thinks this is a reasonable and responsible adjustment after 76 years of the status quo for the wage threshold while the construction and maintenance costs have maintained a steady increase. With a long overdue adjustment and the exclusion of maintenance contracts, the legislature will provide opportunities to municipalities that currently forego projects or maintenance due to the cost. She said that this is a significantly positive change for all communities in rural Alaska. Jobs and updated infrastructure as smaller projects

become a reality provide a "win-win" with the passage of HB 155, she also said.

[4:30:53 PM](#)

BRET HELMS, Training Director, United Association of Plumbers and Pipefitters, Local 375, stated his opposition to modifications to Little Davis-Bacon proposed in HB 155. The proposal to raise the threshold limit for construction contracts will not necessarily lower construction costs but may increase the number of out of state employers who bid on construction projects. Currently, employers are required to pay Little Davis-Bacon journeyman prevailing wages unless the employer has a federally registered apprenticeship program. He predicted that if HB 155 is passed, employers will not be required to have a registered apprenticeship program and wages will be subjective to the employer. He expressed concern that apprentices trained in programs will not have the opportunity to work on these projects. These are good jobs and jobs that allow Alaskan men and women to support their communities, raise families, and remain in Alaska. He feared they may be replaced by a cheap nonresident, low skilled work force brought in from the Lower 48. He concluded by stating this proposal would diminish wages and would also lower the standard of living across Alaska, in communities that are already suffering in the depressed economy. He thanked members for listening to his comments.

[4:32:21 PM](#)

ZEBULON WOODMAN, Member, Laborers Local 942, said he has lived in Alaska his entire life. He said, "Leave this law alone." He offered his belief that exempting the Little Davis-Bacon Act (LDBA) from jobs up to \$50,000 would have affected hundreds of projects last year. With many projects being awarded to nonunion contractors, this proposal attacks wages for many nonunion workers who do not have an advocate. The Little Davis-Bacon wages provide a level playing field for all bidding contractors. It helps to ensure a quality wage and is not "a race to the bottom by contractors who are willing to pay workers less." This bill would take dollars away from the worker to allow municipalities to obtain more work for less money. No one suggested taking "a dime from a contractor or limiting rental rates on equipment, or limit the profit on the sale of material." He related he heard considerable discussion on the onerous paperwork, which was too much for the contractor. He said, "If we take money out of the workers pocket it will make life better for the contractor." He expressed concern for the

working family. He said that raising the threshold may not reduce the cost of bids, since contractors may "pocket more money" while workers are paid less. He urged members to oppose HB 155.

[4:34:07 PM](#)

JEAN TRAINOR, Member, Alaska Public Employees Association (APEA), stated she is speaking as an APEA member and also as a long-term nonunion and union worker in Alaska. She stated she has lived in Alaska for over 35 years. She urged members to oppose HB 155. She characterized HB 155 as "a race to the bottom." She said she has repeatedly heard stories about low paid workers from the Lower 48 taking Alaskan dollars and sending outside, which does not help Alaska's communities. She suggested supporting our communities is accomplished by paying a fair wage to Alaskans. She said she is especially bothered by Lower 48 workers driving down wages. She suggested that 1,400 projects were in the \$2,000 to \$50,000 range. Small "bread and butter" projects provide wages that bridge the big projects for workers. Alaska has a boom and bust economy. There are times when fair wages paid under Little Davis-Bacon projects provide income that helps see the families through the leaner times.

[4:36:31 PM](#)

REPRESENTATIVE THOMPSON asked whether she lived in a road service area.

MS. TRAINOR answered yes. In response to Representative Thompson, she said even though she lives in a road service area in the Goldstream Valley, she still supports HB 155.

REPRESENTATIVE THOMPSON pointed out that Little Davis-Bacon has the potential to double road service area fees added to her property taxes.

MR. TRAINOR emphasized she is fully supportive to have the people grading her road obtain a fair wage.

[4:37:43 PM](#)

JIM LAITI, Business Representative, Plumbers and Pipefitters Local 375, stated he is a lifelong Alaskan. He has worked in the construction industry since the 1970s. He related that the work is seasonal and cyclical. He recalled years in which he worked for eight or so contractors. He worked on day, week, or

monthly jobs, all of which help support local contractors who must maintain their facility and staff. Additionally, he and his friends must also maintain their homes during the winter months as compared to those who live in the Lower 48 and just work during the construction season. He asked members not to advance HB 155, which will negatively impact Alaskan workers as well as contractors. He stated that using a skilled highly trained worker can make all the difference on a renovation project or maintenance project in terms of the overall cost over time.

[4:40:20 PM](#)

JASON ALWARD, Business Agent, International Union of Operating Engineers Local 302, stated that he is a lifelong Alaskan. He is speaking on behalf of himself. He asked whether a problem exists in terms of the very old statute pertaining to construction contracts over \$2,000 should be covered under prevailing wages. He offered his belief that a problem does not exist with the status quo. Seven or eight states currently have lower threshold on contracts. This ensures that Alaska Hire is a priority. He offered his belief that using the Little Davis-Bacon will "level the playing field" for contractors by eliminating employers from the ability to "get jobs on the backs of their employees." He stated that raising the threshold does not guarantee jobs will cost less. It only guarantees that workers paid less and even more importantly, the worker may not be an Alaskan worker. He characterized this bill as a "race to bottom" which he did not believe is necessary at a time when the state has \$12 billion in surplus funds. He concluded by stating that diminished wages for Alaskans for mostly seasonal occupations is not the answer. He said, "I oppose HB 155. Thank you."

[4:42:27 PM](#)

RON AXTELL, Representative, Laborers Union Local 942, stated that he helps represent over 2,000 Alaskan union laborers in Southcentral Alaska. He also speaks for small business workers who are entitled to earning a living wage. He asked how to stretch workers and improve Alaska when this bill has the potential to move Alaska backwards. He offered his belief that by raising the threshold on paying the prevailing wage for projects it also would lower the standard of many workers who count on prevailing wage work. He stated that if the wage is inadequate it is possible jobs will not be available. He related that a higher ceiling makes it more likely outside

bidders will bid successfully on jobs. There is no guarantee these contractors will hire Alaskans. The state subsidizes programs. He asked whether paying less will result in subsidizing more programs. He urged members not to change the current limit.

[4:44:10 PM](#)

KEITH MONTGOMERY, Business Representative, Carpenters Local 1281, stated he is a 28 year resident of Alaska. He said he is glad to see the amendment to the bill was adopted. He offered his belief that HB 155 does not provide a mechanism to develop the workforce or the standards set forth in prevailing wage jobs.

[4:45:38 PM](#)

JOHN GARRETT, Member, Sheet Metal Workers Local 23, stated he is an 18 year Alaskan. He spoke in opposition to HB 155. He recalled prior testimony and commented with respect to raising thresholds. He said that jobs can be divided into phases. A person could have large jobs divided into many phases, which is just one way to game the system. He agreed with the comments that this bill is a "race to the bottom." He thought it might lead to the situation in which people cannot afford to live in the state. He reminded members that health care and utility costs have increased exponentially. He said, "This is not a union or nonunion issue. This is a worker issue." He did not understand why the burden is placed on the worker. He understood that costs need to be considered but this is not the way to do it. He thought the approach attacked workers.

[4:47:28 PM](#)

BRONSON FRYE, Member, Painters and Allied Trades Union, Local 1959, stated that he is a lifelong Alaskan and is a journeyman drywall, finisher, and painter by trade. He has worked union and nonunion jobs. He currently represents painters, drywall finishers, floor coverers, and glaziers. He has been in commercial construction for ten years. The Davis-Bacon or prevailing wage jobs provide the financial lifeblood for many construction workers in Alaska. He said he bases this on his experience and comments by many others in the construction industry. He emphasized that this is not a union versus nonunion issue. The wages paid to union and nonunion workers on Davis-Bacon projects promotes the growth of the middle class and boosts the state's overall economy. Since the state has a \$12

billion surplus, it would be a travesty to pass a bill that would devastate the income of thousands of construction workers in Alaska. He explained that "race to the bottom" has a real and tangible meaning. When a contractor bids on a project, the three main variables in construction are material cost, overhead, and labor cost. Of those, the material cost and overhead are approximately the same, but the labor cost is the only real variable. Construction contracts are awarded to the lowest bidder. Having a standard, such as Little Davis-Bacon helps the worker. It also ensures the construction contract is awarded to a responsible contractor and is not a "race to the bottom." He urged members to please oppose HB 155.

[4:50:58 PM](#)

LARRY BELL, Representative, International Brotherhood of Electrical Workers (IBEW) Local 1547, stated he has three kids and is a second generation Alaskan. He is a resident of Wasilla. He represents almost 8,000 active and retired members of the IBEW. He stated his opposition to HB 155. He said that this bill is not good as a measure of the "floor" wage for Alaskans. It is not good for local hire. It is not good for seasonal workers in Alaska. It is not good for the quality or ensuring quality of construction on state-funded projects. He implored members to leave this bill alone. He offered his belief that HB 155 ensures employment on public funded jobs will focus on efficiency and the ability to do the job right and effectively.

[4:52:01 PM](#)

SHAWN CROSS, Apprentice, International Brotherhood of Electrical Workers (IBEW) Local 1547, stated that he was testifying in support of his local union. He asked committee members to oppose HB 155.

[HB 155 was held over.]

[4:53:13 PM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:53 P.M.