

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

March 15, 2012

1:48 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**

PRESENTATION: "How Equality Policies Work to Strengthen Economies and the Labor Force."

- HEARD

SENATE BILL NO. 28

"An Act making sales of and offers to sell certain energy resources at prices that are unconscionable an unlawful act or practice under the Alaska Unfair Trade Practices and Consumer Protection Act."

- MOVED SB 28 OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 267(L&C)

"An Act relating to the Real Estate Commission; and providing for an effective date."

- MOVED 2d CSHB 267(JUD) OUT OF COMMITTEE

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 AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 28

SHORT TITLE: PRICE GOUGING INVOLVING ENERGY RESOURCES

SPONSOR(s): SENATOR(s) WIELECHOWSKI, ELLIS, FRENCH

01/19/11 (S) PREFILE RELEASED 1/7/11  
01/19/11 (S) READ THE FIRST TIME - REFERRALS  
01/19/11 (S) L&C, FIN  
03/13/12 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)  
03/13/12 (S) Heard & Held  
03/13/12 (S) MINUTE(L&C)  
03/15/12 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)

BILL: HB 267

SHORT TITLE: REAL ESTATE SALES LICENSEES/COM'N

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

01/17/12 (H) PREFILE RELEASED 1/13/12  
01/17/12 (H) READ THE FIRST TIME - REFERRALS  
01/17/12 (H) L&C  
02/06/12 (H) L&C AT 3:15 PM BARNES 124  
02/06/12 (H) Moved CSHB 267(L&C) Out of Committee  
02/06/12 (H) MINUTE(L&C)  
02/08/12 (H) L&C RPT CS(L&C) 4DP  
02/08/12 (H) DP: CHENAULT, THOMPSON, HOLMES, OLSON  
02/13/12 (H) JUD REFERRAL ADDED  
02/20/12 (H) JUD AT 1:00 PM CAPITOL 120  
02/20/12 (H) Moved 2d CSHB 267(JUD) Out of Committee  
02/20/12 (H) MINUTE(JUD)  
02/22/12 (H) JUD RPT 2D CS(JUD) NT 5DP 2NR  
02/22/12 (H) DP: LYNN, GRUENBERG, THOMPSON, HOLMES,  
PRUITT  
02/22/12 (H) NR: KELLER, GATTO  
02/24/12 (H) MOTION TO ADOPT CS(L&C) WITHDRAWN UC  
02/24/12 (H) 2D CS(JUD) ADOPTED UNAN CONSENT  
02/24/12 (H) TRANSMITTED TO (S)  
02/24/12 (H) VERSION: 2D CSHB 267(JUD)  
02/27/12 (S) READ THE FIRST TIME - REFERRALS  
02/27/12 (S) L&C  
03/15/12 (S) L&C AT 1:30 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)
04/05/11	(S)	Heard & Held
04/05/11	(S)	MINUTE(L&C)
01/19/12	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)
01/19/12	(S)	Heard & Held
01/19/12	(S)	MINUTE(L&C)
02/21/12	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)
02/21/12	(S)	-- MEETING CANCELED --
02/23/12	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)
02/23/12	(S)	Scheduled But Not Heard
02/28/12	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)
02/28/12	(S)	Scheduled But Not Heard
03/01/12	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)
03/01/12	(S)	Heard & Held
03/01/12	(S)	MINUTE(L&C)
03/15/12	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

CHRISTINE COUGHMAN, Montana State Senator  
Missoula, MT

**POSITION STATEMENT:** Gave presentation on "How Equality Policies Work to Strengthen Economies and the Labor Force."

JAMIE GREER, nondiscrimination activist and lobbyist  
Missoula, MT

**POSITION STATEMENT:** Supplemented Ms. Coughman's presentation on equality policies.

SENATOR BILL WIELECHOWSKI  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Sponsor of SB 28.

ED SNIFFEN, Assistant Attorney General  
Civil Division  
Commercial and Fair Business Section  
Alaska Department of Law  
Anchorage, AK

**POSITION STATEMENT:** Commented on Alaska's anti-trust and consumer protection statutes relative to SB 28.

TERRY HARVEY, Staff  
Representative Cathy Munoz  
Alaska State Legislature

Juneau, AK

**POSITION STATEMENT:** Commented on HB 267 for the sponsor.

LINDA HALL, Director

Division of Insurance

Department of Commerce, Community and Economic Development  
(DCCED)

**POSITION STATEMENT:** Commented on Alaska's Workers' Compensation system and how she thought SB 116 would affect insurance premiums.

PAUL GROSSI, Lobbyist

Pipefitters and Iron Workers

Juneau, AK

**POSITION STATEMENT:** Supported SB 116.

MIKE MONAGLE, Director

Division of Workers' Compensation

Department of Labor and Workforce Development (DOLWD)

Juneau, AK

**POSITION STATEMENT:** Pointed out the division's concerns with SB 116.

#### **ACTION NARRATIVE**

[1:48:56 PM](#)

**CHAIR DENNIS EGAN** called the Senate Labor and Commerce Standing Committee meeting to order at 1:48 p.m. Present at the call to order were Senators Menard, Davis and Chair Egan. Senators Giessel and Paskvan joined the meeting a couple of minutes later.

**Presentation: "How Equality Policies  
Work to Strengthen Economies and the Labor Force."**

[1:49:34 PM](#)

CHAIR EGAN welcomed Christine Coughman to give a presentation on equality work policies.

CHRISTINE COUGHMAN, Montana State Senator, thanked the Chair. She stated that in addition to being a Senator, she had been director of the Human Rights Network, which takes a broad view of human rights in Montana: everything from helping communities respond to violence and intimidation that occurs to minority populations and white supremacist rhetoric and activities of groups such as the Militia and Freemen. They look at health care

as a human right along with a broad base of issues. Even though she no longer works there, she still looks at gay, lesbian, bisexual and transgender equality as a civil rights issue, and believes that what is good for human rights is also good for business.

[1:50:33 PM](#)

SENATOR GIESSEL joined committee.

MS. COUGHMAN said equality really means fairness, and fairness provides a multitude of intangible benefits to businesses everywhere. Many people are looking for a work place that recognizes the relationships that all employees have. It means having a much more open and innovative business climate that ensures fundamental fairness and basic civil rights for everyone. Alaska has an opportunity, as other states do, to lead by embracing non-discrimination polices ensuring that all shareholders, employees and consumers can live their lives to their fullest potential.

MS. COUGHMAN said to not underestimate what it means to a gay or lesbian employee to live in fear of losing their job should their family life become a topic of conversation among their colleagues. Keeping their lives secret from people who may wish them harm may become their focus rather than being productive in their jobs.

Further, equality benefits corporate recruitment, retention and morale, she said. Demographers have found that the new generation of highly desirable workers are likely to choose where they want to live first and then look for their job. They often cite diversity and inclusive policies in the work force as a reason why they want to move to a community in order to accept employment. The discussion in Montana is often about why young people are leaving the state for opportunities elsewhere, and people should stay open to the possibility that these kinds of policies help people decide to come to a community. Whether or not a person is gay or lesbian, he or she wants to feel that there are inclusive policies of diversity in the work force where they live and work.

MS. COUGHMAN said the younger generation is much more comfortable with these policies than others in terms of wanting them present in order to go to work and feel good about their company.

[1:56:26 PM](#)

SENATOR PASKVAN joined the committee.

MS. COUGHMAN said equality policies would put Alaska businesses in the strongest and most competitive position to attract, recruit and retain the best and brightest employees as well as keep high caliber employees in the state. Alaska employers risk losing same sex-couples and their allies to Vancouver, Seattle or other places where these policies are already in place. Great states and cities must demonstrate a commitment to creating open, healthy and equitable environments in which to live and work. Businesses would face lower recruiting costs with an expanded pool of qualified candidates.

There is some threat of negative publicity around these issues, as well. For instance, recently, two employees of the University of Montana sued the university system because they were denied health benefits for their partners. It went all the way to the Montana Supreme Court that ruled in favor of the plaintiffs, because the University system had a policy that allowed opposite sex but unmarried couples to receive health benefits. The Court said you must treat unmarried same-sex couples the same; you cannot discriminate against one over the other. The University could have decided to drop that benefit, but it would have affected a large number of people already getting it. And they did make the right choice to keep it. She said the State of Montana followed suit, and as a result she and her partner were able to take advantage of the same benefits as her colleagues do, making her equal to them in the Senate.

MS. COUGHMAN said she wished she could say Montana had been successful in passing statewide non-discriminating policies, but that is not the case. They have tried 10 times over the last two decades to pass additions to their human rights law that would provide non-discrimination policies in employment, housing, benefits and public accommodations. Even though they have not been successful, people are getting educated in the process. This issue has now moved to the municipalities, like question 5 in Anchorage.

[1:58:55 PM](#)

She said that one city in Montana had already adopted non-discrimination policies and other cities are lining up. It really does beg for a statewide solution in many ways, because really, do you want your citizens receiving different protections based on where they happen to work or recreate and visit?

MS. COUGHMAN said the reason she asked Jamie Greer to chat with them is because he is on the forefront of the effort to organize for non-discrimination benefits in cities across the state of Montana. She invited him forward to address the committee.

[1:59:33 PM](#)

JAMIE GREER, non-discrimination activist and lobbyist, Missoula, Montana, said his job primarily is reaching out to business owners and making sure they understand not just what they are doing and why it's important, but also helping them find ways to come forward in their support and also change their internal policies. Right now in Montana, similar to what is happening in Alaska, gay, lesbian, bisexual and transgender residents are not included in the Montana Human Rights Act. He is approaching businesses and saying what they are doing is not unique and they are not alone.

He said that 89 percent of Fortune 500 companies in this country already have workplace policies that protect gay and lesbian individuals, and Wal-Mart Stores, Inc., the largest private employer in the world, recently added transgender people to their nondiscrimination policy. He is trying to branch out and build support on a local level using a list of substantial corporations that are doing business located in the Pacific, the Pacific Northwest and the West.

MR. GREER said 190 major businesses achieved the top score of 100 on the Human Rights Campaign's equality index, which can easily be found on line. That means that major corporations are already taking the steps to protect gay and lesbian employees, and they are doing this because it makes sense in terms of keeping the best and the brightest employees at their corporations. An increasing number of companies, large and small, are reimbursing gay and lesbian employees for the taxes that they pay on health insurance benefits for their spouses and domestic partners. It's a tax that does not apply to heterosexual married couples.

[2:02:53 PM](#)

SENATOR MENARD asked where they have gone on a scale from one to ten as far as improvement.

MS. COUGHMAN answered they have gone from 1 to 7.2. They passed a non-discrimination bill out of one House in a previous year. This year the Senate passed a different equality bill related to language that remains in their felony laws regarding same-sex neighbors; the House hadn't been cooperating though.

SENATOR MENARD asked how many states favor this issue.

MR. GREER didn't know the specific number, but almost 50 percent of Americans have either statewide or municipal protections.

SENATOR DAVIS welcomed Senator Coughman to the state, commending and encouraging her on her work.

**SB 28-PRICE GOUGING INVOLVING ENERGY RESOURCES**

[2:05:47 PM](#)

CHAIR EGAN announced consideration of SB 28.

SENATOR WIELECHOWSKI, sponsor of SB 28, said he had received many phone calls and emails in support of SB 28 and none opposing it.

[2:07:32 PM](#)

SENATOR GIESSEL asked Mr. Sniffen, Department of Law, if he had investigated fuel prices in the past.

ED SNIFFEN, Assistant Attorney General, Department of Law, said his responsibilities include enforcement of anti-trust and consumer protection statutes. In that role, he had investigated fuel prices in the last decade.

SENATOR GIESSEL asked if he found any issues.

MR. SNIFFEN replied that pricing investigations are tricky, because anti-trust law requires finding evidence of collusion or coordinated conduct. The department has retained experts to look at fuel pricing in the State of Alaska, the details of which are confidential, but they have released a couple of reports setting out their findings. No evidence of illegal activity - any collusion or coordinated conduct - had been found of among the refiners, distributors or retailers in the state.

He said one of the good things about this particular bill is that it would remove the requirement to actually find collusion or coordinated conduct. They could look at conduct that is just "unconscionable." But the tricky thing would be if determining unconscionable would be any easier than determining collusion or coordinated conduct.

SENATOR GIESSEL asked if he knew of a definition of unconscionable.

MR. SNIFFEN responded that case law provides some guidance on it using words like excessive or exorbitant. In discussions with Senator Wielechowski's office, they decided that unconscionable would be slightly easier to identify than collusion or coordinated conduct, only because a couple of cases actually define what that means, although he didn't know how it would apply in Alaska. For example, in Pennsylvania and Ohio they say unconscionable means something that affronts the sense of justice, decency and reasonableness. Senator Wielechowski pointed out that in most states, price gouging laws require a declared state of emergency before the laws kick in; then you have a baseline. You could point out a company that had raised its price by 300 percent only because Hurricane Katrina came in and wiped out a lot of people. But because of Alaska's lack of competition, distributors and refiners can charge what they like without a declared state of emergency, and he had never had to look at an unconscionable price.

SENATOR GIESSEL remarked that he just said he didn't have a determination of "unconscionable price."

MR. SNIFFEN replied that was right, and he would have to come up with a test if this bill passed. Also, if you are going to tell somebody they can't charge something, the follow-up might be having to tell them what they can charge. An accounting would be required to determine what their costs are, what their investment risks are and what their return on capital is. Then it starts to look a lot like regulation, which is what the RCA does.

SENATOR GIESSEL said page 2, line 2, refers to "fuel for space heating." In Anchorage that fuel is natural gas; in other areas it's diesel. What does this refer to and who regulates that price?

MR. SNIFFEN answered most diesel fuel that is used for heating (delivered by a tank wagon or a truck) is the kind of space heating fuel that would be covered by this bill, but natural gas could also be used, and that is regulated by the RCA. The RCA does not regulate prices for fuel oil.

SENATOR GIESSEL asked if this language conflicts with the RCA's regulatory authority over natural gas.

[2:15:09 PM](#)

MR. SNIFFEN replied maybe, but by default, it would only apply to the commodity that is regulated by the RCA. He didn't know if there would be an actual conflict in the sense that the RCA would not attempt to regulate this kind of fuel product.

SENATOR WIELECHOWSKI responded that this provision was added in a committee several years ago by the Senate Energy Committee; at that time, Senator Hoffman and Senator Stedman were concerned about high costs in rural and Southeast Alaska, particularly, in areas that use diesel oil for heating. It was never the intent to regulate an energy source that is currently regulated by the RCA.

SENATOR PASKVAN asked Mr. Sniffen to comment on the difficulty in applying a collusion or coordinated conduct standard in a smaller limited market where there could be either an oligopoly or a monopoly.

MR. SNIFFEN answered that it's very difficult to find illegal collusion or coordinated conduct in a smaller market, because prices are displayed for everyone to see. There is no need for competitors to engage in illegal conduct, because everyone knows what everyone else is doing. Even in Anchorage, where there is robust competition for gasoline, collusion between retailers is very difficult to uncover. Several years ago, the Attorney General's Office found evidence that some retailers had meetings and agreed to fix the price on gasoline, and he took action by shutting the stations down. But absent a "mole" or "whistle blower" who is at those kinds of meetings, it is very difficult to find.

[2:18:51 PM](#)

SENATOR WIELECHOWSKI said originally the bill had a specific trigger of 10 percent higher than Seattle gas prices. Refiners didn't like that; it was too specific, even though the two prices had tracked for years. Then they tried using "excessive" or "exorbitant" and were finally advised by attorneys that using "unconscionable" was a better standard, because it is used in other states and in regulatory hearings and has a body of case law behind it. The Attorney General has reported investigating this issue twice, but they have been limited to collusion and anti-trust issues; they have not investigated whether or not the prices are unconscionable.

SENATOR WIELECHOWSKI pointed out that all this bill does is empower the Attorney General, if he believes there is evidence of very high prices without warrant, to investigate, and if he

finds evidence, he can file a lawsuit. He explained that originally the bill was drafted so that anyone could file a lawsuit. Tesoro said that their main concern was that they didn't want to fight 100 lawsuits. He was told by the representative that if that provision were changed to only allow the Attorney General to file a lawsuit, they would not oppose the bill. The next day after he made the change, Tesoro came in and opposed the bill. So there are tight restrictions on this bill; it is designed to protect Alaskan consumers.

SENATOR WIELECHOWSKI stated that he was not saying anyone was acting other than they would in a free market; people are going to try to make as much money as they possibly can. The problem in the State of Alaska is there is no free market here, and that situation allows legal price gouging. This bill just says that in that situation the Attorney General is empowered to investigate and if they find evidence of gouging with unconscionable prices, they have the ability to file a lawsuit.

[2:22:12 PM](#)

SENATOR GIESSEL moved conceptual Amendment 1 as follows:

I move that SB 28 be amended to include health care (from both providers and facilities), rental housing, and the sale of grocery food items. That they be covered by and subject to the same anti-gouging provisions as the refiners, distributors and retailers of certain energy resources.

She apologized for the conceptual form and said her amendment was still in drafting. She explained that the Department of Administration was struggling to contain the accelerating health care costs. Alaskans pay 50 percent more for health care than people in Seattle. In fact, many insurers are sending their beneficiaries to Seattle for health care services, because the prices are so high in Alaska. She had heard the same about rental housing and grocery prices in some locations.

SENATOR DAVIS asked the sponsor if this amendment would affect the title and what his thoughts were on it.

SENATOR WIELECHOWSKI replied the amendment would require a title change; he had additional problems with it, because he didn't think the state should be in the business of regulating the free market unless it's absolutely necessary. The significant difference between groceries, for instance, and gasoline prices, is that there is one place to buy gasoline; one refiner refines

80 to 82 percent of gasoline, and another refines 10 percent. There is an oligopoly when it comes to gasoline and heating in the State of Alaska, but if he doesn't like what he is charged for a dozen eggs or a carton of milk at Safeway, he can go to any of another dozen stores that are around. If he doesn't like what his doctor at Providence charges, he can go to other health care providers. He has hundreds of choices in rental property. There is a free market for those items; there is not a free market for gasoline. That is the major difference.

SENATOR GIESSEL said many Alaskan communities have extremely limited grocery and housing opportunities and certain groups offer specialized health care. So it does apply to these other vendors.

SENATOR WIELECHOWSKI said Senator Giessel was correct and that would be an excellent bill for to file on her own and take through the committee process.

[2:26:47 PM](#)

SENATOR MENARD said she had one strong concern with the amendment and that was that it had not had due process. She knew the direction in which Senator Giessel was going and wanted to hear from those other industries about why citizens of Alaska feel gouged, but it's way too late in the session to tackle this amendment.

SENATOR PASKVAN objected to the amendment. A roll call vote was taken. Senator Giessel voted yea; Senators Menard, Davis, Paskvan and Egan voted nay. Therefore, the amendment failed.

[2:29:05 PM](#)

SENATOR PASKVAN moved to report SB 28 from committee to the next committee of referral with individual recommendations and attached fiscal note, if any. Senator Giessel objected. A roll call vote was taken: Senators Menard, Davis, Paskvan and Egan voted yea; and Senator Giessel voted nay. Therefore, SB 28 passed from the Senate Labor and Commerce Standing Committee.

#### **HB 267-REAL ESTATE SALES LICENSEES/COM'N**

[2:29:26 PM](#)

CHAIR EGAN announced consideration of HB 267 [2n CSHB 267(JUD) was before the committee].

TERRY HARVEY, staff to Representative Cathy Munoz, sponsor of HB 267, said the committee heard the Senate companion bill a few

weeks back. It was sponsored by the chair, so he knew they were familiar with it. He said this bill resolves three areas of concern brought to them by the Alaska Realtors Association. It modifies real estate law in one area and offers clarity in several others. The modifier will allow a licensee to share a part of all of their commission with a charitable organization; this is not allowed under current statutes that say a licensee can only share that information with another licensee. This makes an exception for charitable organizations and promotes charitable giving within the industry.

[2:31:20 PM](#)

HB 267 also clarifies that a licensed assistant can only work for one brokerage at a time. It also clarifies the closing process for a brokerage. Currently, if a broker becomes ill or incapacitated or violates the law, only another licensed broker may be assigned by the Real Estate Commission to perform the incapacitated broker's functions. This change allows the flexibility for the Real Estate Commission to choose among other licensees for that duty, like a real estate sales professional. This was deemed a reasonable concept, because some areas of Alaska have only one broker in the entire community or perhaps for many miles. The idea was to allow other licensees to be designated by the commission to come in to perform the function as needed.

MR. HARVEY said the House Judiciary Committee broadened the title to include temporary permits, licensed assistants and charitable organizations. Also more clarity was added to the licensed assistant language that now reads:

The licensed assistant is not employed to perform activities requiring licensure under this chapter for more than one licensed real estate broker.

[2:34:16 PM](#)

SENATOR PASKVAN asked the Alaska Real Estate Commission's position.

MR. HARVEY replied the Alaska Realtors Association supported the changes, and he understood from them that the Real Estate Commission also supported the changes.

CHAIR EGAN noted that Mr. Champion was shaking his head yes.

SENATOR PASKVAN asked if he knew of any serious opposition from within the profession.

MR. HARVEY said he was not aware of any at this time.

[2:35:54 PM](#)

SENATOR PASKVAN moved to report 2d CSHB 267(JUD), version I, from committee to the next committee of referral with individual recommendations and attached zero fiscal note. There were no objections and it was so ordered.

[2:36:27 PM](#)

At ease from 2:36 to 2:37 p.m.

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

[2:37:27 PM](#)

CHAIR EGAN announced the consideration of SB 116. He said the committee would consider an amendment by Senator Giessel.

SENATOR GIESSEL explained that the proposed amendment [27-LS0549\X.1] would allow individuals to choose his or her own health care provider rather than bargaining away that patient choice.

[2:38:40 PM](#)

LINDA HALL, Director, Division of Insurance, Department of Commerce, Community and Economic Development (DCCED), commented that she had done a lot of work with the Workers' Compensation system as it affects insurance costs in particular. She was concerned they were looking at a new system that will only apply to employers and employees that are engaged in a collective bargaining arrangement. Approximately 25 percent of the workforce would be impacted by this bill - if they choose to and they may not. Some provisions could be advantageous to other employers and she wasn't sure why they would adopt something for less than 25 percent of the state's workforce.

[2:40:28 PM](#)

MS. HALL said that supporters of HB 116 have alleged there would be cost savings, but in working with the Division of Workers' Compensation, she hadn't found a study supporting that claim. A University of California Berkeley Study of California carve-outs since 1993 concluded that, "Overall carve-outs do not appear to harm employees, sometimes they help." Data analysis of one carve-out showed that it had no effect on costs in dispute rates.

She said Alaska's costs are driven by the high cost of health care. Currently, 76 percent of the costs of our system are driven by medical costs in comparison to a 59 percent average nationwide. So if lawmakers allow a deviation from the current system that has any potential to reduce medical costs, she thought it should be something that all employers could engage in.

MS. HALL said she had heard this system could cause a single employer to simultaneously run multiple workers' compensation systems. The Municipality of Anchorage, for instance, has about seven collective bargaining units. If they each decided to set up some type of this arrangement, the municipality would be running eight different systems (including the state system). It would be a "system run amuck."

2:43:18 PM

She said these are general thoughts she has had. Another concern was that that they were considering implementing a new program and yet the Medical Service Review Committee, a group that was formed by this legislature, had made an extensive report with a lot of recommendations for changes in the system as a whole, and she hadn't seen any real debate of any of those measures. This committee spent months studying new systems, new ways to develop fee schedules and had a number of recommendations that were in HB 12. It proposed the adoption of an advisory committee to serve as a sounding board for the legislature to review proposals and make recommendations for various types of changes in an open and transparent environment.

MS. HALL said a number of options had been put forward to improve our system including medical treatment guidelines and utilization guidelines. It appears, and it has been stated, that the administration of this new exemption program would be through some kind of trust. But the bill doesn't mention the trust or how it would be funded. With today's system costs and with Montana's reforms, she worried that Alaska would be back in first place as having the highest workers' compensation premiums in the country - and that is not a place we want to be.

2:45:07 PM

MS. HALL said that SB 116 also provides for the identification of medical treatment providers, medical evaluators and vocational rehabilitation specialists who would be the exclusive source of treatment, but there weren't any principles or guidelines. So there is a potential for a multitude of little groups without any consistency, and that concerned her in an

area as critical as workers' compensation. Basically, she wanted to see a system whose emphasis is on getting an injured worker back to work and didn't see this doing that.

CHAIR EGAN asked if she had comments on the amendment.

MS. HALL answered no.

[2:46:22 PM](#)

PAUL GROSSI, lobbyist, Pipefitters and Iron Workers, said adopting the amendment to SB 116 would eliminate potential cost savings and they wouldn't be able to support it any longer. {

SENATOR PASKVAN asked what he thought of the director's concerns about limited application.

MR. GROSSI responded that her concern was that all employers and employees wouldn't be affected, which is true, but that doesn't mean it shouldn't be tried. It could potentially be a "pilot project" from which things could be extrapolated for the larger population. So that is not a reason to stop it.

He said the director's concern about it leading to two different systems isn't really accurate, because if an employer thinks this is not effective for them they could choose to not be a part of it. No one is being forced into this system. This is just enabling language.

SENATOR PASKVAN asked his understanding of competing physicians being able to meet and communicate.

[2:50:55 PM](#)

MR. GROSSI replied that he is not an expert on this type of system, but to him it means that doctors would be permitted by law to form groups to bid on these types of systems to get this work.

SENATOR GIESSEL said a 2009 report from the Minnesota Department of Labor indicated that the costs have actually gone up in Minnesota where this system is used over the past few years. Alaska has an even smaller pool of health care providers and although it's similar to Minnesota in that Minnesota is kind of rural, it has the Mayo Clinic and some large universities. She asked if he had run any numbers as far as costs.

MR. GROSSI answered no; Director Hall talked about a small California study but he wasn't sure if it was accurate. Getting

back to Minnesota, he said you have to look at costs relative to the rest of the system. He guessed that costs would still go up in Alaska, but they might not go up as much. While he didn't have any numbers on workers' compensation, itself, some of the labor groups and their employers have formed similar systems for their health care benefits that have shown a savings.

SENATOR GIESSEL asked if overall he regarded the existing workers' compensation system as broken - excessively expensive and slow to settle claims.

MR. GROSSI replied that he wouldn't couch it as broken yet, but it is becoming more expensive, and most of it is because of rising health care costs along with some litigation. At least there is the potential to improve by trying something different. The "broken" term could be used in the near future, if they don't start doing something. They should consider Director Hall's suggestions, too, because this measure is not the one answer to fix the system.

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MIKE MONAGLE, Director, Division of Workers' Compensation, Department of Labor and Workforce Development (DOLWD), observed that Director Hall had mentioned the cost of benefits and how Alaska has been going back and forth with the State of Montana for the last 10 years on who is number one and two in the country on workers' comp costs. Last year, Montana put serious reforms for medical costs in place, and as a result, the National Council on Compensation Insurance, Inc. (NCCI), the rating organization that also rates Alaska, lowered the premium costs in Montana by 25 percent, and he had no doubt when the premium studies come out this year that Alaska will take over the number one spot on workers' comp costs again.

He also observed that as the director, he often gets comments from injured workers that the system is difficult to navigate and complex and he fears that adding carve outs would complicate it more.

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MR. MONAGLE said as far as the selection of medical doctors goes, he didn't see any incentive to bring costs down under this process. The Health Care Commission's study noted the biggest cost driver to the system was lack of competition. Just because you have a list of doctors who step forward to say they are interested in participating, that doesn't equate to an incentive to reduce their fees. And unless something is done to reduce

fees, he didn't see any changes to the medical costs in the workers' comp system.

Finally, Mr. Monagle said part of the legislation presupposes that a carve-out will reduce costs, but the 2002 Berkeley study mentioned by Director Hall and the 2012 State of California study found no significant differences between rates for a carve-out employer and the rates for an employer who received their benefits through the insurance marketplace. He had looked extensively and hadn't found a single study that said carve-outs will, in fact, reduce workers' comp rates.

SENATOR PASKVAN said if you can reduce just the mediation costs (resolution without using lawyers) and the employer isn't required to use the new system, there is a chance that medical costs could be reduced a little bit, too.

MR. MONAGLE referenced the California study that found no difference in the number of disputes in the carve-out process versus disputes under the workers' comp claim system. He said, although it's not in statute, the division already does mediations; he did 60 last year. One of the things that is concerning about the process is that although the bill doesn't mandate mediation, it does say once you choose to mediate, and once that process is broken off either by the hearing officer or the parties, it must go to arbitration. That process doesn't simplify the system, but it does add costs to it.

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MR. MONAGLE explained that the prior version of SB 116 had an appellate provision saying that the arbitrator's decision could be appealed to the Workers' Comp Appeals Commission, but he didn't see that in the CS, where it would seem as though the arbitrator's decision would be final, and that could potentially lead to some additional administrative costs.

CHAIR EGAN said the committee still had questions about Senator Giessel's amendment. He held SB 116 in committee.

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There being no further business to come before the committee, Chair Egan adjourned the Senate Labor and Commerce meeting at 3:02 p.m.