

1742 HLC 1/27/82 HB 159 - 2/3/82 HCR 56, HB 303

PERMANENT PARTIAL DISABILITY

In every workers' compensation system the most expensive element, and the most controversial, is that of permanent partial disability benefits. Much has been written about the history, development and philosophy of permanent partial disability benefits, and some of it is quite interesting. However, what is necessary at this time is simply an understanding of the various benefit alternatives available for compensating permanent partial disability, a philosophical decision as to the reasons for which Alaska wishes to provide such benefits and, based upon that decision, the development of a mechanism and formula to distribute those benefits appropriately.

Permanent partial disability results when an individual is injured and having recovered to the greatest extent possible is left with a physical problem which did not exist prior to injury. If the condition is severe enough to totally destroy the individual's ability to obtain and retain gainful employment, the result is classified as permanent total disability. What we are concerned with here is that class of cases in which a permanent physical problem exists, but the ability to earn has not been totally destroyed. At this point there are three basic criteria which can be used to determine who is to receive permanent partial disability benefits, and in what amount.

The first theory is based upon permanent physical impairment, and is often referred to as the "whole man theory." Pursuant to this theory, the amount of benefits payable for permanency is determined on the basis of the degree of permanent physical impairment suffered, a purely medical determination, without reference to its effect upon the individual's life, employment or economic status. Assuming equal average weekly wages, a lawyer and a machinist who both suffered equally serious hand injuries would receive the same amount of money for their injuries, despite the probable difference in economic impact.

The second theory deals with loss of wage earning capacity, which takes into consideration not only the degree of physical injury, but also its probable impact on the ability of the individual to earn a living. This requires that in the event of a dispute, the fact finder must predict, usually quite soon after release from active medical care, what effect the injury will have on the individual's ability to compete in the open labor market. The test does not require any economic loss to occur and in fact, because the concern is with loss of capacity, a substantial award for partial loss of that capacity is in no way inconsistent with a factual situation in which the employee remains with the same employer and on the same job track until normal retirement, with no economic loss resulting from the injury. Typically, if this prediction, which usually takes the form of an award, proves wrong, nothing can be done to modify it in the absence of a change in the employee's actual physical condition.

The final alternative for paying permanent partial disability benefits is what is commonly known as the "wage loss" method. This system involves paying benefits based solely upon actual loss of income resulting from the effects of an injury, with the amount of the loss determined as it actually occurs, rather than on a "prediction" basis as would take place under the earning capacity loss theory described above.

Alaska follows a pattern used in well over half the states, with a few unique twists, starting with a combination of the impairment theory and the earning capacity loss theory. If a permanent injury is limited to any of the extremi-

ties (fingers, toes, hand, leg, etc.) or the eye or hearing, the amount of the benefit paid is based solely upon the physical impairment sustained, which in turn is based almost solely upon medical evaluation of the loss. The actual benefit calculation is accomplished by first determining the workers' weekly benefit rate, which is $56 \frac{2}{3}\%$ of his average weekly wage, subject to a maximum of \$942 per week. Sec. 23.30.190 of the Act is then consulted, which contains a schedule indicating the weeks of benefits, at the rate just described, for total loss or total loss of use of the particular bodily member involved. For example, total loss of an arm results in benefits being paid for 280 weeks, at the individual's weekly benefit rate. If the loss is less than total, the worker is paid benefits for the proportionate number of weeks. For example, a 50% loss of use of the arm would result in benefits paid for 50% of 280 weeks or 140 weeks. This method of benefit computation, known as "the schedule", is used to one extent or another in most states in the manner just described, but Alaska has complicated the picture to some extent by adding another limitation, that of a maximum dollar amount. For example, while the loss of an arm is theoretically 280 weeks of compensation, it is also subject to a dollar maximum of \$43,680.00. This means that anyone whose weekly benefit is in excess of \$156 (over 75% of injured Alaskan workers) will not receive the full 280 weeks provided initially by the statute. In fact, the average injured worker will only receive 136.5 weeks of compensation for total loss or loss of use of an arm. The same result holds true, within a few dollars and a few percentage points, for all of the other injuries covered by the schedule.

For those injuries not covered by the schedule, primarily back and head injuries, the benefit is based upon loss of wage-earning capacity, which is determined by computing the difference between earning capacity prior to injury and after injury, and replacing $66 \frac{2}{3}\%$ of the difference, on a weekly basis. Theoretically these benefits are payable for life, but in reality are subject to a maximum dollar amount of \$60,000.00. Although, as previously mentioned, earning capacity loss does not require actual loss of earnings, the Alaska statute does require that determination of the amount of loss in the first instance be accomplished by considering actual post injury earnings, but if actual earnings are found not to "fairly and reasonably" represent earning capacity, other factors can be considered, and an award made which is at variance with the actual economic loss sustained. Application of this "adjustment factor" varies from time to time, primarily due to changes in the philosophy of the Board, which must determine the degree of loss in contested cases. At the present time, the Board appears to place heavy reliance on actual earnings, and in many instances applies the law in a manner approaching that of a wage loss system, with benefits determined on a weekly basis as actual loss of income occurs.

Each of these methods contains a number of flaws, in both the amount of benefits which may be paid to an individual worker, and in the problems inherent in determining the amount to be paid. From the standpoint of getting the money to the people who need it, the impairment method is the weakest of the three. Historically, workers' compensation has placed major emphasis on paying benefits to replace economic loss, and since the schedule or impairment method does not consider economic loss at all, it misses the mark in most cases. Its primary justification is ease of application, since there is supposedly very little to argue about when determining the extent of physical impairment. However, it has been found that it is relatively easy to locate doctors who will be 20 to 30 percentage points apart when evaluating the same injury, and as a result use of a schedule does not guarantee an absence of litigation.

It is possible to minimize these shortcomings in two ways. First, if guidelines are adopted for the determination of the extent of impairment, such as those published by the American Medical Association, it is relatively easy to avoid significant disagreement among medical experts. Secondly, some degree of economic reality can be incorporated in the schedule as is done in California, by modifying the weeks to be paid in a number of ways. On the assumption that the economic impact of an injury increases geometrically, rather than proportionately as severity increases, the schedule can be "stepped" so that one week of benefits may be payable for each of the first 10 points of impairment (1-10% impairment), two weeks paid for each of the next 10 points, three weeks for each of the next 10, and so on. In this manner an individual with a 10% loss of use of the arm would receive 10 weeks of compensation and someone with a 20% loss would receive 30 weeks, reflecting an assumption, of limited validity, that the economic impact of a 20% loss is more than twice as severe as that from a 10% loss.

The weeks payable can also be modified to take into consideration other factors such as age, type of occupation (physical vs. sedentary), and amount of education, with a percentage increase or decrease in the rating depending upon the answers given to relevant questions contained in a rating formula. Obviously this significantly increases the likelihood of litigation, so that a price is paid for attempting to make the schedule more economically realistic.

Use of a schedule basis raises an interesting question as to the development of average weekly wage, particularly if an unmodified schedule based totally on physical impairment is used. Since economic impact is being ignored, there is no reason to tie the amount of benefit to average weekly wage. The fact that one worker makes more than another does not mean that his arm is also "worth" more, and in fact the opposite may be true. As a result, if an impairment schedule is used, the amount of benefits to be paid can be established legislatively as a specific dollar amount for each loss, to be paid in every case regardless of the individual's earnings.

Application of an earning capacity loss system also presents a number of problems, primarily on the operational side. From a philosophical standpoint, it more closely follows the basic workers' compensation premise of dealing with economic loss, although as previously described it is entirely possible to pay benefits for loss of capacity in cases in which no actual economic loss ever occurs. In fact, the few studies which have been undertaken tend to show that only a minority of cases demonstrated significant economic loss several years after injury, although in most of those cases the loss was significant.

Another finding from these studies demonstrates a more serious problem with earning capacity loss systems. For most of the cases with significant losses, the compensation paid was totally inadequate to deal with the economic loss incurred, while in the remaining cases the amount of compensation paid was far in excess of the loss. This resulted primarily from the fact that the award must by its very nature be a prediction, and an estimate, a task which is probably beyond the ability of mere mortals. There are simply too many variables determining the effect an injury may have on a given individual, and attempts to make the award fit the case are something less than accurate. Also inherent in this uncertainty is the need for lawyers and litigation in order to arrive at a "correct" decision. Since a determination of loss of earning capacity is strictly a judgment call, a claimant would be foolish to simply accept a determination made by the employer/carrier, and would be equally foolish to go before the Board without an attorney to present his case. Unfortunately there is little that can be done to eliminate these problems without virtually switching to another benefit system.

For purposes of determining loss of earning capacity, the computation of average weekly wage should simply reflect a realistic and established preinjury earning capacity. Since in this type of system we are not concerned with matching benefit payments with actual loss of income, it is possible and preferable to base the wage on average earnings for a recent but extended period of time, such as the previous twelve months. Given a willingness to accept the opportunity for additional litigation, the Board could be given the authority to modify the figure arrived at in this manner, if it can be established that because of extraordinary circumstances the figure is significantly high or low.

The third and final alternative is a wage loss system. In its purest form, it provides benefits only in the event of actual loss of income attributable to the injury. This immediately raises a question as to its fairness, since in the extreme case an individual who suffered a loss of limb but was able to return to full employment would receive nothing in the way of benefits for his injury. While this may not be inconsistent with historical workers' compensation philosophy, it does leave a great deal to be desired when applied in real life. This problem can be cured by paying an impairment award, preferably limited to serious injuries, regardless of any wage loss benefits which may also be due.

Another problem may result from comparing preinjury wages with inflated post-injury wages, an obvious inequity. This can be limited to a great extent by adjusting the comparison to take into consideration the change in wage rates through time, although given the experience under the Longshore Act, it is questionable whether an unlimited adjustment would be acceptable.

For Alaska, use of a wage loss system would raise two very significant questions. First, a wage loss system can only be successful, from a cost standpoint, if the great majority of workers can be returned to jobs which pay the same or almost the same as those held at the time of injury. If the frequently heard statement that "there is no light duty in Alaska" is true, adoption of a wage loss system would be an economic disaster. Similarly, if union rules are so strict that a worker with a permanent injury cannot be given preferential treatment in obtaining work within his capabilities, the ability to return people to gainful employment would be greatly reduced, and the benefits of a wage loss system eliminated.

Secondly, serious consideration must be given to the system's ability to determine when an income loss is "due to the injury" rather than some other factor, such as the end of the season. As in the case of temporary total disability, use of a wage loss system depends on matching benefit payments with actual economic loss, so that factors such as end of season, a return to a state with lower wage levels, and an individual's desire to reduce his workweek must all be taken into consideration in determining wage loss. If this cannot be accomplished with a fair degree of accuracy, the system would be a total disaster.

While research is continuing in an attempt to determine the ability of Alaska employers to return injured individuals to the workplace, in the final analysis a decision on these potential problems can only be reached by joint labor/management discussions. It is doubtful that anyone else can or should determine whether this type of system can be used effectively in Alaska and without their concurrence an attempt to implement a wage loss system would probably result in economic disaster.

If a wage loss system is adopted, the computation of average weekly wage would closely follow that recommended for temporary total disability. The wage base should reflect the weekly wages actually earned during the period of employment, whether it be six months or a year, so that the comparison of pre- and post-injury wages will reflect the actual loss incurred. Therefore, a 13 week average, or something in that range, would be appropriate, with the safeguards described in the temporary total disability section.

PERMANENT TOTAL DISABILITY

Statistically, permanent total disability benefits do not constitute a significant proportion of the overall cost of workers' compensation in Alaska, although the state does rank sixth nationally in frequency of permanent total cases. This does not mean that permanent total disability does not significantly impact on the compensation system. Its importance is hidden to a great extent, because its effects are felt in the area of permanent partial disability benefits. This is due to the threat of a case becoming a permanent total, with lifetime benefits and no dollar maximum, which results in cases being settled at levels approaching their maximum permanent partial disability value, \$50,000.00, instead of being litigated, and possibly resulting in a finding of total disability.

As mentioned previously, permanent total disability occurs in those circumstances in which the injury is so severe as to totally destroy, for all practical purposes, the ability of an injured worker to obtain anything other than intermittent and financially insignificant employment. In cases in which the physical injury is severe, there is usually no question as to the individual's entitlement to total disability benefits. However, of concern to the Alaska compensation system is the worker who retains relatively substantial physical abilities, but claims to be or is actually unable to work because of the limited job opportunities in the area. For example, should an injured worker who cannot find employment in Eagle, where he lives, have his workers' compensation status determined on the basis of Eagle alone, or should the availability of suitable employment in other parts of the state be considered? And if there is no suitable employment in Alaska for someone injured shortly after moving to the state, or who has indicated in some manner that working in Alaska is temporary rather than permanent, should employment opportunities in the lower 48 be considered? Again there is no correct answer, only issues that are appropriate for legislative decision on a policy basis.

At the present time the statutory provision dealing with permanent total disability, Sec. 23.30.180, provides virtually no indication of the factors to be considered in determining total disability status. This is left to the courts, and results in a great deal of uncertainty as to the possible outcome of individual cases. Although no statute can eliminate the potential for court involvement, the legislature can create a great deal more certainty by enacting amendments to Sec. 23.30.180 which provide clear policy guidelines to those who must apply the law.

HOUSE LABOR AND COMMERCE COMMITTEE

FINAL INTERIM REPORT

December 17, 1981

The House Labor and Commerce Committee has completed its interim work. Most of the Committee's priority legislation is being drafted or redrafted and will be ready for further consideration early in the second session of the 12th Alaska Legislature.

Public participation during hearings in Anchorage and Fairbanks was excellent, particularly with regard to the Committee's three primary areas of concern -- workers' compensation, statewide telecommunications and government permits.

Additionally, Chairman Terry Martin has reviewed some 30 pieces of legislation lodged in the Committee but which were not addressed in any detail during the interim. Chairman Martin is organizing these bills and resolutions by priority so they can be expedited early next session.

A status report of interim activities is as follows:

WORKERS' COMPENSATION

Tom Sofo of the legislative legal services arm currently is preparing the final redraft of House Bill 159 dealing with revision of state workers' compensation law.

The redraft will be ready for further Committee consideration early next session.

As the Committee's top priority during the interim, much time has been spent collecting public testimony from various concerns in an effort to reach consensus on resolving this lingering problem. The Committee has explored a multitude of proposals to reduce the escalating premium rates.

While the final interim bill will address various broad concerns of the Committee, specifics regarding insurance rates and self-insurance programs will be incorporated in a separate bill shortly after the start of the second session.

The Committee feels it must await results of an in-depth study being conducted by John Lewis of Florida, a workers' compensation expert on contract with the state Division of Workers' Compensation. Mr. Lewis's findings are necessary before revision of the complicated rate structure can be addressed in any detail.

However, the final interim redraft of House Bill 159 attempts to adjust the law in ways the Committee feels will help reduce the extremely high insurance premiums Alaska businesses pay out for workers' compensation.

For one, a significant reduction in premium rates can be assured through immediate response to the needs of employees injured on the job, so that these injured workers can be returned to the labor force in the shortest period of time.

This objective can be attained, in part, by requiring injured workers expected to be on workers compensation more than 90 days to be referred to rehabilitation or pain clinics within 30 days of injury. Public testimony from experts in the field reported that months and even years pass before an injured worker is referred to a clinic. Obviously, the quicker an injured worker is rehabilitated, the quicker he can be returned to the work force. This means less compensation is paid out which, in effect, would affect the rate structure.

In regard to workers' compensation-job training and placement programs, the cost, in many cases, should be borne by the appropriate agencies such as CETA, WIN, or other government sponsored groups directly responsible for an

employee injured while on the job.

Higher educational career training, skill centers and other post secondary educational opportunities such as college should be funded through a special state grant program.

It must be emphasized that retraining costs, when figured into insurance premiums borne by the employer, is ultimately passed on to the consumer. It is the consumer who picks up the tab for the increased cost of goods and services.

Following a recent meeting with the state Workers' Compensation Board, the Committee feels the Board must be given more authority in making final determination of workers' compensation cases, in order to avoid long and costly legal fights -- all of which is reflected in the rate structure.

A goal of six months from the time of injury to settlement will result in almost no need for expensive attorney and court fees. It is felt that a decrease of 50 percent in the time spent on litigation of cases could be attained if the law were more clear on the Board's authority. The Committee feels that the Board -- comprised of lay experts in the field -- deals fairly with claimants and injured workers and give them every opportunity to air their grievances.

The Committee also feels that workers' compensation premiums could be further reduced in cases where an injured worker carries health insurance, or other insurance policies that cover personal injury.

The redraft of House Bill 159 also addresses the need to tighten up the so-called "Bunkhouse Rule," which essentially holds an employer responsible for an employee's safety when he is working more than 25 miles from his home.

While the Committee recognizes the right of workers to be protected when away from home, particularly in Alaska's remote regions, it also finds abuses in the system, especially during leisure-time activities and accidents caused by intoxication.

The Committee is of the opinion that an intoxicated worker who is injured is responsible for his actions and should not be entitled to collect workers' compensation benefits.

Likewise, if a worker is injured while racing motorcycles or playing sports during his leisure hours, it is highly questionable whether the employer should be responsible for his injury, particularly when other insurance programs carried by the worker may cover the injury.

The Committee also desires a clear and concise definition of the terms "benefit" and "compensation" as they appear in House Bill 159. In either case, the term should relate only to a worker's take-home pay and medical treatment. Workers' compensation was never meant to be an open-ended benefit system. The terms "compensation" and "benefit" appear so regularly throughout House Bill 159 that anything less than a concise definition will lead to misunderstanding and confusion.

GOVERNMENT PERMITS

The Committee has placed the redraft of Senate Bill 84 on hold until the beginning of the second session.

Testimony collected during the interim shows conclusively a real need for streamlining the government permitting process. However, it is equally clear that opinion on how to accomplish this goal varies widely.

On the one hand, the Alaska Oil and Gas Association (AOGA) and its membership believes Senate Bill 84 (Second Rules) does not go far enough in facilitating

the procedure for gas and oil permits. The association would like a stronger "lead agency" clause in Senate Bill 84 and a softening of language in the bill that guarantees "any individual, irrespective of his 'standing' otherwise granted under the law, to appeal a permitting decision, and further delay resolution of the application," according to the association.

On the other hand, environmental groups -- particularly Trustees for Alaska -- feel Senate Bill 84 and proposed administrative regulations do not adequately protect local community interest in the permitting procedure.

In the middle is the state Department of Law which, under direction of the Governor, has drafted new regulations governing classification of permits -- the reported purpose being to streamline the system.

Although the Committee feels there is strong support in both the House and Senate to clean up the system, it doesn't want to work hard to pass legislation only to have it vetoed by the Governor. This is why the Committee believes participation by the administration in this legislation is vital.

The Governor's chief executive, Jerry Reinwand, feels legislative participation in this issue is important and has reportedly held up implementing regulations until after the negotiation process. That process is underway, and hopefully an accord can be reached prior to the session.

STATEWIDE TELECOMMUNICATIONS

Legal services is currently drafting a House Concurrent Resolution that will spell out what the Committee feels should be the legislative policy regarding statewide telecommunications. The resolution will be sponsored by the House Labor and Commerce Committee.

The resolution is being drafted along the following lines:

-- Whereas a significant and increasing amount of public funds is being invested in telecommunications systems; and

-- Whereas it should be the role of state government to encourage and not compete with the private sector; and

-- Whereas the private sector which deals in Alaska telecommunications faces a crowding out by government in the wake of increasing state wealth; and

-- Whereas the private sector has been the foundation and vitality of the American Democratic and economic system; and

-- Whereas the Alaska State Legislature lacks a policy regarding the burgeoning telecommunications system;

Be it resolved that the Alaska State Legislature should take the following into account to serve as guidelines when considering telecommunications appropriations:

-- When and where possible, the state Divisions of Telecommunications should procure services from private enterprise or certified and franchised utilities and contract for the construction, management, operation and maintenance of telecommunications systems.

-- When and where possible, the state Divisions of Telecommunications should reduce or eliminate airwave interference of state owned or financed stations with privately owned and operated cable television stations.

-- Artificial regulatory and government barriers for growth and development of new and innovative services by the private sector should be removed.

-- In-state programming or Bush programming can be beneficial to sectors of the Alaskan community. However, the Divisions of Telecommunications should not only assure that such programs are cost effective, but production of these

programs should be available to the private sector on a contract or bid basis.

-- Alaska's villages should have the opportunity to own, operate and maintain their own satellite earth stations.

-- Companies owned and operated by Alaska residents and based in Alaska should be given a competitive edge over Outside interests.

-- No commercial advertisements shall be carried in state funded or state subsidized programs or in programs transmitted by state funded or state subsidized satellite channels.

-- The Legislature should encourage commercial radio and television news coverage of the legislative sessions by making equipment, space and satellite time available to the private sector. This would serve as a meaningful and efficient and non-controversial method of communicating legislative affairs to the public.

ARCHITECTURAL AND ENGINEERING SERVICES

House Bill 612, which relates to contracts for architectural, engineering and surveying services, has been redrafted and is ready for further Committee consideration upon convening of the legislative session.

House Bill 612 clarifies the conditions under which a state contract for professional services can be awarded. It requires the state and other subdivisions of the state to determine whether a bidding firm is "capable and qualified" to do the work, rather than issuing a contract strictly based on the lowest bid. A person who provides such professional services may annually submit to the department a statement of qualifications and performance data.

House Bill 600, which lays out contractual liability of architects, engineers, surveyors and the state of Alaska, is currently in a holding pattern until an equitable formula for liability can be worked out. A final redraft of House Bill 600 is expected prior to the beginning of the session.

COMPULSORY AUTOMOBILE INSURANCE

The Committee recommends the sponsors of House Bill 346 pursue other avenues to increase the number of insured drivers.

House Bill 346 has received little support during hearings held in Anchorage and Fairbanks during the interim.

It is generally felt that compulsory automobile insurance will not attain its primary goal -- to increase the number of insured drivers in Alaska. In fact, it is counter productive in that it is thought to be unenforceable and actually may result in higher insurance rates for the already insured driver. This is because the high risk factor of those who are generally uninsured under the current situation would be spread among drivers who already are insured.

The Committee understands that sponsors of the bill are currently exploring other alternatives including stronger state financial responsibility laws.

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HOUSE LABOR & COMMERCE
STANDING COMMITTEE
January 27, 1982
1:36 p.m.

Members Present: Rep. Martin, Chairman
Rep. Bylsma, Vice Chairman
Rep. Randolph

Members Absent: Rep. Rogers
Rep. Gardiner

COMMITTEE CALENDAR

HB 159 An Act relating to workers' compensation;
and providing for an effective date.

WITNESS REGISTER

Ed Holden
North American Rehabilitation
100 E 46th
New York, New York
Position Statement: Presented film regarding rehabilitation.

Zee Jackson
Rehabilitation Consultant
PO Box 3130
Anchorage, Alaska 99510
264-2460
Position Statement: Summary of presentation (1/26) of her study.

John Lewis
Workers Compensation Consultant
PO Box 330550
Miami, Florida 33133
(305) 443-8111
Position Statement: Presented interim report on Alaska Workers
Compensation System.

PREVIOUS ACTION

HB 159 No previous action. No action taken this
date.

Statutory Reference: AS 18.80; AS 23.30.

ACTION NARRATIVE

Tape #006

Recording
Number 0081

The meeting was called to order by Chairman Martin at 1:36 p.m. Members present were Representatives Martin, Bylsma, and Randolph. Members absent were Representatives Gardiner and Rogers. This meeting was a joint meeting with the Senate Labor & Commerce Committee. Senate Committee members present were: Senators Fahrenkamp, Mulcahy, and Ziegler. Rep. Martin outlined the meeting.

Number 0109

Ed Holden, of North American Rehabilitation, New York, spoke about a man who became paraplegic and then decided to make a film about rehabilitating disabled people. Holden gave an introduction to the film, and then showed it to the committee. The film was about dealing with a disability. A bookle. that accompanied the film is available from the House Labor & Commerce Committee.

Number 0546

Zee Jackson, Rehabilitation Consultant, Anchorage, gave a summary of her previous day's presentation. She outlined problems with the system, and recommendations for correcting those problems.

Number 0587

John Lewis, Worker. Compensation Consultant, Miami, Florida, presented a report the defines critical areas. Lewis said Alaska must look at problems, decide philosophy, determine feasibility, and construct legislation. He said philosophy is an integral part of workers compensation, and that the legislature must determine the state's philosophy.

Number 0645

Lewis spoke about the "bunkhouse rule", which is the court's test of whether an injury is job-related. He said courts have decided that, if people are forced to live away from home at a remote site, broader concepts apply. Lewis said Alaska has the broadest rules of any state. He went over factors the legislature should consider regarding the bunkhouse rule.

Number 0732

Lewis said options are: 1) to limit compensable injuries to working hours; 2) to limit compensable injuries to on the premises; 3) to limit compensable injuries to working hours and the special hazards of

remote living; and, 4) to limit compensable injuries to everything except those injuries resulting from personal activities.

Number 0780

Lewis went over problems regarding medical benefits. He gave the pros and cons of various methods of doctor selection, and stated that alternatives are: 1) employee selection; 2) employer selection; 3) employer selects doctor; after 10 days, employee can switch; 4) employee selects doctor; after 10 days, employer can switch; 5) permit employer to pick from a panel of doctors selected by the insurer; and 6) Board establishes panel for workers compensation cases in Alaska and retains authority to remove people from the panel.

Number 0823

Lewis said the Second Injury Fund was set up to provide employers incentive (and to avoid disincentives) to hire physically impaired people. He said the fund is sometimes abused and reimbursement becomes more difficult. He felt guidelines need to be established to ensure that employers hired employees with knowledge of the employee's impairment, and to convince the employers that they are protected from a workers compensation claim by the employee with a method such as giving the employer a form certifying the employee's impairment, and insuring protection from the fund.

Number 0870

Lewis then addressed average weekly wage. He said that, after the pipeline, this became higher in Alaska. Lewis said average weekly wage needs to be compared to the existing employment situation. Other concerns he noted were room and board value and fringe benefits. He recommended that the legislature clarify the law as to whether benefits are included in average weekly wage determination.

Number 0971

Lewis went over the various types of disabilities--temporary total disability, temporary partial disability, permanent partial disability, permanent total disability--and problems in determining the type of disability suffered by the injured employee. (See pages 9-15 Lewis's report.)

Lewis recommended procedural changes to the

second injury fund. He requested feedback from the committee, employers, and carriers for use in further reports.

Number 1178

There being no further business to come before the committee, the meeting was adjourned at 3:14 p.m.

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Lewis then addressed average weekly wage. He said that, after the pipeline, this became higher in Alaska. Lewis said average weekly wage needs to be compared to the existing employment situation. Other concerns he noted were room and board value and fringe benefits. He recommended that the legislature clarify the law as to whether benefits are included in average weekly wage determination.

Number 0971

Lewis went over the various types of disabilities--temporary total disability, temporary partial disability, permanent partial disability, permanent total disability--and problems in determining the type of disability suffered by the injured employee. (See pages 9-15 of Lewis's report.)

Lewis recommended procedural changes to the

second injury fund. He requested feedback from the committee, employers, and carriers for use in further reports.

Number 1178

There being no further business to come before the committee, the meeting was adjourned at 3:14 p.m.

SIGN-IN SHEET

Name (please print)	Address	Representing	Testify? (YES or NO)	Phone Number
Jim Robison	Box 899 ANCH.	w/c DISTRICT COUNCIL of LABORERS ANCHORAGE STATE - AFL-CIO		376-1640
Pat Young	Brookline Junction	Voc Rehab	?	586-6500
DON RAILLIEAU	Box 4-2653 Anch.	ASDCL		514-5461
DON KOCH	PO BOX D JUNEAU 99811	DIV. OF INSURANCE	CONSERVE	465 2577
Kenneth Moore	—	Div of Insurance	observe	✓ ✓
J A McLEAN	Box 1774	Ins. Assn	—	6-3210
ED HITSZ	201 DANNER, #155 ANCH 99502	D.A. CODE CO	NO	349-6733
SEAN KLINE	134 Franklin Junction	A.H.C	—	6-1748
ED HOLDEN	100 E 46 TH N.Y. N.Y	NORTH AMER RE	—	
Jack Thompson	2214 Post Road, Anch 99501	WCCA		272 0536
William Reeves	3201 Second Road Anch 99503	AGC	NO	276 5359
Joe Johnson	P.O. BOX 3130	Consulting		
John Lewis	Box 330550, Miami FL	—	Yes	305-443-9111
Jacques McMichael	P.O. Box 1149 JNO	w/c Div Dept. of LABOR	NO	465-2790
Jim Johnson	PO Box 1149 JNO	w/c Board Man	NO	465-2790
Jim Johnson	214 N. Franklin JNO	Local 302	No	2580-3850
Richard CURRIE	306 W. HOUSENEY JNO	Local 852 TEAMSTERS	N	586-3222
MIKE MORGAN	9170 GLACIER ROAD	DIV VOC REHAB	NO	586 6500
J. Paul House	P.O. Box 1149 JNO	w/c Div. 2nd Injury Fund	NO	465-2791
MIKE THOMAS	Box 1211 Junction	Ins. Insurance Assn	No	586 3346

LABOR & COMMERCE COMMITTEE
DAILY COMMITTEE HEARING

Date: 1/27/82

Place: _____

<u>Members</u>	<u>Present</u>	<u>Absent</u>	<u>Time Arrived</u>	<u>Time Left</u>
Rep. B. Bylsma, V. Chair	✓		1:28	
Rep. D. Randolph	✓		1:28	
Rep. B. Rogers				
Rep. T. Gardiner				
Rep. T. Martin, Chair	✓		1:25	

Subject Matter:

House Bill No. _____

Senate Bill No. _____

Special Orders:

1-28-82

HB 159

HOUSE LABOR & COMMERCE
STANDING COMMITTEE
January 28, 1982
1:13 p.m.

Members Present: Rep. Martin, Chairman
Rep. Bylsma, Vice Chairman
Rep. Rogers
Rep. Randolph

Members Absent: Rep. Gardiner

COMMITTEE CALENDAR

HE 159 An Act relating to workers' compensation;
and providing for an effective date.

WITNESS REGISTER

William Reeves
Alaska General Contractors
3201 Spenard Road
Anchorage, Alaska
276-5354
Position Statement: Gave recommendations.

Jack Thompson
WCCA
2216 Post Road
Anchorage, Alaska 99501
272-0536
Position Statement: Gave recommendations.

Don Koch, Chief
Market Surveillance Section
Division of Insurance
Pouch D
Juneau, Alaska 99811
465-2577
Position Statement: Gave testimony; promised written
recommendations.

Jim Robison
W/C District Council of Laborers
and State AFL-CIO
Box 899
Anchorage, Alaska
276-1640
Position Statement: Gave recommendations.

Barbara Grisson
Pacific Marine Insurance

6253 East 41st Ct.
Anchorage, Alaska
800-426-4115
Position Statement: Comments.

Paul Troeh
administrative law procedures specialist
5921 Sunset
Juneau, Alaska 99801
586-6856
Position Statement: Gave suggestions.

PREVIOUS ACTION

HB 159 No previous action. No action taken this date.

Statutory Reference: AS 17.80; AS 23.30.

ACTION NARRATIVE

Tape #006
Recording
Number 1180

The meeting was called to order by Vice Chairman Bylsma. Members present were: Representatives Martin (arrived late), Bylsma, Randolph, and Rogers. Representative Gardiner was absent. The purpose of this meeting was to take testimony on HB 159.

Number 1195

William Reeves, Alaska General Contractors (AGC), Anchorage, said incentives are needed for injured employees to return to work, and for employers to rehire them. He went over disincentives. Reeves recommended: 1) go to percent of spendable income based on current wages; 2) do not include fringe benefits in wages; and, 3) Workers Compensation Board should be given authority to determine the value of room and board. He wanted to avoid unnecessary legislation. Reeves then went over the workdraft committee substitute section by section with recommendations.

Number 1420

Jack Thompson, WCCA and Alaska Conference of Employers, Anchorage, gave the committee a list of membership of both organizations he represents, and referred to the ACE report. Referring to John Lewis's report (presented 1/27), Thompson discussed the bunkhouse rule

definition in the workdraft committee substitute (p. 10, "in the course of employment"). He said employers are willing to meet litigation head-on. Thompson felt, regarding AS 23.30.095, that the Workers Compensation Board should be given more authority. He preferred that the employee be allowed to select a health care provider for a period of time, with the employer having the option to change providers after that time period. He recommended the ACE report remedy for average weekly wage, and their suggestions regarding permanent partial and permanent total disabilities. (A copy of the ACE report is available for review from the Committee.) Regarding the use of alcohol (see AS 23.30.235), Thompson recommended reinserting strong language, and again referred to the ACE report. He believes a mandated reduction in premiums should be made if workers compensation claims are reduced.

Number 1528

Don Koch, Chief, Market Surveillance Section, Division of Insurance, said pricing changes could complicate matters. He said forms are filed by a national council, not the insurer. He felt language should be changed to allow revoking and fining. He said he would present typewritten recommended changes to the committee at a later date.

Number 1589

Jim Robison, W/C District Council of Laborers and Alaska State AFL-CIO, Anchorage, felt the Division of Vocational Rehabilitation should have had the opportunity to give rebuttal testimony. He then went over the workdraft committee substitute for HB 159 section by section, giving his comments. Regarding the proposed amendments to the workdraft, Robison said he agreed with AGC that none of the amendments should be accepted. He commented on a letter distributed by Rep. Martin dated 1/25/82. Robison felt more effort on the part of the system would almost eliminate the need for attorneys. He commented on the bunkhouse rule and selection of doctors. Robison thought wages should include fringe benefits. He felt determination of degree of disability needs more study before being changed. There was discussion among the committee, Robison, Thompson, and Reeves.

Number .762

Barbara Grisson, Pacific Marine Insurance, Anchorage, spoke to the second injury fund. She had no problem with percentages and amounts, but felt wording was needed for the Department to give procedural relief allowing minimum payment forgiveness to the Department of Labor until it is cost effective to process small checks. There was discussion of this point among Rep. Martin, Grisson, and McClintock (Division of Workers Compensation). Grisson, on behalf of her company, agreed that problems should be resolved by agencies concerned.

Number 1800

Paul Troeh, administrative law procedures specialist, Juneau, said that AS 23.30.225 repeal would repeal half of the social security offset procedure, which would then not meet federal requirements. He suggested the committee take other action. John Lewis interjected that it should be left alone until further information is available. Troeh said the courts tend to give broad coverage under the bunkhouse rule. He pointed out several discrepancies not addressed.

Tape 7, Number 0325

As there was no further business to come before the committee, the meeting was adjourned at 2:59 p.m.

Sofo ✓✓✓

January 25, 1982

Original sponsor: Rules/Legislative Council

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 159 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to workers' compensation; and provid-
7 ing for an effective date."

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

Sec 66 P 44

9 * Section 1. AS 18.80.220(a)(4) is amended to read:

10 (4) an employer, labor organization or employment agency to
11 discharge, expel or otherwise discriminate against a person because he
12 has

13 (A) opposed any practices forbidden under AS 18.80.200 -
14 18.80.280; [OR BECAUSE HE HAS]

15 (B) filed a complaint, testified or assisted in a pro-
16 ceeding under this chapter; or

17 (C) filed a claim for workers' compensation benefits
18 under AS 23.30; *Sec 13 P 13*

19 * Sec. 2. AS 23.30.025 is amended by adding a new subsection to read:

20 (c) An insurer may issue a policy of insurance insuring the payment
21 of benefits under this chapter which provides for a deductible amount to
22 be paid by the employer. A policy with a deductible provision must be
23 approved by the director of insurance and must provide that the deduct-
24 ible amount be paid by the insurer to the employee on behalf of the
25 employer. After payment of the deductible by the insurer, the insurer
26 may recover the deductible amount from the employer. The failure of an
27 employer to reimburse an insurer for the deductible amount does not
28 relieve the insurer from any other obligation it may have under the
29 policy of insurance. An insurer is not required to apply for a deviation

1 under AS 21.39.070 in order to issue a policy under this subsection.
 2 This subsection does not apply to a policy of excess insurance purchased
 3 by a self-insurer.

4 * Sec. 3. AS 23.30.045(c) is amended to read:

5 (c) For a person eligible for vocational rehabilitation service
 6 under this chapter or AS 23.15.080 [AND] who is placed with an employer
 7 for service [WITHOUT WAGES] at the request of the board or the division
 8 [OFFICE] of vocational rehabilitation to give him on the job training,
 9 work readiness, [OR] work therapy experience [,] or work sampling, the
 10 liability set out in (a) of this section applies to the state rather
 11 than to the employer.

12 * Sec. 4. AS 23.30.080 is amended by adding a new subsection to read:

13 (d) If an employer fails to insure or provide security as required
 14 by AS 23.30.075, the board may issue a stop order prohibiting the use of
 15 employee labor by the employer until the employer insures or provides
 16 security as required by AS 23.30.075. If an employer fails to comply
 17 with a stop order issued under this section, the board shall assess a
 18 civil penalty of at least \$1,000 per day. The employer may not obtain a
 19 public contract with the state or any of its political subdivisions for
 20 one year following the violation of the stop order.

21 * Sec. 5. AS 23.30.095(a) is amended to read:

22 (a) The employer shall furnish medical, surgical, and other atten-
 23 dance or treatment, nurse and hospital service, medicine, crutches, and
 24 apparatus for the period which the nature of the injury or the process
 25 of recovery requires [, NOT EXCEEDING TWO YEARS FROM AND AFTER THE DATE
 26 OF INJURY TO THE EMPLOYEE. HOWEVER, IF THE CONDITION REQUIRING THE
 27 TREATMENT, APPARATUS, OR MEDICINE IS A LATENT ONE, THE TWO-YEAR PERIOD
 28 RUNS FROM THE TIME THE EMPLOYEE HAS KNOWLEDGE OF THE NATURE OF HIS
 29 DISABILITY AND ITS RELATIONSHIP TO HIS EMPLOYMENT AND AFTER-DISABLEMENT.

1 IT SHALL BE ADDITIONALLY PROVIDED THAT, IF CONTINUED TREATMENT OR CARE
2 OR BOTH BEYOND THE TWO-YEAR PERIOD IS INDICATED, THE INJURED EMPLOYEE
3 HAS THE RIGHT OF REVIEW BY THE BOARD. THE BOARD MAY AUTHORIZE CONTINUED
4 TREATMENT OR CARE OR BOTH AS THE PROCESS OF RECOVERY MAY REQUIRE]. When
5 medical care is required, the injured employee may designate a health
6 care provider [LICENSED PHYSICIAN] inside the state to render the care
7 except in cases where, in the judgment of the board, care or treatment
8 or both can best be administered by the selection of another health care
9 provider [PHYSICIAN]. Upon procuring the services of a health care
10 provider [PHYSICIAN], the injured employee shall give proper notifica-
11 tion of his selection to the employer within a reasonable time after
12 first being treated. [IF FOR ANY REASON DURING THE PERIOD WHEN MEDICAL
13 CARE IS REQUIRED THE EMPLOYEE WISHES TO CHANGE TO ANOTHER PHYSICIAN, HE
14 MAY DO SO IN ACCORDANCE WITH RULES PRESCRIBED BY THE BOARD.]

15 * Sec. 6. AS 23.30.095(b) is amended to read:

16 (b) ~~If the employee is unable to designate a health care provider~~
17 ~~[PHYSICIAN] and the emergency nature of the injury requires immediate~~
18 ~~medical care, or if he does not desire to designate a health care pro-~~
19 ~~vider [PHYSICIAN] and so advises the employer, the employer shall desig-~~
20 ~~nate the health care provider [PHYSICIAN]. Designation under this~~
21 ~~subsection, however, does not prevent the employee from subsequently~~
22 ~~designating a health care provider [PHYSICIAN] for continuance of re-~~
23 ~~quired medical care.~~

24 *Sec 31 P 24+25*

24 * Sec. 7. AS 23.30.095(c) is amended to read:

25 (c) No claim for medical or surgical treatment is valid and en-
26 forceable as against the employer unless, within 20 [TWENTY] days follow-
27 ing the first treatment ~~and following the time set by the board for~~
28 ~~notice of subsequent treatments, the health care provider [PHYSICIAN]~~
29 giving the treatment or the employee receiving it furnishes to the

1 employer and the board notice of the injury and treatment, preferably on
2 a form prescribed by the board. The board shall [MAY], however, excuse
3 the failure to furnish notice within 20 days when it finds it to be in
4 the interest of justice to do so, and it may, upon application by a
5 party in interest, make an award for the reasonable value of the medical
6 or surgical treatment so obtained by the employee.

7 * Sec. 8. AS 23.30.095^{SEC 37 P 24}(e) is amended to read:

8 (e) The employee shall, after an injury, at reasonable times
9 during the continuance of his disability if requested by his employer
10 or, when ordered by the board, submit himself to an examination by a
11 health care provider [PHYSICIAN OR SURGEON] authorized to practice
12 [MEDICINE] under the laws of the state in which the employee may be
13 found, furnished and paid for by the employer. [THE EMPLOYEE HAS THE
14 RIGHT TO HAVE A PHYSICIAN, PAID FOR BY THE EMPLOYER, PRESENT AT THE
15 EXAMINATION OR EXAMINATIONS.] No fact relative to the injury or claim
16 communicated to or otherwise learned by a health care provider [PHYSI-
17 CIAN OR SURGEON] who may have attended or examined the employee, or who
18 may have been present at an examination is privileged, either in the
19 hearings provided for in this chapter or an action to recover damages
20 against an employer who is subject to the benefits [COMPENSATION] provi-
21 sions of this chapter. If an employee refuses to submit himself to any
22 examination provided for in this section [HEREIN], his rights to compen-
23 sation shall be suspended until the obstruction or refusal ceases, and
24 his compensation during the period of suspension may, in the discretion
25 of the board or the court determining an action brought for the recovery
26 of damages under this chapter [HEREUNDER], be forfeited. The board in
27 any case of death may require an autopsy at the expense of the party
28 requesting the autopsy. No autopsy may be held without notice first
29 being given to the widow or widower or next of kin if they reside in the

1 state or their whereabouts can be reasonably ascertained, of the time
2 and place of the autopsy and reasonable time and opportunity given the
3 widow or widower or next of kin to have a representative present to
4 witness the autopsy. If no adequate notice is given, the findings from
5 the autopsy may be suppressed on motion made to the board or to the
6 superior court, as the case may be.

7 * Sec. 9. AS 23.30.105(a) ^{Sec 36 P 26} is amended to read:

8 (a) The right to benefits [COMPENSATION FOR DISABILITY] under this
9 chapter is barred unless a claim for them [IT] is filed within two years
10 after the employee has knowledge of the nature of his disability and its
11 relation to his employment and after disablement. The [HOWEVER, - THE
12 MAXIMUM TIME FOR FILING THE CLAIM IN ANY EVENT OTHER THAN ARISING OUT OF
13 AN OCCUPATIONAL DISEASE SHALL BE FOUR YEARS FROM THE DATE OF INJURY, AND
14 THE] right to benefits [COMPENSATION] for death is barred unless a claim
15 for benefits [THEREFORE] is filed within one year after the death. If [,
16 EXCEPT THAT IF] payment of compensation has been made without an award
17 on account of the injury or death, a claim may be filed within two years
18 after the date of the last payment. It is additionally provided that,
19 in the case of a latent injury [DEFECTS PERTINENT TO AND CAUSING COMPEN-
20 SABLE DISABILITY], the injured employee has full right to claim as shall
21 be determined by the board, time limitations notwithstanding.

22 * Sec. 10. AS 23.30.110(c) ^{Sec 40 P 30} is amended to read:

23 (c) The board shall make the investigation which it considers
24 necessary in respect of the claim, and upon application of an interested
25 party shall order a hearing on it. If a hearing on a claim is ordered,
26 the board shall give the claimant and other interested parties at least
27 10 days' notice of the hearing, served personally upon the claimant and
28 other interested parties or sent by registered mail, and shall, within
29 30 [20] days after the hearing is held [HAD], by order, reject the claim

1 or make an award in respect to it. If a hearing is continued by the
2 board, additional notice under this subsection is not required. [IF NO
3 HEARING IS ORDERED WITHIN 20 DAYS AFTER NOTICE IS GIVEN AS PROVIDED IN
4 (b) OF THIS SECTION, THE BOARD SHALL BY ORDER REJECT THE CLAIM OR MAKE
5 AN AWARD IN RESPECT TO IT.]

6 * Sec. 11. AS 23.30.155(j) is amended to read:

7 (j) If an employer has made advance payments or overpayments of
8 compensation, he is entitled to be reimbursed, after approval by the
9 board, out of any unpaid installment or installments of compensation
10 due.

11 * Sec. 12. AS 23.30.155 is amended by adding new subsections to read:

12 (n) Compensation owed to an injured employee in the state shall be
13 paid by a check or draft that may be cashed on the first banking day
14 after it is received by the employee and on any succeeding banking day.

15 (o) If the board determines that it is in the interest of an
16 injured employee and that a substantial hardship will not be imposed on
17 the employer, the liability of the employer for all or part of compensa-
18 tion payable under AS 23.30.190 may be discharged by the payment of a
19 lump sum.

20 * Sec. 13. AS 23.30.175(b) is repealed and reenacted to read:

21 (b) After June 30 and before December 1 of each year, the commis-
22 sioner shall adopt and publish the average weekly wage for each jurisdic-
23 tion for the preceding calendar year as published by the United States
24 Secretary of Labor for the purposes of unemployment insurance. In
25 determining the rate of compensation the commissioner shall use the
26 average weekly wage figure for each jurisdiction, including Alaska, for
27 which the Secretary of Labor computes an average weekly wage. These
28 figures are the applicable average weekly wages for those jurisdictions
29 for the following calendar year.

Sec 52 P 36, 37

1 * Sec. 14. AS 23.30.175(c) is repealed and reenacted to read:

2 (c) The following rules apply to recipients who do not reside in
3 Alaska:

4 (1) The weekly rate of compensation shall be calculated by
5 multiplying the recipient's average weekly wage times the ratio of the
6 average weekly wage of the jurisdiction in which the recipient resides
7 to the average weekly wage of Alaska. The rate is based on the average
8 weekly wages in effect when the recipient leaves Alaska and shall be
9 adjusted annually upon publication of the average weekly wages for all
10 jurisdictions.

11 (2) The calculation required by this subsection does not
12 apply if the recipient is absent from Alaska for medical or rehabilita-
13 tion services not reasonably available in Alaska.

14 (3) If the average weekly wage of the recipient and the
15 resulting compensation rate is determined under AS 23.30.220(2) the
16 calculation required by this subsection applies to only those wages
17 earned in Alaska.

18 (4) Application of this subsection may not result in a reduc-
19 tion of the weekly compensation rate to less than \$65 a week except as
20 provided in (a) of this section.

Sec 53 P 37

21 * Sec. 15. AS 23.30.175(d) is repealed and reenacted to read:

22 (d) In a jurisdiction for which no average weekly wage is computed
23 by the United States Secretary of Labor for the purposes of unemployment
24 insurance, the average weekly wage shall be as determined by the commis-
25 sioner.

Sec 55 P 38, 39, 40

26 * Sec. 16. AS 23.30.190(a)(20) is amended to read:

27 (20) in all other cases in this class of disability the
28 compensation is $66\frac{2}{3}$ percent of the difference between his average
29 weekly wages and his wage-earning capacity after the injury in the same

1 employment or otherwise, payable during the continuance of the partial
 2 disability, but subject to reconsideration of the degree of the impair-
 3 ment by the board on its own motion or upon application of a party in
 4 interest; [WHENEVER THE BOARD DETERMINES THAT IT IS IN THE INTEREST OF
 5 JUSTICE, THE LIABILITY OF THE EMPLOYER FOR COMPENSATION, OR ANY PART OF
 6 IT AS DETERMINED BY THE BOARD, MAY BE DISCHARGED BY THE PAYMENT OF A
 7 LUMP SUM;]

8 * Sec. 17. AS 23.30.191 is repealed and reenacted to read:

9 Sec. 23.30.191. EXPENSES FOR REHABILITATING INJURED EMPLOYEES. An
 10 employee, who, as a result of injury, is or may be expected to be totally
 11 or partially incapacitated for his normal occupation and who, under the
 12 direction of the board, is being rehabilitated to engage in a remunera-
 13 tive occupation. may receive compensation necessary for his rehabilita-
 14 tion of 66-2/3 percent of his average weekly wage subject to the maximum
 15 payable under AS 23.30.175.

16 * Sec. 18. AS 23.30.215(a)(1) is amended to read:

17 (1) reasonable and necessary funeral expenses not exceeding
 18 \$2,500 [\$1,000];

19 * Sec. 19. AS 23.30.220(2) is amended to read:

20 (2) the average weekly wage is [THAT MOST FAVORABLE TO THE
 21 EMPLOYEE] calculated by dividing 456 [52] into the total wages earned,
 22 including self-employment, in the highest paid three consecutive years
 23 out of [ANY ONE OF] the five [THREE] calendar years immediately preced-
 24 ing the injury;

25 * Sec. 20. AS 23.30.250 is amended to read:

26 Sec. 23.30.250. PENALTY FOR MISREPRESENTATION. A person who wil-
 27 fully makes a false or misleading statement or representation for the
 28 purpose of obtaining a benefit or payment under this chapter is guilty
 29 of theft as defined in AS 11.46.100(3) and is punishable as provided in

1 AS 11.46.120 - 11.46.150 [A MISDEMEANOR, AND UPON CONVICTION IS PUNISH-
 2 ABLE BY A FINE OF NOT MORE THAN \$1,000, OR BY IMPRISONMENT FOR NOT MORE
 3 THAN ONE YEAR, OR BY BOTH].

Sec 68 P 45

4 * Sec. 21. AS 23.30.265(16) is amended to read:

5 (16) "medical and related benefits" includes but is not
 6 limited to physicians' fees, nurses' charges, pain clinic services,
 7 hospital services, hospital supplies, medicine and prosthetic devices,
 8 physical rehabilitation, and treatment for the fitting and training for
 9 use of such devices as may reasonably be required which arises out of or
 10 is necessitated by an injury, and transportation charges to the nearest
 11 point where adequate medical facilities are available;

Sec 70 P 45, 46

12 * Sec. 22. AS 23.30.265(20) is amended to read:

13 (20) "wages" means the money rate at which the service ren-
 14 dered is recompensed under the contract of hiring [IN FORCE AT THE TIME
 15 OF THE INJURY,] and includes the reasonable value of board, rent,
 16 housing, lodging, or similar advantage received from the employer, and
 17 gratuities received in the course of employment from other [OTHERS] than
 18 the employer;

Sec 71. P 45, 46

19 * Sec. 23. AS 23.30.265 is amended by adding new paragraphs to read:

20 (29) "benefits" means compensation and medical and related
 21 benefits;

22 (30) "health care provider" means a chiropractor licensed
 23 under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist
 24 licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing
 25 optician licensed under AS 08.71; an optometrist licensed under AS 08.72;
 26 a pharmacist licensed under AS 08.80; a physical therapist licensed
 27 under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a
 28 psychologist and a psychological associate licensed under AS 08.86; and
 29 a hospital as defined in AS 18.20.130, including a governmentally owned

1 or operated hospital; a corporate entity covered under AS 21.88.050-
2 (b)(12); an employee of a health care provider acting within the course
3 and scope of his employment; and persons comparably licensed in other
4 jurisdictions to provide health care;

5 (31) "in the course of employment" includes travel to and from
6 a remote job site but does not include activities outside of working
7 hours off a site provided by the employer that are not under the super-
8 vision or control of the employer.

9 * Sec. 24. ^{Sec 72 P46} AS 23.30.095(g), 23.30.125(b), 23.30.175(e) and (f), and
10 23.30.225(b) are repealed.

11 * Sec. 25. ^{Sec 72 P46} This Act takes effect July 1, 1982.

HOUSE LABOR & COMMERCE
STANDING COMMITTEE
January 28, 1982
1:13 p.m.

Members Present: Rep. Martin, Chairman
Rep. Bylsma, Vice Chairman
Rep. Rogers
Rep. Randolph

Members Absent: Rep. Gardiner

COMMITTEE CALENDAR

HB 159 An Act relating to workers' compensation;
and providing for an effective date.

WITNESS REGISTER

William Reeves
Alaska General Contractors
3201 Spenard Road
Anchorage, Alaska
276-5354
Position Statement: Gave recommendations.

Jack Thompson
WCCA
2216 Post Road
Anchorage, Alaska 99501
272-0536
Position Statement: Gave recommendations.

Don Koch, Chief
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Pouch D
Juneau, Alaska 99811
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Position Statement: Gave testimony; promised written
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Jim Robison
W/C District Council of Laborers
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Box 899
Anchorage, Alaska
276-1640
Position Statement: Gave recommendations.

Barbara Grisson
Pacific Marine Insurance

6253 East 41st Ct.
Anchorage, Alaska
800 .26-4115
Position Statement: Comments.

Paul Troeh
administrative law procedures specialist
5921 Sunset
Juneau, Alaska 99801
586-6856
Position Statement: Gave suggestions.

PREVIOUS ACTION

HB 159 No previous action. No action taken this date.

Statutory Reference: AS 18.80; AS 23.30.

ACTION NARRATIVE

Tape #006
Recording
Number 1180

The meeting was called to order by Vice Chairman Bylsma. Members present were: Representatives Martin (arrived late), Bylsma, Randolph, and Rogers. Representative Gardiner was absent. The purpose of this meeting was to take testimony on HB 159.

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Jack Thompson, WCCA and Alaska Conference of Employers, Anchorage, gave the committee a list of membership of both organizations he represents, and referred to the ACE report. Referring to John Lewis's report (presented 1/27), Thompson discussed the bunkhouse rule

definition in the workdraft committee substitute (p. 10, "in the course of employment"). He said employers are willing to meet litigation head-on. Thompson felt, regarding AS 23.30.095, that the Workers Compensation Board should be given more authority. He preferred that the employee be allowed to select a health care provider for a period of time, with the employer having the option to change providers after that time period. He recommended the ACE report remedy for average weekly wage, and their suggestions regarding permanent partial and permanent total disabilities. (A copy of the ACE report is available for review from the Committee.) Regarding the use of alcohol (see AS 23.30.235), Thompson recommended reinserting strong language, and again referred to the ACE report. He believes a mandated reduction in premiums should be made if workers compensation claims are reduced.

Number 1528

Don Koch, Chief, Market Surveillance Section, Division of Insurance, said pricing changes could complicate matters. He said forms are filed by a national council, not the insurer. He felt language should be changed to allow revoking and fining. He said he would present typewritten recommended changes to the committee at a later date.

Number 1589

Jim Robison, W/C District Council of Laborers and Alaska State AFL-CIO, Anchorage, felt the Division of Vocational Rehabilitation should have had the opportunity to give rebuttal testimony. He then went over the workdraft committee substitute for HB 159 section by section, giving his comments. Regarding the proposed amendments to the workdraft, Robison said he agreed with AGC that none of the amendments should be accepted. He commented on a letter distributed by Rep. Martin dated 1/25/82. Robison felt more effort on the part of the system would almost eliminate the need for attorneys. He commented on the bunkhouse rule and selection of doctors. Robison thought wages should include fringe benefits. He felt determination of degree of disability needs more study before being changed. There was discussion among the committee, Robison, Thompson, and Reeves.

Number 1762

Barbara Grisson, Pacific Marine Insurance, Anchorage, spoke to the second injury fund. She had no problem with percentages and amounts, but felt wording was needed for the Department to give procedural relief allowing minimum payment forgiveness to the Department of Labor until it is cost effective to process small checks. There was discussion of this point among Rep. Martin, Grisson, and McClintock (Division of Workers Compensation). Grisson, on behalf of her company, agreed that problems should be resolved by agencies concerned.

Number 1800

Paul Troeh, administrative law procedures specialist, Juneau, said that AS 23.30.225 repeal would repeal half of the social security offset procedure, which would then not meet federal requirements. He suggested the committee take other action. John Lewis interjected that it should be left alone until further information is available. Troeh said the courts tend to give broad coverage under the bunkhouse rule. He pointed out several discrepancies not addressed.

Tape 7, Number 0325

As there was no further business to come before the committee, the meeting was adjourned at 2:59 p.m.

LABOR & COMMERCE COMMITTEE
DAILY COMMITTEE HEARING

Date: _____

Place: _____

<u>Members</u>	<u>Present</u>	<u>Absent</u>	<u>Time Arrived</u>	<u>Time Left</u>
Rep. E. Bylsma, V. Chair	✓		1:00	
Rep. D. Randolph	✓		1:11	
Rep. B. Rogers	✓	✓	1:06	
Rep. T. Gardiner				
Rep. T. Martin, Chair	✓	✗	1:53	

Subject Matter:

House Bill No. 159 _____

Senate Bill No. _____

Special Orders:

SIGN-IN SHEET

Name (please print)	Address	Representing	Testify? (YES or NO)	Phone Number
WILLIAM REEVES	3201 Coenard Road	AGC	YES	276 5359
Jack Thompson	2216 Post Road, Ancl 99501	WCCA	Yes	272 0536
Joe Jackson	P.O. Box 3130, Ancl. 99510	Self	If Requested	264-246 246-2460
Jackie McClintock	P.O. Box 1149 Juneau	DOL Duke Div.	NO	465-2790
Jim Robinson	Box 899 ANCH.	w/c District Council of Labor Relations, AF-CIO	Yes	276-1641
Don Roultan	Box 899 ✓	"	NO	
John Lewis	Box 330550 Miami, FL		If Requested	305-443-800
Beverly Ward	134 N Franklin	Unco	No	586-3680
E. Good Blatter	Box 1149	Dept Labor	NO	465-2700
Mike Thomas	Box 1211 Juneau	Am. Insurance Ass'n	No	586 3340
GARY C. Jenkins	P.O. Box 194, Anko Bay	NFIB	NO	586-4100
DON KOCH	POUCH D JUNEAU	DIV. OF INSURANCE	IF NEEDED	465-2577
Barbara Gussion	6253 E 41st Ct Anchorage	Pacific Marine Ins	If needed	800-426-411
Mike Budsall	9626 Eagle Juneau	DUR	If needed	586-1245
Pat Young	Juneau	DUR	"	6-6500
Paul Troen	5921 Sunset	SELF	Possibly	586-6850

2-1-82

HOB 146

HOB 303

HOUSE LABOR & COMMERCE
STANDING COMMITTEE
February 1, 1982
1:05 p.m.

Members Present: Rep. Martin, Chairman
Rep. Byisma, Vice-Chairman
Rep. Randolph

Members Absent: Rep. Gardiner
Rep. Rogers

COMMITTEE CALENDAR

HB 303 An act relating to employment preference for residents of depressed areas.

HB 146 An act relating to payment procedures on certain public contracts.

WITNESS REGISTER

Jeff Barry
Committee Aide
House Labor & Commerce Committee
Pouch V
Juneau, Alaska 99811
465-3669
Position Statement: Overview of HB 146 and proposed amendments.

Judy Knight, Special Assistant to the Commissioner
Department of Labor
PO Box 1149
Juneau, Alaska 99801
465-2700
Position Statement: Gave department's position and suggested amendments on both bills.

Al Gordon, Assistant Director
Wage & Hour Division
Department of Labor
PO Box 630
Juneau, Alaska 99811
465-4500
Position Statement: Testified with Knight regarding Department's position regarding HB 146.

Sharon Mackland, lobbyist
Utility Contractors Association
no phone or address given
Position Statement: Supported HB 146; gave suggested amendments.

Jean Kline
Alaska Chapter
Associated General Contractors (AGC)
586-1740
Position Statement: Questions and clarifications (HB 146).

Ginny Chitwood
Alaska Municipal League
no phone or address given
Position Statement: Various criticisms of HB 146; spoke from prepared testimony.

John Scribner
Department of Transportation & Public Facilities
Juneau, Alaska
Position Statement: Opposed to HB 146 as written.

PREVIOUS ACTION

HB 146

No previous action.

Statutory Reference: AS 36

Action Taken: Amendment #1: Rep. Randolph moved, on page 1 of the Committee Substitute for SSHB 146, to delete subsection (b) (lines 16-19), and insert language recommended in memo dated 5/19/81 to Committee from Department of Labor, which reads: "The state shall initiate payment to the contractor for the amount due under the public construction or public works contract within 15 days after the contractor submits to the state a bill for materials and services with a certification issued by the Department of Labor that all employees employed on the project by the contractor and by all subcontractors have been paid not less than the established prevailing rate of pay as determined and published by the Department of Labor." There being no objection, the motion passed.

Amendment #2: Rep. Bylsma moved to delete subsection (d), lines 25-28, page 1. There being no objection, the motion passed.

Amendment #3: Rep. Randolph moved, on page 1, line 29, to insert between the words "state" and "is", the following: "or a political subdivision of the state". There being no objection, the motion passed.

Rep. Randolph moved to rescind the committee's action in adopting Amendment #1. For: Randolph. Against: Martin, Bylsma. Motion failed.

Rep. Randolph moved to pass CSSSHB 146 (L&C) from committee with individual recommendations. There being no objection, the motion passed.

HB 303

No previous action.

Statutory Reference: AS 36.

Action Taken: Rep. Randolph moved to table bill; there being no objection, motion passed.

ACTION NARRATIVE

Tape #001
Recording
Number 0326

The meeting was called to order by Chairman Martin at 1:05 p.m. Members present were: Representatives Martin, Bylsma, and Randolph. Members absent were: Representatives Gardiner and Rogers. First bill considered by the committee was HB 146.

Number 0343

Jeff Barry, Labor & Commerce Committee aide, gave an overview of the bill and proposed amendments.

Number 0410

Judy Knight, Special Assistant to the Commissioner of Labor, felt the committee substitute does not address the problem. Knight presented the committee with a position paper. Specifically, she felt the term "certified payroll" was unclear, and that 15 days is too short a time for state to pay. She referred to the paper she presented to the committee for a list of suggested amendments.

Number 0451

Al Gordon, Assistant Director of the Wage & Hour Division, joined Knight in presenting testimony. There was discussion about what is a reasonable time in which to expect the state to pay contractors.

Number 0482

Knight said there needs to be clarification between the terms "certified payroll" and "payroll certified by..."

Number 0492 There was discussion about which branches of the state government the bill should address.

Number 0540 Knight explained the state's normal procedure for payment of contractors.

Number 0559 Barry said the intention of the bill was that "certified payroll" would mean sworn to or attested by the contractor that employees have been paid. Gordon said that, without certification, the Department of Labor cannot enforce paying prevailing wages; the employee would have to go through a lengthy process to get his money.

Number 0588 Sharon Mackland, Utility Contractors Association, supported the bill. She was concerned with "retainage". She felt the definition of "state" needed to be expanded. Knight suggested using words, "contracting agency", to replace word "state". Barry said he had asked legal services for a definition; they said that "state", as used, means the state or any political subdivision. There was discussion.

Number 0666 Jean Kline, Alaska Chapter, Associated General Contractors, also wanted "political subdivision" included in the definition of "state". She had several questions about the impact of the bill; there was discussion. Kline commended DOT's handling of contracts.

Number 0715 Ginny Chitwood, Alaska Municipal League, said there was no objection by the municipalities to interest accruing, but felt that interest on retainage destroys the function of retainage and removes incentive to complete contracts on time. She said the definition doesn't differentiate between the various types of retainage. (Chitwood spoke from prepared testimony.) Rep. Martin asked why contractors should have to compensate money withheld; Chitwood responded that retainage is to ensure a contractor finishes the work. There was discussion of retainage and various methods which could be used.

Number 0811 John Scribner, Department of Transportation and Public Facilities, opposed the bill as written. He said it increases the risk that the contractor will not complete the job.

He felt the increased risk would increase the cost of bonding, and that increased bonding would be difficult for small contractors to obtain. He felt adequate procedures exist--bidding, bonding, and mobilization costs are paid up front; materials payments are made when materials are delivered; and progress payments are currently being made. He said the total turnaround is two weeks. He said an analysis had been done, and it was found that most payments get out quickly, but a few take as long as 30-35 days. He noted that mail sometimes takes over a week. Scribner explained retainage as it is presently being used, and the costs of retainage.

Number 0898

Rep. Randolph moved to delete, on page 1, lines 16-19, subsection (b) of the committee substitute, and replace with language recommended by the Department of Labor in the paper they presented to the committee. There being no objection, the motion passed.

Number 0921

Rep. Bylsma moved to delete subsection (d), lines 25-28, page 1 of committee substitute. There being no objection, the motion passed.

Number 0936

Rep. Randolph moved to insert "or a political subdivision of the state" between the words "state" and "is" on line 29 of page 1 of the committee substitute. There being no objection, the motion passed.

Number 0942

Judy Knight said that, in the Department's preferred amendment, when the final billing occurs, the contracting agency would contact the Department of Labor, who would send a memo verifying that wages were paid. She gave a timeframe of a couple days at most if payrolls had been submitted throughout the project. There was discussion.

Number 0965

Rep. Randolph said the issue of the bill is to speed the flow of money; he felt the amendment passed by the committee had the potential to be a problem. He moved to rescind the adoption of amendment #1. There was discussion. On the question, Rep. Randolph voted in favor of rescinding; Reps. Bylsma and Martin opposed rescinding. The motion failed.

Rep. Randolph moved to pass the committee substitute with individual recommendations. There being no objection, the motion passed, and the committee substitute was passed from committee with amendments.

Number 1014

Rep. Martin gave an introduction to HB 303.

Number 1020

Judy Knight, Special Assistant to the Commissioner of Labor, said the Department of Labor, the Attorney General, and the Governor would like to give employment preference to residents. She said they had attempted to do this constitutionally. Knight explained that there is a large amount of paperwork involved, and that it is difficult to determine residence and ensure the intention to stay in the state. She said she is not sure if the cost of the legislation justifies the intent. Knight noted that people outside the state are looking to Alaska for employment. The Department of Labor is concerned about this influx of people. She said the bill addresses the issues in a positive manner, but information needed to make the bill workable is not available. There was discussion.

Number 1128

Rep. Randolph moved to table the bill. There being no objection, the motion passed.

Number 1135

There being no further business to come before the committee, the meeting was adjourned at 2:20 p.m.

2/1/82

meter

- 0326 Call to order by Ch. Martin
- 0330 CS 55HB 146 (intro)
- 0343 Jff Barry - overview of bill + amendments
- 0410 ~~Judy~~ Knight - CS does not address problem.
(handed out memo to explain their position)
"certified payroll" unclear term. 15 days too short
a time to pay. ~~suggested~~, see memo for suggested
amendment.
- 0451 Al Gordon, Asst Dir, Wage & Hour Div joined
Ms. Knight. ^{Knight} "Want method to ensure employees
have been paid.
- 0467 Randolph - agree w/ that, but need to be sure contractor
is paid in timely fashion.
- 0472 Knight - agree, but bill needs changes.
- 0481 Martin - clarification
- 0482 Knight - CS says "certified payroll" rather than
"payroll certified by".
- ~~0490 Martin~~ said
- 0492 Martin - Knight discussed definitions of "state"
Bylsma - in this definition, wd
only apply to executive branch.
- 0535 Bylsma - suggested as not (see memo) could under-
mine purpose of whole bill - Dept Labor cd hld up 30-60 days.
- 0540 Knight - wd not intentionally. ~~State~~ went through
normal procedure.
- 0559 Barry - intention was that certified payroll means
sworn to or attested by contractor that employees have been paid.

- 0575 ~~E~~ Gordon - without certification, Dept of Labor cannot enforce paying prevailing wages; employee has to go through lengthy process & sue to get his money. This way, Department monitors
- 0588 Sharon Mackland, Utility Contractors Assoc - supports bill. Concerned w/ "retainage". Sec E says state is liable to contractor; original bill included political subdivisions (boroughs, cities) - this version needs definition, Sec d, of state expanded or made same as on pg 3, line 9, or including "political subdivision" in pg 1 definition.
Discussion Martin/Mackland re definition of "state".
- 0646 Knight - suggested "contracting agency" to replace word "state".
- 0647 Barry - asked lawyers for definition - they said "state" as used, means state or any political subdivision.
Discussion w/Knight.
- 0666 Jeanne Kline, At Chap, Gen Assoc Contractors - ~~again~~ also wanted "political subdivision" included in definition. Oola about administration - AGC contracts administered through DOT - will this cling that? Knight said Labor has nothing to do w/DOT pymts - He just monitor them. Kline asked why add'n was changed from Title 35 to 36. Barry said this just clarifies penalties ~~for~~ for late pymt. Commended DOT's handling of ~~project~~ contracts.

0715 Gerry Chitwood, Alaska Municipal League - no objection by municipalities to interest accruing, but interest on retainage destroys function of retainage; removes incentive to complete contracts on time. Definition doesn't differentiate between various types of retainage. (read from prepared testimony.)

742 Martin - why should contractors have to ~~pay~~ ^{compensate} about money withheld? Chitwood - retainage is to ensure contractor finishes work. Martin - prob has been that smaller subdivisions of state have been holding money after job is done. ^{Chit} She felt it should be written into contract rather than law. Martin felt contractor would be victim in that set. They discussed retainage & various methods.

772 - Bylsma said he had to study it further

778 - Kline re retainage - money retained is contractor's money - why shouldn't he rec benefits, esp if it is bearing interest.

Barry - as written, intent is monies withheld & liened won't be pd; no monies "retained" are disputed

Kline - 90 day w/holding can make or break some small contractors

Randolph moved to add "a political subdivision"

on pg —, line —.

No obj. - passed

942 Judy Knight - in preferred amendt, when final billing occurred, contracting agency wd contact Dept Labor, who wd send memo verifying wages were pd. Gave timeframe of a couple days at most if payrolls had been submitted throughout project. Randolph - questions.

0965 Randolph - issue of bill is to speed flow of money; amendt passed has potential to be problem. Moved to rescind adoption of amendt # 1.

Discussion: Bylsma ^{supports} ~~feels~~ using #1 removes possibility of legal maneuvers to

Martin agrees w/ Rep. Bylsma

Randolph - disagreed, upheld his position

Thinks amendt thwart's reason for bill.

~~Bylsma~~

Randolph - for ~~Rep~~ Bylsma Martin - no motion to rescind amendt failed.

Randolph moved to pass w/ individual recommendations; no objections.

Bill passed for committee.

Chuck
Hollwell

1014 HB 303 - Martin gave intro to bill.

1020 Judy Knight, Special Asst to Commissioner, Dept Labor -
Dept, AG, & Governor wd like to give employment
preference to residents. Tried to do this constitutionally.
Large amt of paperwork involved; hard to determine
residency, ensure intention to stay, ^{not sure} Cost of legislation
justifies intent. People outside looking to Alaska
for employment. Dept of Labor concerned about this
influx of people. Bill addresses issues in positive
manner, but info needed to make bill workable is not
available. Not sure of intent of bill.

1111 Randolph - comment (good explanation); are we
ready to seriously consider issue
Knight - believe in employment preference; no answer
to how to do that constitutionally. Have not found workable
solution.

Randolph - comments. Moved to table bill -
no objection, motion passed
Mtg adjourned 2:30 pm
meter 1135

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

P. O. BOX 1149
JUNEAU, ALASKA 99811

Ph: 465-2700

May 19, 1981

Mr. Ken Spray
House Labor & Commerce Committee
Alaska House of Representative
Pouch V
Juneau, Alaska 99811

Dear Mr. ~~Spray~~: *Ken*

My apologies for the confusion that has resulted from the hearings and conversations concerning a proposed committee substitute for House Bill 146, "An Act relating to payment procedures on certain public contracts." The confusion seems to relate to "certified" payroll as opposed to "certification." The following amendment is proposed to address the concerns expressed by members of the Department to provide security for the payment of wages to employees on public works projects.

Preferred Delete subsection (b), lines 16-19, page 1.
Amendment: Insert the following.

- (b) The state shall initiate payment to the contractor for the amount due under the public construction or public works contract within 15 days after the contractor submits to the state a bill for materials and services with a certification issued by the Department of Labor that all employees employed on the project by the contractor and by all subcontractors have been paid not less than the established prevailing rate of pay as determined and published by the Department of Labor.

Alternative Delete section (b), lines 16-19, page 1.
Amendment: Insert the following.

- #1 { (b) The state shall initiate payment to the contractor for the amount due under the public construction or public works contract within 15 days after the contractor submits to the state a bill for materials and services and a sworn certification that all employees employed on the project by the contractor and by all subcontractors have been paid not less than the established prevailing rate of pay as determined and published by the Department of Labor.

Test of use of money - coup

SIGN-IN SHEET

Name (please print)	Address	Representing	Testify? (YES or NO)	Phone Number
Eileen Rife	P.O. Box 1149	Dept. Labor	NO	465-2750
Judy Knight	" "	" "	?	"
Chuck Caldwell	" "	" "		465-4500
Al Gordon	P.O. Box 630	" "	Yes	465-4870
Janet King		AHC.	?	6-1740
Karen Macklin				
Denny Chitwood	Municipality Local. D.O.T. - opposed - Push that contractors would not complete job increase cost of bonds for small contractors D.O.T. can give advances for equip. material. progress payment schedule is usually quick depends on mail.			
John Strubinos				

LABOR & COMMERCE COMMITTEE
DAILY COMMITTEE HEARING

Date: 2/1/82

Place: _____

<u>Members</u>	<u>Present</u>	<u>Absent</u>	<u>Time Arrived</u>	<u>Time Left</u>
Rep. B. Bylsma, V. Chair	✓		1:00	2:00
Rep. D. Randolph	✓		1:05 1:55	1:35 → 2:00
Rep. B. Rogers				
Rep. T. Gardiner				
Rep. T. Martin, Chair	✓		1:00	2:00

Subject Matter:

House Bill No. 303 ^{- tabled} (SS) RE 146 ^{- amended & passed}

Senate Bill No. _____

Special Orders:

3 amendments.

amendment passed

Original sponsor: Brown by request

1 IN THE HOUSE

BY THE LABOR AND COMMERCE COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 146 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to payment procedures on certain public
7 contracts."

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

9 * Section 1. AS 36 is amended by adding a new chapter to read:

10 CHAPTER 90. MISCELLANEOUS PROVISIONS.

11 Sec. 36.90.001. PUBLIC CONSTRUCTION CONTRACT PAYMENTS. (a) At
12 the request of a contractor the state shall pay the contractor 20
13 percent of the amount of the contract on or before the date the state
14 gives the contractor notice to proceed with the public construction or
15 public work covered by the contract.

16 #1 (b) The state shall initiate payment to the contractor for the
17 amount due under the public construction or public work contract within
18 15 days after the contractor submits a bill with a certified payroll to
19 the state for materials or services.

20 (c) If the state fails to make a payment due under this section,
21 it shall pay interest to the contractor under AS 45.45.010(a) on the
22 amount due. If a failure to make a payment due under this section
23 continues for 60 days or more, the state shall pay the contractor a
24 penalty of 10 percent of the amount due plus interest.

25 #2 Delete - (d) In this section "state" means a department, office, agency,
26 or other organizational unit of the executive branch, except one
27 expressly excluded by law, but does not include an agency in the
28 judicial or legislative branches of the state government.

29 (e) The state is liable to a contractor registered under AS 08.18
or a political subdivision of the state.

#3 Add

delete the section

2-3-82

HCR 56

HOUSE LABOR & COMMERCE
STANDING COMMITTEE
February 3, 1982
1:12 p.m.

Members Present: Rep. Martin, Chairman
Rep. Bylsma, Vice-Chairman
Rep. Rogers
Rep. Randolph

Members Absent: Rep. Gardiner

COMMITTEE CALENDAR

HCR 56 Relating to the policy of the legislature concerning telecommunications.

HB 146 An Act relating to payment procedures on certain public contracts. NOTE: no testimony was taken today on this bill; committee rescinded action taken on 2/1/82. See today's "Previous Action", last motion.

WITNESS REGISTER

Alex Hillis
Department of Administration
Pouch C
Juneau, Alaska 99811
465-2200
Position Statement: Gave administration's position.

Allen Blume
Telelink Communications, Inc.
PO Box 1648
Juneau, Alaska 99801
586-6228
Position Statement: Supported legislation.

Robert Gould
Alaska Cable Television Association
No address or phone given
Position Statement: Supported legislation.

PREVIOUS ACTION

HCR 56 No previous action.

Statutory Reference: None.

Action taken: Rep. Rogers moved, page 1,

lines 8-12, to delete word "increasing"; Rep. Randolph seconded. Motion passed unanimously.

Rep. Rogers moved, page 1, line 15, to delete word "incentive" and replace with word "initiative". After discussion, the motion was withdrawn.

Rep. Rogers moved, page 1, line 20, to delete word "appropriations" and insert "issues". After discussion, Rep. Rogers amended his motion to insert word "legislation" rather than "issues". Motion passed by unanimous consent.

Rep. Rogers moved, page 1, line 22, to insert before the word "services", the words "cost-effective". Motion passed by unanimous consent.

Rep. Rogers moved, page 2, line 10, to insert "public and" before word "commercial". Rep. Randolph objected. Rep. Rogers withdrew his motion.

Rep. Rogers moved, page 2, lines 11-12, to delete everything after word "sessions". There was discussion; Rep. Randolph proposed amending motion to delete everything after word "basis" on line 9. Discussion. Question was called on Rep. Randolph's amendment: For: Randolph; Opposed: Martin, Rogers, Bylsma. Amendment failed. Question was called on Rep. Rogers' amendment: For: Rogers, Bylsma, Randolph; Opposed: Martin. Motion passed.

Rep. Rogers moved, Page 2, line 6, insert after word "stations" the language, "or to contract with the private sector for operation and maintenance of the stations". Motion passed unanimously.

Rep. Rogers moved, page 2, line 2, to delete first "and" and insert "or". Motion passed unanimously.

Rep. Rogers moved, page 2, line 10, insert "public and" before word "commercial"; Rep. Randolph objected. Question: for--Martin, Rogers, Bylsma; opposed--Randolph. Motion passed.

Rep. Randolph moved, page 1, line 25, delete "to the extent possible"; and on line 26, delete "reduce or"; objection by Rep. Rogers. Amendment was withdrawn by Rep. Randolph.

Rep. Randolph moved, page 1, line 28, delete word "unnecessary", and line 29, delete words "new and innovative". Rep. Rogers moved to divide motion; he withdrew this motion. Question on Rep. Randolph's motion: for--Randolph; opposed--Bylsma, Martin, Rogers. Motion failed.

Rep. Bylsma moved, page 1, line 26, delete words "reduce or". There being no objection, the motion passed.

Rep. Randolph moved, page 1, to delete all language on lines 15 and 16; Rep. Martin objected. Question: for--Rogers, Bylsma, Randolph; opposed--Martin. Motion passed.

HB 146

See minutes for 2/1/82.

Rep. Randolph moved to rescind action in adopting amendment #1 on HB 146, and to adopt the alternate language suggested by the Department of Labor, which reads: "The state shall initiate payment to the contractor for the amount due under the public construction or public works contract within 15 days after the contractor submits to the state a bill for materials and services and a sworn certification that all employees employed on the project by the contractor and by all subcontractors have been paid not less than the established prevailing rate of pay as determined and published by the Department of Labor."; and to move the bill from committee. Motion passed unanimously.

ACTION NARRATIVE

Tape #008
Recording
Number 0001

The meeting was called to order by Chairman Martin at 1:12 p.m. Members present were: Martin, Randolph, Bylsma, Rogers. Representative Gardiner was absent. Representative Martin explained HCR 56.

- Number 0022 Alex Hills, Department of Administration, said the administration sees no conflict with the resolution.
- Number 0052 Allen Blume, Telelink Communications, Inc., supported the resolution. (He spoke from prepared testimony, which is available from the committee.) There was discussion between Blume and Rogers about possible amendments.
- Number 0180 Representative Martin explained HB 506 and outlined the proposal of creating a commission or board of telecommunications, and asked Blume for his opinion. Blume felt the dangers would be that, 1) the commission would be a "toothless monster"; and 2) that it could lead to a proliferation of regulations. He supported generally the idea of a commission, but felt it should be tailored carefully, possibly sunsetted, and should work with other agencies. There was discussion.
- Number 0246 Rep. Randolph said legislation needed to define "free enterprise", "private sector", etc. Rep. Martin asked him to do that. Rep. Rogers expressed concern.
- Number 0261 Robert Gould, Alaska Cable Television Association, supported resolution. He was concerned that the private sector be given a fair chance to deliver services now performed by the public sector. He felt this would be cost-efficient for taxpayers. He was personally concerned whether Alaskan communities need a multiplicity of television stations provided by public appropriations. He wanted to see all communications entities cooperating and communicating with each other, with the legislature, and with the administration.
- Number 0360 Rep. Martin asked Gould's opinion of a commission on telecommunications. Gould said that, in principle, it is a good idea as it is a technical area. He felt the efforts the administration have made have good potential to date. He would not necessarily want to see that replaced, but incorporating that with a new commission may be a good idea. There was discussion of how such a commission would function.

Number 0433

Gould said, regarding legislative coverage, that CTA feels that getting constituents closer to the legislature is good. He said they plan an ACE band with live, unedited coverage of the legislature; local broadcast stations could add commentary. He said they have done preliminary cost proposals that show this could be done for under \$1-million equipment costs. There was discussion.

Number 0567

Rep. Rogers moved, page 1, lines 8-12, to delete word "increasing"; Rep. Randolph seconded. Motion passed unanimously.

Rep. Rogers moved, page 1, line 15, to delete word "incentive" and replace with word "initiative". After discussion, he withdrew the motion.

Rep. Rogers moved, page 1, line 20, to delete the word "appropriations" and insert word "issues". Rep. Martin suggested adding the word "issues". Rep. Rogers changed his motion to insert the word "legislation" rather than "issues". Motion passed by unanimous consent.

Rep. Rogers moved, page 1, line 22, to insert words "cost-effective" before the word "services". Motion passed by unanimous consent.

Rep. Rogers moved, page 2, line 10, to insert the words "public and" before the word "commercial". There was objection by Rep. Randolph. Rep. Rogers withdrew the amendment.

Rep. Rogers moved, page 2, lines 11-12, to delete language "by making equipment, space, and satellite time available to the private sector." Rep. Randolph said the legislature had no business encouraging coverage, and moved to amend the motion to delete everything after the word "basis" on line 9. There was discussion among the committee. Rep. Martin asked Hill for an estimate of costs; Hill said about \$5-million a year is spent total on the television demonstration project, and \$5-million a year on Learn Alaska.

Question was called on the Randolph amendment: Randolph voted for; Bylsma,

Martin and Rogers were opposed; and the amendment failed.

Question was called on the Rogers amendment: Rogers, Randolph, and Bylsma voted for the amendment; Martin opposed; amendment passed. Rep. Rogers moved, page 2, line 6, after the word "stations", to insert the language, "or to contract with the private sector for operation and maintenance of the stations". Motion passed unanimously.

Rep. Rogers moved, page 2, line 2, to delete first "and" and insert "or". Motion passed unanimously.

Number 0800

Rep. Rogers moved, page 2, line 10, to insert words "public and" before the word "commercial"; Rep. Randolph objected. Rep. Martin felt there was no sense re-involving public stations. Rep. Rogers argued that the language is only encouraging coverage and that it didn't mean the state would pay for it. There was discussion. Vote: Rogers, Bylsma, Martin voted for the amendment; Randolph opposed; motion passed.

Rep. Randolph moved, page 1, line 25, to delete "to the extent possible"; and on line 26, delete "reduce or"; there was objection by Rep. Rogers. Discussion. Rep. Rogers felt this could bind the state to upgrading cable system. Rep. Randolph felt the amendment makes it clear that the Division of Telecommunications will clear their own. Hill said that Rep. Rogers is correct; the language allows flexibility, but the amendment would not be possible to carry out. Rep. Randolph withdrew the amendment.

Side B, Number 005

Rep. Randolph moved, page 1, line 28, to delete the word "unnecessary"; and on line 29, to delete the words "new and innovative". Rep. Rogers moved to divide the motion. There was discussion. Rep. Rogers withdrew his motion to divide the question. Question was called: Randolph for; Bylsma, Martin, and Rogers opposed; motion failed.

Rep. Bylsma moved, page 1, line 25, to delete "reduce or". There was no objection; motion passed unanimously.

Number 0060

Rep. Randolph moved, page 1, to delete all language on lines 15 and 16. Rep. Martin objected. There was discussion. Question was called: Bylsma, Rogers, Randolph for; Martin opposed. Amendment passed.

Number 116

Rep. Randolph requested that the bill be redrafted by legal services, incorporating amendments, for discussion the following day.

Rep. Randolph moved to rescind the committee's action on HB 146 in adopting the "preferred amendment" which was proposed by the Department of Labor, and to adopt the alternate language proposed in the same document; and to pass the amended bill from committee. Motion passed unanimously. New language reads, "The state shall initiate payment to the contractor for the amount due under the public construction or public works contract within 15 days after the contractor submits to the state a bill for materials and services and a sworn certification that all employees employed on the project by the contractor and by all subcontractors have been paid not less than the established prevailing rate of pay as determined and published by the Department of Labor."

There being no further business to come before the committee, the meeting adjourned at 2:26.

HOUSE LABOR AND COMMERCE COMMITTEE

FINAL INTERIM REPORT

December 17, 1981

The House Labor and Commerce Committee has completed its interim work. Most of the Committee's priority legislation is being drafted or redrafted and will be ready for further consideration early in the second session of the 12th Alaska Legislature.

Public participation during hearings in Anchorage and Fairbanks was excellent, particularly with regard to the Committee's three primary areas of concern -- workers' compensation, statewide telecommunications and government permits.

Additionally, Chairman Terry Martin has reviewed some 30 pieces of legislation lodged in the Committee but which were not addressed in any detail during the interim. Chairman Martin is organizing these bills and resolutions by priority so they can be expedited early next session.

A status report of interim activities is as follows:

WORKERS' COMPENSATION

Tom Sofo of the legislative legal services arm currently is preparing the final redraft of House Bill 159 dealing with revision of state workers' compensation law.

The redraft will be ready for further Committee consideration early next session.

As the Committee's top priority during the interim, much time has been spent collecting public testimony from various concerns in an effort to reach consensus on resolving this lingering problem. The Committee has explored a multitude of proposals to reduce the escalating premium rates.

While the final interim bill will address various broad concerns of the Committee, specifics regarding insurance rates and self-insurance programs will be incorporated in a separate bill shortly after the start of the second session.

The Committee feels it must await results of an in-depth study being conducted by John Lewis of Florida, a workers' compensation expert on contract with the state Division of Workers' Compensation. Mr. Lewis's findings are necessary before revision of the complicated rate structure can be addressed in any detail.

However, the final interim redraft of House Bill 159 attempts to adjust the law in ways the Committee feels will help reduce the extremely high insurance premiums Alaska businesses pay out for workers' compensation.

For one, a significant reduction in premium rates can be assured through immediate response to the needs of employees injured on the job, so that these injured workers can be returned to the labor force in the shortest period of time.

This objective can be attained, in part, by requiring injured workers expected to be on workers compensation more than 90 days to be referred to rehabilitation or pain clinics within 30 days of injury. Public testimony from experts in the field reported that months and even years pass before an injured worker is referred to a clinic. Obviously, the quicker an injured worker is rehabilitated, the quicker he can be returned to the work force. This means less compensation is paid out which, in effect, would affect the rate structure.

In regard to workers' compensation-job training and placement programs, the cost, in many cases, should be borne by the appropriate agencies such as CETA, WIN, or other government sponsored groups directly responsible for an

employee injured while on the job.

Higher educational career training, skill centers and other post secondary educational opportunities such as college should be funded through a special state grant program.

It must be emphasized that retraining costs, when figured into insurance premiums borne by the employer, is ultimately passed on to the consumer. It is the consumer who picks up the tab for the increased cost of goods and services.

Following a recent meeting with the state Workers' Compensation Board, the Committee feels the Board must be given more authority in making final determination of workers' compensation cases, in order to avoid long and costly legal fights -- all of which is reflected in the rate structure.

A goal of six months from the time of injury to settlement will result in almost no need for expensive attorney and court fees. It is felt that a decrease of 50 percent in the time spent on litigation of cases could be attained if the law were more clear on the Board's authority. The Committee feels that the Board -- comprised of lay experts in the field -- deals fairly with claimants and injured workers and give them every opportunity to air their grievances.

The Committee also feels that workers' compensation premiums could be further reduced in cases where an injured worker carries health insurance, or other insurance policies that cover personal injury.

The redraft of House Bill 159 also addresses the need to tighten up the so-called "Bunkhouse Rule," which essentially holds an employer responsible for an employee's safety when he is working more than 25 miles from his home.

While the Committee recognizes the right of workers to be protected when away from home, particularly in Alaska's remote regions, it also finds abuses in the system, especially during leisure-time activities and accidents caused by intoxication.

The Committee is of the opinion that an intoxicated worker who is injured is responsible for his actions and should not be entitled to collect workers' compensation benefits.

or drugged
Likewise, workers who become ill or contract social diseases due to intimate sexual activities away from home should not become the responsibility of their employer.
Likewise, if a worker is injured while racing motorcycles or playing sports during his leisure hours, it is highly questionable whether the employer should be responsible for his injury, particularly when other insurance programs carried by the worker may cover the injury.

The Committee also desires a clear and concise definition of the terms "benefit" and "compensation" as they appear in House Bill 159. In either case, the term should relate only to a worker's take-home pay and medical treatment. Workers' compensation was never meant to be an open-ended benefit system. The terms "compensation" and "benefit" appear so regularly throughout House Bill 159 that anything less than a concise definition will lead to misunderstanding and confusion.

GOVERNMENT PERMITS

The Committee has placed the redraft of Senate Bill 84 on hold until the beginning of the second session.

Testimony collected during the interim shows conclusively a real need for streamlining the government permitting process. However, it is equally clear that opinion on how to accomplish this goal varies widely.

On the one hand, the Alaska Oil and Gas Association (AOGA) and its membership believes Senate Bill 84 (Second Rules) does not go far enough in facilitating

the procedure for gas and oil permits. The association would like a stronger "lead agency" clause in Senate Bill 84 and a softening of language in the bill that guarantees "any individual, irrespective of his 'standing' otherwise granted under the law, to appeal a permitting decision, and further delay resolution of the application," according to the association.

On the other hand, environmental groups -- particularly Trustees for Alaska -- feel Senate Bill 84 and proposed administrative regulations do not adequately protect local community interest in the permitting procedure.

In the middle is the state Department of Law which, under direction of the Governor, has drafted new regulations governing classification of permits -- the reported purpose being to streamline the system.

Although the Committee feels there is strong support in both the House and Senate to clean up the system, it doesn't want to work hard to pass legislation only to have it vetoed by the Governor. This is why the Committee believes participation by the administration in this legislation is vital.

The Governor's chief executive, Jerry Reinwand, feels legislative participation in this issue is important and has reportedly held up implementing regulations until after the negotiation process. That process is underway, and hopefully an accord can be reached prior to the session.

STATEWIDE TELECOMMUNICATIONS

Legal services is currently drafting a House Concurrent Resolution that will spell out what the Committee feels should be the legislative policy regarding statewide telecommunications. The resolution will be sponsored by the House Labor and Commerce Committee.

The resolution is being drafted along the following lines:

-- Whereas a significant and increasing amount of public funds is being invested in telecommunications systems; and

-- Whereas it should be the role of state government to encourage and not compete with the private sector; and

-- Whereas the private sector which deals in Alaska telecommunications faces a crowding out by government in the wake of increasing state wealth; and

-- Whereas the private sector has been the foundation and vitality of the American Democratic and economic system; and

-- Whereas the Alaska State Legislature lacks a policy regarding the burgeoning telecommunications system;

Be it resolved that the Alaska State Legislature should take the following into account to serve as guidelines when considering telecommunications appropriations:

-- When and where possible, the state Divisions of Telecommunications should procure services from private enterprise or certified and franchised utilities and contract for the construction, management, operation and maintenance of telecommunications systems.

-- When and where possible, the state Divisions of Telecommunications should reduce or eliminate airwave interference of state owned or financed stations with privately owned and operated cable television stations.

-- Artificial regulatory and government barriers for growth and development of new and innovative services by the private sector should be removed.

-- In-state programming or Bush programming can be beneficial to sectors of the Alaskan community. However, the Divisions of Telecommunications should not only assure that such programs are cost effective, but production of these

programs should be available to the private sector on a contract or bid basis.

-- Alaska's villages should have the opportunity to own, operate and maintain their own satellite earth stations.

-- Companies owned and operated by Alaska residents and based in Alaska should be given a competitive edge over Outside interests.

-- No commercial advertisements shall be carried in state funded or state subsidized programs or in programs transmitted by state funded or state subsidized satellite channels.

-- The Legislature should encourage commercial radio and television news coverage of the legislative sessions by making equipment, space and satellite time available to the private sector. This would serve as a meaningful and efficient and non-controversial method of communicating legislative affairs to the public.

ARCHITECTURAL AND ENGINEERING SERVICES

House Bill 612, which relates to contracts for architectural, engineering and surveying services, has been redrafted and is ready for further Committee consideration upon convening of the legislative session.

House Bill 612 clarifies the conditions under which a state contract for professional services can be awarded. It requires the state and other subdivisions of the state to determine whether a bidding firm is "capable and qualified" to do the work, rather than issuing a contract strictly based on the lowest bid. A person who provides such professional services may annually submit to the department a statement of qualifications and performance data.

House Bill 600, which lays out contractual liability of architects, engineers, surveyors and the state of Alaska, is currently in a holding pattern until an equitable formula for liability can be worked out. A final redraft of House Bill 600 is expected prior to the beginning of the session.

COMPULSORY AUTOMOBILE INSURANCE

The Committee recommends the sponsors of House Bill 346 pursue other avenues to increase the number of insured drivers.

House Bill 346 has received little support during hearings held in Anchorage and Fairbanks during the interim.

It is generally felt that compulsory automobile insurance will not attain its primary goal -- to increase the number of insured drivers in Alaska. In fact, it is counter productive in that it is thought to be unenforceable and actually may result in higher insurance rates for the already insured driver. This is because the high risk factor of those who are generally uninsured under the current situation would be spread among drivers who already are insured.

The Committee understands that sponsors of the bill are currently exploring other alternatives including stronger state financial responsibility laws.