

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

April 14, 2017

3:18 p.m.

**MEMBERS PRESENT**

Representative Sam Kito, Chair  
Representative Adam Wool, Vice Chair  
Representative Andy Josephson  
Representative Louise Stutes  
Representative Chris Birch  
Representative Gary Knopp  
Representative Colleen Sullivan-Leonard

**MEMBERS ABSENT**

Representative Mike Chenault (alternate)  
Representative Bryce Edgmon (alternate)

**COMMITTEE CALENDAR**

HOUSE BILL NO. 209

"An Act relating to product warranties and services for certain products; relating to certain dealers, distributors, and manufacturers; and establishing an unfair trade practice under the Alaska Unfair Trade Practices and Consumer Protection Act."

- HEARD & HELD

HOUSE BILL NO. 83

"An Act relating to new defined benefit tiers in the public employees' retirement system and the teachers' retirement system; providing certain employees an opportunity to choose between the defined benefit and defined contribution plans of the public employees' retirement system and the teachers' retirement system; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 195

"An Act relating to insurer actions based on credit history and insurance scores at insurance policy renewal; and providing for insurer consideration of consumer requests for exceptions of credit history or insurance scores."

- SCHEDULED BUT NOT HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 209

SHORT TITLE: PRODUCT WARRANTIES & REQUIRED UPDATES

SPONSOR(S): REPRESENTATIVE(S) KITO

04/03/17	(H)	READ THE FIRST TIME - REFERRALS
04/03/17	(H)	L&C, JUD
04/14/17	(H)	L&C AT 3:15 PM BARNES 124

**WITNESS REGISTER**

BIANCA CARPENETI, Staff  
Representative Sam Kito  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** On behalf of Representative Kito, prime sponsor, introduced HB 209.

KEN GERONDALE, Owner  
Construction Machinery Industrial (CMI)  
Anchorage, Alaska

**POSITION STATEMENT:** Testified that HB 209 supports the small purchasers of heavy equipment within the state of Alaska.

JOHN MACKINNON, Executive Director  
Associated General Contractors of Alaska (AGC)  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 209.

GEORGE WHITAKER, State Government Affairs  
CNH Industrial America LLC  
Racine, Wisconsin

**POSITION STATEMENT:** Testified about the concerns that his company has with HB 209.

JIM HALLORAN  
Caterpillar Inc.  
N C Machinery  
Sacramento, California

**POSITION STATEMENT:** Testified in opposition to HB 209.

DAVID BLOMMER  
Bicknell Inc.

Juneau, Alaska

**POSITION STATEMENT:** Testified in support of HB 209.

WILL TONSGARD III, Vice President

Channel Construction

Juneau, Alaska

**POSITION STATEMENT:** Had his written testimony in support of HB 209 read by Chris Gerondale.

CHRIS GERONDALE, Contract Employee

Channel Construction

Juneau, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on HB 209.

NICK YAKSICH, Senior Vice President

Government and Industry Affairs

Association of Equipment Manufacturers (AEM)

Clarksville, Maryland

**POSITION STATEMENT:** Testified in opposition to HB 209.

CURTIS THAYER, President & CEO

Alaska Chamber of Commerce

Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 209.

#### **ACTION NARRATIVE**

[3:18:59 PM](#)

**CHAIR SAM KITO** called the House Labor and Commerce Standing Committee meeting to order at 3:18 p.m. Representatives Kito, Sullivan-Leonard, Stutes, Knopp, Birch, Josephson, and Wool were present at the call to order.

#### **HB 209-PRODUCT WARRANTIES & REQUIRED UPDATES**

[3:19:39 PM](#)

CHAIR KITO announced that the first order of business would be HOUSE BILL No. 209, "An Act relating to product warranties and services for certain products; relating to certain dealers, distributors, and manufacturers; and establishing an unfair trade practice under the Alaska Unfair Trade Practices and Consumer Protection Act."

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BIANCA CARPENETI, Staff, Representative Sam Kito, Alaska State Legislature, on behalf of Representative Kito, prime sponsor of HB 209, explained that the bill would provide protections for businesses and consumers in Alaska's heavy equipment market. She spoke as follows:

Our state's remote worksites and transportation challenges, coupled with high shipping costs, often result in high costs to local dealers and distributors when delivering warranty and update services for a manufacturer's defective or deficient product. Many of these services are not reimbursed by the manufacturers who require this work. This results in our local businesses, or their customers, absorbing expenses for shipping, transportation, and labor that should be paid by the company that manufactures the defective or deficient product, provides the warranty, and requires the updates.

... Remote rural work sites where no approved warranty providers are available present a challenge. This issue arises when one party in a contract, in this case the local vendor, lacks the ability to negotiate effectively with the other party, in this case the larger company, the manufacturer. Provisions should exist in Alaska law that ensure Alaska's vendors and consumers are truly protected by fair warranty contracts and that the spirit of the warranty to fix what is defective is honored. Government can support an environment where businesses and commerce can thrive. That's the goal of this bill. It is about contractual rights between parties providing protection for Alaska's vendors and consumers.

I'd also like to note that HB 209 closely tracks the statute governing marine and motorized recreational products, AS 45.27.100. That statute passed the Alaska Legislature unanimously in 2009 as [Senate Bill 173]. To my knowledge, this statute has not generated difficulties or unintended consequences in the intervening eight years. And given that successful track record it seemed prudent to take advantage of legislation that was tried and true in Alaska.

HB 209 also includes what I will refer to as "the lemon law provision." Lemon laws originated with

automotive vehicles. These are regulations meant to protect consumers in the event that they purchase a defective vehicle. Alaska's lemon law protecting motor vehicles is AS 45.45.300, which is closely analogous to the lemon law provision in [HB] 209 in front of you.

MS. CARPENETI reviewed the specific provisions of HB 209. She noted that Section 1 of HB 209 [would amend AS 45.45 by adding a number of new sections to statute]. She stated that sections 772-776, in general, would protect the manufacturer's interest by ensuring that dealers comply with standard warranty practices. Section 777 would address required service reimbursement and establish the minimum compensation for work performed by a dealer on behalf of a manufacturer. For example, she continued, it would specify the minimum rate, the established customer hourly rate, and a time for labor costs. In addition, it would require the manufacturer to pay for transportation and lodging costs if the dealer has to send an employee to the field to perform the work. Ms. Carpeneti stated that sections 778-779 would deal with products and parts needed for repairs or services, including how these are reimbursed and where they are delivered. She said Sections 780-781 would outline the timeline and process for a manufacturer to respond to a claim either by paying or disapproving it. The intent is to limit the dealer's obligation to carry the manufacturer's costs of warranty repairs beyond a reasonable period.

MS. CARPENETI continued discussing the changes that would be made in Section 1 of HB 209 under proposed new sections to AS 45.45. She said section 782 would outline the repairs required. She pointed out that this subsection, similar to many of the previous provisions, is based on the all-terrain vehicle (ATV) and marine statute and the purpose is to ensure that the warranty coverage will apply if a customer properly reports a covered defect during the warranty period, even if the actual warranty work takes place at a later time. She explained that sections 783-784 are where the lemon law provisions can be found in HB 209, both for how the provision would work and for how consumers would make a claim under the provision.

MS. CARPENETI reiterated that marine products and ATVs are protected, and motor vehicles have "lemon law" protections under AS 45.45.300, while heavy equipment at this time does not have the same protection in Alaska. In the absence of statutory protections, she advised, dealers in Alaska can find themselves in three-way negotiations with manufacturers and customers about

the return or replacement of defective equipment. In these situations, a dealer may have to buy back failing equipment from a customer or substitute other equipment. Section 785 would outline the exemptions to this provision in that the manufacturer would not be liable for user error. If a user alters or abuses a piece of equipment, that piece of equipment would not be under warranty. She explained that section 786 would work in conjunction with the "lemon law" provision by creating a rebuttable presumption in order to define what is considered reasonable attempts at repairing a defective or deficient product. She stated that the last two sections, 787-788, would establish which products apply here and what would qualify as warranty service.

MS. CARPENETI addressed the remaining sections of the bill. She stated that Sections 2 and 3 cover definitions. Section 4, she pointed out, adds the violations of this provision to unfair methods of competition and unfair or deceptive acts or practices found in 45.50.471, Alaska's consumer protection statute. She said Section 5 establishes the applicability of the act to after its effective date and further noted that the act is not retroactive and therefore it applies to new contracts.

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KEN GERONDALE, Owner, Construction Machinery Industrial (CMI), testified that he has been involved in HB 209 since it was introduced. He said he operated equipment prior to age 27 and became involved in marketing heavy equipment after age 27. In 1985 he started his own business and today CMI is a fairly significant supplier of heavy equipment into the oil patch, as well as mining and general contracting.

MR. K. GERONDALE said he has been working on HB 209 because in Alaska there is a big disparity between small and large contractors. In his work distributing equipment in Alaska he has found that large contractors and large mines have the ability on their own to negotiate with both the dealer and the manufacturer regarding warranties to repair defective equipment and make it right or to force the dealer or manufacturer to buy back that piece of equipment. The bill, he advised, mainly supports the small users of heavy equipment in Alaska that normally do not have a large voice.

MR. K. GERONDALE noted that Alaska has many reputable dealers and he considers his company to be one of them. In the last 12 months, he related, CMI has purchased back five or six pieces of

equipment that did not operate properly, and, of those, half were from small contractors. The strategy of his business is to take care of the people to whom he sells. At the same time, he continued, his experience over the past 30 years is that small and sometimes large users of heavy equipment have not had the protection to negotiate, force, or get a piece of equipment repaired. Given Alaska is the size of the continental U.S. from coast to coast and north to south, he said, it is very expensive for dealers and manufacturers to take care of their equipment, which is, from his standpoint, the background of HB 209.

MR. K. GERONDALE related an instance from about a year ago when CMI sold three new pieces of equipment to Pogo Mine. The equipment was manufactured by Skyjack, a Canadian company that CMI had represented for years. At Pogo Mine the equipment worked a very tough situation underground with explosives and consumables. The three like pieces of equipment did not operate per the design and were considered dangerous for the users of the equipment underground. He said CMI negotiated with the manufacturer for months and months to repair the machines and CMI ended up having to buy back the three pieces and got the manufacturer to reimburse the warranty cost under the manufacturer's condition that it didn't want to ever do business with CMI again as far as selling heavy equipment, which was fine with CMI.

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MR. K. GERONDALE shared another instance in which a small mining company, Goldorado, purchased a used excavator for doing mining in the Talkeetna Mountains and support work for the Alaska Railroad. The equipment had a number of failures, he said, and CMI ended up buying back the excavator with no condition of Goldorado buying another piece. Within six months, though, Goldorado bought another piece of equipment from CMI that was a different brand and is now a happy customer.

MR. K. GERONDALE said his point is that Alaska has no existing protection for large or small users of heavy equipment. He urged the committee to not let any manufacturer say it doesn't have warranty problems because in his experience that is not the case. The manufacturers that CMI represents have a hard time from time to time, he noted, but CMI is a large enough dealer that it can force the initiative and take care of a customer.

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REPRESENTATIVE JOSEPHSON said he has learned that opportunities arise between contracting parties to renegotiate the contracts. He asked whether Mr. K. Gerondale has utilized those opportunities and bargained aggressively. He further asked whether Mr. K. Gerondale's position is that the original manufacturer is always going to be in a preferred economic position.

MR. K. GERONDALE responded that when there are problems, CMI aggressively pursues negotiating with the manufacturers that it works with in supporting equipment. Problems are run into, they are not all trouble-free. He said he doesn't feel that HB 209 will cause any lawsuits or an increase in price. Rather, the bill is going to force the owner of the equipment and the dealer that sold the equipment, or the manufacturer that sold it direct, to negotiate and come up with a solution to the problem. He pointed out that HB 209 is not retroactive. For example, CMI has had signed contracts for many years with manufacturers, and the bill would not help CMI as much as it would help a new dealer that signs a contract. The bill, he opined, is going to put a delta out there, a line in the sand, that CMI can go back to a manufacturer and say that under state law the manufacturer must live up to its commitment.

REPRESENTATIVE JOSEPHSON said it is an interesting bill in that CMI is an Alaskan company and one might think CMI has the sympathy of fellow Alaskans. But, CMI is a very significant company and so it would seem that CMI would have a lot of economic power relative to the out-of-state manufacturer. He said he is also wondering about the role of the legislature and whether it should be intervening in these sorts of contracts. For example, virtually everything is shipped to Alaska so there must be a thousand negotiations about who bears the shipment costs on everything from heads of lettuce to bicycles. He surmised that the legislature is not generally asked to negotiate or intervene in those, and so he is wondering why the legislature is necessary in this instance.

MR. K. GERONDALE responded that, from his experience, it would be very helpful for the end user of heavy equipment in Alaska to have a law like this because the end user can then go back to that manufacturer or that dealer and make sure they do what they said they were going to do - provide a reasonably reliable piece of equipment with a certain warranty that is written down. The legislature is not being asked to have any decision on that warranty, he said. It is being asked to put something on the books, so end users can say they just want [the manufacturer or

dealer] to live by the rules and follow the law to give the end users what they were told they would be given.

MR. K. GERONDALE continued and posed a scenario of a small homebuilder in Sitka that purchases a Skyjack forklift for \$110,000 from a Seattle dealer and is making huge payments only to have the forklift fall apart and the homebuilder cannot get it fixed. What leverage does that small homebuilder have today to deal with the dealer in Seattle, he asked, or a dealer in Anchorage or even Juneau unless there is a financial wherewithal for that dealer to want to solve that problem. That user is going to demand that the Seattle dealer or the manufacturer in Canada buy back that piece of equipment, but, he said, that will not happen because there is no support for that.

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REPRESENTATIVE BIRCH stated he is uncomfortable because it strikes him that the State of Alaska would be inserting itself in a relationship between a dealer and a manufacturer. For example, he said, the bill would require the manufacturer to pay the transportation and lodging costs of a dealer's employee sent to the field to perform the work. He posed a scenario in which someone buys a Ford sport utility vehicle (SUV) and flies it to Kotzebue, Alaska, and he questioned whether it is realistic that that customer can expect Ford to fly someone to Kotzebue at Ford's expense to fix the SUV. Construction equipment can get into really remote locations in Alaska, he noted, and HB 209 would say unilaterally that the manufacturer must pick up the tab for transportation and lodging. He requested Mr. K. Gerondale to address the state intervening in what is a contract between the dealer and the manufacturer.

MR. K. GERONDALE answered that CMI sells lots of equipment to the State of Alaska and the State of Alaska contract calls for the manufacturer or dealer to support that equipment wherever it is, which can be Naknek or Kotzebue. When CMI sells equipment directly to the City of Kotzebue, he pointed out, that warranty includes flying to Kotzebue and working on and repairing the equipment. That is part of CMI's existing warranty program for the products it sells. Having said that, he continued, some manufacturers don't provide that level of support and in that case a large dealer like CMI can force the manufacturer to reimburse CMI and help CMI fix that piece of equipment. The problem is: for a small dealer that doesn't have the financial wherewithal, or for that fellow in Kotzebue who buys a brand-new piece of equipment in Seattle, Washington, and asks the Seattle

dealer to fly somebody up to fix it - that is just not going to happen.

MR. K. GERONDALE further explained that the normal course of business with most of the dealers and the manufacturers that have dealers in Alaska is that they have to fix it on site. In those areas where [a dealer] doesn't get reimbursed the airfare or [other expenses], that is normally not negotiated but rather part of the purchase contract on the front end. He said he can guarantee the committee that 90-95 percent of the equipment that CMI sells out in the Bush, CMI fixes it, CMI has to fix it. The end user does not have to pay for all the travel time or expense of getting there.

REPRESENTATIVE BIRCH offered his understanding that HB 209 wouldn't change the aforementioned and that the bill is simply looking out for smaller dealers and would not adversely impact or directly impact a large operator like CMI.

MR. K. GERONDALE confirmed that the bill would not [cause adverse impact] and that that is part of CMI doing business. He stated that if Representative Birch were to talk to his constituents who are contractors and buying new equipment, they would tell him that that it is expected and should be part of the purchase contract - if the equipment needs repair under the warranty, the travel expense has to be paid because the consumer cannot absorb that high expense.

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REPRESENTATIVE STUTES asked where and why the state would be involved in this. She posed a scenario in which a bill is passed that is more onerous on the manufacturer and asked whether there is anything to Mr. K. Gerondale's knowledge that would preclude the manufacturer from saying that any equipment it sells to the state of Alaska will not have a warranty on it.

MR. K. GERONDALE replied he doesn't know of any bonafide quality manufacturer doing business in Alaska that would quit doing business in Alaska because it is being asked to uphold the warranty that it provides. However, he said, a manufacturer that builds poor product, doesn't have confidence in that product, and knows that a product sent to the Bush will be expensive to support, may choose not to sell it for that specific reason. Just because Alaska stretches coast to coast and north to south, he opined, doesn't mean Alaska shouldn't have the same warranty coverage as the continental 48 states.

REPRESENTATIVE STUTES asked whether Mr. K. Gerondale thinks there isn't any difference between working in rural Alaska as opposed to one of the Lower 48 states.

MR. K. GERONDALE responded that he thinks there is a lot of difference and that is exactly why it is so important to have something on the books to provide protection. Regardless of whether it is a small Bush community that buys crushers or loaders, he continued, there should be the support to support that equipment wherever it is.

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REPRESENTATIVE WOOL offered his understanding that Mr. K. Gerondale is saying that some of the larger mines can successfully negotiate with the manufacturers because of their size and that CMI is at times in that same category. He inquired whether CMI is big enough to get the same negotiating power as the large mines, or whether that is what Mr. K. Gerondale is striving for with HB 209.

MR. K. GERONDALE answered that that is not what he is striving for. He said CMI has that now with the manufacturers that it represents, and he doesn't think HB 209 will change the coverage that CMI has from the manufacturers that it represents. The one area that there is a possible difference, he noted, is the lemon law portion of the bill when it comes to a piece of equipment that just doesn't operate because of design. A good example, he continued, is Tier 4 Interim mission control that has not proved reliable and has been a big problem. Eighty percent of CMI's buybacks have been because of the design of Tier 4 Interim and CMI has been fully supported by its manufacturers when CMI has come to solve that problem.

REPRESENTATIVE WOOL offered his understanding that CMI is large enough to successfully negotiate with the manufacturers. He noted that automobiles must be purchased from a dealer and cannot be purchased directly from Ford. He asked whether smaller companies or individuals in Alaska are able to buy directly from the manufacturer and whether they are the ones the bill is looking to protect.

MR. K. GERONDALE replied yes. A generator or any heavy piece of equipment can be purchased directly from a manufacturer or a dealer outside of Alaska and shipped direct to the purchaser's location in, say, Western Alaska or the Aleutian Chain.

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REPRESENTATIVE JOSEPHSON stated he is not hearing that people are in breach of contract because if that were the case then any lawyer could be employed to sue for breach of contract. He offered his understanding that Mr. K. Gerondale is not saying that [a manufacturer such as] Kubota guaranteed in the fine print that if somebody were in a remote mining site ...

CHAIR KITO, due to technical difficulties with Mr. K. Gerondale's online connection, moved to the next invited witness.

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JOHN MACKINNON, Executive Director, Associated General Contractors of Alaska (AGC), testified in support of HB 209. He noted that AGC is a construction trade association representing around 640 Alaska businesses involved in the construction industry. Of those 640 businesses, he continued, about half are contractors and half are suppliers and associates to the construction industry. For full disclosure, he noted that CMI is an AGC member, as are four or five other major equipment dealers in the state. He stated AGC's support of the bill.

MR. MACKINNON related that several instances have been brought to his attention where smaller contractors were the recipients of poor services as a result of warranty issues or equipment that failed to perform as promised. He said that when he sent last year's version of the bill to his membership, some contractors responded that the bill would have alleviated many of the issues and poor performance that they had experienced. One small dealer has told him of its definite support for the bill. He offered his understanding, however, that equipment dealers are unwilling to support the bill because they fear retribution from their suppliers. He noted that CMI is a big dealer, selling equipment like Hitachi, and is, in order of magnitude, larger. Even though CMI is big and exerts leverage, he said, the big manufacturers are considerably larger. He reiterated AGC's support for HB 209 and said it is good for the industry as a whole.

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REPRESENTATIVE KNOPP asked Mr. MacKinnon whether he knows any end users who are buying factory direct from such companies as Caterpillar, Volvo, or Hitachi.

MR. MACKINNON replied no, big manufacturers are dealing through distributors and licensed retailers. He said he doesn't know of anyone who would be able to buy factory direct. They oftentimes buy from dealers outside Alaska to save money or they buy aftermarket products out of state. Big equipment is sold through licensed dealers within the state, he added.

REPRESENTATIVE KNOPP surmised that when a piece of equipment comes, regardless of which dealer it is purchased through, Alaska dealers still have an obligation for the warranty work on that because that is part of the contract.

MR. MACKINNON responded correct.

REPRESENTATIVE KNOPP further surmised that when dealers pick up a new product line, they would be aware of the warranty and the contract of that manufacturer at that time.

MR. MACKINNON answered correct and added that when a dealer picks up a product line, they might be picking up some potential liabilities.

REPRESENTATIVE KNOPP opined that, to him, HB 209 does not read like a consumer protection bill, but rather a dealer protection bill. He said he likes some things in the bill, but dislikes others. For example, he continued, he has trouble with the provision that the manufacturer would pay the transportation and lodging costs because he thinks that is an unrealistic expectation in a state of this size. He said another provision he doesn't like is the requirement to pay a dealer full retail, rather than cost, for a part off the shelf. He recalled Mr. Gerondale talking about the Tier 4 Interim problem and asked whether that problem is the bulk of the warranty work having to be performed.

MR. MACKINNON replied he cannot answer the question because he is not familiar with many of the details on these warranty issues, although he does know of a number that have been failure to perform as specified or promised in the literature. He added that the Tier 4 Interim, at least for a period of time, was a work in progress and had a lot of little kinks to be ironed out.

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GEORGE WHITAKER, State Government Affairs, CNH Industrial America LLC, testified that CNH is the manufacturer of Case IH and New Holland agricultural equipment and Case IH and New Holland construction equipment. He said seven CNH dealers are located in Alaska, their locations being in Fairbanks, Anchorage, Wasilla, and Palmer. The concerns called out in HB 209 are best addressed between dealers and suppliers, he stated. Product support for delivery warranty reimbursement is a fast-changing environment for suppliers and dealers alike, especially as new smart products are seen. As new technologies emerge, he advised, there is no question that the world of warranty is going to change dramatically over the next three to five years. He said CNH working with its dealers is best suited to plot the course forward without legislative intervention.

MR. WHITAKER drew attention to page 2, line 20, "**Sec. 45.45.775. Restrictions not allowed.**" He said the proposed section for AS 45.45 caught CNH's eye because of the ambiguous language; should a dispute arise between the dealer and a supplier, he said, the result would be an extremely difficult and costly scenario for the parties. He added that CNH questions the exact meaning of the language [on line 23] that states "if the restriction impairs the dealer's or distributor's ability to satisfy a required service". He maintained that "restriction" could mean anything to a plaintiff's attorney, such as the method in which a part was ordered, the words in the service manual, or the form and manner of training that a dealer technician received from a supplier, to name a few. The intent of this paragraph appears to be that the suppliers would have to follow the law, which he said they currently do. He said the section needs clearer language to reduce the potential to head down an unnecessarily expensive and time-consuming path should a dispute arise.

MR. WHITAKER brought attention to page 2, line 25, "**Sec. 45.45.776. Payment for required services.**" Regarding the language, "standard claim procedures", he said there is no real industry standard form for warranty claims. For example, he continued, CNH's process is different in form and function from Caterpillar as is [Caterpillar's] from John Deere and different other suppliers of chainsaws, ATVs, and other products that would be covered under the proposed legislation. It seems absent of an industry standard, he stated. It is ambiguous and lends itself to an unnecessarily expensive and time-consuming process should a dispute arise between dealers and suppliers.

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MR. WHITAKER turned to page 2, [line 29], "**Sec. 45.45.777. Required service reimbursement.**" Regarding the language of Required service reimbursement, beginning on page 2 and continuing to page 3. He said it seems to be an apples and oranges comparison, because the language states that the manufacturer shall pay the dealer at a rate not less than the highest of three choices that follow, [on page 3, lines 5-10, paragraphs (1)-(3), which read as follows]:

(1) the rate the dealer or distributor customarily charges a customer for work that is not a required service;

(2) the manufacturer's printed flat rate; or

(3) the rate established by a flat rate manual for dealers or distributors, if the manual is produced for dealers or distributors by a nationally recognized industry consultant.

MR. WHITAKER stated that private published labor rate manuals may exist in the auto industry but if they exist in construction equipment, they are very hard to find and if found they are typically used for providing productivity analysis for dealer technicians or job quotations, but certainly not for warranty purposes. Mr. Whitaker pointed out that the dealer posted labor rate varies from dealer to dealer, with the dealer deriving the rate locally without input from the manufacturer and without regard to the supplier. The rate is based on the market served and the investment the dealer has made, the wages the dealer pays, and the dealer's position in the marketplace. So, he continued, two dealers representing the same brand will invariably have different posted labor rates. Manufacturers don't typically dictate labor rates to the dealers, he added.

MR. WHITAKER said the next proposed sections for AS 45.45 he will be discussing are about how cost inevitably finds the consumer and will speak to some of the earlier questions about how manufacturers might change warranty and how cost could be passed on to consumers through enhanced warranty reimbursement. He first directed attention to language on page 3, line 11, which states, "The payment under (b) of this section must include payment for clean-up, preparation, diagnosis, disassembly, repair, assembly, testing, and final cleaning". He said the words clean-up, preparation, testing, and final cleaning are "unaccountable and unauditible activities by the dealer." Some jobs will have a lot, some jobs will have a

little, he continued, but the incremental administrative costs will be substantial.

MR. WHITAKER said the aforementioned leads to the discussion about the so-called unreimbursed costs and how they get paid. He stated that a high performing dealer like CMI captures these costs and knows what they are and typically builds those costs into the cost of the machine when establishing a selling price to the consumer. So, those costs are recovered when the dealer sells the machine and they are effectively not unreimbursed costs, the customer pays the costs just like customers ultimately pay for all costs for the dealership plus a profit for the business. It is a cost of doing business. If the supplier were to be handed these costs as proposed in the bill, Mr. Whitaker continued, a similar thing would happen. The supplier would see higher warranty costs and would offset that cost by raising the cost of the equipment sold to dealers in Alaska, or the supplier would put a surcharge on the products shipped to Alaska to cover these costs. So, at the end of the day, the customer would pay these costs through the price of the equipment.

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MR. WHITAKER discussed language on page 3, lines 14-16, [subsection] (d), which states, "In addition to the payment under (b) of this section, the manufacturer shall pay a dealer or distributor a minimum of one hour at the dealer's or distributor's standard labor rate for the administration of each required service claim." He advised that dealers have various people in their business to keep things running - direct folks who produce the revenue and indirect folks who help things happen in the business. All those people are there to help technicians work effectively in generating income. The cost of all those people, he said, is calculated into the dealer's shop or labor rate and it should be treated just like the other departments of the dealership that have administrative costs. So, if the state says, "Mr. Dealer, transfer this cost to the supplier," the suppliers will in turn transfer that cost back to the dealer through price increase or through surcharge and ultimately the customer will pay for that hour of administration as the customer does today.

MR. WHITAKER spoke to language on page 3, lines 17-29, [subsection (e)], which states, "The manufacturer shall reimburse the dealer or distributor for the transportation and lodging costs of the employees of the dealer or distributor when

it is necessary for the employees to travel to the location of a product to perform a required service." He said that from personal experience working in areas of large geography, Texas being an example, if the dealer wants to sell a product to a customer that will be taking the product beyond a certain radius or to a remote area, then the dealer will have conversation with the customer so that the customer understands that he/she will have some financial responsibility for travel time to conduct some warranty and service. So, Mr. Whitaker continued, the customer/owner of a backhoe in Prudhoe Bay can't expect the same type of cost structure for warranty that does a customer in Anchorage or Fairbanks. In turn, that customer builds that cost into his cost of doing business. There is some incremental cost from being a long way from support infrastructure, he said, and those customers understand that and build that into their cost of doing business.

[4:07:18 PM](#)

MR. WHITAKER stated that there is a point regarding the lemon law that doesn't seem to be included in the bill. There might be cases, he continued, where a supplier says that a certain application doesn't work for a machine; for example, it was earlier mentioned about Skyjack lifts in a mining condition. He said CNH has had excavators in salt conditions and in very tough marble quarry mining conditions and CNH wasn't made aware of the conditions that the machine was going into. In these situations, he explained, rather than replace a product CNH would simply want to provide a refund and walk away from the deal, but it doesn't seem that the bill provides coverage for that option for the manufacturer.

MR. WHITAKER addressed what he termed very broad definitions related to equipment, tools, and motor vehicles. He pointed out that regarding a repair, a dealer who sells a Kubota tractor to be used for farming in the Matanuska-Susitna Valley and who sells that same model tractor with a backhoe for light construction in Anchorage would be treating customers, suppliers, and the product differently between the two.

[4:08:55 PM](#)

REPRESENTATIVE JOSEPHSON offered his understanding that there is opportunity for negotiation to occur between the manufacturers that Mr. Whitaker broadly represents and the dealer/distributor. He asked Mr. Whitaker to provide an example of something the manufacturer has conceded in a previous negotiation.

MR. WHITAKER requested clarification on whether "opportunity for negotiation" is in relation to a dealer agreement or in relation to a failed machine warranty experience.

REPRESENTATIVE JOSEPHSON clarified he is talking about a dealer agreement, so meaning the birth of the new set of negotiations much like a union would negotiate with management, not that that is a parallel. He offered his understanding that there are actual meetings where there is an offer and an acceptance made.

MR. WHITAKER replied that CNH has a standard dealer agreement because in many cases the law says that dealers must be treated the same - the same terms, same pricing, no biases towards size. There might be some ability to change price based on volume and so forth, he noted, and below that a lot of operating items are negotiated. In the case of a warranty, he continued, if there is a major failure and it is a critical customer, or the dealer feels that the customer warrants some cooperation, CNH will get in and negotiate that with the customer and dealer in a three-party fashion. Regarding the dealer agreement, there may be some trade areas or other types of things that are unique to Alaska that CNH would negotiate through amendments and addendums to the contract. But by and large, he said, it is a standard contract offered to all dealers and signed across all 50 states.

[4:11:35 PM](#)

REPRESENTATIVE JOSEPHSON noted the committee has heard a lot about the manufacturer's side and the dealer/distributor's side. He inquired as to what the customer thinks is going on. For example, he presumed that if he bought some heavy equipment for his farm in the Matanuska-Susitna Valley and it didn't work, there would be something in writing that says either the distributor that sold him the equipment is responsible and he can rely on that because that is his contract with the distributor or that there is a contract that says it would be someone in Illinois working for John Deere that is responsible. He said he isn't hearing that there is a dispute about contract duty, as that is what contracts are about. He said HB 209 is about moving duty from one side to the other and asked whether that is Mr. Whitaker's understanding.

MR. WHITAKER answered in the affirmative. He added that in this case he wouldn't say shift duty so much as shift cost of execution. He said the first line is always the dealer that sold the equipment or the dealer into whose area the equipment

was sold and is obliged to do the warranty work or do the service work on that machine. If the dealer finally runs out of rope and has done everything it can, then the company will step in and bring in an expert, or make a swap, or do whatever is necessary to get right with the customer.

4:13:50 PM

REPRESENTATIVE BIRCH noted that when a customer buys a car from a dealer, the dealer charges the customer by the hour for maintenance work. However, he continued, if the work is warranty related the dealer has a contract with the supplier that guarantees the dealer the work at a reduced rate. He asked whether in the case of a bulldozer from a supplier to the dealer, the dealer secures some guaranteed line of work and, if so, whether doing warranty work for that equipment is typically a pretty significant percentage of the work that that dealer has.

MR. WHITAKER answered that many manufacturers are different, but in CNH's case if warranty work comes back to the shop, CNH reimburses the dealer at the dealer's retail/walk-in customer rate for labor and reimburses the dealer at cost-plus for parts. He said CNH does this because it also uses warranty as an incentive to the dealer to make investments in tools and training to give best-in-class service. As to how much of a dealer's total revenue for shop work/service work is warranty, he said there is a big variance. It depends on the machines that the dealer has established and how well and effectively the dealer markets its service department. There is no set guarantee, he continued, but obviously the more machines a dealer sells, the more warranty work it generates. On a percentage basis, the shop is typically the most profitable area of the dealership operation, whether it is automotive or construction machinery.

REPRESENTATIVE BIRCH drew attention to page 3, lines 21-23, which state, "A manufacturer shall reimburse a dealer or distributor at the current manufacturer's full suggested retail price for covered products in the dealer's or distributor's inventory". He asked whether this provision seems reasonable to Mr. Whitaker.

MR. WHITAKER replied that in his business there are "majors" and "minors". For the majors that provision would not be out of line, but for the minors it would be difficult. There would also be the variations. For example, Caterpillar and John Deere

may each have a different situation, he said, as there is no real standard. In terms of reimbursing a dealer at the dealer's retail rate for labor, the provision is not out of line.

[4:17:20 PM](#)

REPRESENTATIVE WOOL inquired whether Mr. Whitaker was talking about manufacturers or dealers when he mentioned "majors" and "minors".

MR. WHITAKER responded that he was talking about manufacturers. He said CNH might be considered a full-line manufacturer of construction equipment, whereas there are other folks in a niche market or with a shorter product line or that do attachments only and they would be considered minors.

REPRESENTATIVE WOOL offered his understanding that regarding warranty work, Mr. Whitaker is saying that CNH pays the shop rate and pays for the parts. He asked whether, as a major, CNH negotiates a different deal with different dealers or sellers of CNH's products.

MR. WHITAKER answered that there is a baseline and the baseline then improves as the dealer meets certain metrics in training, schooling in electronic service tools that allow the dealer to efficiently do diagnostics, investment in the special tools that are required for the new models that have come in, and whether the dealer has a parts fill rate that is of a certain strength. The better the dealer does, he continued, the more the dealer is invested, and the better service level the dealer gets, then the more reimbursement the dealer receives from CNH. He prefaced the aforementioned by noting that that is CNH's policy and he is not talking for the industry in that regard.

REPRESENTATIVE WOOL surmised that CNH doesn't micro-negotiate with independent dealers for special deals on warranty and service work and that CNH has a pretty flat rate with the various dealers based on the aforementioned metrics.

MR. WHITTAKER replied yes.

[4:20:02 PM](#)

REPRESENTATIVE KNOPP inquired whether CNH reimburses on a flat rate basis and has flat rate manuals for certain repairs.

MR. WHITAKER responded that CNH has a flat rate manual for warranty repairs. For instance, a job may take two hours and then the dealer will multiply that times the dealer's personal shop labor rate plus any additional incentive that CNH may have given to the dealer.

REPRESENTATIVE KNOPP surmised CNH would not pay a dealer for four hours on a job on which CNH had a flat rate of two hours.

MR. WHITAKER answered that if the dealer raised an objection because of running into an unusual situation, the dealer would have the ability to appeal and CNH will often make concessions based on that appeal. If there is nothing special about the operation, he added, then it is very likely that most of the time the dealer would receive [payment for] two hours.

REPRESENTATIVE KNOPP related his personal experience regarding warranty work. He said that when his skid loader breaks down the first thing his local dealer tells him to do is bring in the loader. If he cannot bring the loader in due to its location, the dealer comes out to fix it and his experience has been that he must pay for the mechanic's travel time and lodging. Even when the equipment was under warranty, he pointed out, he has had to pay for the travel but not the service that was covered by the warranty. He asked whether his experience is the current standard practice or whether it is CNH's practice to reimburse those types of expenses.

MR. WHITAKER replied that as a general statement CNH doesn't reimburse travel time or employee lodging and related costs. If the dealer has a compelling reason that CNH should look at it, then CNH will react to it. Also, he added, it is part of the dealer's responsibility to understand where the product is going. If it is going into a very difficult mining situation, as was earlier described, he would suggest that Skyjack should have been consulted about whether it was a place that Skyjack was comfortable placing the product in. The dealer needs to understand those costs and account for them as part of the sales price that went into the product when it was purchased.

REPRESENTATIVE KNOPP asked whether, going into the purchase, it wouldn't also be the consumer's responsibility to understand that, especially if it was for a rural area. He said he would think that the consumer and the dealer must have that conversation.

MR. WHITAKER agreed that those conversations should happen and added that it is incumbent upon the dealer to communicate clearly to the customer that there are certain expectations the customer should have that are different from when the customer is located in close proximity to the dealer.

[4:25:29 PM](#)

CHAIR KITO noted it is said that things are different in Alaska and in some circumstances, they really are different. He pointed out that a lot of construction happens in remote parts of Alaska where a contractor will load up a barge and ship it in the springtime to a site and that equipment will not come back until the fall or will stay there if it is a multi-year job. In many cases, he further pointed out, the contractor won't know which contract he is going to get by bidding, so when the contractor gets a bid, he will go to whatever location is identified and is therefore unable to tell the dealer which community the equipment is going to be taken to. If the equipment fails it affects the bottom-line of that contractor and the contractor has purchased that piece of equipment in good faith. He said the manufacturer needs to understand that some of these smaller contractors don't have the ability to ship up another piece of equipment or do some of the repairs on their own and are reliant on the dealer or manufacturer to make sure that they have equipment that works so they can do their jobs. There is very little road for the geography of the state, he noted, and a lot of places are only accessible by air or water. He urged that Mr. Whitaker think about this regarding how the manufacturers consider reimbursement for travel or lodging, or how to support the pieces of equipment.

[4:27:41 PM](#)

JIM HALLORAN, Caterpillar Inc., Sacramento, California, stated that Mr. Whitaker did a fine job of explaining the provisions in the bill. He said Caterpillar and its dealer, N C Machinery, are in opposition to HB 209. He noted that N C Machinery has been Caterpillar's dealer since 1926 and said Caterpillar looks at this more uniquely based on this life-long relationship with the dealer and N C Machinery has a similar relationship with its customers. Caterpillar sees this as a solution looking for a problem, he added, because it is not experiencing the problems that have been raised and, if Caterpillar is, it is handling it in-house through its dealer agreements.

MR. HALLORAN addressed Representative Josephson's comment about dealer agreements. He pointed out that Caterpillar has global agreements and appreciates the challenges of Alaska and getting into Alaska's remote areas. He said the global agreement that Caterpillar has in place for Alaska is the same one that Caterpillar has in Sub-Saharan Africa, which has the same amount of challenges for getting parts and equipment service to Caterpillar customers operating there.

MR. HALLORAN spoke to the earlier question about whether this would change how warranties are handled and advised that, yes, it very much would. Caterpillar's agreement is different than CNH, Volvo, or others, he said, and HB 209 would impact how Caterpillar handles its warranties. In terms of out-of-state sales, he noted that the logical out-of-state sale for Alaska would either be Canada or the state of Washington and for Caterpillar, N C Machinery represents the state of Washington.

MR. HALLORAN, regarding the question about when dealer agreements get looked at, said the last change that Caterpillar had in its dealer agreements occurred in mid-1970s. These agreements are working, he stated, and the legislature is overstepping its bounds in getting involved in these types of agreements. He added that Caterpillar shares the concerns pointed by Mr. Whitaker.

[4:31:40 PM](#)

CHAIR KITO opened public testimony on HB 209.

[4:32:03 PM](#)

DAVID BLOMMER, Bicknell Inc., testified in support of HB 209. He said the Bicknell's have been in Alaska for about 40 years and have done paving for about 15 years. In about 2007, he related, Bicknell Inc. purchased a factory rebuilt Ingersoll Rand paver for about \$225,000, one of the last rebuilt pavers before Ingersoll Rand sold its paving division to Volvo Construction Equipment. After receiving the machine in Juneau, it was obvious there were some problems with it.

MR. BLOMMER stated that Bicknell Inc. had several meetings with the local dealer and the manufacturer to try to address the issues. The manufacturer told Bicknell to deal with the issues through normal warranty procedures, he related, but those normal warranty procedures didn't cover travel or labor when the machine broke down on the job, airfreighting in the parts when

the machine was down and Bicknell needed to pave to avoid liquidated damages, trucking the paver back to the dealer to get it worked on, and renting another paver to complete the jobs. Bicknell Inc. sold the paver in 2002 but was unable to get full market value because Juneau is a small town and the paver was already labeled a lemon.

MR. BLOMMER stated HB 209 would have helped reduce some of the costs with the warranty work performed on the paver, although it still would not have covered most of the costs incurred that were associated with the down time. The bill would also have given Bicknell Inc. the ability to return the paver under the lemon law provision. For these reasons, he said, Bicknell Inc. asks that the committee support HB 209.

[4:33:57 PM](#)

REPRESENTATIVE JOSEPHSON stated he is sympathetic but asked whether Bicknell Inc. exercised sufficient due diligence in reading the agreement. He said he could see a situation where because of a compelling need one might speed through that. He asked whether Bicknell Inc. found anything in the agreement that was violated - where the [dealer/manufacturer] said it would do something but didn't.

MR. BLOMMER replied he is before the committee representing the owner, Roscoe Bicknell, and he is unable to comment on that because he doesn't know the specifics on the agreement.

[4:34:57 PM](#)

WILL TONSGARD III, Vice President, Channel Construction, had his written testimony read by Chris Gerondale, a contract employee, as follows:

I, Will Tonsgard, in Juneau, Alaska, ask you to support HB 209. I am vice president of Channel Construction, in Juneau, Alaska, and I'm speaking on behalf of my father - William "Shorty" Tonsgard, Jr., who is president of Channel Construction - and myself. We had not originally intended on getting involved in this discussion because I was concerned about how this may affect our support from Caterpillar going forward. After I heard ... they testified in the Senate Labor and Commerce Committee that they didn't have these problems I became frustrated and angry, because we have had many problems with getting Caterpillar, and

other manufacturers as well, to stand behind the equipment they manufactured for many years.

While we have had problems with many manufacturers, I will provide one example from our experience with Caterpillar and can provide more examples if you feel it would be helpful. Channel Construction purchased two new Caterpillar excavators. Since they were new the excavators would turn to the left when driven. Numerous times we've had Caterpillar and their local dealer try to fix these machines, but they could never fix the problems. We paid N C Machinery, the local Cat dealer, well over \$10,000 to try to fix the excavators but they still can't figure out the problems to this day. We still own and use these excavators every week even though they pull to the left because we are a small company and can't afford to replace these machines even though this issue affects our operation. These are specialized pieces of equipment that would cost us well over \$1 million to replace and we don't have that kind of money. We do a lot of demolition and work on barges. Although we have never had an accident due to this problem, it is a potential safety issue and could cause problems at some point.

It is my understanding that HB 209 would have helped alleviate some of the costs associated with these work orders and allowed us to get these machines replaced under the lemon law feature ... of HB 209 when we first purchased these machines. We are just a small, family-owned construction company and don't have the administrative staff to fight with big manufacturers when things aren't going the way they should. This bill will help small companies like ours have some leverage in getting our equipment fixed when it doesn't work as designed. I can give you other examples where I feel manufacturers other than Cat have not supported small companies like ours when it comes to warranties and technical service bulletins.

[4:37:54 PM](#)

REPRESENTATIVE KNOPP asked whether the reason N C Machinery couldn't fix the problem was because its maintenance support staff was inadequate or because the manufacturer wasn't providing what was needed. He further asked whether it was the

manufacturer or the dealer that was not fulfilling its obligation.

CHRIS GERONDALE, Contract Employee, Channel Construction; part-time worker, Kensington and Greens Creek mines and Construction Machinery Industrial (CMI), responded that the manufacturer sold a piece of equipment that is designed to drive forward in a straight line when both pedals are pushed forward. However, he explained, when both pedals are pushed forward, the machinery turns to the left and this is a safety issue operating on a barge. Why the machine does that is unknown, which is why Channel Construction hired the experts to come out and fix it. He noted that he has found at least five work orders from [N C Machinery] coming out to fix this problem, but [N C] is not sure what the problem is.

[4:39:14 PM](#)

REPRESENTATIVE WOOL asked why the gripe isn't with the dealer given that the sales are not direct from the manufacturer. He commented that obviously [N C Machinery and Caterpillar] have a good relationship and that since Channel Construction bought two machines, a big investment, it would seem that [N C Machinery] would be on the hook for it.

MR. C. GERONDALE answered that N C Machinery is absolutely who [Channel Construction] goes through to deal with these problems. He offered his understanding that under Alaska's automobile, boat, and ATV lemon law, replacement is typically handled through the manufacturer, not the dealer.

REPRESENTATIVE WOOL asked whether it is a coincidence that Mr. C. Gerondale has the same last name as ...

MR. C. GERONDALE replied it is not a coincidence because as he stated earlier, he does work for CMI.

[4:41:25 PM](#)

NICK YAKSICH, Senior Vice President, Government and Industry Affairs, Association of Equipment Manufacturers (AEM), testified in opposition to HB 209. He noted that AEM is a North America based international trade association representing over 950 companies in the off-highway machinery market. He stated that AEM is opposed to HB 209, which [proposes to] alter the treatment of heavy equipment warranties. He said AEM believes it is an intrusion into the business relationship between the

manufacturer and the dealer. It is AEM's hope that these issues are dealt with outside of the legal or legislative arena and that between the customer, the dealer, and the manufacturer these issues can be resolved. In regard to the contracts, he stated that ultimately the manufacturer looks to protect its brand and provide the best technology and best service to the dealer and to the customer. He reiterated that AEM opposes this bill and said it would have a significant impact on all manufacturers.

[4:43:00 PM](#)

CHAIR KITO inquired whether AEM has dealt with other states that have laws that provide some direction on warranty.

MR. YAKSICH replied AEM has not dealt with this issue recently on the warranty. He said the contracts are expensed in terms of buybacks, warranty, parts, and such, but in this case AEM has not dealt with the warranty issues.

CHAIR KITO referenced his earlier comments about the unique construction situation in Alaska where equipment is transported to construction sites and not easily accessible to the road system or dealers. Alaska has some transportation challenges that other places don't, he noted, plus Alaska has a limited construction season that makes it vitally important to be able to have equipment functioning when it needs to be functioning. He urged that manufacturers keep this in mind.

MR. YAKSICH offered his appreciation for the aforementioned. He commented that the previously mentioned Tier 4 issue had to do with an Environmental Protection Agency (EPA) mandate as part of the Clean Air Act. He said manufacturers spent millions of dollars in research and development to comply with that EPA mandate, and it is an example of the kind of challenge that AEM also faces working with the customer, dealer, and manufacturer in complying with the law.

[4:45:10 PM](#)

CURTIS THAYER, President & CEO, Alaska Chamber of Commerce, stated that the chamber supports the current version of HB 209. He noted the chamber represents over 700 businesses, manufacturers, and local chambers across the state. Alaska's remoteness and high cost of shipping are some of the challenges living here, he said, and looking out for the dealers in Alaska needs to be done. This bill is modeled after other laws in

other states for warranties, he continued, and a bill is needed that extends the same protection to heavy equipment. It will keep Alaska's construction resource industry active and alive.

[4:46:08 PM](#)

REPRESENTATIVE JOSEPHSON asked whether the U.S. Chamber of Commerce's position is the same on these sorts of bills as is the state's chamber.

MR. THAYER replied that the Alaska Chamber of Commerce is affiliated with the U.S. Chamber of Commerce through a federation, but the state chamber is not a part of the U.S. Chamber of Commerce.

[4:46:32 PM](#)

CHAIR KITO closed public testimony on HB 209 after ascertaining that no one else wished to testify.

CHAIR KITO held over HB 209.

[4:47:04 PM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:47 p.m.