

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

March 24, 2014

3:28 p.m.

MEMBERS PRESENT

Representative Kurt Olson, Chair
Representative Lora Reinbold, Vice Chair
Representative Mike Chenault
Representative Bob Herron
Representative Dan Saddler
Representative Andy Josephson

MEMBERS ABSENT

Representative Charisse Millett
Representative Craig Johnson

COMMITTEE CALENDAR

HOUSE BILL NO. 230

"An Act allowing the Alaska Industrial Development and Export Authority to issue bonds for an oil or gas processing facility; and creating the oil and gas infrastructure fund to finance construction or improvement of an oil or gas processing facility."

- HEARD & HELD

HOUSE BILL NO. 316

"An Act relating to workers' compensation fees for medical treatment and services; relating to workers' compensation regulations; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 60

"An Act adopting and relating to the Uniform Real Property Transfer on Death Act."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 230

SHORT TITLE: AIDEA BONDS FOR PROCESSING FACILITIES

SPONSOR(s): REPRESENTATIVE(s) SEATON

01/21/14 (H) PREFILE RELEASED 1/10/14
01/21/14 (H) READ THE FIRST TIME - REFERRALS
01/21/14 (H) L&C, FIN
02/21/14 (H) L&C AT 3:15 PM BARNES 124
02/21/14 (H) Heard & Held
02/21/14 (H) MINUTE(L&C)
03/14/14 (H) L&C AT 3:15 PM BARNES 124
03/14/14 (H) Heard & Held
03/14/14 (H) MINUTE(L&C)
03/24/14 (H) L&C AT 3:15 PM BARNES 124

BILL: HB 316

SHORT TITLE: WORKERS' COMPENSATION MEDICAL FEES

SPONSOR(s): LABOR & COMMERCE

02/19/14 (H) READ THE FIRST TIME - REFERRALS
02/19/14 (H) L&C
03/07/14 (H) L&C AT 3:15 PM BARNES 124
03/07/14 (H) Heard & Held
03/07/14 (H) MINUTE(L&C)
03/10/14 (H) L&C AT 3:15 PM BARNES 124
03/10/14 (H) Heard & Held
03/10/14 (H) MINUTE(L&C)
03/14/14 (H) L&C AT 3:15 PM BARNES 124
03/14/14 (H) Scheduled But Not Heard
03/17/14 (H) L&C AT 3:15 PM BARNES 124
03/17/14 (H) Heard & Held
03/17/14 (H) MINUTE(L&C)
03/24/14 (H) L&C AT 3:15 PM BARNES 124

BILL: HB 60

SHORT TITLE: UNIFORM REAL PROPERTY TRANSFERS ON DEATH

SPONSOR(s): GRUENBERG

01/16/13 (H) PREFILE RELEASED 1/11/13
01/16/13 (H) READ THE FIRST TIME - REFERRALS
01/16/13 (H) L&C, JUD
03/21/14 (H) L&C AT 3:15 PM BARNES 124
03/21/14 (H) -- MEETING CANCELED --
03/24/14 (H) L&C AT 3:15 PM BARNES 124

WITNESS REGISTER

LOUIS FLORA, Staff
Representative Paul Seaton

Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified during the discussion of HB 230.

MATT FONDER, Director
Anchorage Office; Tax Division
Department of Revenue
Anchorage, Alaska

POSITION STATEMENT: Testified on HB 230.

TED LEONARD, Executive Director
Alaska Industrial Development & Export Authority (AIDEA)
Department of Commerce, Community, & Economic Development
(DCCED)
Anchorage, Alaska

POSITION STATEMENT: Answered questions regarding HB 230.

ANNA LATHAM, Staff
Representative Kurt Olson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified on behalf of the sponsor, House
Labor & Commerce Committee Chair Kurt Olson.

RICK TRAINI, Business Representative
Teamsters Local 959
Anchorage, Alaska

POSITION STATEMENT: Testified during the discussion of HB 316.

MICHAEL MONAGLE, Director
Central Office
Division of Workers' Compensation
Department of Labor & Workforce Development (DLWD)
Juneau, Alaska

POSITION STATEMENT: Testified and answered questions on HB 316.

REPRESENTATIVE MAX GRUENBERG
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as prime sponsor of HB 60.

BENJAMIN ORZESKE, Legal Counsel
Uniform Law Commission for Real Property, Trust, and Estate Acts
National Conference of Commissioners on Uniform State Laws
Chicago, Illinois

POSITION STATEMENT: Testified during the discussion of HB 60.

DEBORAH RANDALL, Attorney
Anchorage, Alaska

POSITION STATEMENT: Testified during the discussion of HB 60.

KEN HELANDER, Associate State Director
Legislative Advocacy
AARP

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 60.

MARIE DARLIN, Chair
Legislative Advocacy
AARP

Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 60.

ERROL CHAMPION, Chair
Alaska Association of Realtors, Inc.
Juneau, Alaska

POSITION STATEMENT: Testified during the discussion of HB 60.

ACTION NARRATIVE

[3:28:36 PM](#)

CHAIR KURT OLSON called the House Labor and Commerce Standing Committee meeting to order at 3:28 p.m. Representatives Herron, Reinbold, Josephson, Saddler, and Olson were present at the call to order. Representative Chenault arrived as the meeting was in progress.

HB 230-AIDEA BONDS FOR PROCESSING FACILITIES

[3:29:04 PM](#)

CHAIR OLSON announced that the first order of business would be HOUSE BILL NO. 230, "An Act allowing the Alaska Industrial Development and Export Authority to issue bonds for an oil or gas processing facility; and creating the oil and gas infrastructure fund to finance construction or improvement of an oil or gas processing facility."

[3:30:03 PM](#)

LOUIS FLORA, Staff, Representative Paul Seaton, Alaska State Legislature, stated that HB 230 would allow the Alaska Industrial Development & Export Authority (AIDEA) to issue bonds

for an oil and gas processing facility on the North Slope. It would also create an oil and gas processing facility infrastructure fund to allow the legislature to allocate funding to the facility. He highlighted a number of specific findings that demonstrated the difficulty of some of the smaller operations on the North Slope to access processing facilities on the North Slope. The intent is to increase oil throughput in the Trans-Alaska Pipeline System (TAPS) pipeline, he said.

[3:31:20 PM](#)

REPRESENTATIVE REINBOLD moved to adopt the proposed committee substitute (CS) for HB 230, labeled 28-LS1053\N, Nauman, 3/17/14, as the working document [Version N].

CHAIR OLSON objected for the purpose of discussion.

[3:31:38 PM](#)

REPRESENTATIVE SADDLER referred to page 2, line 4, and suggested inverting "for" and "allow" such that it would read, "would allow for new production"

MR. FLORA acknowledged the suggested change.

[3:32:01 PM](#)

REPRESENTATIVE JOSEPHSON asked him to identify the perceived target or beneficiary of the bill.

MR. FLORA answered that the bill is not intended for anyone specifically, but it will generally allow anyone who approaches AIDEA to hold discussions on project financing. He specifically referred to page 2, line 8, paragraph (6), the "findings" language that discusses access issues. More specifically, this language would remove the limit on bonding authority for processing facilities and other infrastructure to allow small companies without capital to finance oil and gas processing facilities to move more oil from new fields and essentially reach out and expand oil and gas throughput.

[3:33:19 PM](#)

REPRESENTATIVE JOSEPHSON asked whether he has discussed maximum credits and foregone revenue with the Department of Revenue.

MR. FLORA deferred to the Department of Revenue to answer.

[3:33:46 PM](#)

REPRESENTATIVE REINBOLD wondered why bonding is necessary, since a good project would be able to obtain private funding.

MR. FLORA answered that the bill is being offered as a concept, which was previously adopted in SB 21 as part of a broader package to increase throughput in the TAPS and provide a range of incentives.

[3:34:41 PM](#)

REPRESENTATIVE REINBOLD offered her belief the only way to obtain additional throughput is by drilling for more oil.

REPRESENTATIVE CHENAULT commented that throughput can be increased for TAPS without drilling any new wells. He suggested that the current problem of constriction in the process facility is that the pipeline was designed to transport more crude oil than water. However, today's oil wells are putting out more water and gas than crude oil. Thus, the production facility is limited by throughput for each category. Again, the wells today produce more water and gas, which limits the amount of oil production. For example, a well might put out 1,000 barrels of water, oil, and gas per day, he said. It makes more sense to run that capacity through the pipeline rather than to have five other wells that might produce 300 barrels of oil, with the remaining production being gas and water. He noted that this can be remedied and configured; however, that process is very expensive. He added that throughput can be increased by expanding the production facility or by providing more opportunities, which is what HB 230 proposes by building another production facility to allow others to input oil.

[3:36:48 PM](#)

REPRESENTATIVE JOSEPHSON understood the bill would allow an additional \$200 million increase in the AIDEA allowance for maximum bond capacity. He asked whether the Department of Revenue has an idea of the maximum dollar credit under the bill.

[3:37:31 PM](#)

MATT FONDER, Director, Anchorage Office, Tax Division, Department of Revenue (DOR), answered that the division doesn't "have a good handle on that" since it is difficult to determine

the number of taxpayers who might take advantage of this credit. It's also important to note that any taxpayer will need to invest a significant amount of money to utilize the credit. The credit amount under the bill is the "lesser of 10 percent" or \$10 million. Therefore, the taxpayer would have 90 percent "skin in the game" so the bill will help, but it will not offer much of an incentive to move forward with the project. Thus, he did not believe it would be the "deal breaker," but it is hard to tell how many taxpayers will take advantage of the credit.

[3:38:37 PM](#)

REPRESENTATIVE JOSEPHSON asked him to predict what new facilities would be built with the AIDEA bonding.

MR. FONDER said he really didn't know; the legislature's "crystal ball" is probably just as good as his.

REPRESENTATIVE CHENAULT asked whether any companies have asked for this type of enhancement for a project.

[3:39:32 PM](#)

TED LEONARD, Executive Director, Alaska Industrial Development & Export Authority (AIDEA), Department of Commerce, Community, & Economic Development, answered yes; AIDEA has been working with Brooks Range Petroleum Corporation, who would like to finance a production facility to develop the Mustang Oil Field [of the southern Miluveach Unit].

[3:40:04 PM](#)

REPRESENTATIVE SADDLER asked for a general assessment of the impact of an additional \$200 million in lending authority and if it will affect AIDEA's interest rates, AIDEA's ability to finance other projects, or Alaska's bond rating. He asked if this process would stand alone or if it would have any ripple effects.

MR. LEONARD answered that AIDEA believes this financing will not affect its capacity to finance other projects or its rating. He explained that these bonds will be AIDEA bonds and could either be general obligation (GO) bonds or revenue bonds. It should not affect the state's rating since the project will be funded by revenue generated by the project or will be supported by AIDEA's assets, but none of the state's assets would be pledged for a project under this bond authorization.

[3:41:27 PM](#)

REPRESENTATIVE SADDLER recalled discussions on the possible liquefied natural gas (LNG) transmission line with respect to the state's general debt-to-equity ratio such that 8 percent of the general fund principal would be allowed. He asked whether an informal policy exists in terms of what AIDEA cannot exceed in terms of GO bonding.

MR. LEONARD answered yes; the rule of thumb under the capacity model is \$500 million of bonding capacity. He reported that AIDEA has approximately \$70 million in outstanding bonds so AIDEA has significant capacity available. In addition, it would also depend on the type of bond, for example, revenue bonds will not affect AIDEA's capacity. Overall, it would depend on the individual project whether AIDEA will want to use its general bonding capacity or if it will issue revenue bonds; however, AIDEA has the capacity to issue up to \$200 million in bonds for these types of facilities. Again, just because AIDEA would have the bonding authority doesn't mean it will use all of its authority. He indicated that AIDEA will consider its capacity for each and every project under this bond authorization to ensure AIDEA has sufficient capacity and that it will not adversely affect AIDEA's ability to fund other projects. He assured members that AIDEA undergoes the same capacity analysis on every project it considers in terms of bond financing.

[3:43:45 PM](#)

REPRESENTATIVE SADDLER asked how much Brooks Range Petroleum Corporation would need for its processing facility.

MR. LEONARD was offline.

CHAIR OLSON, after first determining no one else wished to testify, closed public testimony on HB 230.

[HB 230 was held over.]

[3:45:21 PM](#)

The committee took a brief at-ease.

HB 316-WORKERS' COMPENSATION MEDICAL FEES

[3:46:02 PM](#)

CHAIR OLSON announced that the next order of business would be HOUSE BILL NO. 316, "An Act relating to workers' compensation fees for medical treatment and services; relating to workers' compensation regulations; and providing for an effective date." [Version 0 was before the committee.]

[3:46:28 PM](#)

ANNA LATHAM, Staff, Representative Kurt Olson, Alaska State Legislature, stated that HB 316 changes the fee schedules for workers' compensation from a usual, customary, and reasonable schedule (UCR), which the state has used for the past 10 years, to a resource-based relative value scale (RBRVS) based on Centers for Medicaid (CMS) and Medicare services rate with a conversion factor that is set by workers' compensation board (WCB) under the advisement of the medical services review committee (MSRC).

[3:47:44 PM](#)

REPRESENTATIVE JOSEPHSON recalled 90 percent of the UCR schedule has been discussed. He asked for her view of the 90 percent.

MS. LATHAM said that the target and goal of HB 316 is to set fees at a reasonable and fair amount that allows the medical community to make a fair profit, but to align fees with group health and not allow specific procedures to be inflated at the 400 to 800 percentile.

CHAIR OLSON referred to members' packets to a comparison of the top 25 workers' compensation procedures in comparison to Washington and other states. He noted that there wouldn't be an easy answer. He recalled that Alaska's costs are over 1,000 percent for some workers' compensation medical procedures.

[3:48:41 PM](#)

REPRESENTATIVE JOSEPHSON recalled previous testimony by Premera Blue Cross Blue Shield in which Mr. Sorrin related that specialty services for muscular skeletal or cardiovascular are 600 to 700 percent of Medicare rates.

MS. LATHAM noted that testimony was on HB 203 and not HB 316.

REPRESENTATIVE JOSEPHSON acknowledged that point. He asked how workers' compensation patients could get coverage for those

specialties unless there is sufficient compensation to match the rates.

MS. LATHAM agreed that it made perfect sense. She explained that the intent of HB 316 is to align these rates to be similar to group health rates. She indicated that the aforementioned Anchorage rates for group health will also probably be comparable for workers' compensation rates. She reiterated the intent of HB 316 is reduce the extremely inflated workers' compensation medical procedure rates to more reasonable rates.

[3:50:43 PM](#)

The committee took a brief at-ease.

[3:51:47 PM](#)

RICK TRAINI, Business Representative, Teamsters Local 959, stated he works as the negotiation coordinator and is currently serving his second term as a member of the Alaska Workers' Compensation Board (WCB) representing labor. He offered support for HB 316, noting the bill was introduced on behalf of the Alaska WCB, who unanimously approved a resolution in December requesting this type of authority. He explained that the WCB created a special "listening tour" consisting of a committee with members from labor and industry who toured Anchorage, Fairbanks, Juneau, and Kenai. Over the years, the state has experienced a tremendous escalation in medical costs, which adversely affects premiums paid by employers, and in turn reduces other benefits to employees due to the inflated spending on medical bills for injured workers. The goal of HB 316 is to allow the board the authority to set the fee schedule based on this statute. He hoped that the rates will be more reflective and result in what the top insurers pay for the same procedures. Currently, Alaska is at the top of the nation in reimbursement for fees and services and he hopes to bring these costs in line. In response to Representative Josephson's earlier question, he stated that each type of specialty or service will have a different conversion rate. He said the bill is set up for the Medical Services Review Committee (MSRC) to be responsive to the medical providers, insurers, and other participants in the system and set the rates similar to other insured employees' rates. He offered his belief that the WCB will be a lot more responsive to changing environments and fees.

[3:54:53 PM](#)

MR. TRANI reported that the current medical fees schedule is in its second or third year. Prior to that time, the schedule was in place for 10 years with two cost-of-living adjustments. Again, the WCB would like the fee schedule to be more responsive, and after public testimony and input from the medical community, to set the conversion rate at a modifier acceptable to them, to the public, employers, and employees that use the workers' compensation system.

CHAIR OLSON remarked the WCB has a tough job.

[3:55:43 PM](#)

REPRESENTATIVE JOSEPHSON said the target of the bill is the RBRVS [Resource Based Relative Value Scale]. He asked whether that scale is aligned to reasonable and fair amounts akin to group health.

MR. TRANI said that he was not sure. The target is not to have that be the arrival point but to be the basis for the starting point before the conversion rates or multipliers are applied to the medical services. The end goal isn't to have it use the numbers, he said, but to tailor it based on the input from all of the participants, "consumers," and then arrive at a number.

[3:56:48 PM](#)

REPRESENTATIVE SADDLER asked whether other states face similar types of dramatic cost disparities; if other states face these same problems.

MR. TRANI offered his belief that other states have faced similar issues; however, although Alaska is now ranked number one in terms of workers' compensation costs, it has not always been ranked so high. In 2004, the state had been ranked in the middle or low one third of costs. However, the state hasn't enacted any cost reforms to stay relative to what private insurers pay for employee coverage, but other states have addressed this. He predicted that approximately 14 to 16 states may have some type of medical fee schedule based on a derivative of this method, which represents a trend to make sure that patients using private insurance and patients using workers' compensation are charged the same fees for doctor's visits.

[3:58:51 PM](#)

CHAIR OLSON, after first determining no one else wished to testify, closed public testimony on HB 316.

3:59:30 PM

REPRESENTATIVE JOSEPHSON recalled the workers' compensation costs as being ranked first in the nation, but it does not include the permanent, partial impairment (PPI) ranking, in which the state is ranked 36th of 50.

MICHAEL MONAGLE, Director, Central Office, Division of Workers' Compensation, Department of Labor & Workforce Development (DLWD), answered that the state is number one, but being number one in premium stems from a combination of things. He said it is made up of indemnity costs, noting that permanent, partial impairment is part of the indemnity costs, but medical costs constitutes the other part. The medical portion in Alaska is \$0.75 on the dollar whereas nationally it is \$0.55. The medical costs on a time loss claim, an indemnity claim, in which a worker misses time away from work, averages \$57,000, whereas nationally it averages \$24,000. Thus, Alaska's medical component of the premium loss cost has been significantly higher than the rest of the country. He acknowledged that other portions, such as indemnity benefits, are about in the middle with the PPI being a portion of indemnity. He agreed that the state's PPI benefits nationally rank in about the lower third.

4:00:52 PM

REPRESENTATIVE JOSEPHSON said he doesn't see the goal of linking rates to group health has been shown. He asked whether the aforementioned is a goal or is it just something that the Medical Services Review Committee (MSRC) in combination with the WCB is expected to do.

MR. MONAGLE suggested that the general practitioners use evaluation and management and include the general office visit in line with general health. He acknowledged that as previously suggested, specialty medicine and specialty practitioner rates, including some cardiologists and orthopedic physicians, charge significantly higher rates in Alaska. He said that as Mr. Traini mentioned, when developing conversion factors, the division will examine costs for each specialty. He related that a conversion factor will be developed for evaluation and management whereas a separate conversion factor may be developed for surgery and specialty surgery. He envisioned that the MSRC in conjunction with the WCB will adopt conversion factors. He

did not think it was in anyone's intent to create conversion factors that will dissuade providers from treating an injured worker in the state. He offered his belief that through the collaboration process the division should be able to arrive at a conversion factor agreeable to everyone.

[4:02:58 PM](#)

REPRESENTATIVE REINBOLD noted that labor costs, oil production, and education costs in Alaska are high. She acknowledged that she is sad that workers' compensation costs are also high. She expressed an interest in reducing costs, and she asked if safety prevention in the workplace has been implemented. She also noted that the WCB had three pages of suggestions [in members' packets.] She further asked whether he was pleased with how much was incorporated in the bill or if he has issues.

MR. MONAGLE replied that medical costs are the "elephant in the room," and they really are the cost driver. If the state can resolve the medical cost issues, it will also help lower premium costs. Certainly, other workers' compensation issues definitely need to be resolved. He felt that the list in [WCB's Resolution Number 13-01] addresses some things related to medical costs, such as a recommendation for treatment guidelines to address utilization, but other things such as employment benefits and legal costs could also be addressed to help lower over rates; however, medical costs represent the biggest issue.

[4:04:37 PM](#)

REPRESENTATIVE REINBOLD reiterated that implementing worker safety can also help prevent worker injuries.

MR. MONAGLE offered his belief that employers currently do a great job focusing on safety issues. From 1990 to the current date, employment in Alaska has increased over 100,000 jobs, but during that same time period, the loss rates - the number of workplace injuries - has been reduced from 30,000 to less than 20,000. Thus, the state has been growing employment and reducing injuries, which is largely due to employers valuing safety programs and being safety conscious. The Department of Labor & Workforce Development, Division of Labor Standards and Safety, has a safety consultant program in which employers can confidentially consult with the division to create a safer environment yet not be penalized for violations. In fact, this program helps identify safety practices. In addition, a number of insurance companies offer premium reductions for voluntary

workplace safety programs, such as drug free workplace. He reiterated that insurance companies offer incentives for safe work environments and to reduce premiums and premium discounts.

[4:06:13 PM](#)

CHAIR OLSON remarked that a number of unions have actively been involved in developing their own safety standards, which have been picked up and used by insurance companies and self-insurers, too. He said that the [state's] track record is good, but the aging workforce contributes to the issue since injuries require additional healing time and expense for older workers.

[4:06:53 PM](#)

MR. MONAGLE, in response to Representative Saddler's earlier question, acknowledged that this issue is one other states also face. Prior to 1990, the majority of costs in workers' compensation systems nationwide were indemnity costs so states have focused on that aspect of loss costs. At the same time, medical costs surpassed indemnity costs nationwide as the biggest cost driver. In 1990, 12 states had fee schedules. Today, only six states do not have fee schedules so a transition has occurred nationwide to adopt fee schedules, although not all are RBRVS schedules. However, over 32 states have adopted RBRVS methodology in producing schedules. Again, it is a nationwide issue, but a number of states have worked to address this via practices and adopting fee schedules represents "a big tool" to help control medical costs in workers' compensation.

CHAIR OLSON remarked that not surprisingly all 32 of those states have lower rates than Alaska.

MR. MONAGLE agreed.

[4:08:12 PM](#)

CHAIR OLSON, after first determining no one else wished to testify, closed public testimony on HB 316.

[HB 316 was held over.]

[4:08:39 PM](#)

The committee took an at-ease from 4:08 p.m. to 4:10 p.m.

HB 60-UNIFORM REAL PROPERTY TRANSFERS ON DEATH

4:10:38 PM

CHAIR OLSON announced that the final order of business would be HOUSE BILL NO. 60, "An Act adopting and relating to the Uniform Real Property Transfer on Death Act."

REPRESENTATIVE REINBOLD made a motion to adopt a proposed committee substitute for HB 60, Version C, labeled 28-LS0265\C, Bannister, 3/14/14 as the working document.

CHAIR OLSON objected for the purpose of discussion.

4:11:06 PM

REPRESENTATIVE MAX GRUENBERG, Alaska State Legislature, stated this bill is a combination of two bills, HB 60, the Uniform Transfer on Death Act, and HB 61, which repeals the prohibition of joint tenancy with the right of survivorship in real property. These bills both relate to the transfer of real property for efficiency and to reduce costs.

4:12:21 PM

REPRESENTATIVE GRUENBERG explained that the Uniform Real Property Transfer on Death Act allows a person to execute a transfer on death (TOD) deed that becomes effective upon one's death. The process would be to sign the transfer and record it and it becomes effective when the person dies. The person can revoke it or issue another superseding deed, and the person designated to receive the property can disclaim the transfer of property. He stated the only requirement is to ensure that the document is recorded. In other words, a "wild" deed or will that is not recorded will not affect the property. This bill, HB 60, will make it very easy to determine who owns the property. Federal and state law allow that TOD bank accounts, securities, and personal property can be owned jointly and transferred on death, with the advantage that it avoids probate and is taxed as a transfer on death.

REPRESENTATIVE GRUENBERG said this matter was brought to his attention when a retired attorney, Stan Titus, who owns property in various other states, indicated that he would like to prepare his estate. He pointed out that 21 other states have this provision, with the latest state to adopt this provision being South Dakota. Currently, three other states besides Alaska are considering this change. He characterized it as being "the

coming thing," and he is not aware of any opposition to the bill except by a couple of individual probate lawyers. He admitted that in complex estates it probably is a good idea for lawyers to be involved; however, the TOD deed process is a simple method for parties who have limited assets, such as owning a house in Big Lake and having a pension, since the TOD deed process avoids probate and legal fees.

[4:15:05 PM](#)

REPRESENTATIVE GRUENBERG referred to Section 5, the repealer section of HB 60. This bill even provides forms that can be used, although it isn't required that these forms be used. He pointed out that this act is uniform except for one provision in which an inter vivos deed that doesn't expressly revoke a transfer on death deed (or a part of the TOD deed) creates a rebuttable presumption that the inter vivos deed is effective to revoke a recorded TOD deed, or a part of the recorded TOD deed if the deed meets certain requirements. He said this requires that the deed completely divest the transferor of the transferor's interest in the real property that is the subject of the transfer on death deed. This provision was suggested by a witness who testified before the District of Columbia city council. It seemed to be a good idea, and Representative Gruenberg discussed it with the [uniform law] commissioners, and they do not have any objection, he said.

[4:16:49 PM](#)

REPRESENTATIVE GRUENBERG highlighted one other provision that is not part of the uniform act and that is the repealer in Section 5. Currently, the state has an old statute from Alaska's territorial days that says a person cannot hold real property jointly with a right of survivorship; instead, it has to be by tenancy in common. The difference between a tenancy in common and joint tenancy with a right of survivorship is that in both cases a present ownership in property exists. He explained it is not like a TOD deed, in which the person receives the ownership upon death, but a present ownership exists. However, with a tenancy in common if you die, your estate obtains your interest. In instances with joint tenancy with a right of survivorship, the other co-owners obtain it. In those instances, it really isn't necessary to prepare a will to transfer the property, so it is a simpler method. He explained that previously an old legal term, the four unities existed, which is rarely used. That's the reason why they didn't allow joint tenancy with the right of survivorship. The courts now

look to peoples' intent so most states have gotten away from the old statutes that don't allow joint tenancy in real property. He said that this just goes with the normal law in most places. He said that Alaska is a not a "code state" but follows the common law, and this will just put it back in the common law, he explained.

[4:18:59 PM](#)

REPRESENTATIVE SADDLER referred to page 2, lines 27-30, and asked for further clarification on the process.

REPRESENTATIVE GRUENBERG explained that many uniform acts are drafted by a committee of commissioners on uniform state law, with one professor - in this instance a professor from the University of Iowa law school. This particular hypothetical situation was apparently overlooked when the uniform act was drafted. This provision means that if a second deed exists and the person doesn't revoke the original deed, which normally would contain a revocation clause, a rebuttable presumption exists, such that it is presumed that the earlier TOD deed is revoked. In instances in which the new deed completely divests the grantor of his interest in the real property and also satisfies AS 13.48.070 (1)(A)(2) means that it is "acknowledged by the transferor after the acknowledgment of the deed being revoked and recorded before the transferor's death in the recording district where the deed is recorded." He emphasized that it must be signed in front of a notary and recorded. He said that there can be a rebuttal, but normally if one deed is recorded and another deed is recorded and both indicate TOD deed, it'd be clear that the person's intent is to follow the later deed; however, a circumstance might exist where that doesn't occur. In the District of Columbia ruling it is absolute; however, he cautioned that he did not want to make it absolute since he has found there will always be some factual situation that wasn't anticipated. This language would make it rebuttable to cover any unusual circumstance.

REPRESENTATIVE SADDLER acknowledged it should never be absolute.

[4:22:22 PM](#)

REPRESENTATIVE GRUENBERG agreed. He pointed out that Alaska is the first state to adopt this provision. He indicated that it does not disturb uniformity and it is possible the [uniform law] commissioners may decide to pick up the provision later. In the meantime, this will provide legislative history, he said.

4:23:06 PM

REPRESENTATIVE GRUENBERG, in response to a question, said that the next committee of referral, the House Judiciary Standing Committee, will examine things related [to the judiciary].

BENJAMIN ORZESKE, Legal Counsel, Uniform Law Commission for Real Property, Trust, and Estate Acts, National Conference of Commissioners on Uniform State Laws (NCCUSL), acknowledged that Representative Gruenberg did a good job describing this bill. He offered to answer any questions.

REPRESENTATIVE GRUENBERG referred to his written testimony in members' packets.

4:24:48 PM

DEBORAH RANDALL, Attorney, stated she is an estate planning attorney. She said she was absolutely delighted when the uniform bill was presented to the estate and probate section. She said she is a total believer in this. This bill will simplify matters for clients who only own a piece of real property. She explained that her typical client will have real estate, such as a house and bank accounts that can be passed through a joint account or with a beneficiary designation. Thus, the only property that can't be transferred in that manner is real property, and this bill will simplify this for countless people. She supports the proposition to keep it simple and said this bill will make it simple for people and she is not concerned that this bill will adversely affect her workload. She thinks that people will likely still use lawyers for advice, but this will provide "one more quiver in our arsenal" that we can use. She said she favored revoking the prohibition on joint tenancy by survivorship of real property and offered her belief that every state does this, including Arizona and Hawaii, which works great for parents who wish to leave property to surviving children. She reiterated that this will definitely simplify estate planning for many people. She characterized this as a "win-win" situation for everyone.

4:27:05 PM

REPRESENTATIVE GRUENBERG stated that Ms. Randall was very involved on the probate and real estate sections. He pointed out that [lines 22-27, page 5, of Version C,] carefully advises that this action may have important legal consequences and if

the party has any questions, that he/she should consult an attorney. He asked whether this was of considerable discussion.

MS. RANDALL said that the main consideration was that people would be doing transfers without understanding what they were doing. She expressed that this specific language will put people on notice that more issues could exist besides the transfer of property, like creditor claims or issues surrounding children with disabilities. She said that she thought perhaps this warning would make them stop and think before they act.

[4:28:50 PM](#)

REPRESENTATIVE HERRON asked to place on the record the reason for the prohibition during territorial days and carried forward.

REPRESENTATIVE GRUENBERG said he not been able to do extensive research, but he recalled one case, *Carver v. Gilbert* 387 P.2d 928 (1963). The case discussed the genesis of this statute. He recalled that this was taken from Oregon laws, and at the time of the Organic Act in the late 19th Century, many laws were taken from Oregon, and the four unities were important, including unity of time, title, possession, and interest. He characterized the time period as being more formal than now, and the court did not consider intention of the parties, such as how to get out from under joint tenancy and revoke it. He noted the difficulty researching Oregon laws that date back to the 1890s.

[4:31:20 PM](#)

REPRESENTATIVE SADDLER asked how much property is transferred on transfer on death provisions in other states. He expressed an interest in the market share that would be taken away from probate courts by TOD provisions.

REPRESENTATIVE GRUENBERG deferred to Mr. Orzeske.

MR. ORZESKE said he doesn't have hard statistics, but the first state that allowed these was Missouri in 1989, and the second state followed about eight years later. Even in Missouri, TODs represents a small percentage of transfers. He estimated it is 5 to 15 percent of transfers.

[4:32:39 PM](#)

REPRESENTATIVE SADDLER asked if this action is outside the will.

REPRESENTATIVE GRUENBERG answered that [under the bill] the transfer would not be done with a will, which would generally go through probate. He added that this [transfer on death deed] can be done 20 years prior to a will or a few weeks prior to death, but it is definitely not part of the will.

[4:33:20 PM](#)

KEN HELANDER, Associate State Director, Legislative Advocacy, AARP, offered support for HB 60 including the repeal of the prohibition of joint tenancy with right of survivorship. He stated that probate laws which govern the transfer of property at death vary significantly from state to state. The variations and complexity of these laws have contributed to a misunderstanding of this process. In fact, this has led to the development of uniform model legislation to simplify the process for the average consumer. Non-probate transfers, such as payment on death accounts, accounts passing by beneficiary designation, and joint accounts passing by right of survivorship do not involve the court system and thus give people a way to transfer control of personal assets without the costs and unwanted side effects of probate litigation. He said this bill would authorize TOD deeds to enable revocable non-probate real property transfers. Many older people have fixed or limited incomes and very often their principal asset is their home. Placing survivors through complex, costly, and lengthy probate procedures to settle simple matters is an unnecessary burden during a time of bereavement and stress. Transfers on death deeds also protect the property interests of the owner by avoiding many of the pitfalls that occur with deeds in common, which can even lead to financial exploitation of a vulnerable elder. The AARP believes that HB 60 will serve the best interests of Alaskans, and he encouraged passage of the bill.

[4:35:39 PM](#)

MARIE DARLIN, Chair, Legislative Advocacy, AARP, said she agreed with Mr. Helander. She said the work on HB 60 started last year and the bill has had some good work since then. She urged members to please finalize the bill. She acknowledged that the AARP membership is often involved in these types of issues more than others. She offered AARP's support for the bill.

[4:37:29 PM](#)

ERROL CHAMPION, Chair, Alaska Association of Realtors, Inc., stated he provided written testimony a year ago in support of HB

60, and the Alaska Association of Realtors continues to support the bill. He said this is the right direction, since the most important asset many families often have is their home. This bill will allow the right of passage without surviving relatives having to go through legal costs and the length of time to go through probate. He urged adoption of HB 60.

[4:38:25 PM](#)

REPRESENTATIVE SADDLER appreciated him putting this on the record. He said he had received a letter of support from realtors in Eagle River so he was pleased to have his testimony.

MR. CHAMPION said it was amazing how many real estate transactions are related to the passage of ownership due to a death.

[HB 60 was held over.]

[4:39:03 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:39 p.m.