

ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE

April 5, 2011

2:05 p.m.

MEMBERS PRESENT

Senator Dennis Egan, Chair
Senator Joe Paskvan, Vice Chair
Senator Linda Menard
Senator Bettye Davis
Senator Cathy Giessel

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 100

"An Act relating to employer contributions to the Public Employees' Retirement System of Alaska; relating to requirements that employers who terminate some or all participation in the Public Employees' Retirement System of Alaska pay termination costs; and making the changes retroactive."

- MOVED SB 100 OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 119(EDT)

"An Act relating to the procurement of supplies, services, professional services, and construction for the Alaska Industrial Development and Export Authority; relating to the definition of 'own' for the economic development account; relating to the definitions of 'development project', 'plant', 'facility', and 'project' for the Alaska Industrial Development and Export Authority; relating to the Alaska Industrial Development and Export Authority creating subsidiaries regarding projects financed under AS 44.88.172; and providing for an effective date."

- MOVED SCS CSHB 119(L&C) OUT OF COMMITTEE

SENATE BILL NO. 103

"An Act amending the medical examination requirements for firefighters entitled to a presumption of compensability for a disability resulting from certain diseases."

- HEARD & HELD

SENATE BILL NO. 116

"An Act offering mediation of disputed workers' compensation claims by a hearing officer or other classified employee of the division of workers' compensation and allowing collective bargaining agreements to supersede certain provisions of the Alaska Workers' Compensation Act; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 100

SHORT TITLE: PERS TERMINATION COSTS

SPONSOR(s): SENATOR(s) PASKVAN

03/14/11	(S)	READ THE FIRST TIME - REFERRALS
03/14/11	(S)	L&C, FIN
03/29/11	(S)	L&C AT 2:00 PM BELTZ 105 (TSBldg)
03/29/11	(S)	Heard & Held
03/29/11	(S)	MINUTE(L&C)
04/05/11	(S)	L&C AT 2:00 PM BELTZ 105 (TSBldg)

BILL: HB 119

SHORT TITLE: AIDEA: PROCUREMENT; PROJECTS

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/24/11	(H)	READ THE FIRST TIME - REFERRALS
01/24/11	(H)	EDT, FIN
02/03/11	(H)	EDT AT 10:15 AM BARNES 124
02/03/11	(H)	Heard & Held
02/03/11	(H)	MINUTE(EDT)
02/08/11	(H)	EDT AT 10:15 AM BARNES 124
02/08/11	(H)	Moved CSHB 119(EDT) Out of Committee
02/08/11	(H)	MINUTE(EDT)
02/11/11	(H)	EDT RPT CS(EDT) NT 4DP 3NR
02/11/11	(H)	DP: THOMPSON, MUNOZ, OLSON, FOSTER
02/11/11	(H)	NR: GARDNER, TUCK, HERRON
02/22/11	(H)	FIN AT 1:30 PM HOUSE FINANCE 519
02/22/11	(H)	Moved CSHB 119(EDT) Out of Committee
02/22/11	(H)	MINUTE(FIN)
02/23/11	(H)	FIN RPT CS(EDT) NT 4DP 6NR 1AM
02/23/11	(H)	DP: FAIRCLOUGH, NEUMAN, JOULE, COSTELLO
02/23/11	(H)	NR: T.WILSON, GUTTENBERG, EDGMON, DOOGAN, STOLTZE, THOMAS

02/23/11 (H) AM: GARA
03/23/11 (H) BEFORE THE HOUSE
03/23/11 (H) TRANSMITTED TO (S)
03/23/11 (H) VERSION: CSHB 119(EDT)
03/25/11 (S) READ THE FIRST TIME - REFERRALS
03/25/11 (S) L&C, FIN
03/31/11 (S) L&C AT 2:00 PM BELTZ 105 (TSBldg)
03/31/11 (S) Heard & Held
03/31/11 (S) MINUTE(L&C)
04/05/11 (S) L&C AT 2:00 PM BELTZ 105 (TSBldg)

BILL: SB 103

SHORT TITLE: WORKERS' COMPENSATION FOR FIREFIGHTERS

SPONSOR(s): JUDICIARY

03/16/11 (S) READ THE FIRST TIME - REFERRALS
03/16/11 (S) L&C, FIN
04/05/11 (S) L&C AT 2:00 PM BELTZ 105 (TSBldg)

BILL: SB 116

SHORT TITLE: WORKERS' COMP.: COLL BARGAINING/MEDIATION

SPONSOR(s): LABOR & COMMERCE

03/25/11 (S) READ THE FIRST TIME - REFERRALS
03/25/11 (S) L&C, FIN
04/05/11 (S) L&C AT 2:00 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

DANA OWEN

Staff to Senator Egan
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Commented on HB 119.

STACY SCHUBERT

Alaska Housing Finance Corporation (AHFC)
Anchorage, AK

POSITION STATEMENT: Supported SCS CSHB 119(L&C).

SENATOR FRENCH

Alaska State Legislature
Capitol Bldg.
Juneau, AK

POSITION STATEMENT: Sponsor of SB 103.

LAW HENDERSON, Workers' Compensation Administrator

Department of Risk Management
Municipality of Anchorage, said he opposed the amendment to AS
23.30.121 [SB 103] for several reasons.

POSITION STATEMENT: Opposed SB 103 and HB 116.

TOM WESTCOTT, President
Alaska Professional Firefighters Association
Eagle River, AK

POSITION STATEMENT: Supported CSSB 103 (L&C), version M.

PAUL HANDBY, career firefighter
Representing himself
Juneau, AK

POSITION STATEMENT: Supported SB 103.

DANA OWEN
Staff to the Senate Labor and Commerce Committee
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Presented SB 116 [labeled 27-LS0549\I] on
behalf of the Senate Labor and Commerce Committee, sponsor.

STEVE RANK
Iron Workers International &
Impact
California

POSITION STATEMENT: Supported SB 116 concepts.

KEVIN GREGERSON, Program Administrator
Union Construction Workers' Compensation Program
Minnesota

POSITION STATEMENT: Supported SB 116 concepts.

FRED BROWN, Executive Director
Health Care Cost Management Corporation of Alaska
Fairbanks, AK

POSITION STATEMENT: Supported SB 116.

LAIRD GRANTHAM
Carpenters Local 1243
Fairbanks, AK

POSITION STATEMENT: Supported SB 116.

PAUL GROSSI, lobbyist
Alaska State Pipe Trades &
Iron Workers
Anchorage, AK

POSITION STATEMENT: Supported SB 116.

DAVID MECUEN, President
California Erectors &
Co-chair, California Field Iron Workers Negotiated Workers'
Compensation Program
California

POSITION STATEMENT: Supported SB 116.

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

POSITION STATEMENT: Said the administration had no position on
SB 116.

ACTION NARRATIVE

[2:05:38 PM](#)

CHAIR DENNIS EGAN called the Senate Labor and Commerce Standing Committee meeting to order at 2:05 p.m. Present at the call to order were Senators Menard, Giessel, Davis, Paskvan and Chair Egan.

SB 100-PERS TERMINATION COSTS

[2:06:12 PM](#)

CHAIR EGAN announced SB 100 to be up for consideration.

SENATOR PASKVAN, sponsor of SB 100, said since the last hearing this bill has received the following additional letters of support from around the state: the City of Palmer, the City of Fairbanks, the City of St. Paul, the City of Ketchikan and the City of Wasilla. They have received resolutions from the Alaska Municipal League (AML), the City of Nome, the Fairbanks North Star Borough, and heard support directly from the Municipality of Anchorage, Bristol Bay and many other places around the state. They received a fiscal note that the Finance Committee would thoroughly vet. Mike Lamb, Chief Financial Officer, Fairbanks North Star Borough, and an AML representative were available to answer questions.

CHAIR EGAN objected to take questions.

[2:07:55 PM](#)

SENATOR MENARD stated that this bill has nothing to do with defined benefits (DB) or defined contributions (DC).

CHAIR EGAN withdrew his objection.

SENATOR PASKVAN moved to report SB 100 from committee with individual recommendations and attached fiscal note. There were no objections and it was so ordered.

[2:09:03 PM](#)

At ease from 2:09:03 PM to 2:10:32 PM.

HB 119-AIDEA: PROCUREMENT; PROJECTS

[2:10:32 PM](#)

CHAIR EGAN announced HB 119 to be up for consideration [CSHB 119(EDT) version M was before the committee]. He said a committee substitute had been prepared [SCSCSHB 119(L&C), version 27-GH1745\I] and that his staff would present it.

[2:11:13 PM](#)

DANA OWEN, staff to Senator Egan, explained the changes in the bill had been discussed in the last hearing, but the Alaska Housing Finance Corporation (AHFC) had asked to be added; the SCS now includes those changes. Those changes were okay with AIDEA and everybody else in the administration who is interested in this issue.

He said the first change amends the title; so lines 7-9 on page 1 contain reference to the AIDEA sections of the bill. Beyond that, beginning on line 12, sections 1-5, through page 3, line 26, are all the new AHFC sections of the bill.

The only other changes occur on the last page, page 6, where sections 12 and 13 are new as a result of the AHFC sections. Section 14 is the old effective date and now Section 15 refers strictly to the AHFC sections of the bill. He understood that AIDEA wanted an immediate effective date because they have projects that are pending that they need this authorization for. AHFC may have projects, but didn't express an interest in needing immediate authorization.

CHAIR EGAN objected for questions. He said the administration supports this committee substitute.

SENATOR MENARD said waiting until July is a little convoluted and wondered if AHFC could have complied with the same starting date as AIDEA did.

MR. OWEN said the bill could be changed. He suggested asking AHFC if they would like to have an immediate effective date.

[2:14:32 PM](#)

STACY SCHUBERT, Alaska Housing Finance Corporation (AHFC), stated they had no objection to that change.

SENATOR MENARD moved as conceptual Amendment 1 an immediate effective date for both entities. There were no objections and it was so ordered.

SENATOR PASKVAN moved to report SCS CSHB 119(L&C) as amended from committee with individual recommendations and attached fiscal note. There were no objections and it was so ordered.

[2:16:20 PM](#)

At ease from 2:16:20 PM to 2:17:48 PM.

SB 103-WORKERS' COMPENSATION FOR FIREFIGHTERS

[2:17:48 PM](#)

CHAIR EGAN announced SB 103 to be up for consideration.

[2:18:20 PM](#)

SENATOR PASKVAN moved to bring CSSB 103(), 27-LS0595\M before the committee.

CHAIR EGAN objected for discussion purposes.

SENATOR FRENCH, sponsor of SB 103, recapped that the bill addresses a piece of legislation that passed in 2008 that made statutory changes to the Workers' Compensation Program giving firefighters the presumption of compensability for certain diseases that they incur because of the work they do that so often leads them to exposure to smoke and chemicals. He said, "It was the intent of the legislature that this compensability presumption go to firefighters who had done two things: they'd served for seven years and who had received the required physical exams during that seven year period and had not shown any evidence of the disease." However, a wording change made in one committee had the unanticipated effect of narrowing the scope of the compensability presumption to only those firefighters who had had an initial physical examination at the time of their hire. This was not the intent and it wasn't discussed in committee. It didn't come to light until the Workers' Compensation Board began to implement regulations and began to hear cases brought to it asking to apply the disability

presumption. Recognizing the problem, the Workers' Compensation Board passed a resolution supporting an amendment such as the one in this bill today to give the presumption to those firefighters who have worked for seven years, had all the required exams and had shown no evidence of disease.

In addition, Senator French said, a letter from the National Council on Compensation Insurance says they believe the cost impact is minimal and think that money may be saved by avoiding future litigation costs.

The second change the bill makes is to clarify that the law applies to state as well as municipal firefighting agencies, which picks up a few firefighters who work for the University of Alaska in Fairbanks. The original bill referred to a definition that was on the books at the time that didn't include state firefighters. So, "state or" was added to the existing definition.

SENATOR FRENCH said they tried very hard to make the change through regulation, but Legislative Legal said it "just wouldn't fly that way."

SENATOR PASKVAN said he wanted to make sure the University of Alaska Fairbanks (UAF) Fire Department wasn't excluded because it is in an unusual class by itself.

SENATOR FRENCH responded that page 2 defines "firefighter" as "a person employed by a state or municipal fire department" and that the UAF firefighters are absolutely a subdivision of the state.

SENATOR PASKVAN asked if language on page 2, lines 23-28, makes sure of the retroactive component so that they actually undo the problem that was unintentionally created.

SENATOR FRENCH replied that's "the meat of the bill."

[2:23:01 PM](#)

LAW HENDERSON, Workers' Compensation Administrator, Office of Risk Management, Municipality of Anchorage, said he opposed the amendment to AS 23.30.121 [SB 103] for several reasons. He said in 2008 the legislature enacted this presumption to give firefighters a certain protection for diseases that were considered work related. To trigger that presumption a firefighter must establish they were given a qualifying medical examination before firefighting that did not show evidence of

the disease as well as an annual medical exam during each of the first seven years of employment that did not show evidence of the disease.

MR. HENDERSON said the first problem with the legislation is that the municipality, like most municipalities, didn't even offer annual physical exams in 1986; they weren't even mandatory until OSHA required them in 1989. Moreover, testing for the diseases listed in the statute weren't done or available in most cases until the 90s and in fact some testing still cannot establish some of these cancers. He said the municipality doesn't know what constitutes the medical examination required under the statute.

Further, the statute directed the Department of Labor and Workforce Development (DOLWD) to define the type and extent of medical examination needed to trigger the presumption and to create the form for use during these exams, but no regulation is currently in effect defining the type and extent of examination needed. He said although the legislation was passed in 2008, no regulation was presented to the lieutenant governor until early this year and that will take effect later this month. No form has been developed. Thus, the record is devoid of medical examinations necessary to trigger the presumption - even though it might exist going forward.

MR. HENDERSON said despite the lack of the needed medical examinations, the Alaska Workers' Compensation Board has nevertheless found in favor of at least one firefighter simply based on his statement that he had had a qualifying medical examination. No medical report was offered and probably doesn't exist. This one case alone will probably cost the city more than \$250,000; another case within the municipality may exceed \$1.6 million. Several other cases are pending. In addition, because of AS 23.30.121, the municipality is now unable to insure any of its firefighters for losses over \$1 million as it has been historically able to do for all workers' compensation claims. He explained that while the municipality is self-insured with a retention level of \$1 million per workers' compensation loss per occurrence, when an injury happens to a firefighter, the municipality is now compelled to pay the first \$2 million of the loss even if it is unrelated to a disease listed under AS 23.30.121. Thus the legislation has created an unfunded mandate on the municipality and he assumed similar entities throughout the state. He pointed out that smaller entities may be unable to fund a self-insurance program as they may be unable to fund the first \$2 million of a loss.

MR. HENDERSON said cost and loss of insurance aren't his only concerns. Another is the lack of medical evidence supporting the causation. The Alaska's Workers' Compensation Board has held that if a condition is one of those listed, medical opinions or studies to the contrary are insufficient to rebut the presumption. Thus, this legislation as applied by the board has created an irrebutable presumption. According to the American Cancer Society, cancer is now the second leading cause of death in the United States and one out of every two Americans will be diagnosed with it as some point in their lives.

The question is whether firefighting activities put one at a greater risk to these cancers. Twenty-four states have enacted presumption laws similar to Alaska's. The impact of these statutes and the medical research regarding firefighters were recently analyzed in April 2009 and a report by the National League of Cities entitled "Assessing Firefighting Cancer-Presumption Laws and Current Firefighting Cancer Research." The report points to many problems with the legislation. Loss of insurance is one. Another is the lack of medical research establishing a causal relationship between firefighting and a specific type of cancer. According to the report, of the thousands of cancer studies taking place from 1995 to 2008, only 17 studies looked at firefighters as a possible risk factor for contracting cancer. The research concluded there was a lack of substantive scientific evidence currently available to determine that firefighters face greater risk than the general population.

[2:29:08 PM](#)

Another concern is equity and questions about fairness come up when one class of employees obtains expanded benefits while other employees such as sanitation workers and automotive fleet personnel who may also be exposed to similar hazards as the firefighters are not covered to the same extent.

Alaska already has a presumption under AS 23.30.120 that has worked well since statehood, Mr. Henderson said. He urged them to repeal AS 23.30.121 or short of that to reject the proposed amendment as it would make every firefighter who ever developed cancer entitled to the benefits despite the lack of available testing as the examination wouldn't show evidence of the disease during the first seven years of employment as the testing was not available.

CHAIR EGAN asked him to summarize.

MR. HENDERSON said these tests are available for some cancers but for others it is cost prohibitive or unavailable.

SENATOR PASKVAN asked if he or the municipality objected to this law in 2008 when it was passed.

MR. HENDERSON answered no; but they did in 2007.

SENATOR PASKVAN said it passed in 2008 and this amendment just corrects an unintentional problem. Did he agree?

MR. HENDERSON answered no.

[2:32:26 PM](#)

TOM WESTCOTT, President, Alaska Professional Firefighters Association, Eagle River, said they supported CSSB 103 (L&C), version M. He said this version doesn't change the intent of the original law; on the contrary, it captures the intent and makes it clearer. It has two aspects, the physicals and the definition. The definition captures groups like the UAF fire department.

He said some of what Mr. Henderson said wasn't accurate because the Occupational Safety and Health Administration (OSHA) adopts standards and the National Fire Protection Association (NFPA) regulation 1582 has the standard for firefighter physicals. He also noted that at the time this legislation passed, they had to demonstrate the scientific studies backing up the link for cancer to their profession. And while it's true that everyone someday may get cancer, getting it at 40 or 38 makes the difference. Evidence of this was shown over and over again during this process.

[2:34:42 PM](#)

PAUL HANDBY said he is a career firefighter for Juneau and is a member of Alaska State Firefighters Association. He conveyed that he would be omitted from protection under existing language in SB 103, because he had an extensive pre-employment physical, but each department had the latitude to determine their own required physicals and during budgetary times these physicals on an annual basis can prohibitively expensive. So, many municipalities don't require them. The change in the CS would cover him in the unlikely event he would be stricken by one of the named carcinogens or something that was related to his occupation.

CHAIR EGAN asked if he supported SB 103.

MR. HANDBY replied emphatically yes.

SENATOR FRENCH offered that it is easy to forget the crucial role firefighters play in protecting our communities. It is known that exposure to noxious chemicals that they see in the course of their employment makes them sick. This issue was gone over carefully in 2007 and 2008 when this bill passed. He said he was disappointed in the testimony on this topic from the Municipality of Anchorage. Firefighters take risks for us and this covers them when they're on the job. Once they leave the employment of the municipality, once they retire, they are on their own for their cancers that they develop later on.

This bill got a zero fiscal note from the state risk management and it got a letter of support from the National Council on Compensation Insurance. He said they looked "high and low" through the record to find out what supported the amendment that carved out and required that initial exam and couldn't find a single word of testimony supporting it. He wanted Mr. Henderson to bring it to his attention if he found something different.

CHAIR EGAN closed public testimony and held SB 103 for a further hearing.

SB 116-WORKERS' COMP.: COLL BARGAINING/MEDIATION

[2:39:34 PM](#)

CHAIR EGAN announced SB 116 to be up for consideration.

SENATOR PASKVAN moved to bring SB 116, labeled 27-LS0549\I, before the committee.

CHAIR EGAN objected for discussion purposes.

[2:40:21 PM](#)

DANA OWEN, staff to the Senate Labor and Commerce Committee, presented SB 116 [labeled 27-LS0549\I] on behalf of the Senate Labor and Commerce Committee, sponsor. He said the concept of this bill was brought to them by a number of different people who recognize that there have been problems with the current Workers' Compensation system. Originally, workers' compensation was established to bring speedy, timely conclusion to workers' compensation claims for injuries that workers received on the job. For workers it provided a means to be treated for their injuries with dispatch and for the employers it brought some sense of stability and finality. They knew they couldn't be sued

and they were also promised they would have a reasonably cost effective workers' compensation premium.

He said they had heard anecdotally for many years that workers have had great difficulty concluding their claims. Some workers have had their cases drag on for several years and they know from repeated contacts by employers that workers' compensation costs are viewed as being excessive. California and Minnesota are two states who have had many years of experience with the kind of workers' compensation system that this bill would allow and this idea makes the time to conclude those claims shorter and reduces costs.

MR. OWEN said this bill would allow within the current workers' compensation system for an employer and a group of employees who are represented by a collective bargaining unit to establish beforehand the terms under which their workers' compensation claims will be resolved. One of the key parts of this is that the injured worker will be directed toward mediation immediately. Currently that mediation happens only after a series of conflicts. So, the two parties could agree in the beginning to the doctor who would initially see the patient and also to the doctor who would provide a second opinion. Currently, the system generally takes three physicians; this would eliminate one of them. The net effect would be to reduce costs and to shorten the time for getting people back to work.

SENATOR GIESSEL said their packets have a colored chart that appears different than what he described. She saw two independent medical evaluations in the present system, but none in the bill.

MR. OWEN explained that the confusion may be in his description. Under current workers' compensation you could get three different medical examinations. As proposed in the bill (by agreement between the two parties), an injured worker can have as few as two.

SENATOR GIESSEL said that is not what she sees in the chart and or the bill.

MR. OWEN replied that he is describing the approach some other states are using. This is an example of one of the ways that two parties, under collective bargaining, could agree on how they would handle the claims.

SENATOR GIESSEL said language in (1)(B) on page 1, lines 13-14, says mediation shall be conducted by a hearing officer or other classified employee of the Division of Workers' Compensation. She assumed that the employee would be a classified employee and asked if that meant the injured worker would be mediated by another classified employee.

MR. OWEN replied yes; the bill envisions using hearing officers currently in the division to do the mediation.

SENATOR PASKVAN asked if this applies to all workers around the state.

MR. OWEN answered yes; all workers who are covered under collective bargaining agreements.

2:46:38 PM

STEVE RANK, Iron Workers International and Impact, a labor management cooperative trust fund, said he is based out of California. He explained that California experienced extreme medical costs and litigation; both employers and workers were frustrated with the system. In 2003, labor and management got together and developed a collectively bargained workers' compensation that allows employers and labor representatives to sit down and pre-designate medical providers so that their injured workers are provided "the best medical attention not the worst."

He said these programs are voluntary and don't require any insurance carrier or employer to participate. "They're designed to improve the delivery of medical benefits to injured workers period." Nothing in this bill takes benefits away from injured workers.

MR. RANK said that now workers don't have to wait six or nine months to hear about their claim. Through cooperative efforts of the insurance carriers, the employers and the labor representatives these claims are expedited to make sure that workers are attended to and that their questions are answered by an ombudsman who is available 24/7. Published statistics from the states of California and Minnesota show that these types of programs reduce medical costs, lost work days and, importantly, litigation. This program attempts to give injured workers a method of dealing with their issues without resorting to unnecessary litigation in a system that, in many cases, can't answer their questions.

[2:50:11 PM](#)

KEVIN GREGERSON, Program Administrator, Union Construction Workers' Compensation Program, Minnesota, said he developed this program back in 1997 on behalf of a labor/management board of trustees and has been running it ever since. The program he administers came out of 1995 statute that Minnesota passed allowing for these alternative collectively bargained workers' compensation programs.

MR. GREGERSON said he was asked to compare his experience with the State of Minnesota's workers' compensation system for the last 13 years. He said recent data showed that having an ombudsman to answer question for all parties resulted in significant improvement in terms of injured workers receiving benefits on a timely basis. They have seen a reduction of 40 percent in the average cost of a workers' compensation claim as compared to claims for a similar injury in a similar occupation going through the State of Minnesota's workers' compensation system. The biggest reason for that is that they had preselected the physicians, the vocational rehabilitation counselors and the attorneys who serve as mediators and arbitrators who interact with their injured participants and contractors.

[2:53:18 PM](#)

He also said that language in Alaska statute gives the Labor and Management Committee the authority to determine how they want to perform independent medical examinations. This is really the legislature empowering labor and management to figure out a better way to deliver the same set of statutory benefits utilizing people that they have mutual trust with and have the ability to work with who understand the construction industry and the unique aspects that that industry faces.

[2:54:41 PM](#)

FRED BROWN, Executive Director, Health Care Cost Management Corporation of Alaska, Fairbanks, said they support SB 116. He said his letter is with the committee, but he wanted to mention that his corporation is focused on controlling health care costs. Associated charts show Alaska is among the highest cost states in the union for delivery of workers' compensation benefits generally and specifically that 75 percent of the total costs of workers' compensation are medical.

MR. BROWN said the 2009 report of the Workers' Compensation Medical Services Review Committee observed on page 10 that even though there is the opportunity to create preferred provider networks, there is no incentive to do so, because statute

doesn't require providers to participate. So, they view this language as an opportunity for labor and management to negotiate together with providers to institute a preferred provider network if they choose to do so.

SENATOR PASKVAN asked if he knows what the potential savings might be if this system is followed.

MR. BROWN replied that his organization can sometimes negotiate significant discounts in the neighborhood of 50-60 percent.

[2:57:17 PM](#)

LAIRD GRANTHAM, Carpenters Local 1243, Fairbanks, said he supported SB 116. He said that from 2005 to 2009, Alaska has had the highest workers' compensation rates in the nation. They make Alaska the very least competitive state in the union for conducting business according to a CNBC report. Because of this, they see more "shady employers" who have no insurance or misclassify their employees to cut costs and "cheat the industry." He said this bill will allow for quick resolution of a claim and at a much lower cost to all parties.

Just yesterday, Mr. Grantham said, his office received a request for information about a workers' compensation claim dated back to 1988 and remarked, "Why should any one individual or companies have to wait that long for any type of closure?" He said it's time to allow this voluntary program in Alaska.

[2:58:47 PM](#)

PAUL GROSSI, lobbyist for the Alaska State Pipe Trades and the Iron Workers, said he supported SB 116 and that most of his points were already covered. But, he said, all of them have probably had some experience with constituent complaints from either employers about the cost of the system or from employees about how cumbersome the system is. He used to be the director of Workers' Compensation in Alaska and used to get these complaints; he knows what they are about.

MR. GROSSI stated that this bill is just enabling language. It will allow groups under a collective bargaining system to improve the ways to deal with some of the costs, inefficiencies and difficulties in getting treatment. When he first started working at the Division of Workers' Compensation, medical costs were 30 percent of the entire cost and now they are 75 percent. "So, there is a drastic need to address some of these issues." This bill allows pilot projects on improvements to the system.

[3:02:07 PM](#)

LAW HENDERSON, Workers' Compensation Coordinator, Department of Risk Management, Municipality of Anchorage, said he opposed SB 116. He said the Municipality of Anchorage has eight separate bargaining units and one exempt unit. With SB 116, it could very likely end up being governed by two separate workers' compensation systems, one with a due process protection (the current one) and one without.

He noted that Section 1 of the bill simply codifies what the Division of Workers' Compensation has been doing for about a decade already - which is fine. The problem is in Section 2 that creates a new workers' compensation system through the collective bargaining process. AS 23.30.285(a)(1) says the division would have to hire more employees devoted to this new alternative or parallel system. Beyond that, the statute is vague. In his understanding that the system envisioned under SB 116 is what Minnesota does, but that system stripped the parties of discovery and selection rights afforded under the current system. For example, under the current system an employer may obtain an independent medical evaluation to determine whether an injury is work-related or not and if not work-related, whether disability, permanent impairment, medical vocational or other benefits are warranted under the Alaska Workers' Compensation Act. Under the system envisioned in SB 116, the employer has no right to an independent medical examination. Without medical evidence to support a denial of benefits, an employer is prevented by law from denying benefits. If denied without such evidence, an employer faces a 25 percent penalty and the adjuster faces possible loss of his license.

[3:04:39 PM](#)

Thus, he said, under SB 116, an employer is unable to develop contrary medical evidence and is compelled to simply write checks for benefits having lost any mechanism for testing the validity of the employee's claim. Under the current system, the Alaska workers' compensation Board itself may request an independent medical evaluation by a physician of its choosing. Under SB 116, no such evaluation is permitted. Under the current system, the employee is free to treat with whoever he chooses; under SB 116 they can only select from the list developed by their trust. The current system has numerous vocational counselors available to the employee; under SB 116 an employee is limited to those developed by the trust. The only similarity between the two systems is who pays for them - insurers and self insureds - thereby increasing the cost of the overall workers' compensation system. In short, SB 116 would develop a parallel

system devoid of the constitutional due process protections and choices available under the current system.

CHAIR EGAN said he assumed he opposed SB 116.

MR. HENDERSON responded yes.

[3:06:31 PM](#)

DAVID MECUEN, President, California Erectors, California, said he is also co-chair of the California Field Iron Workers Negotiated Workers' Compensation Program. He explained that they developed this program in 2003 because their workers' compensation program was "out of control." Forty-three percent of their base wage was being paid for workers' compensation premium, but after legislative changes, California is paying 14 percent of base wage for workers' compensation premium - a substantial savings.

MR. MCCUEN said California has a parallel program; it has both signatory and non-signatory employees covered through this program. It is not a burden whatsoever and it has worked well for them. He has not heard one complaint from the workers covered under the negotiated program and delivery of medical care is "a lot better than it used to be." Someone had a rotator cuff injury; in the old days it would have taken him six months before he would actually get authorization for surgery. Under their new program, the person got authorization within two weeks and returned to work within six months. The costs are considerably less; so much so that they have been able to actually pay their guys more for temporary disability.

He said nothing in their process prohibits attorneys from being involved, so if an injured worker wants representation he can have it. He said it's a much better way of doing business and it saves money for everybody.

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MR. MCCUEN said it also saves money for the state by lessening the burden on their workers' compensation appeals process. In California, an appeal takes 1-4 years; under their current dispute resolution program they get mediation in 2-6 weeks and if it does go to arbitration, which is very rare, it takes another 2-4 weeks. It's a much faster process with phenomenal savings. "Everybody wins under this."

SENATOR PASKVAN asked how long their program has been operating.

MR. MCCUEN answered eight years.

SENATOR PASKVAN asked in what categories the savings are located.

MR. MCCUEN replied much of the savings comes from quicker resolution of the problems and reduction in medical rates through a preferred provider program (PPO). Using PPOs eliminates doctors who don't work with workers' compensation patients and in most cases the doctors they use are the ones a worker would choose to see on his own. Their costs are discounted by 20-30 percent and if someone wants to see a specialist it takes about one-third the time it used to take. They also see savings through reduced MOD rates (Experience Modification Rate) by several percentage points which reduces claim costs. Issues are resolved much faster which saves even more money. In the old system an injury took six months to get back to work system and now it takes generally takes six weeks.

[3:13:01 PM](#)

SENATOR PASKVAN verified that the base rate was 43 percent eight years ago and now it's 14 percent.

MR. MCCUEN replied that was correct, but that was for his firm only.

SENATOR PASKVAN asked if that reduction in base rate is monitored by private insurers.

MR. MCCUEN answered that California has a state rating bureau and the state rates his firm based on costs and number of claims; that has also gone down. Their category, which is construction over two stories, has seen a dramatic reduction as a result of alternative dispute resolution (ADR), for which they also set the rate.

[3:14:33 PM](#)

MIKE MONAGLE, Director, Division of Workers' Compensation, Department of Labor and Workforce Development (DOLWD), said he was available to answer questions, but the administration had no position on SB 116.

SENATOR PASKVAN said he saw the two components of the bill as different types of alternative dispute resolution models. He asked Mr. Monagle if he saw a benefit with both models.

MR. MONAGLE replied he wasn't sure what he meant by "both models." There is an alternative dispute resolution process, which includes mediation and if that is not successful, they can go to arbitration.

SENATOR PASKVAN said in other words in Section 1 any worker injured under any circumstance can attend mediation; that's one method. The second section talks about collective bargaining agreements where any employer dealing with a collective bargaining agent, if they want to, can reach an agreement as to an alternative dispute resolution mechanism. His question to Mr. Monagle is if he sees the benefit of the alternative dispute resolution process an improvement in both methods whether it's a represented worker or a non-represented worker.

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MR. MONAGLE replied first about Section 1 saying that mediation has been taking place in the workers' compensation system for a number of years; last year they mediated about 40 complex cases with about 90 percent satisfactory settlement that was approved by the board. He thinks that mediation is a valuable tool that can often lead to reduced disputes and quicker resolution.

The second section also has a mediation and arbitration process. It's difficult for him to answer, because it talks about the ultimate dispute resolution process being set out in a collective bargaining agreement. His workers' compensation officers mediate terms under the Workers' Compensation Act and don't mediate terms under a collective bargaining agreement.

[3:18:08 PM](#)

SENATOR PASKVAN asked if all workers in Alaska are currently covered by workers' compensation statutes.

MR. MONAGLE replied yes - with a few statutory exceptions.

SENATOR PASKVAN asked if he viewed Section 2 as an exception to the workers' compensation coverage. Is the alternative dispute resolution a viable cost savings method and what would be a better method if there is one?

MR. MONAGLE replied that he didn't know of alternative possibilities for resolving disputes in the workers' compensation system, but Section 2 allows employers and employees to come up with a solution to disputes through a collective bargaining process that may mirror the Workers' Compensation Act. Current experience is that a mediation process

can bring quicker resolution, but he couldn't speak specifically to the terms of what a collective bargaining agreement might be.

3:21:10 PM

SENATOR GIESSEL asked what he would describe as broken in the Workers' Compensation Act now.

MR. MONAGLE replied that the bill does a good job of identifying some areas in the workers' compensation system that are "broken." He explained that the department receives 20,000 - 25,000 reports of injury every year and in the vast majority of these cases the injured worker receives speedy medical treatment and timely disability benefits, but a small percentage actually end up in complex disputes. These get a lot of attention.

Medical costs in the system are high and last year he found it took about two years from the time a dispute is begun until a final decision was made. One of the areas the bill touches on that the current workers' compensation system does not address is a return to work program.

SENATOR GIESSEL said she is by profession a health care provider who has provided workers' compensation services to injured workers and asked him to describe what kind of case management an employee gets to help him negotiate the system.

MR. MONAGLE answered that they have workers' compensation officers as part of their staff and they are available to assist injured workers in knowing what their rights are. For the most part, an injured worker under the current system is free to receive the medical treatment of their choice. There are no restrictions on whom they can be treated by or from or the nature or scope of their treatment. The employer reserves the right to send the injured worker to a doctor of their choice. Sometimes there are medical disputes over whether a certain mode of treatment is necessary or not. Often when those disputes come before the board, they have a panel of medical experts that it can assign. If the parties are still in dispute, the workers' compensation board is free to weigh all that medical evidence and find what portion - all, some or none - is credible in awarding benefits to the injured worker or withholding benefits from him.

3:25:21 PM

SENATOR MENARD asked how often the medical board meets saying she was trying to figure out how big the holdup is. How bad is a

medical dispute for the business climate overall? PPOs are never popular.

MR. MONAGLE replied that there is no person or board that an injured person has to await to approve their treatment. Delays typically have to do with hearing back from the employer or their insurance company on whether they believe something is compensable or not.

SENATOR GIESSEL said the process now has the option for an independent evaluation. How often is that used and what does that entail?

MR. MONAGLE replied typically it's the employer who asks for the independent medical evaluation and that is based on the experience of a particular case manager or claim administrator and if he believes there is sufficient evidence to warrant an independent review. Normally, the process begins when the insurance company asks the injured worker to sign a medical release. Then they will look at copies of his medical records for any red flags; for instance if he previously had a motor vehicle accident and they think maybe his current complaints are more related to that accident than his occupational injury, then they might ask for an independent medical examiner and ask those types of questions to determine whether or not there is contrary medical evidence to warrant the payment of a claim or not. He said the vast majority of these cases are paid with no dispute.

[3:29:29 PM](#)

SENATOR GIESSEL asked if he saw the removal of that option to ask for an independent medical evaluation from an employer or an employee in SB 116.

MR. MONAGLE replied that Section 2 provides that the collective bargaining agreement can establish an exclusive list of providers and an exclusive list of independent medical evaluators. Now, the assumption he is making is that the employer and the employee have agreed to the terms of the collective bargaining agreement and therefore, have agreed to establish that exclusive list and abide by the terms of the agreement. In that regard some rights are preserved by parties because they aren't forced into these agreements.

SENATOR GIESSEL thanked him and said since they had heard from lots of employee groups that she wanted also to hear from some employers.

3:31:31 PM

CHAIR EGAN said they would invite employers. Finding no further business to come before the committee, he adjourned the meeting at 3:31 p.m.