

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

January 30, 2002

3:20 p.m.

**MEMBERS PRESENT**

Representative Lisa Murkowski, Chair  
Representative Andrew Halcro, Vice Chair  
Representative Kevin Meyer  
Representative Pete Kott  
Representative Norman Rokeberg  
Representative Harry Crawford  
Representative Joe Hayes

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 262

"An Act relating to accounting for and appropriations of receipts from fees collected by the Department of Labor and Workforce Development for certain inspections and for certain plumbing and electrical worker certificates of fitness; establishing a building safety account; and providing for an effective date."

- MOVED HB 262 OUT OF COMMITTEE

HOUSE BILL NO. 290

"An Act relating to membership in the Comprehensive Health Insurance Association."

- HEARD AND HELD

**PREVIOUS ACTION**

BILL: HB 262

SHORT TITLE: BUILDING SAFETY ACCOUNT

SPONSOR(S): LABOR & COMMERCE BY REQUEST

Jrn-Date	Jrn-Page		Action
04/28/01	1310	(H)	READ THE FIRST TIME - REFERRALS
04/28/01	1310	(H)	L&C, FIN

01/30/02 (H) L&C AT 3:15 PM CAPITOL 17

BILL: HB 290

SHORT TITLE: COMPREHENSIVE HEALTH INSURANCE ASS'N

SPONSOR(S): REPRESENTATIVE(S) ROKEBERG

Jrn-Date	Jrn-Page		Action
01/14/02	1951	(H)	PREFILE RELEASED 1/4/02
01/14/02	1951	(H)	READ THE FIRST TIME - REFERRALS
01/14/02	1951	(H)	L&C, FIN
01/14/02	1951	(H)	REFERRED TO LABOR & COMMERCE
01/30/02		(H)	L&C AT 3:15 PM CAPITOL 17

**WITNESS REGISTER**

REBECCA NANCE GAMEZ, Deputy Commissioner  
Department of Labor & Workforce Development  
PO Box 21149  
Juneau, Alaska 99802-1149  
POSITION STATEMENT: Presented HB 262 and answered questions.

RICHARD MASTRIANO, Director  
Division of Labor Standards & Safety  
Department of Labor & Workforce Development  
PO Box 107021  
Anchorage, Alaska 99510-7021  
POSITION STATEMENT: Answered questions regarding HB 262.

CECIL BYKERK, Chair  
Alaska Comprehensive Health Insurance Association  
PO Box 240723  
Anchorage, Alaska 99524-0723  
POSITION STATEMENT: Testified in support of HB 290.

BOB LOHR, Director  
Division of Insurance  
Department of Community & Economic Development  
3601 C Street, Suite 1324  
Anchorage, Alaska 99503-5948  
POSITION STATEMENT: Testified on HB 290.

KATIE CAMPBELL, Actuary L/H  
Division of Insurance  
Department of Community & Economic Development  
PO Box 110805  
Juneau, Alaska 99811-0805

POSITION STATEMENT: Offered additional information on the state's participation in ACHIA.

**ACTION NARRATIVE**

TAPE 02-7, SIDE A  
Number 0001

CHAIR LISA MURKOWSKI called the House Labor and Commerce Standing Committee meeting to order at 3:20 p.m. Representatives Murkowski, Halcro, Meyer, and Crawford were present at the call to order. Representatives Kott, Rokeberg, and Hayes arrived as the meeting was in progress.

HB 262-BUILDING SAFETY ACCOUNT

CHAIR MURKOWSKI announced that the first order of business would be HOUSE BILL NO. 262, "An Act relating to accounting for and appropriations of receipts from fees collected by the Department of Labor and Workforce Development for certain inspections and for certain plumbing and electrical worker certificates of fitness; establishing a building safety account; and providing for an effective date."

Number 0075

REBECCA NANCE GAMEZ, Deputy Commissioner, Department of Labor & Workforce Development (DLWD), explained that HB 262 is basically a fee-for-service account. Currently, the Mechanical Inspection section takes in just over \$1 million in general funds (GF) and is allotted about \$670,000 in GF. Due to the GF cut, the mechanical inspectors have experienced cuts. Therefore, the Mechanical Inspection section is grossly behind, particularly with [the inspection of] boiler and pressure vessels. Ms. Gamez said, "I think that we're on borrowed time right now." Ms. Gamez announced the department's support of HB 262 because it would enable the [Mechanical Inspection section] to catch up on its backlog in about two years. Ms. Gamez concluded, "We think that it's a really good thing, and very necessary thing in order to ensure the safety of Alaskans throughout the state." She explained that the account would collect the fees and be dedicated for inspections, and therefore the Mechanical Inspection section would become self-sufficient in terms of funding.

Number 0225

CHAIR MURKOWSKI pointed out that DLWD requested the introduction of HB 262 by the House Labor and Commerce Standing Committee.

MS. GAMEZ, in response to Chair Murkowski, estimated that the backlog consists of about 5,000-6,000 boilers or pressure vessels and about 350 elevators. She explained that when there is a new elevator or boiler, those are placed at the top of the list. She pointed out that the American with Disabilities Act (ADA) has caused the number of elevators to roughly double in the last eight years. Therefore, [the department] feels that [HB 262] is necessary in order to address the backlog.

Number 0407

REPRESENTATIVE HALCRO recalled testimony from three years ago in which the commissioner of DLWD said that there was difficulty in retaining inspectors. He asked if that is still a problem.

MS. GAMEZ deferred to Richard Mastriano, Division of Labor Standards & Safety, DLWD. She did mention that attraction and retention in many of the positions of the state are difficult.

Number 0596

RICHARD MASTRIANO, Director, Division of Labor Standards & Safety, Department of Labor & Workforce Development, remarked that boiler inspectors are difficult to find nationwide. [The department] recruits nationwide for boiler inspectors. He explained that because of the difficulty in [recruiting, the department] has allowed plumbing inspectors, through statute, to do iron clad boilers and hot water heaters that they find during their inspection process. This is allowed in order to try to eliminate [some of the backlog]. Still, the retention of boiler inspectors is difficult.

REPRESENTATIVE ROKEBERG noted that in the past there has been discussion of privatization, that is using private contractors for the boiler inspection program. He inquired as to whether that has been pursued by the department. He also inquired as to the scope and cost [of privatization].

MR. MASTRIANO informed the committee that the basic cost of a boiler inspection is \$40. He explained that [the \$40 cost] is averaged across all the boilers in the state. He said that the department felt that the costs would be significantly [higher] if the process was privatized. Mr. Mastriano continued, "If the boiler inspections were, in fact, privatized ..., the private

companies would probably take the 'cream,' the less costly inspections in the state would end up having to do the costly inspections, and you wouldn't really be able to charge adequately to recover the cost." Mr. Mastriano felt that such a situation would impact the [department's] budgetary constraints imposed by the legislature. He echoed Ms. Gamez's testimony regarding the fact that [the Mechanical Inspection section] is only allowed to keep \$670,000 of the money that is collected. He feels that [privatization] would be cost prohibitive later.

REPRESENTATIVE ROKEBERG related his understanding that the intent of HB 262 is to [allow the department] to keep a greater portion or all of the money [that is collected].

MR. MASTRIANO agreed with Representative Rokeberg's understanding.

MS. GAMEZ interjected, "So that we can hire the folks to do the inspections."

REPRESENTATIVE ROKEBERG remarked that in view of the backlog, he would suggest privatizing [the process enough to address the backlog] because this is a safety issue. He said that he feels that [the department] could draft an RFP (request for proposals) to overcome some of the aforementioned concerns surrounding privatization. He asked if Mr. Mastriano's testimony is that the department has never looked into privatization.

MR. MASTRIANO answered that privatization hasn't been reviewed as long as he has been the director.

REPRESENTATIVE ROKEBERG pointed out that the contract could be performance-based so that there would be no added cost to the state. Representative Rokeberg asked if Mr. Mastriano had any statistics about the various classes of boilers.

MR. MASTRIANO offered to provide that information later.

REPRESENTATIVE ROKEBERG related his belief that most of the boilers [that are part of the backlog] are probably commercial or large residential boilers.

MR. MASTRIANO interjected that [most] are commercial boilers.

Number 0870

CHAIR MURKOWSKI pointed out that there are elevator inspectors within the Municipality of Anchorage, and those elevator inspectors perform the inspections within the Anchorage area. Therefore, she asked if such could be done with boiler inspections.

MR. MASTRIANO clarified that the Municipality [of Anchorage] doesn't perform boiler inspections, although electrical and elevator inspections are done by [the municipality]. In further response to Chair Murkowski, Mr. Mastriano explained that [the municipality] doesn't have anyone qualified to perform boiler inspections. It takes five years in the program to get a commission to inspect a boiler. Currently, the department's boiler inspectors are very experienced. These boiler inspectors have been recruited from boiler inspection programs in other states. Furthermore, Mr. Mastriano wasn't sure that the municipality would want to inspect boilers because it would have to inspect to the state standard.

MR. MASTRIANO informed the committee that there are some privately owned companies, the oil companies, that have their own inspectors on staff. However, those [boilers] still have to be reinspected by the [department] every three years.

CHAIR MURKOWSKI recalled that the municipalities actually make money off the elevator and electrical inspections. Perhaps the municipalities would view this as an opportunity to enhance their own revenues. Therefore, this may be worth discussing with the municipalities.

Number 1019

REPRESENTATIVE ROKEBERG inquired as to the qualifications of these boiler inspectors.

MR. MASTRIANO explained that [boiler inspectors] go through training; acquire five years of experience; and pass two national tests in order to become qualified. Mr. Mastriano informed the committee of his own fear that private inspection [companies] usually pay [their employees] more than the [department]. Therefore, the [department] is liable to lose some of its inspectors to the private sector.

REPRESENTATIVE ROKEBERG remarked that a private contract limited to the backlog wouldn't seem to be an issue.

MR. MASTRIANO, in response to Representative Rokeberg, agreed that there are private certified boiler inspectors in the insurance industry as well as the private sector of Alaska. He also agreed that there are different types of certification for different types of pressure vessels.

REPRESENTATIVE HALCRO inquired as to the last time the fee was raised for boiler inspections.

MR. MASTRIANO recalled that the fee was last raised a little over two years ago. He didn't recall what the fee was before.

REPRESENTATIVE HALCRO commented that he didn't know how a boiler inspection could be done for \$40.

MR. MASTRIANO reiterated that the fee is averaged across the entire state. To further clarify, Mr. Mastriano explained that although the majority of the inspections are \$40, some cost a bit more because they are more difficult.

REPRESENTATIVE ROKEBERG said that this boiler [backlog] has been a nagging public safety issue in the state for many years, and he would like to have it solved. Therefore, he would support the bill. However, he noted the temptation to add some private RFPs to diminish the backlog on a self-sustaining basis. This could be done via a conceptual amendment.

REPRESENTATIVE ROKEBERG, in response to Chair Murkowski, explained that [such an amendment] would seem to require an additional section in the bill. He predicted that [an amendment] would require some uncodified law that included an expiration date, as well as some intent language. He specified the following language as a possibility: "ask the department to enter into a short-term program to cut back the backlog on a self-sustained contractual basis." He noted the possibility of making the amendment, sending it the drafter, bringing the amended bill back before the committee for comment from the department.

CHAIR MURKOWSKI remarked that such a conceptual amendment is quite a departure from the bill in front of the committee and thus Representative Rokeberg's suggestion of bringing the amended bill back before the committee wouldn't be a bad idea. Chair Murkowski expressed the need to know that there are individuals [in the private sector] that can do this before such a change is made to the bill. Chair Murkowski announced that

she wouldn't be adverse to holding the bill in order to see what could be drafted.

Number 1395

REPRESENTATIVE HALCRO posed a situation in which the department is directed to try to find a private contractor to catch up on the backlog. During the process, the RFP comes back and costs far more than \$40 a boiler. How would such be factored into a fiscal note, he asked. Furthermore, what would happen if there was no response to the RFP.

REPRESENTATIVE ROKEBERG said that [the language] should specify that the contract would only be awarded if it was cost effective.

MR. MASTRIANO, in response to Representative Rokeberg, answered that the department's fee schedule is adjusted by regulation.

REPRESENTATIVE ROKEBERG asked if anything in HB 262 would overcome that periodic adjustment by regulation. Representative Rokeberg concluded that the regulation could be adjusted in the bill. In response to Chair Murkowski, Representative Rokeberg explained that the bill could be changed to allow the department to periodically adjust its fees. Therefore, the department could raise the fee to cover the cost by an administrative process.

Number 1518

REPRESENTATIVE HAYES said if no one can perform [the boiler inspections] for [\$40], then he assumed that it would be cheaper to do this in-house. Therefore, he questioned why [an RFP] would be sent out if it's cheaper to do [boiler inspections] in-house.

REPRESENTATIVE ROKEBERG commented, "I'm sure we all realize that government can do things cheaper than the private sector, of course." Representative Rokeberg reiterated that one could make the assumption, despite the testimony, that [private boiler inspections] could be done [for \$40] and the contract wouldn't be let if that wasn't the case.

REPRESENTATIVE HALCRO related his belief that there is some merit in the department proceeding through a public process, per regulations, when it wants to increase its fees. It's part of the checks and balances, he said.

Number 1585

REPRESENTATIVE HAYES inquired as to who pays the fees.

MR. MASTRIANO explained that [private sector] boilers have to be inspected and comply with the national standard. If, for instance, there were problems with a business's boiler, then that business would request that the problems be corrected. Time would be given to abate the problem. For that, the boiler owner would receive a certificate that specifies that the boiler complies with the standard and can be operated. If [the problems aren't corrected], then the boiler is "red tagged" and cannot be operated.

REPRESENTATIVE HAYES related his understanding then that the idea is to put out an RFP for a private company to bid for the ability to check a private sector boiler, and raise the fee to the private sector employer so that the private sector can do something that the state was doing cheaper. Representative Hayes said that didn't make sense to him.

CHAIR MURKOWSKI pointed out that part of the problem is whether the \$40 is a reasonable fee that [actually] covers [the cost].

MR. MASTRIANO reiterated that the \$40 fee is an average of all the inspections of all the boilers. In response to Representative Rokeberg, Mr. Mastriano said that under HB 262 the backlog will be [eliminated] in approximately two years.

REPRESENTATIVE ROKEBERG asked if there was an RFP with private contractors working on the backlog as well as the state, then wouldn't the backlog be [eliminated] much faster.

MR. MASTRIANO said that he couldn't answer that, but conceded that the backlog probably could be [eliminated] much faster.

REPRESENTATIVE ROKEBERG continued by saying that even having three more private boiler inspectors would allow the [backlog to be addressed] faster. Furthermore, if the contract specified that it couldn't cost the state more [than \$40], then why wouldn't that be a good thing.

MR. MASTRIANO answered, "I think it would be."

Number 1750

CHAIR MURKOWSKI inquired as to how often a boiler has to be inspected. Once the backlog is eliminated, can the three boiler inspectors keep current, she asked.

MR. MASTRIANO explained that currently there are three boiler inspectors and two plumbing inspectors who are qualified to perform some of the boiler inspections. Currently, these [inspectors] are maintaining the normal inspection process, although not decreasing the backlog.

Number 1793

REPRESENTATIVE KOTT related his understanding that the current three inspectors [and two plumbing inspectors] would be able to maintain a level of inspections that ensures that "we" don't fall any further behind.

MR. MASTRIANO agreed with Representative Kott's understanding.

REPRESENTATIVE KOTT inquired as to how [the department] came to be in this predicament.

MS. GAMEZ explained that a couple of boiler inspector positions had to be cut over the last seven years because those were the only GF that were available. [General funds were only available] in the Division of Labor Standards & Safety or the Division of Workers' Compensation. The other divisions are primarily federally funded. Therefore, when faced with across the board cuts, [the boiler inspector positions] were the only option. The result was a decrease in the level of service by almost half, and therefore [the backlog was created].

REPRESENTATIVE KOTT asked if the increased fees would allow for additional inspectors to be placed on the rolls. If the backlog were to be eliminated, what is the department's plan to do with those additional inspectors.

MS. GAMEZ pointed out that there are many Baby Boomers retiring, which she assumed to be the case with the boiler inspectors in the next few years. Therefore, she doubted that there would be too many boiler inspectors, particularly in light of the difficulty in recruiting and training them. Ms. Gamez said that she had hoped to cultivate some people to replace the workers that have been [a boiler inspector] for a while.

MR. MASTRIANO added that there have already been a couple of [boiler inspectors] who have addressed the fact that they are

close to retirement. Those folks have been asked to stay, and they have agreed.

REPRESENTATIVE KOTT, recalling Representative Rokeberg's earlier suggestion regarding privatization, inquired as to why having three private sector personnel would be more efficient in reducing the backlog versus [the department] hiring three more [boiler inspectors].

MR. MASTRIANO said that he didn't know that it would.

REPRESENTATIVE ROKEBERG clarified that he had assumed that the state wouldn't add any more [boiler inspectors if an RFP went out]. Representative Rokeberg emphasized that the only way to [eliminate] the backlog is to put on additional people. He pointed out that the contract would mandate that the only way the contract would be let is if it saved money. Furthermore, it seems that the fee schedule needs to be reviewed. He didn't believe that the fee schedule was competitive with the private sector. "No wonder the state has a backlog, nobody else wants to inspect boilers because they can't do it for \$40 a pop. So, something's not right," he charged.

Number 2026

REPRESENTATIVE CRAWFORD remarked that it seems that the fees should be kept as low as possible for as long as possible. Therefore, if the state can do it for \$40, why do it for \$89 in the private sector.

REPRESENTATIVE ROKEBERG emphasized that the reason is the 6,000 backlogged inspections. This backlog has been around for some time.

REPRESENTATIVE CRAWFORD highlighted the fact that presently the [boiler] inspections bring in \$1 million, but that section is only given \$670,000 with which to operate. "We are making a \$330,000 profit. With that \$330,000 profit it seems to me that we could put on another inspector or two or whatever it takes to get the backlog done," he said.

REPRESENTATIVE KOTT pointed out that the department has found it difficult to find qualified individuals to work for state wages. Perhaps this would provide some opportunity to attract more people to [become boiler inspectors]. He suspected that there aren't very many boiler inspectors that are [looking] for work with the state. Representative Kott also pointed out that lack

of successful recruitment would return to today's predicament, the continuing backlog, in which case maybe the private sector should be explored via an RFP.

Number 2128

REPRESENTATIVE HALCRO inquired as to the composition of the backlog. Are most of the backlogged boiler inspections located in government facilities or private facilities, he asked.

MR. MASTRIANO answered that the overdue [inspections] are spread throughout the community. He explained that boilers come up for inspection and as they are inspected they are placed at the bottom of the list, and they move up the list again. Mr. Mastriano indicated that a boiler has to be inspected every two years. However, the [department] may not be able to get to it for two-and-a-half years to four years.

REPRESENTATIVE HALCRO inquired as to why the [department] wouldn't adopt a policy of self-inspection. This would be similar to providing a certificate of insurance.

MR. MASTRIANO noted that self-inspection is done with some of the larger companies, the oil companies. However, [the department] is still required to periodically check those boilers as well. Although Mr. Mastriano agreed that some of the backlog could be addressed through self-inspections, he didn't believe it would significantly [reduce the backlog].

REPRESENTATIVE HALCRO said that he wasn't sure how self-inspections wouldn't help in a significant way. He explained that under a self-inspection system, the owner of the boiler would be responsible for finding someone to come in to inspect the boiler. Therefore, it wouldn't impact the [department's] fees or [staff]. Upon inspection, the owner of the boiler would provide [the department] with the certificate.

MR. MASTRIANO echoed earlier testimony in regard to the difficulty in finding a qualified individual to do the inspection. Although there are some private inspectors, Mr. Mastriano wasn't sure that people could afford them. However, he guessed that if self-inspection legislation were passed, folks would have to do it.

CHAIR MURKOWSKI highlighted the fact that boiler inspections are a public safety issue. She mentioned the possibility of boiler owners not taking the initiative to hire an inspector and thus

wouldn't be in compliance, which is a public safety concern. Although the state could come in and inspect the boiler at this time, the boiler owner would only pay \$40 and may determine it's a better deal [more economical] to wait for the state to inspect the boiler.

MR. MASTRIANO pointed out that if the boiler was in really bad shape, then the boiler could be red tagged. If the facility was a 12-plex, the residents would have to find homes until the boiler was brought up to code.

REPRESENTATIVE HALCRO remarked that the liability issue alone would be a huge motivating factor for an individual to make sure that their boiler is maintained.

MS. GAMEZ recalled a situation in which a boiler was red tagged, and only when the department informed the business that it would be closed due to concerns of injury or fatality did the business make the changes. The changes were made three months after the boiler was red tagged. She pointed out that regardless of who inspects the boilers, they must inspect to the state standards.

Number 2365

CHAIR MURKOWSKI pointed out that no one has really commented or objected to the creation of a building safety account per HB 262. The question seems to be revolving around how to best address the backlog. She recalled Representative Rokeberg's suggestion, but also recalled Representative Kott's concern that if an RFP fails to find inspectors or creates complications, then the backlog would [continue to mount]. "It seems to me that this is something that if we can move on it, now is better than later," she said.

REPRESENTATIVE ROKEBERG posed the possibility of requesting that the department inform the committee on the feasibility of doing a contract on a pilot basis. He commented that he wasn't even sure that the department would need legislative authority to [do a contract on a pilot basis]. Once the department reviews the situation, it could be determined whether it merits any further work on the part of the legislature. This legislation basically provides the department with the authority to hire two additional boiler inspectors. Such a request would allow the legislation to move forward while the department reviews the situation.

CHAIR MURKOWSKI agreed that it doesn't hurt to see whether [an RFP] would be feasible.

TAPE 02-7, SIDE B

REPRESENTATIVE MEYER asked if the legislature would have to appropriate the money from the building safety account to DLWD.

MS. GAMEZ clarified that the money would be appropriated to the building safety account. In further response to Representative Meyer, Ms. Gamez said that she believes that the building safety account would work the same as the workers' compensation section. Therefore, the money would go to a dedicated account as opposed to a transfer from the GF every year and thus there wouldn't have to be an annual allocation.

REPRESENTATIVE KOTT asked if a boiler owner can currently acquire certification in the private sector and send that certification to the department.

MR. MASTRIANO answered that the boiler would have be checked by the [department] at some point. In further response to Representative Kott, Mr. Mastriano explained that the boiler would probably be inspected in three years to ensure that the inspection was done to the state standard.

Number 2402

REPRESENTATIVE KOTT inquired as to whether the state assumes any liability in these overdue inspections.

MR. MASTRIANO replied that he didn't know.

MS. GAMEZ said that she couldn't speak to Representative Kott's question in terms of the backlog. However, the state has liability when, after an inspection, the state fails to red tag a boiler that is potentially dangerous. She offered to research the state's liability with the backlog, and report to the committee on that issue.

CHAIR MURKOWSKI asked if past problem boilers are placed on a higher priority list.

MR. MASTRIANO explained that if a problem was found with the boiler and the individual was given a period of time to abate the problem, the individual is then given a card where he/she notes the date the problem was abated. That card is returned to

the department and filed. If an inspector is in the area and there is suspicion that false information was provided on the abatement card, then the inspector will double check [that the problem was resolved]. However, most of time the department relies on self-audits and will believe the individual.

CHAIR MURKOWSKI asked whether that would place the department in a liability situation.

MR. MASTRIANO specified that a red-tag situation is different because a red-tagged boiler can't be operated. If a boiler is found in operation before the boiler is repaired, then the business is closed and the Department of Public Safety is notified. A red-tagged boiler is different than a boiler that has some problems, problems that aren't life threatening, that need to be abated.

Number 2257

REPRESENTATIVE MEYER inquired as to who would pay the travel costs if a school in an outlying area needed its boiler inspected.

MR. MASTRIANO answered that the state pays all the travel costs, which is included in the travel budget. He agreed with Representative Meyer's understanding that the inspection fee covers the cost of the employee only.

REPRESENTATIVE MEYER commented that \$40 does seem rather cheap and perhaps the fee could be raised in order to cover some of the travel costs.

Number 2206

MR. MASTRIANO pointed out that although the fee could be raised, if the [department] is only allowed to keep \$670,000, then the result would be more money in the coffers of the legislature.

REPRESENTATIVE KOTT remarked that it seems somewhat unreasonable that [the state] absorbs the travel costs to inspect boilers in the outlying areas. Representative Kott expressed the need to have a revenue neutral, break even, situation. A service is being provided to the public, and the public should expect that it's getting its money's worth. However, he felt that \$40 is a bit low.

CHAIR MURKOWSKI recalled the suggestions presented today. There was the suggestion that the department investigate the feasibility of a pilot project involving an RFP to obtain private inspectors. She noted that she [will] check with the Municipality of Anchorage as to whether it would be interested in making some money [by doing the boiler inspections in the area].

REPRESENTATIVE ROKEBERG expressed his agreement to merely direct the department to investigate the feasibility of a pilot project involving an RFP to obtain private inspectors rather than an amendment.

CHAIR MURKOWSKI inquired as to the will of the committee.

Number 2050

REPRESENTATIVE KOTT moved to report HB 262 out of committee with individual recommendations and the accompanying fiscal note. There being no objection, HB 262 was reported from the House Labor and Commerce Standing Committee.

HB 290-COMPREHENSIVE HEALTH INSURANCE ASS'N

CHAIR MURKOWSKI announced that the final order of business before the committee would be HOUSE BILL NO. 290, "An Act relating to membership in the Comprehensive Health Insurance Association."

Number 2011

REPRESENTATIVE ROKEBERG, testifying as the sponsor of HB 290, informed the committee that he became aware of the existence and necessity of the Alaska Comprehensive Health Insurance Association (ACHIA) during his time as chair of the House Labor and Commerce Standing Committee. He pointed out that ACHIA is the insurer of last resort. The state is required under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to have a plan such as ACHIA or another plan, a more costly plan as Representative Rokeberg understood it, available for those who can't obtain insurance. He explained that all businesses covered by the Employee Retirement and Income Security Act of 1974 (ERISA), particularly self-insured businesses or those with larger groups, are now exempt from paying their premium to keep the ACHIA plan going. The ACHIA plan is funded by an assessment on the premiums of all the health insurance underwriters in the state. The ERISA-covered

groups, which he estimated to be the bulk of all the covered lives in the state, pay nothing towards this program. This was made most acutely aware to the program when the state decided to withdraw their support, which amounts to as much as 20 percent or \$400,000 plus. Therefore, the burden on other private insurers in the state was increased.

REPRESENTATIVE ROKEBERG noted his desire to keep Alaska as friendly to the underwriting business as possible because Alaska has very few insurers. He estimated that Blue Cross [in] Washington and Alaska has at least 50 percent of the market. A few other insurers have a substantially smaller amount of the market, and therefore Alaska is a very uncompetitive market. He noted that in ACHIA's last fiscal year it took in \$4.5 million in guaranteed premiums from the existing health insurers in the state. He explained that the public employees and the other large self-insured people in the state aren't contributing to the health care plans of the state, which he believes to be wrong. Furthermore, he was concerned that the [Knowles] Administration allowed the collective bargaining units to go their own way with health insurance. That action broke down the system of health care for all state employees and retirees, which could result in jeopardizing the viability of the ACHIA plan because of the diminishment of the number of health insurers in the state, not to mention those insurers that won't enter the state due to the ever-increasing premiums to ACHIA.

REPRESENTATIVE ROKEBERG explained that [HB 290] simply tries to get all self-insured employers who may offer a major medical coverage on an expense-occurred basis to come in. "In other words, anybody we can throw ... a net out and get under ERISA to come in, and then plus the State of Alaska," he clarified. He expressed his belief that the State of Alaska should come back in and pay its fair share. Representative Rokeberg turned to the administration's indeterminate fiscal note and noted that it has a \$3.18 a month assessment on each individual. He [assumed] that the aforementioned cost would be passed on to every state employee, and therefore he would be viewed as causing an increase in the health plan. He didn't feel that was correct; the State of Alaska should pay that and not pass it on to the employee.

Number 1717

CECIL BYKERK, Chair, Alaska Comprehensive Health Insurance Association, informed the committee that he has been the chair of ACHIA since mid-1994. He noted that he works for Mutual of

Omaha. Mr. Bykerk explained that [ACHIA] began operation in 1993 and has gradually grown over the past ten years to 439 policyholders at the end of 2001. Policyholders are charged premiums that are higher than those that they could obtain in the marketplace if these persons were insurable. However, these policyholders aren't charged what it would take to support the pool because it would defeat the purpose of a high risk pool. The shortfall is spread across those insured in the state. He echoed earlier comments that ACHIA is unable to access self-funded plans.

MR. BYKERK explained that HB 290 attempts to broaden ACHIA's assessment base, which he believes to be critical to the success of ACHIA in Alaska. He pointed out that there is a greater and greater burden on the insured population, which mainly consists of small employers or individuals. Additionally, the marketplace in Alaska is extremely fragile [because] there aren't many carriers in the state. Mr. Bykerk informed the committee that the alternative to ACHIA, as far as compliance with HIPAA, would be some other mechanism that would undoubtedly be a guarantee issue environment. Based on observations of other states, Mr. Bykerk said that such an environment would likely result in a number of carriers withdrawing from the state. Therefore, the options would be further narrowed. Mr. Bykerk said that he is fully supportive of [HB 290's] particular way to broaden the assessment base because currently all the employees of self-funded employers in the state have access to ACHIA. If such an employee leaves an employer and has 18 months of continuous coverage, that employee has the option of coming into ACHIA without serving a preexisting condition, and the employee is guaranteed access to ACHIA's pool. Therefore, [self-funded] employers are receiving the benefit of ACHIA without contributing, which means that the burden is transferred to the remaining insured population in the state.

Number 1471

CHAIR MURKOWSKI asked whether any other options had been identified beyond broadening the assessment base, as is done with HB 290, or raising the premiums.

MR. BYKERK pointed out that there are a number of ways to gain access to the self-insured employers. The language in Section 1(3) seems to leave [the avenue to gain access to the self-insured employers] open. He noted that there are approaches that aren't based on premium but rather based on covered lives. Such an approach gains access to some of the self-insured. Some

states use a general revenue appropriation approach, but it's a "dicey" issue. He informed the committee that one state has attempted to [impose] a provider tax, which he likened to a per visit or per head tax. Unfortunately, such a tax gets labeled a "sick tax" and thus isn't well-received.

Number 1343

REPRESENTATIVE HALCRO referred to the sponsor statement, which states that ACHIA generated about \$3 million of which \$2 million was from contributions from members and \$1 million in contributions from individual premiums. However, the sponsor statement goes on to say that ACHIA paid out \$3.9 million in claims. Therefore, it seems that ACHIA was left \$900,000 short. Who would make up that difference, he asked.

MR. BYKERK answered that there are some accounting issues that could be addressed at a later time. He explained that ACHIA tries to keep the number of assessments down during the year so that administrative [costs are kept down]. For example, ACHIA recently sent out an assessment for \$2 million. However, it's unlikely that \$2 million will carry ACHIA through 2002 and thus later in the year ACHIA will make another assessment, which he estimated would be for \$2 million. Some of the second \$2 million assessment will be for 2003. Mr. Bykerk mentioned that the numbers Representative Halcro is using are on a cash basis.

Number 1230

MR. BYKERK informed the committee that for 2001 ACHIA received approximately \$1.7 million in premiums from policyholders, paid \$4.45 million in claims, and incurred administrative expenses. [In 2001] ACHIA assessed \$3,525,000 of which \$400[,000] would be allocated to either the year 2000 or the year 2002. Therefore, ACHIA assessed about \$3.25 million on an accrual basis.

REPRESENTATIVE HALCRO related his understanding that when there is a shortage members are assessed for that balance.

MR. BYKERK replied yes. In further response to Representative Halcro, Mr. Bykerk agreed that the \$4.4 million paid in claims in 2001 is an increase of 15 percent from 2000. Over ACHIA's nine years of existence, the program has grown steadily with a few growth spurts.

Number 1089

REPRESENTATIVE ROKEBERG asked when the state removed itself from ACHIA, and what was the premium at that time.

MR. BYKERK recalled that when the state removed itself from ACHIA it created a significant impact on ACHIA's assessment base. Although he noted that he would have to review the records, he agreed with Representative Rokeberg that there was at least a 20 percent impact when the state removed itself. He estimated that the impact was probably more like 25-30 percent.

Number 1013

JACK McCRAE, Blue Cross Blue Shield, speaking via teleconference, recalled that the state moved out of the pool [ACHIA] in 1998.

REPRESENTATIVE HALCRO inquired as to the state's contribution at the time it moved out of the pool.

MR. McCRAE referred to a document that said that prior to [the state leaving], Blue Cross of Alaska paid about one-third of the pool and [Blue Cross's] share would increase to about one-half of the pool. Mr. McCrae ultimately said that he would have to obtain more information to answer the question.

Number 0930

BOB LOHR, Director, Division of Insurance, Department of Community & Economic Development (DCED), recalled that the state paid \$369,000 in 1997. He also recalled that the state became self-insured in the middle of 1998. Although there were payments [to ACHIA] in subsequent years, those payments were lower because there were fewer state employees covered. In response to Representative Rokeberg's question regarding the premium at the time the state pulled out of the pool, Mr. Lohr offered to run the numbers in order to determine what [the premium] would have been as a percent of the total for that year.

KATIE CAMPBELL, Actuary L/H, Division of Insurance, Department of Community & Economic Development, explained that when the state became self-insured in the middle of 1997, the assessments in 1998 used 1997 data. Therefore, [the numbers] have to be reviewed over a couple of years because there is half a year's premium that was counted until the next year. About \$130 million of the base was state employee premium. At that time, the assessments were about 30 percent. After the state became

self-insured [the assessments] dropped to .5 percent of the premium for all the other insurers. In the next year it moved to .82 percent of the premium.

Number 0766

MR. LOHR began by seconding Representative Rokeberg's and Mr. Bykerk's comments regarding the importance and effectiveness of the ACHIA program. Nationally, there is a niche where certain individuals are unable to obtain insurance through the private insurance market because of medical conditions. Therefore, the national approach has been to establish programs such as ACHIA to provide coverage at a higher cost than the standard premium for standard insurance. However, it's unrealistic to expect that would cover the entire cost of the program. Therefore, the statute provided for an assessment, which is currently based on the total amount of premium for medical insurance written by health insurers in the state. He explained that as a condition of writing major medical policies in the state, [the insurance company] must participate in ACHIA. As mentioned earlier, the assessments have been around \$3 million per year, which amounts to approximately 1 percent of the premium. "It's expected to probably level out somewhat at that \$3 million level," he said.

MR. LOHR pointed out that if the assessment becomes too large, as a percentage of total premium, it begins to impact insurance decisions by those that are purchasing private insurance in the market. One percent is probably reaching the flinch point. Typically, the insurers pass ACHIA's assessment costs to their members. Therefore, everyone subject to the assessment is part of a group policy and would share in the cost of ACHIA. However, HB 290 attempts to assess self-insured employers and add them to [ACHIA's] assessment base to the extent permitted under federal law. The Department of Law (DOL) has reviewed this for the [division], and DOL doesn't believe that the employers can be reached under the ERISA program. The ERISA program deals primarily with pensions, as well as employee benefits. "To the extent that the federal government has occupied that field, they have, in fact, preempted state regulation of those programs," he explained. The [division's] interpretation, as guided by DOL, is that the federal government has preempted the opportunity to compel participation in an assessment. Therefore, the legislation would only [be able to] include state health plans that aren't union health trusts in the assessment base.

MR. LOHR specified that [HB 290] wouldn't include the state plan that covers all employees when unions have not elected to establish their own union trusts.

CHAIR MURKOWSKI related her understanding that ASEA [Alaska State Employees Association] wouldn't be included [under HB 290].

MS. CAMPBELL replied yes, and noted that basically the General Government Unit (GGU) went to the union trust, as well as several others. Therefore, anyone administered by AETNA [would be included under HB 290].

REPRESENTATIVE ROKEBERG mentioned the possibility of amending it.

MR. LOHR informed the committee that [under HB 290] the assessment base would increase from 300 million to 510 million if the State of Alaska's active and former employees were included. The state's premium would amount to approximately 40 percent, \$1.2 million, or \$45 per employee per year. Therefore, those insurance companies currently paying assessments would have their assessment reduced from approximately one percent to six-tenths of a percent of their total health insurance premium. Mr. Lohr said that he believes [HB 290] is a sound concept and worth pursuing, if it can be done on an equitable basis. Being equitable is the challenge with the ERISA preemption.

MR. LOHR recalled Mr. Bykerk's mention of an alternative mechanism of funding, the stop loss coverage. He explained that stop loss insurance is one mechanism to broaden the base of the assessment, bring in more premium to the policy, and redistribute the assessment in a equitable fashion. Therefore, it is essentially a covered lives formula, which attempts to take the number of individuals covered by health insurance in various forms and eliminate the duplication in that count and use it as the basis for assessing a premium for CHIA. He acknowledged that any method of assessment is fairly complex [and therefore] there would need to be a requirement to report covered lives. Mr. Lohr specified the aforementioned as one suggested revision to HB 290 if that approach was pursued.

MR. LOHR explained that under a covered lives approach, stop loss insurers would be assessed on the number of lives covered under the underlying self-insured or union trust plans. Therefore, stop loss insurers would be assessed the same amount per covered life as other insurers, which is presumably passed

on to the insured population. This is one mechanism that the [division] believes to be more equitable and could result in lower premiums for those already forced to pay into the [ACHIA] program while reducing the impact on the insured who aren't directly participating in the [ACHIA] plan. In conclusion, Mr. Lohr related his belief that [ACHIA] is a ray of light in the attempts to increase the availability of health insurance to the uninsured in Alaska. Any mechanism that can ensure the continued success of [ACHIA] is well worth examining.

Number 0139

REPRESENTATIVE HALCRO recalled that [DOL] has provided [the division] with an opinion that a certain percentage of the state employees can't be reached. He asked if those 8,400 union-sponsored self-insured plans are the employees that can't be reached.

MR. LOHR clarified that the opinion says that [the division] can't reach the employer. He explained that ERISA is designed to encourage employers to provide health benefits and other insurance benefits to employees. When the national pattern was reviewed, there was a wide degree of variation in the individual state insurance that was available. Therefore, [the federal government] decided to do a federal system that they hoped would provide incentives to provide the coverage. "So, it is any employer that is self-insured, that is that chooses to absorb the cost of health insurance as part of what they provide as opposed to hiring an insurance company to provide that coverage," he said. If [the business] elects to provide insurance through a private insurer, as the state did before mid-1997, then they wouldn't be subject to ERISA and thus would be subject to the state's jurisdiction.

MS. CAMPBELL pointed out that the State of Alaska plan can be regulated under ERISA.

TAPE 02-8, SIDE A

REPRESENTATIVE ROKEBERG referred to a memo from Mike Ford, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, regarding the ERISA preemption and the attorney general's opinion. He read the following portion of the memo:

There has been considerable litigation over the application [and] interpretation of the ERISA

preemption revision. Some courts have held that even private self-insured benefit plans are subject to state laws regulating insurance. Therefore, it is possible that even private self-insured health care plans would have to participate in the state health care plan as contemplated in this draft.

REPRESENTATIVE ROKEBERG returned to the issue of the stop loss coverage. He asked, "Couldn't we now, if we could expand this bill, place it upon the stop loss insurance of some of these other self-insured companies?"

MR. LOHR answered that he believes that could be done. In further response to Representative Rokeberg, Mr. Lohr said that he didn't know that covered lives for the premium would have to be used. However, he believes there are several [reasons] to recommend it as an approach. In regard to the legal battle, Mr. Lohr related his understanding that the case has been overturned by subsequent decisions and thus the Sixth Circuit Court of Appeals has recognized that fact. Mr. Lohr offered to provide Representative Rokeberg with the agreement in writing.

Number 0211

REPRESENTATIVE ROKEBERG clarified that currently the only people paying for [the ACHIA] premium are individuals with small group policies that aren't under ERISA or some governmental self-insured program or a union trust. In Representative Rokeberg's opinion, 70-75 percent of the people with health insurance in Alaska don't contribute to the ACHIA program, which is the largest problem. He asked if Mr. Lohr conceptually agreed with that statement.

MR. LOHR answered that he agreed with the characterization that a large percentage of Alaskans aren't covered directly or indirectly by the assessment. In terms of the impact of that on the private insurance market, Mr. Lohr said he believes Representative Rokeberg [to be correct]. Mr. Lohr related his belief that broadening the base of that assessment would be in the public interest.

REPRESENTATIVE ROKEBERG remarked that he believes the cost to the individuals or small groups that do go to those could actually be reduced if this was adopted.

MR. LOHR mentioned that he would like to leave the Department of Administration to testify to the State of Alaska plan. However,

in general he felt that broadening the assessment base would make the ACHIA program stronger and reduce the disincentive to stay covered under private and group health insurance policies.

Number 0366

REPRESENTATIVE HALCRO inquired as to whether the ability for unions to offer union-sponsored plans was part of a collective bargaining agreement.

MR. LOHR deferred to the Department of Administration.

[HB 290 was held]

#### **ADJOURNMENT**

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 5:00 p.m.