SB

51

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 6, 1989 FURTHER REFERRALS: LABOR & COMMERCE

Date of Committee Action: 4/12/89

The HEALTH, EDUCATION, & SOCIAL SERVICES Committee considered: CSSB 51(HESS)

CS FOR SENATE BILL NO. 51 (HESS)

[WORKERS' COMP:REHABILITATION SPECIALISTS]

"An Act extending the time period for a person to become a certified workers' compensation rehabilitation specialist; and providing for an effective date."

RECOMMENDATIONS:

[ ] be replaced with _____ [ ] the same title [ ] a new title

[ ] have attached amendment(s)

[X] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[ ] fiscal impact _____

[ ] zero fiscal note _____

[ ] zero with analysis _____

APPROVES PREVIOUS: (Date/Dept)

[ ] fiscal note(s) _____

[X] zero fiscal note(s) 2/8/89 Labor

[ ] zero fn/analysis _____

SIGNING DO PASS:

SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend
Cheri Davis		✓	

Chairman's signature

Alaska State Legislature

SENATOR JIM DUNCAN

P.O. BOX V JUNEAU, ALASKA 99811-3100

(907) 465-4766

COMMITTEES:
FINANCE
VICE CHAIR – HEALTH EDUCATION & SOCIAL SERVICES
BUDGET & AUDIT
BANKING & ECONOMIC DEVELOPMENT

MEMORANDUM

MARCH 9, 1989

TO: REPRESENTIVE JOHNNY ELLIS, CHAIR
HOUSE HEALTH, EDUCATION & SOCIAL SERVICES COMMITTEE

FROM: SENATOR JIM DUNCAN

SUBJECT: CS SENATE BILL 51 (HESS), AN ACT EXTENDING THE TIME FOR A PERSON TO BECOME A CERTIFIED WORKERS' COMPENSATION REHABILITATION SPECIALIST, AND PROVIDING FOR AN EFFECTIVE DATE.

I REQUEST THAT YOU SCHEDULE CSSB 51 (HESS), EXTENDING THE TIME FOR A PERSON TO BECOME A CERTIFIED WORKERS' COMPENSATION REHABILITATION SPECIALIST FOR A FLOOR VOTE AS SOON AS POSSIBLE.

A PROBLEM HAS ARISEN FOR A CONSTITUENT OF MINE AS THE RESULT OF THE RECENTLY REVISED WORKERS' COMPENSATION STATUTES. SECTION 47 OF CHAPTER 79, SLA 1988, ALLOWS A ONE YEAR GRACE PERIOD FOR PRACTICING REHABILITATION SPECIALISTS TO CONTINUE WITHOUT THE REQUIRED CERTIFICATION FROM JULY 1, 1988 TO JUNE 30, 1989. AFTER THAT PERIOD, CURRENTLY PRACTICING REHABILITATION SPECIALISTS WILL NOT BE ALLOWED TO CONTINUE IN THEIR WORK UNLESS THEY ARE CERTIFIED BY THE INSURANCE REHABILITATION SPECIALISTS COMMISSION.

IN PARTICULAR, A CONSTITUENT OF MINE OWNS A LOCAL REHABILITATION SERVICE AND HAS WORKED AS A VOCATIONAL REHABILITATION COUNSELOR SINCE JANUARY 1, 1984. TO MEET THE BACHELORS DEGREE REQUIREMENT FOR A CATEGORY TWO REHABILITATION SPECIALIST, SHE IS NOW TAKING 17 CREDIT HOURS IN ADDITION TO CONTINUING HER WORK AS A REHAB SPECIALIST. AT THE TIME OF ENACTMENT OF THE LEGISLATION, SHE STILL NEEDED TWO YEARS TO ATTAIN HER BACHELOR'S DEGREE. THIS MEANS THAT ON JUNE 30, 1989, SHE WILL BECOME INELIGIBLE TO CONTINUE HER WORK AS A REHABILITATION SPECIALIST IN SPITE OF THE FACT THAT SHE IS DOING AN EXCELLENT JOB AND HAS REFERENCES WHICH BEAR THIS OUT.

CS SB 51 (HESS) WILL EXTEND THE GRACE PERIOD TO ATTAIN CERTIFICATION UNTIL JUNE 30, 1992, BUT ONLY FOR INDIVIDUALS WHO WERE ACTIVELY EMPLOYED FOR AT LEAST ONE YEAR BEFORE JUNE 30, 1988 AS REHABILITATION SPECIALISTS.

IF YOU HAVE ANY QUESTIONS ON THIS BILL, PLEASE CONTACT ROXANNE STEWART OF MY STAFF AT 465-4766.

ATTACHMENTS

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CSSB 51 (HESS)
PUBLISH DATE:

FISCAL NOTE

REQUEST:
Revision Date:
Agency Affected: Labor
Title: "An Act extending the time period...
to become a...workers' compensation...specialist..."
BRU: Workers' Compensation
Sponsor: Duncan & Kerttula
Requestor: Senate HESS
Components:
Workers' Compensation

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Jacquelyn McClintock
Phone: 465-2790
Division: Workers' Compensation
Date: 2/7/89

Approved by Commissioner: Jim Sampson
Date: 2/7/89
Agency: Department of Labor

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Bill No CSSB 51 (HESS) **Date:** February 23, 1989

Title: "An Act extending the time period for a person to become a certified workers' compensation rehabilitation specialist; and providing for an effective date."

Contact: J. L. McClintock 465-2790

One of the major concerns addressed by the Labor/Management Task Force in last year's workers' compensation legislation was to assure that quality vocational rehabilitation services be provided by skilled professionals to assist Alaska's injured workers in their return to the work place, thereby reducing liability for long-term disability for Alaska employers. To accomplish this, specific standards for professional vocational certification were included in the 1988 workers' compensation bill. These standards require that a person be a certified insurance rehabilitation specialist (CIRS) or a certified rehabilitation counselor (CRC), or the equivalent in jurisdictions without CIRS or CRC certification standards, in order to be placed on the Workers' Compensation Board's list of rehabilitation speciaiists.

The 1988 legislation provided a one-year period, until June 30, 1989, for persons who had been providing rehabilitation services to obtain the required certification. CSSB 51 would extend the time period for obtaining certification by an additional three years. At this time, the Department is aware of four individuals who will not be able to meet the certification requirements by the June 30, 1989 deadline.

The Department has no objection to this extension which will provide those who have been providing rehabilitation services the additional time needed to meet the certification requirements.

APPROVED:

Jim Sampson, Commissioner
Department of Labor

POSITION PAPER/Department of Labor

LAWS OF ALASKA

1988

Source: CCS SB 322

Chapter No.: 79

AN ACT

Relating to workers' compensation, and providing for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

THE ACT FOLLOWS ON PAGE 1, LINE 9

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

Approved by the Governor: May 31, 1988
Actual Effective Date: Sections 42 and 50 take effect June 1, 1988. Sections 1 - 41, and 43 - 49 take effect July 1, 1988

AN ACT

Relating to workers' compensation; and providing for an effective date.

* Section 1. LEGISLATIVE INTENT. (a) It is the intent of the legislature that AS 23.30 be interpreted so as to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of AS 23.30.

(b) The legislature declares that the workers' compensation laws must not be construed by the courts in favor of any party. It is the specific intent of the legislature that workers' compensation cases be decided on their merits, except when otherwise provided by statute. It is also the intent of the legislature that the board possess the greatest possible authority in the exercise of its fact finding responsibilities and that the board's decisions be conclusive unless the court finds that a reasonable person could not have reached the conclusion made by the board.

(c) It is the intent of the legislature in amending AS 23.30.175 regarding benefits payable to recipients not residing in the state to

(1) recognize the levels of workers' compensation benefits brought about by the high cost of living that exists in the state as compared to other localities;

(2) increase the incentives to return to work; and

(3) remove obstacles to the utilization of vocational rehabilitation that may be brought about by the payment of workers' compensation

benefits at the high levels provided by the Alaska workers' compensation law to individuals residing in localities with living costs lower than those in Alaska.

(d) It is the intent of the legislature to encourage employers to improve safety practices in the workplace and to use improved safety practices to reduce work related injuries.

(e) It is the intent of the legislature in amending AS 23.30.075(b) and 23.30.155 that the division of workers' compensation, division of insurance, and Department of Law strictly enforce the punishment authorized under AS 23.30.075(b) and the reporting requirements and penalties for noncompliance under AS 23.30.155. Strict enforcement is necessary because

(1) the state has failed to impose the punishment authorized under AS 23.30.075(b) against those employers who fail to obtain workers' compensation insurance or to qualify as a self-insurer; and

(2) there is a lack of specific data from the division of workers' compensation and division of insurance to adequately assess the efficiency and costs of the workers' compensation system.

* Sec. 2. AS 21.39.155 is amended by adding a new subsection to read:

(c) An insurer may impose a surcharge not to exceed 25 percent of the premium for assigned risk pool insurance, except that a surcharge may not be applied to the first $3,000 in premium in any policy year.

* Sec. 3. AS 21.89 is amended by adding a new section to read:

Sec. 21.89.015. WORKPLACE SAFETY PROGRAM. An insurer who provides workers' compensation insurance in this state shall establish and maintain a workplace safety rate reduction program, subject to the approval of the division of insurance.

* Sec. 4. AS 23.30.005(h) is amended to read:

(h) The department shall [MAY] adopt [IDENTICAL] rules for all

panels, and procedures for the periodic selection, retention, and removal of both rehabilitation specialists and physicians under AS 23.30.041 and 23.30.095, and shall [MAY] adopt regulations to carry out the provisions of this chapter. Process and procedure under this chapter shall be as summary and simple as possible. The department, the board or a member of it may for the purposes of this chapter subpoena witnesses, administer or cause to be administered oaths, and may examine or cause to have examined the parts of the books and records of the parties to a proceeding that relate [WHICH RELATED] to questions in dispute. The superior court, on application of the department, the board or any members of it, shall enforce the attendance and testimony of witnesses and the production and examination of books, papers, and records.

* Sec. 5. AS 23.30.020 is amended by adding a new subsection to read:

(b) An employee who knowingly makes a false statement as to the employee's physical condition on an employment application or preemployment questionnaire may not receive benefits under this chapter if

(1) the employer relied upon the false representation and this reliance was a substantial factor in the hiring; and

(2) there was a causal connection between the false representation and the injury to the employee.

* Sec. 6. AS 23.30.025 is amended by adding a new subsection to read:

(c) An insurer extending coverage required under this chapter by specifying Alaska in the other states section or similar provision of the insurance policy shall provide notice to the department under AS 23.30.085.

* Sec. 7. AS 23.30.030 is amended by adding a new paragraph to read:

(8) An annual insurance premium that exceeds $2,000 may be paid on an installment basis of not fewer than two payments, if

requested by the insured. Premiums paid by installment must be structured to reflect seasonal peaks in the basis of the premium. The insurer shall include this provision in the insurance policy in a manner that clearly informs the insured of the provision.

* Sec. 8. AS 23.30.040(b) is amended to read:

(b) If an employee suffers a compensable injury that results in temporary total disability, temporary partial disability, permanent partial disability, or permanent total disability, the employer or insurance carrier shall contribute to the second injury fund. The contribution shall be made annually at the time of the report filing required by AS 23.30.155(m) [BY ONE YEAR FROM THE DATE OF THE INJURY OR ON TERMINATION OF THE EMPLOYEE'S CLAIM, WHICHEVER IS SOONER. IF THE CLAIM IS NOT TERMINATED WITHIN ONE YEAR, SUBSEQUENT CONTRIBUTIONS SHALL BE MADE YEARLY UNTIL THE TERMINATION OF THE EMPLOYEE'S CLAIM]. The amount of the contribution is the product of the compensation to which the employee is entitled for temporary total disability, temporary partial disability, permanent partial disability, or permanent total disability and the applicable contribution rate set out in column A of this subsection. Payment need not be made to the second injury fund if the total contribution under this subsection is less than $20. By December 15 of each year the commissioner shall determine and make available to the public the applicable contribution rate for the following calendar year according to the reserve rate of the second injury fund in column B of this subsection:

Column A	Column B	
Second Injury Fund	Reserve Rate	
Contribution Rate	At Least	But Less Than
(Percent)	(Percent)	(Percent)
6	0	50

5	50	75
4	75	100
3	100	125
2	125	150
1	150	175
0	175	

* Sec. 9. AS 23.30.040(h) is amended to read:

(h) Administration expenses of the state under this section and AS 23.30.205 must [SHALL] be paid from the second injury [GENERAL] fund.

* Sec. 10. AS 23.30.041 is repealed and reenacted to read:

Sec. 23.30.041. REHABILITATION OF INJURED WORKERS. (a) The board shall select and employ a reemployment benefits administrator. The board may authorize the administrator to select and employ additional staff. The administrator is in the partially exempt service under AS 39.25.120.

(b) The administrator shall perform the following functions:

(1) enforce regulations adopted by the board to implement this section;

(2) recommend regulations for adoption by the board that establish performance and reporting criteria for rehabilitation specialists;

(3) enforce the quality and effectiveness of reemployment benefits provided for under this section;

(4) review on an annual basis the performance of rehabilitation specialists to determine continued eligibility for delivery of rehabilitation services;

(5) submit to the department, on or before January 1 of each year, a report of reemployment benefits provided under this

section for the previous fiscal year; the report must include a general section, sections related to each rehabilitation specialist employed under this section, and a statistical summary of all rehabilitation cases, including

(A) the estimated and actual cost of each active rehabilitation plan;

(B) the estimated and actual time of each rehabilitation plan;

(C) a status report on all individuals completing or terminating a reemployment benefits program including a return to work date;

(D) the cost of reemployment benefits;

(6) maintain a list of rehabilitation specialists who meet the qualifications established under this section;

(7) promote awareness among physicians, adjusters, injured workers, employers, employees, attorneys, training providers, and rehabilitation specialists of the reemployment program established in this subsection.

(c) If an employee suffers a compensable injury that may permanently preclude an employee's return to the employee's occupation at the time of injury, the employee or employer may request an eligibility evaluation for reemployment benefits. The employee shall request an eligibility evaluation within 90 days after the employee gives the employer notice of injury unless the administrator determines the employee has an unusual and extenuating circumstance that prevents the employee from making a timely request. The administrator shall, on a rotating and geographic basis, select a rehabilitation specialist from the list maintained under (b)(6) of this section to perform the eligibility evaluation.

(d) Within 30 days after the referral by the administrator, the rehabilitation specialist shall perform the eligibility evaluation and issue a report of findings. The administrator may grant up to an additional 30 days for performance of the eligibility evaluation upon notification of unusual and extenuating circumstances and the rehabilitation specialist's request. Within 14 days after receipt of the report from the rehabilitation specialist, the administrator shall notify the parties of the employee's eligibility for reemployment preparation benefits. Within 10 days after the decision, either party may seek review of the decision by requesting a hearing under AS 23.30.110. The hearing shall be held within 30 days after it is requested. The board shall uphold the decision of the administrator except for abuse of discretion on the administrator's part.

(e) An employee shall be eligible for benefits under this section upon the employee's written request and by having a physician predict that the employee will have permanent physical capacities that are less than the physical demands of the employee's job as described in the United States Department of Labor's "Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles" for

(1) the employee's job at the time of injury; or

(2) other jobs that exist in the labor market that the employee has held or received training for within 10 years before the injury or that the employee has held following the injury for a period long enough to obtain the skills to compete in the labor market, according to specific vocational preparation codes as described in the United States Department of Labor's "Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles."

(f) An employee is not eligible for reemployment benefits if

(1) the employer offers employment within the employee's

predicted post-injury physical capacities at a wage equivalent to at least the state minimum wage under AS 23.10.065 or 75 percent of the worker's gross hourly wages at the time of injury, whichever is greater, and the employment prepares the employee to be employable in other jobs that exist in the labor market;

(2) the employee has been previously rehabilitated in a former workers' compensation claim and returned to work in the same or similar occupation in terms of physical demands required of the employee at the time of the previous injury; or

(3) at the time of medical stability no permanent impairment is identified or expected.

(g) Within 10 days after the employee receives the administrator's notification of eligibility for benefits, an employee who desires to use these benefits shall give written notice to the employer of the employee's selection of a rehabilitation specialist who shall provide a complete reemployment benefits plan. If the employer disagrees with the employee's choice of rehabilitation specialist to develop the plan and the disagreement cannot be resolved, then the administrator shall assign a rehabilitation specialist. The employer and employee each have one right of refusal of a rehabilitation specialist.

(h) Within 90 days after the rehabilitation specialist's selection under (g) of this section, the reemployment plan must be formulated and approved. The reemployment plan must include at least the following:

(1) a determination of the occupational goal in the labor market;

(2) an inventory of the employee's technical skills, physical and intellectual capacities, academic achievement, emotional

condition and family support;

(3) a plan to acquire the occupational skills to be employable;

(4) the cost estimate of the reemployment plan, including provider fees; the amount of tuition, books, tools, and supplies; transportation; temporary lodging; or job modification devices;

(5) the estimated length of time that the plan will take;

(6) the date the plan will commence;

(7) the estimated time of medical stability as predicted by the physician;

(8) a detailed description and plan schedule; and

(9) a finding by the rehabilitation specialist that the inventory under (2) of this subsection indicates that the employee can be reasonably expected to satisfactorily complete the plan and perform in a new occupation within the time and cost limitations of the plan.

(i) Reemployment benefits shall be selected from the following in a manner that ensures remunerative employability in the shortest possible time:

(1) on the job training;

(2) vocational training;

(3) academic training;

(4) self-employment; or

(5) a combination of (1) - (4) of this subsection.

(j) The employee, rehabilitation specialist, and the employer shall sign the reemployment benefits plan. If the employer and employee fail to agree on a reemployment plan, either party may submit a reemployment plan for approval to the administrator; the administrator shall approve or deny a plan within 14 days after the plan is submitted; within 10 days of the decision, either party may seek

review of the decision by requesting a hearing under AS 23.30.110; the board shall uphold the decision of the administrator unless evidence is submitted supporting an allegation of abuse of discretion on the part of the administrator; the board shall render a decision within 30 days after completion of the hearing.

(k) Benefits related to the reemployment plan may not extend past two years from date of plan approval or acceptance, whichever date occurs first, at which time the benefits expire. If an employee reaches medical stability before completion of the plan, temporary total disability benefits shall cease and permanent impairment benefits shall then be paid at the employee's temporary total disability rate. If the employee's permanent impairment benefits are exhausted before the completion or termination of the reemployment plan, the employer shall provide wages equal to 60 percent of the employee's spendable weekly wages but not to exceed $525, until the completion or termination of the plan. A permanent impairment benefit remaining unpaid upon the completion or termination of the plan shall be paid to the employee in a single lump sum. The fees of the rehabilitation specialist or rehabilitation professional shall be paid by the employer and may not be included in determining the cost of the reemployment plan.

(l) The cost of the reemployment plan incurred under this section shall be the responsibility of the employer, shall be paid on an expense incurred basis, and may not exceed $10,000.

(m) Only a rehabilitation specialist may accept case assignments as a case manager and sign eligibility determinations and reemployment plans. A person who is not a rehabilitation specialist may perform rehabilitation casework if the work is performed under the direct supervision of a rehabilitation specialist employed in the same firm

and location.

(n) After the employee has elected to participate in reemployment benefits, if the employer believes the employee has not cooperated the employer may terminate reemployment benefits on the date of noncooperation. Noncooperation means unreasonable failure to

(1) keep appointments;

(2) maintain passing grades;

(3) attend designated programs;

(4) maintain contact with the rehabilitation specialist;

(5) cooperate with the rehabilitation specialist in developing a reemployment plan and participating in activities relating to reemployability on a full-time basis;

(6) comply with the employee's responsibilities outlined in the reemployment plan; or

(7) participate in any planned reemployment activity as determined by the administrator

(o) Upon the request of either party, the administrator shall decide whether the employee has not cooperated as provided under (n) of this section. A hearing before the administrator shall be held within 30 days after it is requested. The administrator shall issue a decision within 14 days after the hearing. Within 30 days after the administrator files the decision, either party may seek review of the decision by requesting a hearing under AS 23.30.110; the board shall uphold the decision of the administrator unless evidence is submitted supporting an allegation of abuse of discretion on the part of the administrator; the board shall render a decision within 30 days after completion of the hearing.

(p) In this section

(1) "administrator" means the reemployment benefits

administrator under AS 23.30.041(a);

(2) "employability" means possessing the ability but not necessarily the opportunity to engage in employment that is consistent with the employee's physical status imposed by the compensable injury;

(3) "labor market" means a geographical area that offers employment opportunities in the following priority:

(A) area of residence;

(B) area of last employment;

(C) the state;

(D) other states;

(4) "physical capacities" means objective and measurable physical traits such as ability to lift and carry, walk, stand or sit, push, pull, climb, balance, stoop, kneel, crouch, crawl, reach, handle, finger, feel, talk, hear or see;

(5) "physical demands" means the physical requirements of the job such as strength, including positions such as standing, walking, sitting, and movement of objects such as lifting, carrying, pushing, pulling, climbing, balancing, stooping, kneeling, crouching, crawling, reaching, handling, fingering, feeling, talking, hearing, or seeing;

(6) "rehabilitation specialist" means a person who is a certified insurance rehabilitation specialist, a certified rehabilitation counselor, or a person who has equivalent or better qualifications as determined under regulations adopted by the department;

(7) "remunerative employability" means having the skills that allow a worker to be compensated with wages or other earnings equivalent to at least 60 percent of the worker's gross hourly wages at the time of injury; if the employment is outside the state, the stated 60 percent shall be adjusted to account for the difference

between the applicable state average weekly wage and the Alaska average weekly wage.

* Sec. 11. AS 23.30.055 is amended to read:

Sec. 23.30.055. EXCLUSIVENESS OF LIABILITY. The liability of an employer prescribed in AS 23.30.045 is exclusive and in place of all other liability of the employer and any fellow employee to the employee, the employee's legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from the employer or fellow employee at law or in admiralty on account of the injury or death. The liability of the employer is exclusive even if the employee's claim is barred under AS 23.30.020(b). However, if an employer fails to secure payment of compensation as required by this chapter, an injured employee or the employee's legal representative in case death results from the injury may elect to claim compensation under this chapter, or to maintain an action against the employer at law or in admiralty for damages on account of the injury or death. In that action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, or that the employee assumed the risk of the employment, or that the injury was due to the contributory negligence of the employee.

* Sec. 12. AS 23.30.075(b) is amended to read:

(b) If an [AN] employer [WHO] fails to insure and keep insured employees subject to this chapter or fails to obtain a certificate of self-insurance from the board, upon conviction the court shall impose a fine of $10,000 and may impose a sentence of [, IS PUNISHABLE BY A FINE OF NOT MORE THAN $1,000, OR BY] imprisonment for not more than one year [, OR BY BOTH]. If an employer is a corporation, all persons who, at the time of the injury or death, had authority to insure the

[SAID] corporation or apply for a certificate of self-insurance, and the person actively in charge of the business of the [SUCH] corporation shall be subject to the penalties prescribed in this subsection [HEREIN] and shall be personally, jointly, and severally liable together with the corporation for the payment of all compensation or other benefits for which the corporation is liable under this chapter if the [SAID] corporation at that [SUCH] time is not insured or qualified as a self-insurer.

* Sec. 13. AS 23.30.095(a) is amended to read:

(a) The employer shall furnish medical, surgical, and other attendants or treatment, nurse and hospital service, medicine, crutches, and apparatus for the period which the nature of the injury or the process of recovery requires, not exceeding two years from and after the date of injury to the employee. However, if the condition requiring the treatment, apparatus, or medicine is a latent one, the two-year period runs from the time the employee has knowledge of the nature of the employee's disability and its relationship to the employment and after disablement. It shall be additionally provided that, if continued treatment or care or both beyond the two-year period is indicated, the injured employee has the right of review by the board. The board may authorize continued treatment or care or both as the process of recovery may require. When medical care is required, the injured employee may designate a licensed physician to provide all medical and related benefits. The employee may not make more than one change in the employee's choice of attending physician without the written consent of the employer. Referral to a specialist by the employee's attending physician is not considered a change in physicians [INSIDE THE STATE TO RENDER THE CARE EXCEPT IN CASES WHERE, IN THE JUDGMENT OF THE BOARD, CARE OR TREATMENT OR BOTH CAN BEST BE

ADMINISTERED BY THE SELECTION OF ANOTHER PHYSICIAN]. Upon procuring the services of a physician, the injured employee shall give proper notification of the selection to the employer within a reasonable time after first being treated. Notice of a change in the attending physician shall be given before the change [IF FOR ANY REASON DURING THE PERIOD WHEN MEDICAL CARE IS REQUIRED THE EMPLOYEE WISHES TO CHANGE TO ANOTHER PHYSICIAN, THE EMPLOYEE MAY DO SO IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE BOARD].

* Sec. 14. AS 23.30.095(c) is amended to read:

(c) A claim for medical or surgical treatment, or treatment requiring continuing and multiple treatments of a similar nature is not valid and enforceable against the employer unless, within 14 days following treatment, the physician or health care provider giving the treatment or the employee receiving it furnishes to the employer and the board notice of the injury and treatment, preferably on a form prescribed by the board. The board shall, however, excuse the failure to furnish notice within 14 days when it finds it to be in the interest of justice to do so, and it may, upon application by a party in interest, make an award for the reasonable value of the medical or surgical treatment so obtained by the employee. When a claim is made for a course of treatment requiring continuing and multiple treatments of a similar nature, in addition to the notice, the physician or health care provider shall furnish a written treatment plan if the course of treatment will require more frequent outpatient visits than the standard treatment frequency for the nature and degree of the injury and the type of treatments. The treatment plan shall be furnished to the employee and the employer within 14 days after treatment begins. The treatment plan must include objectives, modalities, frequency of treatments, and reasons for the frequency of treatments.

If the treatment plan is not furnished as required under this subsection, neither the employer nor the employee may be required to pay for treatments that exceed the frequency standard. The board shall adopt regulations establishing standards for frequency of treatment.

* Sec. 15. AS 23.30.095(e) is amended to read:

(e) The employee shall, after an injury, at reasonable times during the continuance of the disability, if requested by the employer or when ordered by the board, submit to an examination by a physician or surgeon of the employer's choice authorized to practice medicine under the laws of the jurisdiction in which the physician resides [STATE IN WHICH THE EMPLOYEE MAY BE FOUND], furnished and paid for by the employer. The employer may not make more than one change in the employer's choice of a physician or surgeon without the written consent of the employee. Referral to a specialist by the employer's physician is not considered a change in physicians. An examination requested by the employer not less than 14 days after injury, and every 60 days thereafter, shall be presumed to be reasonable, and the employee shall submit to the examination without further request or order by the board. Unless medically appropriate, the physician shall use existing diagnostic data to complete the examination. Facts relative to the injury or claim communicated to or otherwise learned by a physician or surgeon who may have attended or examined the employee, or who may have been present at an examination are not privileged, either in the hearings provided for in this chapter or an action to recover damages against an employer who is subject to the compensation provisions of this chapter. If an employee refuses to submit to an [ANY] examination provided for in this section, the employee's rights to compensation shall be suspended until the obstruction or refusal ceases, and the employee's compensation during

the period of suspension may, in the discretion of the board or the court determining an action brought for the recovery of damages under this chapter, be forfeited. The board in any case of death may require an autopsy at the expense of the party requesting the autopsy. An autopsy may not be held without notice first being given to the widow or widower or next of kin if they reside in the state or their whereabouts can be reasonably ascertained, of the time and place of the autopsy and reasonable time and opportunity given the widow or widower or next of kin to have a representative present to witness the autopsy. If adequate notice is not given, the findings from the autopsy may be suppressed on motion made to the board or to the superior court, as the case may be.

* Sec. 16. AS 23.30.095(f) is amended to read:

(f) All fees and other charges for medical treatment or service [ARE LIMITED TO THE CHARGES THAT PREVAIL IN THE SAME COMMUNITY FOR SIMILAR TREATMENT OF INJURED PERSONS OF LIKE STANDARD OF LIVING AND] shall be subject to regulation by the board but may not exceed usual, customary, and reasonable fees for the treatment or service in the community in which it is rendered, as determined by the board. An employee may not be required to pay a fee or charge for medical treatment or service.

* Sec. 17. AS 23.30.095(j) is repealed and reenacted to read:

(j) The board may appoint a medical services review committee, or contract with an existing organization in the state or another state, to assist and advise the board in matters involving the appropriateness, necessity, and cost of medical and related services provided under this chapter.

* Sec. 18. AS 23.30.095 is amended by adding a new subsection to read:

(k) In the event of a medical dispute regarding determinations

of causation, medical stability, ability to enter a reemployment plan, degree of impairment, functional capacity, the amount and efficacy of the continuance of or necessity of treatment, or compensability between the employee's attending physician and the employer's independent medical evaluation, a second independent medical evaluation shall be conducted by a physician or physicians selected by the board from a list established and maintained by the board. The cost of the examination and medical report shall be paid by the employer. The report of the independent medical examiner shall be furnished to the board and to the parties within 14 days after the examination is concluded. A person may not seek damages from an independent medical examiner caused by the rendering of an opinion or providing testimony under this subsection, except in the event of fraud or gross incompetence.

* Sec. 19. AS 23.30.105(a) is amended to read:

(a) The right to compensation for disability under this chapter is barred unless a claim for it is filed within two years after the employee has knowledge of the nature of the employee's disability and its relation to the employment and after disablement. However, the maximum time for filing the claim in any event other than arising out of an occupational disease shall be four years from the date of injury, and the right to compensation for death is barred unless a claim therefor is filed within one year after the death, except that if payment of compensation has been made without an award on account of the injury or death, a claim may be filed within two years after the date of the last payment <u>of benefits under AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215</u>. It is additionally provided that, in the case of latent defects pertinent to and causing compensable disability, the injured employee has full right to claim as shall be determined by the board, time limitations notwithstanding.

* Sec. 20. AS 23.30.110(c) is repealed and reenacted to read:

(c) Before a hearing is scheduled, the party seeking a hearing shall file a request for a hearing together with an affidavit stating that the party has completed necessary discovery, obtained necessary evidence, and is prepared for the hearing. An opposing party shall have 10 days after the hearing request is filed to file a response. If a party opposes the hearing request, the board or a board designee shall within 30 days of the filing of the opposition conduct a prehearing conference and set a hearing date. If opposition is not filed, a hearing shall be scheduled no later than 60 days after the receipt of the hearing request. The board shall give each party at least 10 days' notice of the hearing, either personally or by certified mail. After a hearing has been scheduled, the parties may not stipulate to change the hearing date or to cancel, postpone, or continue the hearing, except for good cause as determined by the board. After completion of the hearing the board shall close the hearing record. If a settlement agreement is reached by the parties less than 14 days before the hearing, the parties shall appear at the time of the scheduled hearing to state the terms of the settlement agreement. Within 30 days after the hearing record closes, the board shall file its decision. If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied.

* Sec. 21. AS 23.30.120 is amended by adding a new subsection to read:

(c) The presumption of compensability established in (a) of this section does not apply to a mental injury resulting from work-related stress.

* Sec. 22. AS 23.30.125 is amended by adding a new subsection to read:

(f) Subject to an employer's or employee's burden of proof, a finding of fact made by the board as a part of a compensation order is conclusive unless the court specifically finds that a reasonable person could not have reached the conclusion made by the board.

* Sec. 23. AS 23.30.130(a) is amended to read:

(a) Upon its own initiative, or upon the application of any party in interest on the ground of a change in conditions, including, for the purposes of AS 23.30.175, a change in residence, or because of a mistake in its determination of a fact, the board may, before one year after the date of the last payment of compensation benefits under AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, whether or not a compensation order has been issued, or before one year after the rejection of a claim, review a compensation case under [IN ACCORDANCE WITH] the procedure prescribed in respect of claims in AS 23.30.110. Under [IN ACCORDANCE WITH] AS 23.30.110 the board may issue a new compensation order which terminates, continues, reinstates, increases, or decreases the compensation, or award compensation.

* Sec. 24. AS 23.30.155(c) is amended to read:

(c) The insurer or adjuster [EMPLOYER] shall notify the board and the employee on a form prescribed by the board that the payment of compensation has begun or has been increased, decreased, suspended, terminated, resumed, or changed in type. An initial report shall be filed with the board and sent to the employee within 28 days after the date of issuing the first payment of compensation. If at any time 21 days or more pass and no compensation payment is issued, a report notifying the board and the employee of the termination or suspension of compensation shall be filed with the board and sent to the employee within 28 days after the date the last compensation payment was issued. A report shall also be filed with the board and sent to the

employee within 28 days after the date of issuing a payment increasing, decreasing, resuming, or changing the type of compensation paid. If the [EMPLOYER FAILS TO NOTIFY THE] board and the employee are not notified within the 28 days prescribed by this subsection for reporting, the insurer or adjuster [EMPLOYER] shall pay a civil penalty of $100 for the first day plus $10 for each day thereafter that the [EMPLOYER FAILED TO GIVE] notice was not given. Total penalties under this subsection [SECTION] may not exceed $1,000 for a failure to file a required report. Penalties assessed under this subsection are eligible for reduction under (m) of this section. A penalty assessed under this subsection after penalties have been reduced under (m) of this section shall be increased by 25 percent and shall bear interest at the rate established under AS 45.45.010.

* Sec. 25. AS 23.30.155(d) is amended to read:

(d) If the employer controverts the right to compensation the employer shall file with the board and send to the employee a notice of controversion on or before the 21st day after the employer has knowledge of the alleged injury or death. If the employer controverts the right to compensation after payments have begun, the employer shall file with the board and send to the employee a notice of controversion within seven days after an installment of compensation payable without an award is due. When payment of temporary disability benefits is controverted solely on the grounds that another employer or another insurer of the same employer may be responsible for all or a portion of the benefits, the most recent employer or insurer who is party to the claim and who may be liable shall make the payments during the pendency of the dispute. When a final determination of liability is made, any reimbursement required, including interest at the statutory rate, and all costs and attorneys' fees incurred by the

prevailing employer, shall be made within 14 days of the determination.

* Sec. 26. AS 23.30.155(e) is amended to read:

(e) If any installment of compensation payable without an award is not paid within seven days after it becomes due, as provided in (b) of this section, there shall be added to the unpaid installment an amount equal to 25 [20] percent of it. This additional amount shall be paid at the same time as, and in addition to, the installment, unless notice is filed under (d) of this section or unless the nonpayment is excused by the board after a showing by the employer that owing to conditions over which the employer had no control the installment could not be paid within the period prescribed for the payment.

* Sec. 27. AS 23.30.155(f) is amended to read:

(f) If compensation payable under the terms of an award is not paid within 14 days after it becomes due, there shall be added to that unpaid compensation an amount equal to 25 [20] percent of it which shall be paid at the same time as, but in addition to, the compensation, unless review of the compensation order making the award is had as provided in AS 23.30.125 and an interlocutory injunction staying payments is allowed by the court.

* Sec. 28. AS 23.30.155(m) is repealed and reenacted to read:

(m) On or before March 1 of each year the insurer or adjuster shall file a verified annual report on a form prescribed by the board stating the total amount of all compensation by type, the number of claims received and the percentage controverted, medical, and related benefits, vocational rehabilitation expenses, legal fees, including a separate total for fees paid to attorneys and fees paid for the other costs of litigation, and penalties paid on all claims during the

preceding calendar year. If the annual report is timely and complete when received by the board and provides accurate information about each category of payments, the commissioner shall review the timeliness of the insurer's or adjuster's reports filed during the preceding year under (c) of this section. If during the preceding year the insurer or adjuster filed at least 99 percent of the reports on time, the penalties assessed under (c) of this section shall be waived. If during the preceding year the insurer or adjuster filed at least 97 percent of the reports on time, 75 percent of the penalties assessed under (c) of this section shall be waived. If during the preceding year the insurer or adjuster filed 95 percent of the reports on time, 50 percent of the penalties assessed under (c) of this section shall be waived. If during the preceding year the insurer's or adjuster's reports have not been filed on time at least 95 percent of the time, none of the penalties assessed under (c) of this section shall be waived. The penalties that are not waived are due and payable when the insurer or adjuster receives notification from the commissioner regarding the timeliness of the reports. If the annual report is not filed by March 1 of each year, the insurer or adjuster shall pay a civil penalty of $100 for the first day the annual report is late, and $10 for each additional day the report is late. If the annual report is incomplete when filed, the insurer or adjuster shall pay a civil penalty of $1,000.

* Sec. 29. AS 23.30.155 is amended by adding new subsections to read:

(n) If the employer is self-insured or uninsured, the requirements of (c) and (m) of this section apply to the employer.

(o) The board shall promptly notify the division of insurance if the board determines that the employer's insurer has frivolously or unfairly controverted compensation due under this chapter. After

receiving notice from the board, the division of insurance shall determine if the insurer has committed an unfair claim settlement practice under AS 21.36.125.

* Sec. 30. AS 23.30.175 is repealed and reenacted to read:

Sec. 23.30.175. RATES OF COMPENSATION. (a) The weekly rate of compensation for disability or death may not exceed $700 and initially may not be less than $110. However, if the board determines that the employee's spendable weekly wages are less than $110 a week as computed under AS 23.30.220, or less than $154 a week in the case of an employee who has furnished documentary proof of the employee's wages, it shall issue an order adjusting the weekly rate of compensation to a rate equal to the employee's spendable weekly wages. If the employer can verify that the employee's spendable weekly wages are less than $154, the employer may adjust the weekly rate of compensation to a rate equal to the employee's spendable weekly wages without an order of the board. If the employee's spendable weekly wages are greater than $154, but 80 percent of the employee's spendable weekly wages is less than $154, the employee's weekly rate of compensation shall be $154. Prior payments made in excess of the adjusted rate shall be deducted from the unpaid compensation in the manner the board determines. In any case, the employer shall pay timely compensation.

(b) The following rules apply to benefits payable to recipients not residing in the state at the time compensation benefits are payable:

(1) the weekly rate of compensation shall be calculated by multiplying the recipient's weekly compensation rate calculated under AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, by the ratio of the cost of living of the area in which the recipient resides to the cost of living in this state;

(2) the calculation required by (1) of this subsection does not apply if the recipient is absent from the state for medical or rehabilitation services not reasonably available in the state;

(3) if the gross weekly earnings of the recipient and the resulting compensation rate is determined under AS 23.30.220(a)(2), the calculation required by this subsection applies only to the portion of the recipient's weekly compensation rate attributable to wages earned in the state;

(4) application of this subsection may not reduce the weekly compensation rate to less than $154 a week, except as provided in (a) of this section.

(c) The board shall provide by regulation for the determination and comparison of living costs for this state and the other areas in which recipients reside and for the annual redetermination and comparison of these costs.

* Sec. 31. AS 23.30.180 is amended to read:

Sec. 23.30.180. PERMANENT TOTAL DISABILITY. In case of total disability adjudged to be permanent 80 percent of the injured employee's spendable weekly wages shall be paid to the employee during the continuance of the total disability. <u>If a permanent partial disability award has been made before a permanent total disability determination, permanent total disability benefits must be reduced by the amount of the permanent partial disability award, adjusted for inflation, in a manner determined by the board.</u> Loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two of them, in the absence of conclusive proof to the contrary, constitutes permanent total disability. In all other cases permanent total disability is determined in accordance with the facts. <u>In making this determination the market for the employee's services shall be</u>

(1) area of residence;

(2) area of last employment;

(3) the state of residence; and

(4) the State of Alaska.

* Sec. 32. AS 23.30.180 is amended by adding a new subsection to read:

(b) Failure to achieve remunerative employability as defined in AS 23.30.041(p) does not, by itself, constitute permanent total disability.

* Sec. 33. AS 23.30.185 is amended to read:

Sec. 23.30.185. COMPENSATION FOR TEMPORARY TOTAL DISABILITY. In case of disability total in character but temporary in quality, 80 percent of the injured employee's spendable weekly wages shall be paid to the employee during the continuance of the disability. Temporary total disability benefits may not be paid for any period of disability occurring after the date of medical stability.

* Sec. 34. AS 23.30.190 is repealed and reenacted to read:

Sec. 23.30.190. COMPENSATION FOR PERMANENT PARTIAL IMPAIRMENT. (a) In case of impairment partial in character but permanent in quality, and not resulting in permanent total disability, the compensation is $135,000 multiplied by the employee's percentage of permanent impairment of the whole person. The percentage of permanent impairment of the whole person is the percentage of impairment to the particular body part, system, or function converted to the percentage of impairment to the whole person as provided under (b) of this section. The compensation is payable in a single lump sum, except as otherwise provided in AS 23.30.041, but the compensation may not be discounted for any present value considerations.

(b) All determinations of the existence and degree of permanent impairment shall be made strictly and solely under the whole person

determination as set out in the American Medical Association Guides to the Evaluation of Permanent Impairment, except that an impairment rating may not be rounded to the next five percent. The board shall adopt a supplementary recognized schedule for injuries that cannot be rated by use of the American Medical Association Guides.

(c) The impairment rating determined under (a) of this section shall be reduced by a permanent impairment that existed before the compensable injury. If the combination of a prior impairment rating and a rating under (a) of this section would result in the employee being considered permanently totally disabled, the prior rating does not negate a finding of permanent total disability.

* Sec. 35. AS 23.30.200 is amended to read:

Sec. 23.30.200. TEMPORARY PARTIAL DISABILITY. In case of temporary partial disability resulting in decrease of earning capacity the compensation shall be 80 percent of the difference between the injured employee's spendable weekly wages before the injury and the wage-earning capacity of the employee after the injury in the same or another employment, to be paid during the continuance of the disability, but not to be paid for more than five years. Temporary partial disability benefits may not be paid for a period of disability occurring after the date of medical stability.

* Sec. 36. AS 23.30.200 is amended by adding a new subsection to read:

(b) The wage-earning capacity of an injured employee is determined by the actual spendable weekly wage of the employee if the actual spendable weekly wage fairly and reasonably represents the wage-earning capacity of the employee. The board may, in the interest of justice, fix the wage-earning capacity that is reasonable, having due regard to the nature of the injury, the degree of physical impairment, the usual employment, and other factors or circumstances in

case that may affect the capacity of the employee to earn wages in a disabled condition, including the effect of disability as it may naturally extend into the future.

* Sec. 37. AS 23.30.220(a) is amended to read:

(a) The spendable weekly wage of an injured employee at the time of an injury is the basis for computing compensation. It is the employee's gross weekly earnings minus payroll tax deductions. The gross weekly earnings shall be calculated as follows:

(1) The gross weekly earnings are computed by dividing by 100 the gross earnings of the employee in the two calendar years immediately preceding the injury.

(2) If the employee was absent from the labor market for 18 months or more of the two calendar years preceding the injury [THE BOARD DETERMINES THAT THE GROSS WEEKLY EARNINGS AT THE TIME OF THE INJURY CANNOT BE FAIRLY CALCULATED UNDER (1) OF THIS SUBSECTION], the board shall [MAY] determine the employee's gross weekly earnings for calculating compensation by considering the nature of the employee's work and work history, but compensation may not exceed the employee's gross weekly earnings at the time of injury.

(3) If an employee when injured is a minor, an apprentice, or a trainee in a formal training program, as determined by the board, whose wages under normal conditions would increase during the period of disability, the projected increase may be considered by the board in computing the gross weekly earnings of the employee.

(4) If the employee is injured while performing duties as a volunteer ambulance attendant, policeman, or fireman, the gross weekly earnings for calculating compensation shall be the minimum gross weekly earnings paid a full-time ambulance attendant, policeman, or fireman employed in the political subdivision where the injury

occurred, or, if the political subdivision has no full-time ambulance attendants, policemen, or firemen, at a reasonable figure previously set by the political subdivision to make this determination but in no case may the gross weekly earnings for calculating compensation be less than the minimum wage computed on the basis of 40 hours work per week.

* Sec. 38. AS 23.30.225 is amended by adding a new subsection to read:

(c) If employer contributions to a qualified pension or profit sharing plan have been included in the determination of gross earnings and the employee is receiving pension or profit sharing payments, weekly compensation benefits payable under this chapter shall be reduced by the amount paid or payable to the injured worker under the plan for any week or weeks during which compensation benefits are also payable. The amount of the reduction may not in any week exceed the increase in weekly compensation benefits brought about by the inclusion of employer contributions to a qualified pension or profit sharing plan in the determination of gross earnings.

* Sec. 39. AS 23.30.244 is amended to read:

Sec. 23.30.244. CIVIL DEFENSE AND DISASTER RELIEF FORCES AS STATE EMPLOYEES. A resident of Alaska temporarily engaged in a civil defense or disaster relief function in another state or country under [THE PROVISION OF] AS 26.23.130 or as a volunteer in this state is considered an employee of the state for purposes of this chapter.

* Sec. 40. AS 23.30 is amended by adding a new section to read:

Sec. 23.30.247. DISCRIMINATION PROHIBITED. (a) An employer may not discriminate in hiring, promotion, or retention policies or practices against an employee who has in good faith filed a claim for or received benefits under this chapter. An employer who violates this section is liable to the employee for damages to be assessed by the

court in a private civil action.

(b) This section may not be construed to prevent an employer from basing hiring, promotion, or retention policies or practices on considerations of the employee's safety practices or the employee's physical and mental abilities; nor may this section be construed so as to create employment rights not otherwise in existence.

(c) This section may not be construed to prohibit an employer from requiring a prospective employee to fill out a preemployment questionnaire or application regarding the person's prior health or disability history as long as it is meant to either document written notice for second injury fund reimbursement under AS 23.30.205(c) or to determine whether the employee has the physical or mental capacity to meet the documented physical or mental demands of the work.

* Sec. 41. AS 23.30.265(15) is amended to read:

(15) "gross earnings" means periodic payments, by an employer to an employee for employment before any authorized or lawfully required deduction or withholding of money by the employer, including compensation that is deferred at the option of the employee, and excluding irregular bonuses, reimbursement of expenses, expense allowances, and any benefit or payment to the employee that is not fully taxable to the employee during the pay period, except that the total amount of contributions made by an employer to a qualified pension or profit sharing plan during the two plan years preceding the injury, multiplied by the percentage of the employee's vested interest in the plan at the time of injury, shall be included in the determination of gross earnings; the value of room and board if taxable to the employee may be considered in determining gross earnings; however, the value of room and board that would raise an employee's gross weekly earning above the state [ALASKA] average weekly wage at the time of injury may

not be considered;

* Sec. 42. AS 23.30.265(17) is amended to read:

(17) "injury" means accidental injury or death arising out of and in the course of employment, and an occupational disease or infection which arises naturally out of the employment or which naturally or unavoidably results from an accidental injury; "injury" [, AND] includes breakage or damage to eyeglasses, hearing aids, dentures, or any prosthetic devices which function as part of the body and further includes an injury caused by the wilful act of a third person directed against an employee because of the employment; "injury" does not include mental injury caused by mental stress unless it is established that (A) the work stress was extraordinary and unusual in comparison to pressures and tensions experienced by individuals in a comparable work environment, and (B) the work stress was the predominant cause of the mental injury; the amount of work stress shall be measured by actual events; a mental injury is not considered to arise out of and in the course of employment if it results from a disciplinary action, work evaluation, job transfer, layoff, demotion, termination or similar action, taken in good faith by the employer;

* Sec. 43. AS 23.30.265 is amended by adding a new paragraph to read:

(34) "medical stability" means the date after which further objectively measurable improvement from the effects of the compensable injury is not reasonably expected to result from additional medical care or treatment, notwithstanding the possible need for additional medical care or the possibility of improvement or deterioration resulting from the passage of time; medical stability shall be presumed in the absence of objectively measurable improvement for a period of 45 days; this presumption may be rebutted by clear and convincing evidence.

* Sec. 44. AS 23.30.210 and 23.30.265(28) are repealed.

* Sec. 45. TRANSITIONAL PROVISIONS. Notwithstanding AS 23.30.040(b), as amended by sec. 8 of this Act, and AS 23.30.155(m), as amended by sec. 28 of this Act, on or before March 1, 1989, each employer that is subject to those sections shall file a report and make the appropriate contribution for all claims existing as of December 31, 1988. The period covered in the report shall be from the date of the termination report or the last anniversary report filed, if one has been filed, through December 31, 1988.

* Sec. 46. TEMPORARY RATE REDUCTION; FUTURE FILINGS. (a) Notwithstanding AS 21.39.030, workers' compensation rates filed by rating organizations for use in the state may not be increased before January 1, 1990.

(b) Rate filings made after December 31, 1988, must fully reflect the legal effect of changes made to the workers' compensation system by this Act.

* Sec. 47. TRANSITIONAL PROVISION. Notwithstanding AS 23.30.041(p), as enacted by sec. 10 of this Act, for the period from July 1, 1988, until June 30, 1989, the term "rehabilitation specialist" as used in AS 23.30.041 includes a person who was actively employed for at least one year before June 30, 1988, in providing rehabilitation services to an injured worker receiving benefits under AS 23.30.

* Sec. 48. APPLICABILITY. Except for secs. 8, 24, 28, 29, 42, and 46 of this Act, this Act applies only to injuries sustained on or after July 1, 1988.

* Sec. 49. Section 3 of this Act applies to assigned risk pool insurance policies that are entered into or renewed on or after July 1, 1988.

* Sec. 50. Section 42 of this Act applies to injuries sustained on or after the effective date of sec. 42 of this Act.

* Sec. 51. Sections 42 and 50 of this Act take effect immediately under AS 01.10.070(c).

* Sec. 52. Sections 1 - 41, and 43 - 49 of this Act take effect July 1, 1988.

HOUSE LABOR AND COMMERCE COMMITTEE
March 8, 1988
2:00 p.m.

MEMBERS PRESENT

Rep. Dave Donley, Chairman, arrived late
Rep. Niilo Koponen, Vice Chair
Rep. H. A. "Red" Boucher
Rep. Cliff Davidson
Rep. Johnny Ellis
Rep. Walt Furnace
Rep. Curt Menard, arrived late

COMMITTEE CALENDAR

HB 310: "An Act relating to payment under public construction contracts."

HB 485: "An Act amending provisions relating to a solicitation for offers to purchase or operate the Alaska Railroad; an providing for an effective date."

HB 536: "An Act relating to the sale, pricing, and marketing of alcoholic beverages; and prohibiting persons from being on premises involving alcoholic beverages under certain circumstances."

HB 352/SB 322: "An Act relating to workers' compensation; and providing for an effective date."

Discussion of potential committee legislation.

WITNESS REGISTER

Rep. Bill Hudson
District 4A
P.O. Box V
Juneau, Alaska 99811
465-3744
Position Statement: Offered an amendment to CSSB 322.

Mr. Doug Rickey
Assistant
Rep. Grussendorf
P.O. Box V
Juneau, Alaska 99811
465-3720
Position Statement: Supported HB 310.

Ms. Resa Jerrel
Lobbyist
Associated General Contractors of Alaska
134 North Franklin St.
Juneau, Alaska 99801
586-1740
Position Statement: Offered suggestions to HB 310.

Mr. Paul Roller
Acting Director
Division of Insurance
Alaska Dept. of Commerce and Economic Development
P.O. Box D
Juneau, Alaska 99811
465-2515
Position Statement: Opposed proposed mandatory rate decrease for CSSB 322.

Mr. Dick Cattanach
Management Side
Labor/Management Ad Hoc Committee
1001 Old Seward Hwy.
Anchorage, Alaska 99503
349-6666
Position Statement: Offered suggestions on the proposed House CS for CSSB 322.

Mr. Robert Anders
Labor Side
Labor/Management Ad Hoc Committee
900 W. Northern Lights Blvd.
Anchorage, Alaska 99503
561-5288
Position Statement: Offered suggestions on the proposed House CS for CSSB 322.

Mr. Don Koch
Special Deputy
Division of Insurance
Alaska Dept. of Commerce and Economic Development
P.O. Box D
Juneau, Alaska 99811
465-2577
Position Statement: Offered alternatives to a mandated rate reduction.

Ms. Denise VanDerPol
Vocational Rehabilitation Specialist
130 Seward St. Rm. 212
Juneau, Alaska 99801
586-6462
Position Statement: Supported proposed amendment 5-1514Be for CSSB 322.

Mr. Loren Rasmussen
Chief of Design & Construction Maintenance Standards
Alaska Dept. of Transportation
P.O. Box Z
Juneau, Alaska 99811
465-2960
Position Statement: Supported HB 310.

PREVIOUS ACTION

HB 310:	Jrn-Date	Jrn-Pg		Action
	05/12/87	1348	(H)	Read the first time with referral(s)
	05/12/87	1348	(H)	L&C then JUD, FIN

Previous committee consideration and testimony of HB 310 was held on 2/18/88.

HB 485:	Jrn-Date	Jrn-Pg		Action
	02/15/88	2216	(H)	Read the first time with referral(s)
	02/15/88	2216	(H)	Transportation then Labor & Commerce
	02/26/88	2366	(H)	TRA RPT CS(TRSP) New Title 6DP
	02/26/88	2366	(H)	Zero Fiscal Note published 2/26/88

HB 536:	Jrn-Date	Jrn-Pg		Action
	03/02/88	2424	(H)	Read the first time with referral(s)
	03/02/88	2424	(H)	L&C, HESS, Judiciary

HB 352:	Jrn-Date	Jrn-Pg		Action
	01/11/88	1847	(H)	Read the fist time with referral(s)
	01/11/88	1847	(H)	L&C then JUD

Previous committee consideration and testimony on HB 352 was held on January 19, 21 and 29 and February 12 and 16, 1988.

SB 322:	Jrn-Date	Jrn-Pg		Action
	01/11/88	1840	(S)	Read the first time with referral(s)
	01/11/88	1840	(S)	L&C
	02/23/88	2376	(S)	L&C RPT CS 5DP
	02/23/88	2376	(S)	Zero Fiscal Note published
	02/25/88	2416	(S)	Rules to calendar
	02/25/88	2419	(S)	Read the second time
	02/25/88	2420	(S)	L&C CS adopted unan consent

02/25/88	2420	(S)	Advanced to third reading unan consent
02/25/88	2420	(S)	Read the third time CSSB 322 (L&C)
02/25/88	2420	(S)	L&C Letter of Intent adopted by Senate
02/25/88	2421	(S)	Passed Y15 N- X5
02/25/88	2421	(S)	Effective date same as passage
02/25/88	2424	(S)	Transmitted to (H)
02/26/88	2358	(H)	Read the first time with referral(s)
02/26/88	2358	(H)	Labor & Commerce then Judiciary

Previous committee consideration and testimony on SB 322 was held on January 19, 21, 29 and February 12, 1988.

ACTION NARRATIVE

TAPE ONE, SIDE ONE
Number 000

The House Labor and Commerce Committee meeting was called to order by Vice Chairman Koponen at 2:20 p.m. Members present were Representatives Koponen, Donley, Ellis, Boucher, Davidson, Furnace and Menard.

Vice Chairman Koponen announced that proposed committee legislation, W.O. 5-2031A drafted by Cramer, was the first order of business. He explained that the proposed legislation permitted employees access to information in their personnel file and provided penalties to employers who delete or alter information in the employee's file. He added that the proposed committee legislation would be taken up at the next meeting.

Vice Chairman Koponen announced that the next order of business was HB 310, an act relating to payment under construction contracts. He stated that there was a proposed committee substitute in the member's file.

Number 040

Mr. Doug Rickey, assistant to Rep. Grussendorf, sponsor of HB 310, stated that HB 310 was designed to help smaller subcontractors on statewide construction projects. He pointed out that there had been a number of complaints that subcontractors were not being paid for their services and that was the reason for introducing HB 310. He continued that the proposed committee substitute did two things. One, it clarified the intent of the legislature as related to the "Little Miller Act, which was the state's version of

the federal Miller Act. He further stated that the Miller Act required that prime contractors on public construction projects post payment and performance bonds and that the U.S. Supreme Court had restricted the coverage of the Miller Act to first tier subcontractors. He continued that the State Supreme Court had not ruled, to his knowledge, on how broad the coverage extended for subcontractors and HB 310 would provide that subcontractors of subcontractors would be covered under the prime contractor's bond. He noted that the payment bond was the main concern addressed in HB 310 and it guaranteed that all labor and materials would be paid. He further stated that the proposed committee substitute would enable all persons who provided materials and labor on a public construction project to go to the bond posted by the prime contractor if payment was not received. He pointed out that Section 2 of the committee substitute required a subcontractor to give notice to the prime contractor, within ten days of starting the job, indicating they were on the project. The intent of Section 2 was for the prime contractor to know throughout the project how many subcontractors were potential claimants against his bond.

Number 119

Vice Chairman acknowledged that Rep. Donley arrived at 2:25 p.m. and had resumed the Chair.

Chairman Donley reminded the committee members that the listen only teleconference being transmitted to Anchorage, Soldotna, Ketchikan and Sitka would begin when the committee took up CSSB 322, the workers' compensation bill.

Rep. Koponen moved to adopt the committee substitute for HB 310 (L & C). Rep. Furnace objected and asked Mr. Rickey if the intent was to put stronger requirements in the state law than the federal law. Mr. Rickey replied that was correct.

Rep. Furnace asked what happened in the case where the state or municipality was the prime contractor, did HB 310 apply to state and political subdivisions.

Mr. Rickey responded that he did not know but assumed it did.

Rep. Furnace suggested that a section be added to HB 310 stating that the bill not only applied to private sector contractors but to the state and political subdivisions when they were the prime contractor. He removed his objection to the motion that the committee adopt the committee substitute.

Number 170

Chairman Donley asked if there were any other objections to the motion and being none, the motion passed. He called for the first witness.

Number 180

Ms. Resa Jerrel, lobbyist for Associated General Contractors (AGC) of Alaska, suggested that Section 2, line 26 of CSHB 310 be expanded upon to address what happened if a subcontractor of a subcontractor did not notify the prime contractor of their presence on a project. She suggested a penalty such as a forfeiture of a percentage of the amount the claim was for, against the prime contractor. She stated that the AGC was willing to work out another committee substitute in the Judiciary Committee.

Number 197

Rep. Furnace made a couple of suggestions for amendments to CSHB 310. The first being to Section 1, line 13 - 16, where a subcontractor had 90 days from the last date on which the person performed labor or provided materials to make a claim. He suggested that the time frame be changed to 30 days.

Rep. Menard arrived at 2:30 p.m.

Number 220

Chairman Donley stated that the motion was to amend CSHB 310 on Section 1, line 14 from 90 days to 30 days.

Rep. Koponen stated that he opposed the motion and pointed out that the 90 day stipulation was from existing statute.

A discussion followed concerning the subcontractor's time restraints for filing an action against the payment bond of the prime contractor and the notice requirement of the sub contractor to the prime contractor.

Rep. Furnace stated that for the first and second tier subcontractors, he felt that the 90 day requirement was fine but reiterated his opinion that the subcontractor of a subcontractor should have a 30 day time limit for filing a claim.

Number 265

Mr. Doug Rickey stated the 90 day requirement had been in existing law since 1953. He commented that the problem with a 30 day requirement was that a subcontractor might

not know in 30 days if they had a claim or any trouble at all.

Number 278

Chairman Donley explained that the motion before the committee was to change CSHB 310, Section 1, line 14 from "90 days" to "30 days."

Rep. Koponen stated that 30 days was not enough time to establish if there was a claim or not.

Rep. Furnace withdrew his original motion of changing 90 days to 30 days and made a motion to change Section 1, line 14 from "90 days" to "60 days" and asked unanimous consent.

Chairman Donley asked all those in favor of changing Section 1, line 14, from "90 days" to "60 days" to raise a hand. There were two members in favor and four opposed, the motion failed.

Number 310

Rep. Furnace suggested amending CSHB 310 to ensure that state and local political subdivisions, as prime contractors, would have the same requirements under CSHB 310 as private sector contractors. He informed the committee that he needed time to check with the drafters to see if they were already included and if not, to work out some language to include them.

Mr. Rickey stated there were three committees of referral and perhaps the amendments could be worked out in one of the other committees.

Rep. Furnace asked for one day to check out the question of whether the state and local entities were subject to CSHB 310.

Number 334

Rep. Boucher moved CSHB 310 to the next committee of referral with individual recommendations. Rep. Furnace objected to the motion. Chairman Donley asked for discussion on the motion to move the bill.

Rep. Davidson stated that as Chairman of the subcommittee for HB 310 he wanted the committee to understand that time was of the essence and that the subcommittee as well as the sponsor of CSHB 310 wanted it in place because of the Jobs Bill that recently passed. He reminded the committee that there were three further committees of referral and urged that the amendments be worked out in one of those committees.

Rep. Furnace stated that he felt that the Labor and Commerce Committee was the proper committee to address the issues of coverage under the Miller Act and the time requirement for filing claims with the prime contractors bonding company.

Mr. Rickey asked the representative from the Dept. of Transportation if state and local political subdivisions acting as the prime contractor were subject to CSHB 310.

Number 370

Mr. Loren Rasmussen, Chief of Design and Construction Maintenance Standards for the Alaska Dept. of Transportation, stated that he did not know the answer but assumed that it did.

Rep. Furnace stated that he did not want the committee to move CSHB 310 on an assumption.

Rep. Boucher stated that he thought the Judiciary Committee could work it all out and maintained his motion to move CSHB 310 to the next committee of referral.

Number 387

Chairman Donley asked the members in favor of moving CSHB 310 to the next committee of referral with individual recommendations, to signify by raising their hands. There were four in favor and two opposed, so the motion carried.

Number 395

Chairman Donley stated that the next order of business was HB 536, an act relating to the sale, pricing, and marketing of alcoholic beverages; and prohibiting persons from being on premises involving alcoholic beverages under certain circumstances. He pointed out that there was not anyone signed up to testify and the committee had discussed HB 536 last week when the committee voted to introduce it as a committee bill.

Rep. Koponen moved HB 536 to the next committee of referral with individual recommendations, there being no objections the motion passed.

Number 404

Chairman Donley announced that HB 485, an act amending provisions relating to a solicitation for offers to purchase or operate the Alaska Railroad; and providing for an effective date, was next on the agenda. He invited Rep. Bette Cato, sponsor of CSHB 485, to join the committee.

Rep. Bette Cato testified in support of CSHB 485 (Transportation). She provided the committee with a history of the purchase of the railroad from the federal government and the formation of the Alaska Railroad Corporation (ARRC). She discussed the state and federal reversion clauses in both the state and federal acts and then explained the intent of CSHB 485.

Rep. Cato informed the committee that by deleting the requirement to document at least three attempts to sell the corporation, CSHB 485 broadened the language which would allow the legislature to properly evaluate all offers made to ARRC and thus make an informed decision that was in the state's best transportation and financial interest. She reiterated her support of CSHB 485 and explained that the Labor and Commerce committee substitute returned the title as closely as possible to its original form.

Number 487

Rep. Boucher moved CSHB 485 to the next committee of referral with individual recommendations. The were objections and Chairman Donley called for discussion.

Rep. Koponen asked why the original HB 485 was changed in the Transportation Committee.

Rep. Cato stated the reason the Transportation Committee changed HB 485 was because it would not enable the legislature to look at all offers for sale that might come forth.

Number 503

Rep. Koponen moved to adopt the Labor and Commerce committee substitute for CSHB 485. There being no objections, the motion passed.

Rep. Furnace asked for further explanation of CSHB 485.

A discussion followed concerning the reasoning for changing the provision that required at least three offers of sale to be included in the documented analysis and how the railroad would be able to establish criteria for all sale offers.

Rep. Furnace asked if there had been any formal offers for sale of the railroad. Rep. Cato answered that there hadn't been any formal offers yet, but a few inquires.

Rep. Furnace stated that he was still confused as to how CSHB 485 would tender the process of removing state

ownership of the railroad and putting the ownership into the private sector.

Rep. Cato clarified CSHB 485 specifically Section 1, subsection (b).

A discussion followed on the differences between existing statute and the changes in CSHB 485.

Rep. Koponen pointed out that CSHB 485 stipulated that all offers for sale must come through the ARRC for screening before being submitted to the legislature.

Number 557

Rep. Cato stated that reversion clauses of the state and federal act gave criteria to any offers for sale. Any offers would have to include reversion clauses existing in statute and she cited an example of corporations that were in the business of purchasing other businesses. The state would not consider an offer by a company that wanted to divest itself of the property.

A discussion followed concerning the rational of deleting the language that required documented analysis of at least three offers to sell the ARRC.

Number 615

Rep. Furnace pointed out that the legislature did not confirm ARRC's Board of Directors appointments and he felt that CSHB 485 removed from the legislature any additional contact by taking away the requirement of documentation. He stated that it removed control from the legislature.

Number 627

Rep. Boucher stated his support of CSHB 485 and pointed out that he sat on both committees and there was a strong legislative presence especially when the railroad reported through the Transportation Committee.

TAPE ONE, SIDE TWO
Number 005

Rep. Furnace pointed out that there were no statutory controls supporting CSHB 485.

Rep. Davidson noted that it was unnecessary to have the ARRC offer itself for sale every five years because he believed that if there was a buyer for the railroad, they would come forth. He stated his support for CSHB 485.

Number 053

Rep. Boucher moved CSHB 485 (L&C) to the next committee of referral with individual recommendations. Rep. Furnace objected for the record. Chairman Donley asked those in favor of the motion to raise their hand. There were four members in favor of the motion, so the motion passed.

Number 066

Chairman Donley announced that the next order of business was CSSB 322, an act relating to workers' compensation and he informed the committee that this portion of the meeting was being teleconferenced to Anchorage, Soldotna, Sitka and Ketchikan. He pointed out that the teleconference was listen only because of the time constraints on the committee members and mentioned that there had been six previous meetings where public testimony was accepted.

Number 086

Rep. Furnace mentioned the memorandum, dated March 7, 1988, which listed the proposed House CS changes to CSSB 322. It was prepared by Rep. Donley's staff and included in the committee members file (House Labor and Commerce Committee file item #3). He asked if there was a House committee substitute available for the meeting.

Chairman Donley answered that the committee substitute was not available for today's meeting and the memorandum was the list the committee members would go through to discuss the items of concern that had been brought to the attention of the committee. He further stated that the committee would accept any suggested written amendments that were presented to the committee.

Number 103

Chairman Donley summarized the process the subcommittee on CSSB 322 went through to come up with the seventeen items listed in the memorandum. He stated that it was the Chair's wish to have the Labor/Management Ad Hoc Committee (Task Force) representatives come before the committee and go through the list of proposed changes and get their impressions on the issues. He noted that Rep. Hudson had a proposed amendment to submit to the committee and asked him to join the committee.

Number 138

Rep. Bill Hudson, representing district 4A, stated that he was submitting the proposed amendment, W.O. 5-1514Be drafted by Ford, (included in the House L & C committee file, item #7), on behalf of a constituent who would be

totally disfranchised from her private business if CSSB 322 passed without the proposed amendment. He explained that the proposed amendment would add a new bill section inserted after line 25, on page 29 of CSSB 322. The new bill section would read, "Section 39. The term 'rehabilitation specialist' defined in AS 23.30.041(p) as repealed and reenacted in Sec. 9 of this Act, includes a person who, by September 1, 1988, has requested the Department of Labor to determine that the person is qualified as a rehabilitation specialist and who the department determines (1) was actively employed from at least July 1, 1987, until June 30, 1988, in providing rehabilitation services to an injured worker receiving benefits under AS 23.30; and (2) possesses the skills necessary to meet the minimum qualifications for a rehabilitation specialist." The renumber the remaining bill sections accordingly. He explained that the proposed amendment would take care of the rehabilitation specialist who had been practicing in the state but did not have the necessary certification that was required by CSSB 322. He asked the committee to consider and hopefully adopt the proposed amendment.

Number 190

Chairman Donley explained that the committee would make final decisions on the proposed amendment on Thursday, March 10. He asked for further discussion or questions for the witness.

Rep. Hudson pointed out that Ms. Denise VanDerPol, the rehabilitation specialist that would be disfranchised by CSSB 322, was present to testify if requested.

Number 212

Ms. Denise VanDerPol, rehabilitation specialist, identified herself and offered to answer questions.

Rep. Davidson asked if she had been left out of CSSB 322 as it was presently drafted.

Ms. VanDerPol answered, "Yes" and stated that if CSSB 322 was passed the way it was currently worded, she would be out of business because she did not meet the qualifications for certification required by CSSB 322.

Rep. Davidson asked what it would take for her to become qualified to meet the requirements of CSSB 322.

Ms. VanDerPol explained that CSSB 322 required that rehabilitation specialists have their Certified Insurance Rehabilitation Specialist (CIRS) certification or a Certified Rehabilitation Counselor (CRC) certification. She

stated that rehabilitation specialists should be allowed time to complete the certification program to meet the requirements of CSSB 322.

Rep. Davidson asked what the procedure was for a specialist to become certified.

Ms. VanDerPol explained that it was a national certification that was given at specific times throughout the year and administered throughout the nation. She continued that in order to qualify to take the certification test, a specialist had to have certain academic requirements. She explained that she was currently pursuing the academic requirements to qualify for the certification test.

Chairman Donley informed the committee members that the section of the bill that they were dealing with was on page 11, Section 6, lines 27-29 and continuing on to page 12. He pointed out that in addition to the two specified qualifications, there was a provision stating "or a person who has equivalent or better qualifications as determined under regulations adopted by the department." He suggested that the provision was an opportunity for dealing with the regulations and would allow those specialists not certified a way to still conduct business in the state.

Number 244

Rep. Furnace asked how long Ms. VanDerPol had been in business.

Ms. VanDerPol replied that she had been in business in Juneau for one and a half years and had been practicing vocational rehabilitation in the state for four years.

Number 273

Rep. Menard asked how many rehabilitation specialists were in her situation.

Ms. VanDerPol noted that there were several other individuals.

Chairman Donley stated that former testimony from Rep. Collins indicated that there were approximately 30 percent of the rehabilitation specialists who would fall into that category.

Number 284

Mr. Paul Roller, Acting Director for the Division of Insurance, Alaska Dept. of Commerce and Economic Development, stated that the proposed change that concerned

the division the most was the mandated rate decrease for workers' compensation premiums. He continued that it was the division's belief that mandated rate decreases would have the opposite effect and eventually increase rates. He submitted a packet of material outlining the mandated rate decrease on workers' compensation premiums that occurred in Maine. He explained that in 1985, the Maine legislature decided on a mandated rate decrease of eight percent. In 1986 there was a mandated moratorium on rates and in 1987 and 1988 there was a ten percent mandated maximum cap on rates. He continued that at the end of 1987 the Governor of Maine was forced to call a special session in order to modify the workers compensation bill. He advised that the effect of a mandated rate decrease would be that insurance carriers would leave the state and there would be a lack of coverage. The lack of carriers would force more employers into the assigned risk pool and at higher rates. He emphasized that carriers would not write policies at a loss to them. He continued that the carriers would force into a higher risk pool, at a rate of 120 percent, companies that were marginal, as far as risk was concerned. He stated that Maine was faced with a 75 to 100 percent rate increase before they got their rates back up to being adequate. He continued that mandated rate decreases were a departure from other states' laws which require rates to be adequate so that insurance companies were solvent and able to pay claims.

Mr. Roller stated that item #2 of the proposed changes, which called for intent language to be added to Section 1, which required including incentives for improving workplace safety and mandating that insurers shall offer a rebate of not less than 5% of the annual premium costs to any employer that had no safety violations during the year covered by the premium. He stated his belief that item #2 was a form of a mandated rate decrease. He cautioned that there was not a correlation between lack of safety violations and the number of workers compensation claims. He pointed out that in 1986 there was a five percent decrease in industrial accidents and yet Alaska's workers' compensation claims had risen. He suggested that a system where credit was given for a mandatory safety program was an alternative. He stated that item #6 was a particularly good idea and elaborated on litigation costs. He pointed out that item #15 requirements were already on the books and included a provision that bank drafts for payment of workers' compensation benefits had to be negotiable in Alaska. The one problem he had with item #15 was that 30 percent of the Alaska workers' compensation claimants reside outside the state.

Number 380

Chairman Donley asked the Labor/Management Ad Hoc Committee (Task Force) representatives to join the committee.

Mr. Dick Cattanach introduced himself and stated that he was on the management side of the Task Force.

Mr. Bob Anders introduced himself and stated that he was co-chair of the labor side of the Task Force.

Mr. Cattanach stated that they would go through the proposed changes in the memorandum item by item and answer any questions. He stated that the first item they wanted to address was the proposed letter of intent on the last page of the memorandum. He called attention to the second paragraph, second to the last line, where it said, "incentives for prompt and fair settlement of disputes" and suggested it be changed to "incentives for prompt and fair resolutions of disputes." He stated that they would go to the front page of the memo and start with item #1. He commented on Mr. Roller's testimony, pointing out Maine was a unique situation and that Alaska's problems weren't like Maine's. He expounded on Maine's problem and the reasons that caused the problems. He did not think that Alaska would have to deal with the same kinds of problems as Maine's. He reminded the committee that expert testimony suggested that Alaska's workers compensation system could produce savings on premiums but the insurance company experts said there were not any savings at all. He wondered who to believe. He stated that the management side of the Task Force did not agree with mandated rate decreases or roll backs but would not oppose them either.

Mr. Anders stated that last summer an insurance underwriter came to Alaska looking at a four to six percent reduction in the workers' compensation rates but went away after a meeting allowing only a two percent reduction. He stated that the Task Force did not feel that the insurance industry had given CSSB 322 proper recognition of the soft dollar savings that were built into it. He pointed out that the Task Force was asked by the insurance industry to change a number of items, which they did, but they still didn't recognize any more savings. He stated that as far as the labor side was concerned, a ten percent mandated reduction was not out of the question.

Number 439

Mr. Cattanach stated there wasn't a problem with the first paragraph in item #2 of the proposed changes. He noted that the second paragraph calling for a five percent premium reduction contingent on no safety violations, he had a problem with. He pointed out that Occupational

Safety and Health Administration (OSHA) would determine the safety violations and they didn't inspect every contractor. He continued that they only inspect about ten percent of the businesses in the state and they were typically construction, mining, lumber companies and fish canneries. He stated that these industries were being penalized while giving an almost automatic reduction to the rest of the businesses and he didn't think it was fair.

Chairman Donley asked what he thought about Mr. Roller's suggestion of a reduction for those businesses that institute a safety program. He explained that there were two levels of citations issued for safety violations (one for serious offenses and one for less serious offenses) and suggested eliminating the higher level penalties.

Mr. Anders offered a third alternative to the committee. He suggested a ten percent rebate for employers in the assigned risk pool who didn't have any accidents or injuries for the past premium year. Mr. Cattanach pointed out that employers in the assigned risk pool tend to be the smaller companies that had to pay higher rates because an insurance carrier didn't want to cover them and he didn't think it was fair.

Number 480

Mr. Cattanach explained that the Task Force didn't have a problem with item #3 but he worried that it could create a false sense of security in that a company that could not afford workers' compensation insurance premiums probably couldn't afford a $10,000 fine either. He indicated there was a problem in Alaska with uninsured employers and one that needed to be addressed.

Rep. Furnace asked if there were currently in statute fines for not carrying workers' compensation coverage.

Chairman Donley stated there was a $1,000 fine.

Rep. Furnace suggested a $5,000 fine as opposed to the $10,000 fine that was suggested in item #3.

Mr. Cattanach explained what happened to the system when an injured worker's employer didn't have workers' compensation insurance.

Number 504

Mr. Anders stated that the Task Force reviewed item #4 and did not have a problem with it.

Chairman Donley stated that the Chair had a problem with item #5 and called attention to the memorandum dated March 8 (House L&C committee file item #4) which was an addendum to the proposed committee substitute items.

Mr. Anders stated that there were still problems with item number 5 and that it didn't take care of the problem as management viewed it. He stated that CSSB 322 was a comprise where both sides gave in on certain items and item number 5 was one that management felt they needed and labor was in support of that. He continued that if a person could not find similar work in the area where the injury occurred, item number 5 would allow the determination of permanently total disabled when that was not the intent of the workers' compensation system. He reiterated that it was necessary to include the whole state as the labor market.

Number 537

Mr. Cattanach stated that in regard to item #6 the Division of Workers' Compensation had already adopted their annual report and it broke down attorney fees and most of the costs of a claim.

Mr. Cattanach stated that item #7 still had problems. The Task Force didn't find the 90 days stipulation a problem but they felt the language "unusual and extenuating physical limitations" needed to be reworked. The Task Force also felt that increased litigation would result by allowing the language, "employee knew or should have known" in regard to not being able to return to their previous occupation. He pointed out that the attending physician could have written their findings in a report but didn't inform the injured worker and that was the kind of case that would be litigated. He further stated that an administrator who determined when an employee had "unusual and extenuating physical limitations" was sufficient enough to extend the time period.

Mr. Anders stated that labor supported management on item number 7.

Mr. Anders stated that there wasn't a problem with item #8.

Mr. Cattanach pointed out that item #8 could cause problems when a doctor died, went out of business or left the state. He wondered how the system would deal with that. He stated that as long as the treating physician had the right of referral, management could live with it. He suggested that it should be addressed through regulations.

Number 573

Mr. Cattanach stated that in regard to item #9 the Task Force wanted the committee to understand what they were trying to do in Section 32 of CSSB 322. He continued that currently 25 percent of all the cases before the Workers' Compensation Board were concerned with the fairness issue in determining spendable weekly wage determination. He further stated that the language that was drafted was targeted to the exceptional cases but they had now become the rule. The Task Force wanted a much narrower definition aimed at the people who voluntarily left the work force, such as a mother who had to take care of her children or a student, and they wanted those people to be exceptions. He continued that it was not their intent to open the door for everyone else and emphasized that "voluntary" was important. He stated the reasons for determining the 18 month standard and confirmed that item #9 was definitely a comprise and the Task Force didn't want to change 18 months to 12 months.

Number 591

Mr. Anders stated that the Task Force didn't have a problem with item #10.

Mr. Anders stated that in regard to item #11, the Task Force suggested that the word "unanimously" be deleted so that a formal board hearing was not required to determine the choice of a physician requested to perform an Independent Medical Exam (IME). He explained that if unanimously was left in, the result would be to fill up the board's schedule and burden the system even more than it currently was.

Number 632

Mr. Cattanach stated that the Task Force took item number 12 and number 13 together and they recommended keeping the penalties at 25 percent.

TAPE TWO, SIDE ONE
Number 000

Mr. Anders stated that items #14, 15, and 17 were alright.

Mr. Anders stated that in regard to item #16 all that was needed was to include "approval" or "acceptance."

Number 020

Mr. Anders continued that in reference to vocational rehabilitation counselors, it was not the Task Forces' intent to keep anyone that was qualified from performing

these services. He continued that the certification language included was so that the administration would set regulations and that individuals who were qualified would not be excluded.

Mr. Cattanach stated that he did not feel that vocational rehabilitation counselors should be grandfathered in for CSSB 322 if they lacked certification and suggested they be required to submit a plan. He pointed out that the plan should contain an expected date of completion for certification and the Task Force did not think the time period should exceed three years.

Number 040

Chairman Donley invited Mr. Don Koch to testify.

Number 056

Mr. Don Koch, Special Deputy for the Division of Insurance, suggested an alternative for item #2. He felt that it was appropriate for the legislature to establish the rule but not appropriate for them to establish the value on the rule, in regard to the mandated rebate of not less than five percent. He continued that the assigned risk pool companies currently had a 20 percent surcharge but statistics indicate that their rate of accidents or injuries was 33 percent worse than other employers not in the assigned risk pool. He continued that it was mostly the small businesses that were placed in the pool and that a lot of them did not belong there. He explained that the division submitted a proposal to the National Council that called for the removal of the surcharge on employers in a risk pool if their premiums did not exceeded $10,000. He pointed out that a company with over $10,000 in premium costs probably belonged in the high risk pool but the companies with less than $10,000 in premium costs didn't. He stated that there was an alternative in effect in the rating system, called an experience modification plan (EMP). He further stated that typically, employers subjected to the EMP were businesses that on the average generated $2,500 a year in premium costs. He continued that these employers were compared with their peers on claim frequency, with the worst claim frequency offender having a larger EMP. He noted that this addressed the safety program the committee had been talking about. He explained that there wasn't a plan for the small risk company but the division was aware of the "merit rating plan" that some states had adopted. The merit rating plan provided for some form of credit to be given to a small company, not subject to the EMP, if they had an accident free period of experience. He stated that it was the intent of the division to push for something along those

lines and felt it was a good alternative to item #2. He stated that it should accomplish essentially the same things.

Number 115

Chairman Donley asked when a company went into the assigned risk pool were the rates fixed at a certain level for everyone in the pool.

Mr. Koch explained that their rates were the same as they would be outside the pool with the exception of the 20 percent surcharge.

Chairman Donley asked why there couldn't be two levels of the assigned risk pools.

Mr. Koch replied that making the distinction between the two levels would be very difficult.

Mr. Koch explained that the division started a program informing businesses how to prepare insurance forms and that would help by keeping some companies out of the assigned risk pool.

A discussion followed concerning the experience modification plan and which companies belonged in the plan.

Number 187

Since there was no further business to come before the House Labor and Commerce Committee, Chairman Donley adjourned the meeting at 4:00 p.m.

HOUSE LABOR AND COMMERCE COMMITTEE
March 10, 1988
1:30 p.m.

MEMBERS PRESENT

Rep. Dave Donley, Chairman
Rep. Niilo Koponen, Vice Chair
Rep. H. A. "Red" Boucher
Rep. Cliff Davidson, arrived late
Rep. Johnny Ellis
Rep. Walt Furnace
Rep. Curt Menard

MEMBERS ABSENT

None

COMMITTEE CALENDAR

HB 352/SB 322 "An Act relating to workers' compensation; and providing for an effective date."

SCR 44 "Relating to estimates of joblessness in the state."

SJR 33 "Relating to the labeling of irradiated food."

HB 535 "An Act relating to working conditions for employees required to use respirators."

Discussion of potential committee legislation.

WITNESS REGISTER

Mr. Bob Arnold, Assistant
Senator Willie Hensley
P.O. Box V
Juneau, Alaska 99811
465-2444
Position Statement: Supported SCR 44.

Ms. Beth Kerttula, Volunteer
Senator Jay Kerttula
P.O. Box V
Juneau, Alaska 99811
465-3771
Position Statement: Supported SJR 33.

Mr. Richard Arab, Deputy Director
Division of Safety and Health
Alaska Dept. of Labor
P.O. Box 21149
Juneau, Alaska 99802
465-4855
Position Statement: Supported HB 535.

Ms. Jackie McClintock, Director
Division of Workers' Compensation
Alaska Dept. of Labor
P.O. Box 21149
Juneau, Alaska 99802
465-2790
Position Statement: Supported SB 322

Ms. Resa Jerrel, Lobbyist
Associated General Contractors of Alaska
134 North Franklin St.
Juneau, Alaska 99801
586-1740
Position Statement: Opposed HB 535.

Mr. Chuck Caldwell, Chief
Division of Research and Analysis
Alaska Dept. of Labor
P.O. Box 21149
Juneau, Alaska 99802
465-4500
Position Statement: Answered questions regarding SCR 44.

Ms. Ginger Baim, Assistant
House Labor and Commerce Committee
P.O. Box V
Juneau, Alaska 99811
465-3892

PREVIOUS ACTION

HB 535:	Jrn-Date	Jrn-Pg		Action
	02/29/88	2393	(H)	Read the first time with referral(s)
	02/29/88	2393	(H)	L&C then HESS
SCR 44:	Jrn-Date	Jrn-Pg		Action
	02/05/88	2150	(S)	Read the first time with referral(s)
	02/05/88	2150	(S)	L&C
	02/08/88	2172	(S)	L&C waived five-day notification rule
	02/11/88	2234	(S)	Co-spon added: Zharoff
	02/12/88	2246	(S)	L&C RPT 4DP

	02/12/88	2247	(S)	Zero fiscal note published
	02/18/88	2341	(S)	Co-spon added: Binkley
	02/22/88	2360	(S)	Rules to calendar
	02/22/88	2363	(S)	Read the second time SCR 44
	02/22/88	2364	(S)	Passed Y18 N- A:
	02/22/88	2367	(S)	Transmitted to (H)
	02/24/88	2327	(H)	Read the first time with referral(s)
	02/24/88	2328	(H)	L&C

SJR 33:	Jrn-Date	Jrn-Pg		Action
	03/26/87	719	(S)	Read the first time with refe. ral(s)
	03/26/87	719	(S)	STA & HESS
	04/15/87	951	(S)	Spon substitute intro
	04/15/87	951	(S)	STA, HESS & JUD
	04/23/87	1031	(S)	STA RPT 1DP 3NR
	04/23/87	1031	(S)	Zero fiscal note published
	05/13/87	1393	(S)	HES RPT 5DP
	05/15/87	1455	(S)	JUD RPT CS 4DP
	02/09/88	2191	(S)	Rules to calendar W/CS and Zero FN
	02/09/88	2192	(S)	Read the second time
	02/09/88	2192	(S)	Rules CS adopted unan consent
	02/09/88	2192	(S)	Advanced to third reading unan consent
	02/09/88	2192	(S)	Read the third time CSSS SJR 33(RUL)
	02/09/88	2193	(S)	Passed Y18 N- X2
	02/09/88	2197	(S)	Transmitted to (H)
	02/10/88	2143	(H)	Read the first time with referral(s)
	02/10/88	2143	(H)	L&C then HESS

SB 322:	Jrn-Date	Jrn-Pg		Action
	01/11/88	1840	(S)	Read the first time with referral(s)
	01/11/88	1840	(S)	L&C
	02/23/88	2376	(S)	L&C RPT CS 5DP
	02/23/88	2376	(S)	Zero Fiscal Note published
	02/25/88	2416	(S)	Rules to calendar
	02/25/88	2419	(S)	Read the second time
	02/25/88	2420	(S)	L&C CS adopted unan consent
	02/25/88	2420	(S)	Advanced to third reading unan consent
	02/25/88	2420	(S)	Read the third time CSSB 322 (L&C)

02/25/88	2420	(S)	L&C Letter of Intent adopted by Senate
02/25/88	2421	(S)	Passed Y15 N- X5
02/25/88	2421	(S)	Effective date same as passage
02/25/88	2424	(S)	Transmitted to (H)
02/26/88	2358	(H)	Read the first time with referral(s)
02/26/88	2358	(H)	Labor & Commerce then Judiciary

Previous committee consideration and testimony on SB 322 was held on January 19, 21, 29, February 12 and March 8, 1988.

HB 352:	Jrn-Date	Jrn-Pg		Action
	01/11/88	1847	(H)	Read the fist time with referral(s)
	01/11/88	1847	(H)	L&C then JUD

Previous committee consideration and testimony on HB 352 was held on January 19, 21 and 29, February 12, 16, 18, and March 8, 1988.

ACTION NARRATIVE

TAPE ONE, SIDE ONE
Number 000

The House Labor and Commerce Committee meeting was called to order by Chairman Donley at 1:45 p.m. Members present were Representatives Donley, Ellis, Boucher, Davidson, Koponen, Furnace and Menard.

Chairman Donley stated that the first order of business was SCR 44, relating to estimates of joblessness in the state. He called for the first witness.

Number 018

Mr. Bob Arnold, assistant to Senator Hensley, stated that SCR 44 was aimed at obtaining more accurate information on unemployment levels or jobless levels in the state. He pointed out that the Alaska Dept. of Labor reported unemployment, in Senator Hensley's district, at nine to ten percent while surveys indicated that unemployment was at 40 to 50 percent. He continued that the Alaska Dept. of Labor was not the problem, that the problem was the U.S. Dept. of Labor's rules on the gathering of unemployment data (methodology and definitions concerning what constituted unemployed). He advised the committee that according to the definitions of unemployment, a person needed to actively search for work within the last four weeks in

order to be counted as unemployed. He continued that for a person in rural Alaska, where there were not any jobs available, it didn't make sense to look for a job that wasn't there. He pointed out that a survey conducted by the Alaska Dept. of Labor in 1981 for the House Research Agency, concluded that the official methodology (US Dept. of Labor) tended to overestimate employment and underestimate unemployment in rural areas. He stated that Senator Hensley believed that it was more important than ever to obtain as accurate a picture of levels of unemployment in Alaska as possible and that four billion dollars in federal grants were distributed throughout the United States on the basis of unemployment data.

Number 069

Mr. Arnold stated that the resolution asked two things. One, it asked the Alaska Dept. of Labor to prepare an estimate drawn upon any and every source of information concerning levels of real joblessness in Alaska. The second thing the resolution asked was for the Alaska Dept. of Labor to advise the legislature what steps could be taken to influence change in the federal methodology so that in the future official estimates would come closer to really representing the joblessness level in the state.

Rep. Furnace asked how the resolution would be used to change the reporting requirements that determine the basis for unemployment levels.

Mr. Arnold replied that SCR 44 did not address the issue of reporting requirements because they were federally fixed. He stated that this resolution directed the legislature to ask the Dept. of Labor for guidance in how to influence change in the federal methodology used to determine unemployment criteria.

Number 114

Rep. Boucher commended Senator Hensley on introducing SCR 44 and asked that the delegates from Alaska to the US Congress be informed of SCR 44.

Mr. Arnold stated that Senator Hensley's office would send the resolution to the Alaska delegates in Washington, D.C. as soon as the action in both bodies was complete.

Rep. Koponen stated that the federal unemployment statistic criteria was changed several times and asked if one of the changes stipulated a number of weeks of unemployment before a person was counted as unemployed. He asked a representative from the Dept. of Labor to explain the most recent definition of unemployment for the purpose of being counted among the unemployed.

Number 190

Mr. Chuck Caldwell, Chief of Research and Analysis for the Alaska Dept. of Labor, stated that there had been changes in the benefit programs over the last few years but there hadn't been a change in the definition of the statistical programs. The last time the statistical program was changed was in the 1960's, as far as definitions were concerned.

Rep. Boucher moved SCR 44 to the next committee of referral with individual recommendations. There being no objections, the motion passed.

Number 210

Chairman Donley announced that the next order of business was SJR 33, relating to the labeling of irradiated foods. He called for the first witness.

Ms. Beth Kerttula, a volunteer from Senator Kerttula's office, stated that SJR 33 was a consumers right to know resolution. She stated that SJR 33 was not a ban on irradiated foods but simply a resolution to let the Federal Drug Administration (FDA) know that Alaskans disapproved of eliminating the labeling requirements for irradiated food or food that contained irradiated ingredients. She stated her belief in labeling food for content and pointed out that a lot of information had been published concerning the fact that irradiation may be hazardous to people's health. She continued that a study from India indicated that a large percentage of children fed irradiated wheat developed precursors to leukemia. She reiterated that scientific information suggested that irradiation was dangerous. She also noted that one method of irradiation involved the use of nuclear waste. She listed the countries that have either banned irradiation or considered banning it and she prepared a list for the committee members of the states that have introduced resolutions to either ban irradiation or at least study it further. She concluded that even the University of Alaska, which was working on a study of irradiation, recognized that irradiation, at the least, lessened the nutritional value of food. She encouraged the committee to support SJR 33.

Number 267

Rep. Menard stated his support of SJR 33.

Rep. Menard moved SJR 33 to the next committee of referral with individual recommendations. There being no objections, the motion passed.

Number 293

Chairman Donley announced that the next order of business was proposed committee legislation, W.O. 5-2031A drafted by Cramer, which related to access to an employee personnel file. He asked the committee if they wanted to introduce it as committee legislation and there being no objections, the committee will introduce it.

Chairman Donley stated that the next piece of proposed committee legislation was W.O. 5-2032A drafted by Cramer, which related to plant closures, mergers and privatization. He asked the committee members to study it and explained that the committee would bring it up for discussion next week.

Number 301

Chairman Donley announced that the next order of business was HB 535, an act relating to working conditions for employees required to use respirators. He asked his staff to explain the proposed committee substitute for HB 535.

Ms. Ginger Baim, assistant to the House Labor and Commerce Committee, stated that the proposed committee substitute for HB 535 made two changes. The first being to paragraph A which changed the amount of consecutive hours worked, using a respirator, before receiving a break from four hours to two hours. She continued that the second part of the bill, paragraph B, required that an employee using a respirator fill out a safety report at the end of the shift and that the safety report had to indicate that an employee would not be discriminated against if the employee reported a safety violation.

Number 323

Ms. Resa Jerrel, lobbyist for Associated General Contractors of Alaska (AGC), stated that the language in paragraph B was greatly improved and that AGC had major problems with the previous version of HB 535. She continued that AGC still had a problem with the mandatory rest break after two hours consecutive use of a respirator. She pointed out that current Federal Occupational Safety and Health Administration (OSHA) regulations state that an employee using lead in their work, must have a break every 4.4 hours. She continued that OSHA had a standard paragraph which they used in requirements for various substances that allowed employees to stop work at any time to wash their face. She stated her belief that most employees would take their own breaks when needed and did not require mandatory fifteen minute breaks. She explained that the AGC had a respirator program which included a standard form for companies to post for their employees and

that one of the items of the program called for constant review to determine that the program met the state goal of providing maximum employee protection. She continued that when a company had a valuable employee, who knew how to work with toxic substances and a respirator, that the employer would not risk losing them by discriminating against them for listing a safety violation. She concluded that AGC felt there were enough regulations to protect employees and that HB 535 was not needed.

Number 365

Rep. Ellis asked if federal OSHA standards were the same as the state's.

Ms. Jerrel replied that the state had it's own OSHA program which it took over from the federal government two years ago.

A discussion followed concerning the proposed committee substitute requirement of two hours consecutive work before receiving a break and the federal requirement for persons working with lead which required a break for every 4.4 hours of consecutive work.

Number 427

Rep. Furnace stated that the two hour requirement seemed too short and suggested that HB 535 should comply with the federal standard, in the use of lead, of 4.4 hours.

Rep. Koponen moved to adopt the committee substitute for HB 535 for the purpose of discussion. There being no objections, the motion passed.

Number 445

Mr. Richard Arab, Deputy Director for Occupational Safety and Health for the Alaska Dept. of Labor, stated the Dept. of Labor supported CSHB 535. He stated that the major problem with wearing a respirator was heat stress and dehydration especially if wearing a full body suit associated with asbestos removal. He stated that it got very hot and that the department felt that a two hour interval was reasonable. He continued that the Industrial Hygiene Association recommended there be a morning and an afternoon fifteen minute break, in addition to the lunch break, for occupations where heat stress could be a factor. He advised the committee that the department did not have a problem with the record keeping requirement of paragraph B.

Number 470

Rep. Boucher asked if there were any lung doctors available to testify.

Chairman Donley suggested that the committee ask Dr. Thorn, of the Dept. of Labor, to testify when CSHB 535 was scheduled again before the committee.

Rep. Boucher requested that Dr. Thorn be present to give testimony on CSHB 535.

Chairman Donley asked if there were any members of the public to testify on CSHB 535, there being none he advised that CSHB 535 would be held over in committee for further study.

Number 483

Chairman Donley announced that the next order of business was SB 322, an act relating to workers' compensation. He called for a 10 minute break to see if the proposed House committee substitute for SB 322 would arrive.

The meeting was called back to order at 2:40 p.m. Chairman Donley announced that since the legal department could not get the committee substitute ready in time, the committee would go over the memorandum dated March 10, 1988, prepared by Rep. Donley's staff, which listed the proposed House committee substitute changes for SB 322 (included in the House Labor and Commerce committee file item #5). He stated that after the committee went through the memo they would adjourn until 4:00 p.m. which was the time the drafters estimated the proposed committee substitute for SB 322 would be done.

Number 500

Ms. Ginger Baim, assistant for the House Labor and Commerce Committee, stated that there were two issues concerning the rehabilitation section. The first issue was, should the committee include in the proposed committee substitute a grandfather clause that allowed currently practicing rehabilitation specialists, without the required certification, the right to continue practicing. She continued that within that question were two considerations. Should the state allow an open ended grandfather clause permitting any rehabilitation specialist who had been practicing in the state to be included or should the grandfather clause stipulate a time frame for currently practicing rehabilitation specialists to complete the certification required under the definition in CSSB 322. She explained that the first consideration would allow practicing rehabilitation specialists who had

demonstrated competency in their field, but with no intention of certifying, the right to have the department judge what constituted equivalency in regard to certification. The second consideration dealt with opening a window in the grandfather clause that would allow a currently practicing specialist the right to complete their certification program within a specified period of time. She concluded that there was still some confusion over the definition of rehabilitation specialist and whether or not the current definition was accurate.

Number 515

Rep. Furnace mentioned that Rep. Hudson had offered an amendment to the committee for discussion. He stated his support of that amendment and mentioned that the intent was to open the window for certification for two to three years.

Rep. Koponen stated that the committee could use some information on how the certification requirements could be met and whether or not they were feasible for Alaskans.

A discussion followed concerning whether or not a rehabilitation specialist was qualified to practice in Alaska and if so how much time should be allowed so practicing rehabilitation specialists could get the proper certification to meet the criteria set out in CSSB 322.

Number 549

Rep. Ellis stated that trying to judge if a rehabilitation specialist was qualified would be beyond what the committee members should include in statute and suggested a window of opportunity for professional certification, gaged by the length of the certification course, as the way to go.

Rep. Furnace asked for Ms. McClintock's response to the proposed amendment, W.O. 5-1514Bg, and wondered if it gave the workers' compensation division the latitude to determine if the qualifications were adequate.

Number 572

Ms. Jackie McClintock, Director of Workers' Compensation Division, stated that most rehabilitation specialists in the state were qualified to do the job but were not able to take the certification test because of time and locality restraints.

Rep. Menard asked what the program was and if they were taking university classes to get certified.

Ms. McClintock answered that with both certification programs there were academic requirements to be met before being allowed to take a certification test. She continued that the Certified Insurance Rehabilitation Specialist (CIRS) required a bachelors degree while a Certified Rehabilitation Counselor (CRC) required a master's degree.

Rep. Menard stated his concern that the people who need to take the certification test should be allowed more time than a year especially if they continue to work and need to go outside to take the test.

Rep. Furnace asked if proposed amendment, W.O. 5-1514Bg, met the test, as far as the division of workers' compensation was concerned.

Ms. McClintock replied that it opened a window of time for rehabilitation specialists to apply with the Dept. of Labor stating their intentions to become certified. She stated that it did not stipulate a time period in which the person must be certified by.

Rep. Furnace moved that proposed amendment, W.O. 5-1514Bg, be adopted by the committee for the purpose of discussion.

TAPE ONE, SIDE TWO
Number 000

Chairman Donley mentioned that the people who fit into the category of needing certification would still be considered qualified to do the work while obtaining the necessary certification.

Rep. Davidson asked if the question before the committee was to determine how much of a time frame was needed for certification.

Rep. Furnace recommended that the time span be set at two years for completing the certification program.

A discussion followed concerning the requirements for CIRS and CRC certification.

Number 061

Rep. Boucher asked if an acupuncturist would be considered a rehabilitation specialist.

Ms. McClintock replied, "No," and explained that a rehabilitation specialist accessed the vocational skills of an injured worker that would be necessary for future employment.

Rep. Boucher asked Ms. McClintock if she was happy with the proposed amendment concerning the definition of rehabilitation specialist.

Ms. McClintock stated that she was satisfied with the Labor/Management Ad Hoc Committee's diligence at looking into the definitions of CIRS and CRC. She continued that she was not adverse to leaving a window open for people to get their educational requirements necessary for taking the certification tests.

Chairman Donley pointed out that there may be rehabilitation specialists that were not qualified to practice in the state.

Number 150

Rep. Boucher asked Ms. McClintock if the proposed workers' compensation legislation was the best possible legislation.

Ms. McClintock answered that she personally thought it was the best legislation to come out.

Number 175

Chairman Donley stated that while the committee was waiting for the proposed House committee substitute from the legal department, they should go through the items listed in the March 10 memorandum (File item #5). He pointed out that the purpose of the workers' compensation legislation was to keep Alaskans working and to improve the system. He continued that the first change of the proposed House committee substitute was to call for a mandated rate decrease of six percent. He relayed the rational for the mandated rate decrease and called for a moratorium on additional rate increases for the next 18 months.

Number 194

Rep. Furnace stated he understood the rational for a six percent mandated rate decrease but pointed out that it could cause problems for the insurance industry. He didn't formally object to the mandated rate decrease but he felt that the committee might want additional testimony on this issue before making a final decision.

Chairman Donley pointed out that the six percent figure was derived at because of the public testimony the committee heard last month which predicted soft and hard dollar savings of approximately six percent. He continued that additionally, the proposed committee substitute would contain a proposal that would provide for a rebate of 10 percent for employers in the assigned risk pool and a five percent rebate for employers not in the assigned risk pool

if they institute a safety program that meets the standards established by OSHA and didn't have any safety violations for the premium year.

Chairman Donley stated that the third change in the proposed committee substitute called for a mandatory fine of $10,000 for employers who failed to carry workers' compensation insurance. He continued that the fourth change called for the number of claims filed and the percent of claims that were controverted during the year to be included in the insurers annual report to the division of workers' compensation.

Number 251

Rep. Furnace stated that in regard to change number three, he preferred setting the fine at $5,000.

Chairman Donley stated that item #5 of the proposed committee substitute called for amending the contents of the annual report to break out the costs of legal fees to reflect the fees paid to both the plaintiff and defense attorneys and to include all other costs associated with litigation. He continued that item #6 called for amending the section to provide that an employers choice of physician for an Independent Medical Exam (IME) was limited to no more than one change in choice, as was an employees right of choice under the proposed legislation. He pointed out that item #6 didn't preclude referrals to specialists or referrals from one doctor to another. He stated that item #7 had to do with the stress language that the committee discussed earlier. He stated that item #8 included language requiring that an IME must be offered in the same speciality as the treating physician unless the Board agreed, on a case by case basis, to authorize an IME by a physician who was not within the same speciality of the employees physician.

Number 299

Rep. Furnace stated that this was another area that he wanted the committee to look into. He suggested that the word "unanimously" in regard to the Board's decision, be reinstated.

Chairman Donley pointed out that three Board members voted on the decision regarding authorizing a physician not in the same speciality to conduct an IME and asked if the committee wanted a unanimous vote or a two thirds vote by the Board. The proposed committee substitute called for two thirds vote and Rep. Furnace was asking for a unanimous vote.

Rep. Furnace stated that it was important and wanted the chance to vote on it. Chairman Donley stated that the committee would have the opportunity to vote when the proposed committee substitute was before them.

Number 317

Rep. Davidson asked why it should be a unanimous decision by the Board.

Rep. Furnace replied that it was important because of the nature of the IME to have like specialists or physicians reviewing one another's work.

Number 331

Chairman Donley stated that the next few amendments conformed with the testimony offered by the Task Force. He continued that item #12 was important because it called for benefit checks paid to recipients residing in Alaska to be paid by checks drawn on Alaska banks.

Chairman Donley stated that item #15 called for a new section to be added that addressed the concern of the increased time it took between filing a case and obtaining a formal hearing date before the Board.

Number 355

Chairman Donley stated that he was very proud of the committee for all their hard work and reiterated that workplace safety was the most important thing the committee should encourage to reduce workers' compensation premiums and costs.

Number 376

Chairman Donley stated that the committee would adjourn until 4:00 p.m., when the proposed committee substitute would be ready from the legal department. The proposed committee substitute did not arrive and the meeting did not reconvene.

Since there was no further business to come before the House Labor and Commerce Committee, Chairman Donley adjourned the meeting at 3:20 p.m.

HOUSE LABOR AND COMMERCE COMMITTEE
March 15, 1988
2:30 p.m.

MEMBERS PRESENT

Rep. Dave Donley, Chairman, arrived late
Rep. Niilo Koponen, Vice Chair
Rep. H. A. "Red" Boucher
Rep. Johnny Ellis
Rep. Walt Furnace, arrived late
Rep. Curt Menard

MEMBERS ABSENT

Rep. Cliff Davidson

COMMITTEE CALENDAR

A Presentation on the Alliance Bank and Proposed Hallwood Stabilization Trust.

HJR 64: "Relating to Alaska's participation in the bottomfish fisheries and other benefits from the Exclusive Economic Zone of the United States off the coast of Alaska."

HB 482: "An Act making an appropriation from the Railbelt energy fund to the Railbelt energy account of the power development revolving loan fund for construction of the Bradley Lake power project; and providing for an effective date."

HB 483: "An Act establishing the Railbelt energy account in the power development revolving loan fund; and providing for an effective date."

CSSB 15: "An Act relating to trade secrets."

CSSB 322: "An Act relating to workers' compensation; and providing for an effective date."

Discussion of proposed committee legislation.

WITNESS REGISTER

Rep. Adelheid Herrmann
District 26
P.O. Box V
Juneau, Alaska 99811
465-4942
Position Statement: Sponsor of HJR 64.

Rep. Sam Cotton
District 15A
P.O. Box V
Juneau, Alaska 99811
465-3711
Position Statement: Sponsor of HB 482 & HB 483.

Mr. Tony Gumbiner
Chairman of the Board
The Hallwood Group
767 Third Avenue
New York, New York 10017
Position Statement: Supported the proposed Hallwood Stabilization Trust.

Mr. Jim Cairns
Chairman of the Board
Alliance Bank
Minnesota & Benson Blvd.
Anchorage, Alaska 99503
Position Statement: Supported the proposed Hallwood Stabilization Trust.

Mr. Gary Daily
City of Unalaska
P.O. Box 89
Unalaska, Alaska 99685
581-1259
Position Statement: Supported HJR 64.

Mr. Chris Christensen, Assistant
Senator Jan Faiks
P.O. Box V
Juneau, Alaska 99811
465-3755
Position Statement: Supported SB 15.

Mr. Bob LeResche, Executive Director
Alaska Power Authority
P.O. Box AM
Juneau, Alaska 99811
465-3575
Position Statement: Supported HB 482 & HB 483.

Ms. Jackie McClintock, Director
Workers' Compensation Division
Alaska Dept. of Labor
P.O. Box 21149
Juneau, Alaska 99802
465-2790
Position Statement: Answered questions regarding workers' compensation insurance.

Ms. Erika Mahaney
Injured Worker
P.O. Box 671495
Chugiak, Alaska 99687
338-4506
Position Statement: Opposed to CSSB 322.

PREVIOUS ACTION

HJR 64:	Jrn-Date	Jrn-Pg		Action
	02/15/88	2210	(H)	Read the first time with referral(s)
	02/15/88	2210	(H)	L&C then RES

HB 482:	Jrn-Date	Jrn-Pg		Action
	02/15/88	2215	(H)	Read the first time with referral(s)
	02/15/88	2215	(H)	L&C then RES, FIN
	02/22/88	2318	(H)	Co-spon added: Brown

Previous committee consideration and testimony on HB 482 was held on March 3, 1988.

HB 483:	Jrn-Date	Jrn-Pg		Action
	02/15/88	2215	(H)	Read the first time with referral(s)
	02/15/88	2215	(H)	L&C then FIN
	02/19/88	2299	(H)	Co-spon added: Boucher
	02/22/88	2318	(H)	Co-spon added: Brown

Previous committee consideration and testimony on HB 483 was held on March 3, 1988.

SB 15:	Jrn-Date	Jrn-Pg		Action
	01/12/87		(S)	Prefile released
	01/19/87	22	(S)	Read the first time with referral(s)
	01/19/87	22	(S)	L&C then JUD
	02/12/87	276	(S)	L&C RPT 3DP with amendment 1NR
	02/12/87	277	(S)	Zero fiscal note pub.
	03/13/87	589	(S)	JUD RPT CS 3DP
	03/13/87	589	(S)	Zero fiscal note/ analysis

	03/18/87	629	(S)	Rules to calendar
	03/18/87	633	(S)	Read the second time
	03/18/87	633	(S)	JUD CS adopted unan consent
	03/18/87	633	(S)	Advanced to third reading unan consent
	03/18/87	633	(S)	Read the third time CSSB 15(JUD)
	03/18/87	633	(S)	Passed Y20 N-
	03/18/87	635	(S)	Transmitted to (H)
	03/20/87	568	(H)	Read the first time with referral(s)
	03/20/87	568	(H)	L&C then JUD

SB 322:	Jrn-Date	Jrn-Pg		Action
	01/11/88	1840	(S)	Read the first time with referral(s)
	01/11/88	1840	(S)	L&C
	02/23/88	2376	(S)	L&C RPT CS 5DP
	02/23/88	2376	(S)	Zero Fiscal Note published
	02/25/88	2416	(S)	Rules to calendar
	02/25/88	2419	(S)	Read the second time
	02/25/88	2420	(S)	L&C CS adopted unan consent
	02/25/88	2420	(S)	Advanced to third reading unan consent
	02/25/88	2420	(S)	Read the third time CSSB 322 (L&C)
	02/25/88	2420	(S)	L&C Letter of Intent adopted by Senate
	02/25/88	2421	(S)	Passed Y15 N- X5
	02/25/88	2421	(S)	Effective date same as passage
	02/25/88	2424	(S)	Transmitted to (H)
	02/26/88	2358	(H)	Read the first time with referral(s)
	02/26/88	2358	(H)	Labor & Commerce then Judiciary

Previous committee consideration and testimony on SB 322 was held on January 19, 21, 29, February 12 and March 8, 10, 1988.

ACTION NARRATIVE

TAPE ONE, SIDE ONE
Number 000

The House Labor and Commerce Committee meeting was called to order by Chairman Donley at 2:35 p.m. Members present were Representatives Donley, Ellis, Boucher, Koponen, Furnace and Menard.

Chairman Donley announced that the first order of business was a presentation on the current status of the Alliance Bank and the proposed Hallwood Stabilization Trust. He introduced Mr. Tony Gumbiner, Chairman of the Board of the Hallwood Group and Mr. Jim Cairns, Chairman of the Board of the Alliance Bank.

Mr. Gumbiner explained that the Hallwood Group was a public corporation listed on the New York Stock Exchange as well as an investment bank. He pointed out that they were usually traded on major stock exchanges around the world. He stated that rescuing companies in need of their services was their area of expertise. He stated that a few months ago the Hallwood Group completed a restructuring of Alaska Mutual Bank, United Bank of Alaska and the United Bank of Southeastern. He recounted how the Hallwood Group had restructured the Bank of Texas and explained how they assisted the Federal Deposit Insurance Corporation (FDIC) and the controller of currency, the Federal Reserve with the problems of failing banks.

Number 083

Mr. Gumbiner explained background information that related to the proposal for the establishment of the Hallwood Alaskan Real Estate Stabilization Trust. He informed the committee members that a copy of the proposal was in their file and that the proposal was commonly referred to as "Bridgebank."

Mr. Gumbiner stated that the objective of the proposed trust was to prevent further decline in real estate values by allowing the trustees to manage the liquidation of the trust assets to prevent an oversupply of property in the local marketplace which would cause further decline in the price of residential or commercial properties.

Number 156

Mr. Gumbiner explained that the proposed trust would be formed as a liquidating trust that was established under a firm set of rules. The rules were contained in the distribution agreement and organized by a trustee. The trust would be formed along the lines of a nonprofit institution, with Hallwood Group not collecting any fees for their services. The trust would be managed by a Board of Trustees that would be selected from the beneficiary institutions and a representative from the state. The Hallwood Group asked the state to fund the enterprise by making an equity investment of 15 million dollars in the trust. The state would be entitled to a small portion of the equity and the other players would be entitled to a portion of the equity depending on the amount of

contribution. The state would be giving the trust liquidity in order to get the trust organized.

Number 195

Mr. Gumbiner stated that the trust would be maintained for ten years and during the ten year period the trust would try to maintain a level of prices instead of pushing property on the market precipitously. He explained how the trust would offer funds of property for sale and to whom. He stated that in the future the state could be asked to lend money to the trust. He continued that the Hallwood Group was asking for assistance from the Alaska Housing Finance Corporation (AHFC) and the Alaska Industrial Development Association (AIDA). The assistance requested would be for moratoriums on financing new supplies of real estate.

Number 330

Mr. Jim Cairns, Chairman of the Board of Alliance Bank, pointed out that the trust did not view this proposal as a state bail out because the state would receive a portion of the equity of the trust. He stated that their concern was the dumping of property, viewed as bad investments, on the market and effectively lowering the value of all property. He stated that another thing that bothered them was the possibility of Alliance Bank returning to the FDIC after 16 months and what that would do toward the state's gradual economic recovery. He explained that the purpose of the proposed trust was two fold, to stabilize the market and to try to preserve the banking system in the state.

Number 400

Vice Chairman Koponen stated for the record that Rep. Ellis arrived at 2:37 p.m. and Rep. Furnace arrived at 2:45 p.m. Rep. Boucher asked about the possibility of Alliance Bank being returned to the FDIC.

Mr. Gumbiner explained that Alliance Bank would not be returned to FDIC if it looked as if the bank could make money in the long term.

Mr. Cairns stated that it was the conclusion of the Hallwood Group and the Alliance Bank that the bank could make a profit.

A discussion followed concerning the factors that could effect the Alliance Bank and the Hallwood Group from making a profit.

A discussion followed concerning outstanding loans from the Alliance Bank and how they would be handled.

A discussion followed concerning the FDIC and what role they play in determining the disposition of loans.

Number 522

Rep. Koponen asked if there were any advantages in transferring the title of some properties to the University Foundation as a gift.

Mr. Gumbiner stated that it wouldn't be a true gift because the carrying costs were currently well in excess of any benefit that could arise from the tax break.

Rep. Menard asked if the 15 million dollars that the state contributed would be sufficient working capital.

Mr. Gumbiner stated that Alaska would not be giving the trust money; rather the state was making an investment on the same terms as any other beneficiary institution. The state would be repaid as well as get cash flow from the investment. He continued that the 15 million dollars was seed money which was sufficient working capital to establish the trust. The Hallwood Group would probably require 45 million dollars in order to fund the trust to the point where it was cash flow positive.

Number 575

Vice Chairman Koponen announced that the next order of business was HJR 64, relating to Alaska's participation in the bottomfish fisheries and other benefits from the Exclusive Economic Zone of the United States off the coast of Alaska. He asked the sponsor of HJR 64, Rep. Herrmann, to join the committee.

Number 580

Rep. Herrmann asked to make a few brief remarks concerning the Exclusive Economic Zone (EEZ). She stated that on March 10, 1983, President Reagan established by proclamation an Exclusive Economic Zone of the United States and thereby joined 58 other coastal nations declaring jurisdiction over the ocean resources adjacent to their land masses. She continued that the coastal states had a strong interest in the protection, conservation and development of the coastal and ocean resources. She continued that management of the ocean resources was a difficult matter for two fundamental reasons. The present complex system of ocean governmental jurisdiction and the nature of the ocean itself. The challenge would be to design and implement an equitable and efficient ocean resource management system. She explained that the US EEZ extended 200 miles off the coast.

Number 595

Rep. Herrmann explained that the reason she introduced HJR 64 was because the state's fisheries benefitted other states as well. Alaska's fisheries and decision making bodies for fisheries were many times controlled by outside interests. She would like to see this practice stopped. Many times the capitalization of a fishery was done by outside interest because they either had the existing equipment or the capital to invest in needed equipment. She would like to see more Alaskans involved in the state's fisheries but she felt that could not happen if the resource was limited. She asked the committee members for their support of HJR 64.

Rep. Menard asked how Rep. Herrmann came up with the "no less than 50 percent participation" figure.

Rep. Herrmann stated that since there was not much participation now by Alaskans, and because the area was right off Alaska's coast, she figured why shouldn't Alaskans have 50 percent of the bottomfish fisheries.

Rep. Ellis asked how far along the federal government was in limiting entry.

She replied that the council was holding hearings but she was not sure about an answer.

Number 626

Mr. Gary Daily, Port Director for Dutch Harbor, city of Unalaska, stated his support as well as the city of Unalaska's support for HJR 64. He explained that there was a vast economic potential for Alaska in the bottomfish fisheries.

TAPE ONE, SIDE TWO
Number 000

Mr. Daily st ted that there were 41 Alaskan factory trawlers presently fishing out of the EEZ and noted they were mostly from Seattle. He expected the number of the factory trawlers to double within three years which would equate to over 22,000 jobs. He stated that historically all the trawling and deep sea fisheries had been done by Seattle people not by Alaskans. He pointed out that Unalaska and Dutch Harbor with that awesome name of fisheries and money did not have a fleet. He stated his support for a partnership with the US government for area management and noted that the most effective enforcement partner was the US Coast Guard. He understood there were presently two Japanese ships and crews that were in Soviet

prisons for violating Soviet waters and commented on how they protect their resource. He figured that the bottomfish fisheries were a two billion dollar industry.

Number 068

Rep. Koponen moved HJR 64 to the next committee of referral with individual recommendations. There were no objections, so the motion carried.

Chairman Donley announced that the next order of business was HB 482 and HB 483. He explained that HB 483 was the enabling legislation that would establish the Railbelt energy account in the power development revolving loan fund and that HB 482 was the appropriation legislation. He stated there were proposed committee substitutes for both bills in the member's files. The committee substitutes cleaned up technical problems and assured that the money was channeled through a revolving loan fund. In addition, there was a proposed amendment from Rep. Cotton to appropriate $18 million from the Railbelt energy fund to the Fritz Creek transmission line project.

Number 099

Rep. Cotton, sponsor of HB 482 and HB 483, asked the committee to consider another amendment to the proposed committee substitute for HB 483. It would accomplish what he hoped to accomplish in the first place. The amendment would change Section 1, line 18 and 19 to read, "unless the loan has been authorized by the legislature."

Number 121

Rep. Koponen moved to adopt the amended committee substitute, W.O. 5-1895B drafted by Utermohle, for HB 483. There being no objections, the motion passed.

Rep. Menard asked if the legislature was in the group.

Rep. Cotton answered "absolutely" and explained that he wanted to make sure that the legislature was in the position to approve any expenditures coming out of the Railbelt energy account.

Rep. Ellis asked if the Fritz Creek intertie project needed a loan.

Rep. Cotton stated that the utility group suggested that the Fritz Creek transmission line be funded from the Railbelt energy fund. He stated that he did not have a problem with it and that an amendment to that effect was prepared for HB 482 and included in the members files. He explained that the status on the Fritz Creek transmission

line was that Homer Electric Association (HEA) had originally arranged financing, it's an $18 million project, and that it was considered an integral part of the overall project. It would run the power from Bradley Lake to Soldotna. He continued that HEA arranged for Rural Electric Association (REA) financing at five percent but they ran into some problems. The problem was that part of the power would be going to municipal utilities and REA's rules didn't allow the loan to benefit non REA utilities. He stated that funding the Fritz Creek project was an appropriate use of funds from the Railbelt energy account.

Number 178

Rep. Ellis asked Rep. Cotton if he had considered including in the language of HB 483, in addition to power projects, funding for demand side energy projects.

Rep. Cotton answered "yes" and suggested to the committee that they might want to delete the word "power" from line 13.

A discussion followed concerning which language should be used in HB 483 to allow projects that were on the demand side of energy projects to be funded from the Railbelt energy fund.

Number 241

Rep. Menard asked if it was a fifty year loan package.

Rep. Cotton replied that he thought it was a thirty year term on the loan.

Number 263

Rep. Ellis proposed an amendment to HB 483 which would be inserted on line 14 after the first sentence of the bill. A discussion followed concerning the language of the proposed amendment. "Projects which may qualify for loans shall include demand side energy conservation and energy use studies."

Rep. Koponen asked if it would include such things as distribution, conservation and alternative energy projects.

Rep. Ellis replied that he would like it to be all inclusive.

Rep. Cotton stated he did not have a problem with the amendment. He reiterated his suggestion to delete the word "power" from line 13.

Chairman Donley stated that the motion before the committee was to include the sentence that Rep. Ellis stated and to delete the word "power" from line 13.

Rep. Ellis amended his motion to insert after the first sentence on line 14, "Projects which may qualify for loans shall include demand side energy conservation projects and energy use studies" and to delete the word "power" from line 13.

Chairman Donley asked if there were any objections to the motion to amend. He asked the members in favor of the motion to indicate by the usual sign. There were four in favor, so the motion carried.

Chairman Donley stated there was an amended committee substitute before the committee on HB 483. He called for further discussion.

Number 318

Rep. Koponen moved CSHB 483 (L&C) to the next committee of referral with individual recommendations. Rep. Furnace objected to the motion. Chairman Donley asked all those in favor of the motion to signify by the usual sign, there were five members in favor and one opposed, the motion carried.

Number 327

Chairman Donley stated that the next order of business was HB 482, the appropriation bill for HB 483. He advised the committee members that there was a proposed amendment attached to the committee substitute for HB 482 in their files.

Rep. Cotton stated his support for the proposed amendment to the proposed committee substitute for HB 482.

Number 341

Rep. Ellis asked if the $165 million was the actual figure.

Rep. Cotton stated that he was hoping that the number was lower. A discussion followed on how that figure could change.

Rep. Ellis asked if the figures changed how would the legislation be handled.

Rep. Cotton indicated that the Alaska Power Authority (APA) would loan the required amount to the project and then there would be a balance in the account that would be

available to the legislature for appropriation or the legislature could authorize another loan from the fund.

Rep. Ellis asked what the further reduction in rates would be to the consumers if HB 482 and HB 483 were passed into law.

Rep. Cotton explained that the APA put together Bradley Lake alternative financing cases, referred to as the base case which was the presently approved plan of finance and would result in 4.6 cents per kilowatt hour cost of power. If the legislature used base case number three financing at six percent it would go down to 3.8 cents per kilowatt hour. He stated that by using the six percent interest rate, there would be $2.5 million annual savings to the consumer.

Number 401

Rep. Menard asked if the $18 million for the Fritz Creek project was in addition to the $165 million appropriated from the Railbelt energy fund to the Railbelt energy account.

Rep. Cotton replied "yes".

Number 414

Rep. Ellis asked for the verdict from the energy task force on the Fritz Creek project.

Rep. Cotton explained that there never was a question of the need for the Fritz Creek project but that it had been assumed that HEA would own it and arrange their own financing for it. He continued that if the project was not financed through the Railbelt energy fund, that financing would be arranged through another source.

Rep. Ellis asked if there was anyone from the administration to testify on HB 482 and HB 483.

Rep. Cotton replied that he hadn't talked with anyone from the administration concerning this legislation and noted that they would spend the Railbelt energy fund on other items if they could.

Number 447

Rep. Boucher moved to adopt the amendment for the committee substitute for HB 482. Rep. Ellis objected for the purpose of discussion.

Mr. Bob LeResche, Executive Director of the Alaska Power Authority (APA), stated that under HB 356, which passed

into law, the savings in the wholesale rate would be passed through to the consumers. Each kilowatt hour would save that many tenths of a cent and each consumer would save that many tenths of a cent on their bill depending on their consumption of kilowatt hours. He stated that the administration still had ideas about using the money from the Railbelt energy fund to supplement the general fund. He continued that if by a quirk of fate the money remained in the fund, the administration did not object to the money being used the way HB 483 and HB 482 would stipulate. He noted that the benefits of the project exceed just spending the money. He stated that the APA supported the use of loan money on the Fritz Creek project.

A discussion followed concerning possible problems with the Fritz Creek project.

Number 495

Rep. Ellis asked if the APA had a position on the amended CSHB 483 which called for use of funds for demand side energy projects.

Mr. LeResche stated that he had no objection to that amendment.

Rep. Ellis asked if the amendment he made was in conflict with the power development revolving loan fund.

Mr. LeResche stated that he did not think there was a conflict.

Chairman Donley stated that there was a motion to adopt the amendment for the proposed CSHB 482 and asked if there were any objections to the motion. Rep. Furnace objected and called for the question. Chairman Donley asked all members in favor of the amendment to signify by the usual sign, there were four members in favor, so the motion carried.

Number 525

Rep. Boucher moved to adopt the amended CS for HB 482, there being no objections, the motion passed.

Rep. Boucher moved CSHB 482 (L&C) to the next committee of referral with individual recommendations. Rep. Furnace objected and called for the question. Chairman Donley asked all members in favor of the motion to signify by the usual sign, there were four members in favor so the motion carried.

Number 530

Chairman Donley announced that the next order of business was CSSB 15, an act relating to trade secrets. He commented that CSSB 15 had been before the committee several times and asked for the will of the committee.

Number 535

Mr. Charles Christensen, assistant to Senator Faiks who sponsored CSSB 15, stated that the common law recognized the tort of misappropriation of trade secrets. A trade secret was defined as any information that derived independent economic value from not being generally known and not readily obtained by proper means by other persons. He stated that the bill before the committee was in effect, the uniform trade secrets act, which had been adopted by at least 11 states. He continued that SB15 restated the common law on the subject and noted that in Alaska there hasn't been ary Supreme Court cases which addressed the issue of trade secrets. He concluded that the cases before the Superior Court were very expensive to litigate because there wasn't any statutory law on trade secrets.

Number 548

Rep. Menard moved CSSB 15 to the next committee of referral with individual recommendations, there being no objections, the motion passed.

Chairman Donley stated that the next order of business was proposed committee legislation, W.O. 5-2032A drafted by Cramer, which dealt with plant closures. He asked if there were any objections to introducing it as committee legislation and having none the committee will introduce it.

Number 560

Chairman Donley explained that the next order of business was CSSB 322, the workers' compensation legislation. He stated that the proposed committee substitute, W.O. 5-1514L drafted by Ford, was before the committee in the member's files. He explained that included in the proposed CS was the provision for the rehabilitation specialists to have a grace period in which to get their certification requirements. He stated that there was a proposed amendment to CSSB 322 which was attached to the memorandum dated March 15 (File item #9) and he explained that the amendment was based on the recommendation from the Task Force that all the penalty provisions be consistent.

Rep. Koponen moved to adopt the proposed amendment, W.O. 5-1514La drafted by Ford. Rep. Menard objected for the purpose of discussion. There was some discussion on the proposed amendment.

Rep. Menard withdrew his objection.

Rep. Furnace asked to get a handle on the deletions.

Number 609

Ms. Ginger Baim, assistant to the House Labor and Commerce Committee, explained how the amendment delineated the renumbering of the sections of the bill following the amendment.

Chairman Donley restated there was a motion on the floor and since there were no further objections to adopt the amendment for the proposed HCS for CSSB 322, it was adopted.

Rep. Koponen moved to adopt HCS for CSSB 322 (L&C) as amended. There being no objections, the motion carried.

Chairman Donley stated that the amended HCS CSSB 322 (L&C) was before the committee and open for discussion.

Number 625

Rep. Furnace stated that there were three items of concern, that were left over from the last meeting.

TAPE TWO, SIDE ONE
Number 000

Chairman Donley advised Rep. Furnace that if he made an oral motion to amend, the Chair would accept it.

Number 009

Rep. Furnace asked the committee to look at item #8 of the memo dated March 15. He moved and asked unanimous consent to amend the language and reinstate the word "unanimous" in relation to the consent of the board for Independent Medical Exams (IME).

Chairman Donley clarified the issue, stating that item #8 called for physicians reviewing another physician's work doing IME's must be in the same speciality unless the board agreed otherwise. The amendment would require that the board unanimously agree to authorize an IME by a physician who was not in the same speciality as that of the employee's treating physician.

Number 251

Ms. McClintock stated that there wasn't any issue that required a unanimous decision from the workers' compensation board.

A discussion followed concerning a unanimous decision and whether or not it could be appealed.

Number 283

Chairman Donley asked the committee if they wanted to leave the bill as it was or to amend it according to Rep. Furnace proposed amendment. He asked if there was further discussion on the amendment. There wasn't any. Chairman Donley asked all members in favor of the amendment to signify by the usual sign. There were five members in favor, so the motion passed.

Number 307

Rep. Furnace called attention to item #3 on the March 15 memo which raised the fine from $1,000 to $10,000 for not carrying workers' compensation insurance.

Rep. Furnace proposed that the fine be kept at $1,000.

Chairman Donley stated that the members could find that section of the bill on page 13, line 22.

Chairman Donley asked Rep. Furnace to clarify the language he wanted for an amendment.

Chairman Donley stated that the motion before the committee was to change on page 13, line 23, the fine from $10,000 to $1,000.

Rep. Furnace stated that the $10,000 fine was too harsh and didn't think that an employer who couldn't afford workers' compensation insurance premiums could afford a $10,000 fine.

Number 358

Rep. Ellis asked if anyone had served jail time for not carrying insurance.

Ms. Ginger Baim stated that no one had served jail time under this section of law.

Rep. Furnace asked if anyone ever had to pay a $1,000 fine.

Ms. McClintock answered that she thought a couple of the more serious cases were fined $1,000.

Number 375

Chairman Donley stated that he was opposed to the proposed amendment because a strong message was needed so those employers would carry insurance. He asked all members in favor of the motion to amend to signify by the usual sign. There were five members opposed, so the motion failed.

Number 385

Rep. Furnace called the member's attention to item #1 of the March 15 memo which was the mandated rate decrease for workers' compensation premiums of six percent, found on page 33, line 7, (Section 44) of HCS CSSB 322. Rep. Furnace moved to delete Section 44 in it's entirety.

Chairman Donley stated that there was a motion to amend before the committee and asked if there was discussion on the motion.

Number 396

Rep. Furnace stated that he realized that the intent of the legislation was to save money but he was concerned that a mandated rate reduction would actually increase the cost in the future.

Rep. Boucher stated that this was the guts of the bill and that the intent was to reduce the cost of workers' compensation insurance. He also asked if mandating rate decreases was constitutional or if it could be done.

Number 416

Chairman Donley pointed out that the state had the power to regulate insurance rates and the division of insurance was governed by statute to carry out that function. The legislature had the power by statute to tell the division how to do that function.

A discussion followed concerning the division of insurance's opposition to a mandated rate decrease.

Rep. Furnace stated that he was more concerned about the possible insolvency of one of the insurance carriers in the state and how that would affect future rates.

Number 443

Chairman Donley explained the hard and soft dollar savings of HCS CSSB 322.

Number 469

Chairman Donley stated that the motion was to delete Section 44, which was the mandated rate decrease of six percent. He asked all those in favor of the motion to signify by the usual sign. There were five members opposed, so the motion failed.

Rep. Koponen moved HCS CSSB 322 (L&C) to the next committee of referral with individual recommendations. Chairman Donley asked if there were any objections.

Rep. Furnace stated that there was someone who had traveled long distance to address the committee and asked that she be allowed to testify.

Number 490

Ms. Erika Mahaney, representing victims of the workers' compensation system, stated that the original intent of the system appeared to be lost. She asked the committee to specifically look at three problems before passing the legislation out of committee. The first problem was that the length of time should be extended between IME's. The second problem had already been addressed in HCS CSSB 322 regarding like specialists reviewing each other's work for IME's. The third problem was that no limit should be placed on treatment or length of treatment without fair evidence to the contrary. She asked the committee not to move HCS CSSB 322 out of committee.

Number 540

Rep. Koponen suggested that Ms. Mahaney's testimony be passed on to the Judiciary Committee.

Number 549

Chairman Donley stated that there was a motion to move HCS CSSB 322 as amended to the next committee of referral with individual recommendations. There were no objections to the motion, so the motion carried.

Chairman Donley thanked the committee members for all their hard work on HCS CSSB 322.

Since there was no further business to come before the House Labor and Commerce Committee, Chairman Donley adjourned the meeting at 4:45 p.m.

March 6, 1989

Senator Duncan
Alaska State Legislature
Room 119, P.O. Box V
Juneau, Alaska 99811

Dear Senator Duncan:

The Labor Management Task Force recently responded to you regarding Senate Bill 51. In that letter we outlined our concerns with vocational rehabilitation services as we viewed them when initiating worker's compensation legislation in 1988.

We have recently reviewed your committee substitute for SB 51 and feel that the limitations provided in the title allow us to reconsider our previously stated objections to SB 51. As we understand it the time period for obtaining certification as a rehabilitation specialist would be extended for an additional three years. The Department of Labor has informed us that there are only four individuals that will not be able to make the certification requirements by the June 30, 1989 deadline. We have presently no objection to this extension of additional time needed to meet certification requirements.

Sincerely,

Mary Pierce
Co-Chairman
Labor Management Task Force

Robert Anders
Co-Chairman
Labor Management Task Force

cc: Senator Tim Kelly
Jacqueline McClintock -
Division of Worker's Compensation
Representative Dave Donley

MP/tmb/L.SD.3/6

April 11, 1989

Alaska House of Representatives
Health, Education and Social Services
Room 106, Capitol Building
P.O. Box V
Juneau, Alaska 99811
Attn: Honorable Johnny Ellis, Chairman

SUPPORT FOR THE PASSAGE OF CSSB 51

Dear Mr. Ellis:

I would like to extend my support for SB 51 (CSSB 51), which is currently being reviewed by your committee. This legislation would provide adequate time for members of the vocational rehabilitation profession to obtain the necessary prerequisites for certification.

Without this corrective legislation, the original provision unduly excluded viable members of the vocational rehabilitation profession, by providing inadequate time for educational training. CSSB 51 would not endanger the integrity of the vocational rehabilitation area; it would only grant valued members of this profession, who were already gainfully employed, the time needed to complete the education necessary for certification.

I am confident that you will carefully review the merits of this legislation. Thank you for your attention in this matter.

Sincerely,

John Lepore

John Lepore
3444 Nowell Ave. #309
Juneau, Alaska 99801