

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

March 25, 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. 290

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

- MOVED CSHB 290(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 504

"An Act relating to the wages of people working in the fisheries business."

- HEARD AND HELD

HOUSE BILL NO. 443

"An Act retroactively extending the application and licensing deadlines and amending the effective date of certain provisions relating to regulation of persons who practice tattooing and permanent cosmetic coloring or body piercing; and providing for an effective date."

- BILL HEARING POSTPONED TO 3/27

HOUSE JOINT RESOLUTION 38

Relating to urging the United States Congress to pass terrorism risk protection legislation.

- BILL HEARING POSTPONED

PREVIOUS ACTION

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
01/30/02		(H)	L&C AT 3:15 PM CAPITOL 17
01/30/02		(H)	Heard & Held
01/30/02		(H)	MINUTE(L&C)
02/01/02		(H)	L&C AT 3:15 PM CAPITOL 17
02/01/02		(H)	Heard & Held
02/01/02		(H)	MINUTE(L&C)
03/22/02		(H)	L&C AT 3:15 PM CAPITOL 17
03/22/02		(H)	Heard & Held MINUTE(L&C)
03/25/02		(H)	L&C AT 3:15 PM CAPITOL 17

BILL: HB 504

SHORT TITLE: WAGES FOR WORKERS IN FISHERIES

SPONSOR(S): RLS

Jrn-Date	Jrn-Page		Action
03/15/02	2547	(H)	READ THE FIRST TIME - REFERRALS
03/15/02	2547	(H)	L&C
03/25/02		(H)	L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

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

POSITION STATEMENT: Reviewed the changes encompassed in CSHB 290, Version J.

BOB LOHR, Director
Division of Insurance
Department of Community & Economic Development
3601 C Street, Suite 1324

Anchorage, Alaska 99503-5948
POSITION STATEMENT: Answered questions.

John George, Lobbyist
American Family Life Assurance Company (AFLAC)
3328 Fritz Cove Road
Juneau, Alaska 99801
POSITION STATEMENT: Testified in support of the premise behind
HB 290.

DON EHTERIDGE, Lobbyist
Alaska State American Federation of Labor and Congress of
Industrial Organizations
710 W 9th Street
Juneau, Alaska 99801
POSITION STATEMENT: Testified in opposition to HB 290.

LINDA SYLVESTER, Staff
to Representative Kott
Alaska State Legislature
Capitol Building, Room 204
Juneau, Alaska 99801
POSITION STATEMENT: Testified on behalf of the sponsor of HB
504, the House Rules Standing Committee.

STEPHANIE MADSEN, Vice President
Pacific Seafood Processors Association
213 Third Street
Juneau, Alaska
POSITION STATEMENT: Testified in support of HB 504.

ED FLANAGAN, Commissioner
Department of Labor & Workforce Development
PO Box 21149
Juneau, Alaska 99802-1149
POSITION STATEMENT: Testified in opposition to HB 504.

ACTION NARRATIVE

TAPE 02-43, SIDE A
Number 0001

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

HB 290-COMPREHENSIVE HEALTH INSURANCE ASS'N

VICE CHAIR HALCRO announced that the first order of business would be HOUSE BILL NO. 290, "An Act relating to membership in the Comprehensive Health Insurance Association."

Number 0047

REPRESENTATIVE KOTT moved to adopt Version 22-LS1150\J, Ford, 2/28/02, as the working document. There being no objection, Version J was before the committee.

REPRESENTATIVE ROKEBERG, Alaska State Legislature, testified as the sponsor of HB 290. He explained that HB 290 changes the method of spreading the premium. Under the current Alaska Comprehensive Health Insurance Association (ACHIA), the small number of private health insurance companies underwrite individual and very small group plans that aren't eligible for the Employee Retirement and Income Security Act of 1974 (ERISA). These private health insurance companies make the \$3 million per annum assessments based on the amount of premiums they write in the state. Version J changes the methodology to a covered lives method of spreading the costs of the ACHIA program and defines major medical benefits in order to capture a broader degree of people. Representative Rokeberg directed attention to the Division of Insurance's March 13, 2002, document entitled, "CSHB 290 (Version J) Analysis of Change in Assessment Formula."

Number 0233

KATIE CAMPBELL, Actuary L/H, Division of Insurance, Department of Community & Economic Development (DCED), testified via teleconference. Ms. Campbell explained that Version J does a couple of things. As mentioned by the sponsor, the major change is the change from a premium base to a number of covered lives base. Version J also increases the membership of the ACHIA program to include any self-funded plans as allowed under federal law. To the extent that plans can be accessed, those plans would be members of the ACHIA program. Also, the definition of major medical was expanded a bit from what is in current law. She pointed out that the March 13, 2002, document from the division illustrates how the formula would change. She directed attention to page 4 of the document, which includes an example of the impact of the new formula for some of the insurers and members of ACHIA. This example utilizes data captured in 2000. The caveat is that the information is only as

good as the information provided by the insurers. She pointed out that Premera Blue Cross is the largest insurer and currently pays about 50 percent of the assessment. If the formula [base] is changed to the number of covered lives, it's disbursed more broadly because the State of Alaska is covered under the ACHIA program and thus will pick up a fairly large portion of the assessment, and therefore it's distributed more broadly by the insurers because of the larger number of insured lives compared to the premium the insurer would write.

REPRESENTATIVE ROKEBERG highlighted the change in the CS that's related to the ability to make an assessment against the stop loss insurance that the self-insureds sometimes purchase; this method allows the risk to be spread through a larger number of people. Representative Rokeberg informed the committee that the State of Alaska isn't an ERISA group, the state didn't join ACHIA because they became self-insured. However, this legislation would bring the state back in.

Number 0524

VICE CHAIR HALCRO estimated that under [Version J] the State of Alaska's contribution to ACHIA would amount to \$690,000. He inquired from where that money would come.

REPRESENTATIVE ROKEBERG answered that it could come from the individual under the current language of the legislation. He announced that he has a proposed amendment if the committee wishes to change it such that the state would pick up that portion.

VICE CHAIR HALCRO recalled concern that several of the labor organizations, through collective bargaining, had the ability to become self-insured. He asked if including these self-insureds would brush up against collective bargaining.

REPRESENTATIVE ROKEBERG replied that he didn't think so, although he noted that he isn't a labor law expert. He informed the committee that there are a small number of bargaining units that were paying small premium assessments under [the current formula], almost 1 percent. Under the current draft, the state would pay a baseline amount and the individuals would pay the difference. Representative Rokeberg informed the committee that the calculation against the 260,000 lives amounts to approximately \$.86 a month per covered life, which he viewed as a small amount to finance this important program.

REPRESENTATIVE ROKEBERG said:

And contrary to some popular belief, even members of the State ... well not necessarily the State, but most other unions -- the State wouldn't apply because they would always have our state coverage. But, in the instance where other people that are coming in now, all of them would have the opportunities to become ACHIA members if ... it was such that they could not provide insurance in an affordable manner under their existing contract.

REPRESENTATIVE ROKEBERG emphasized that there are benefits to these people. Furthermore, he reminded the committee that without [ACHIA] the [state] would jeopardize its primacy under the federal law because of the Health Insurance Portability and Accountability Act (HIPAA). Representative Rokeberg pointed out that several other states have gone with this method as a way to cover the cost of the pool more equitably. There have been suggestions to use the permanent fund dividend (PFD) or other tax methods to do this.

VICE CHAIR HALCRO inquired as to who will pay the \$690,000 that the state will have to contribute to ACHIA. Is there any problem with what is being done with this legislation, he asked.

Number 0857

BOB LOHR, Director, Division of Insurance, Department of Community & Economic Development, testified via teleconference. Mr. Lohr answered that he didn't believe there is any problem with [implementation] of this legislation, which he characterized as a good piece of legislation. He related his belief that the legislation broadens the base of the assessment of the ACHIA program. With regard to who pays, Mr. Lohr said that ultimately the employee pays because typically an employer for the state is going to pass the costs to the employee, which is the case with private insurance companies. He highlighted that under the current situation, the cost is passed through to private insurers only, which is why 1 percent is specified. Therefore, a program such as encompassed in HB 290 would broaden the base of assessment to lower it to the range of six-tenths of a percent.

REPRESENTATIVE MEYER related his understanding then that all the employees at say Carr's Safeway will pay more into their plan under this legislation.

MR. LOHR explained that such would only be the case if Carr's chooses to use stop loss insurance as a component of their strategy to control the risk of high cost health insurance for individuals. Therefore, if the amount of claims in a given year exceeded a certain threshold, then stop loss insurance would kick in. Without the use of stop loss insurance, the entity wouldn't be included. Mr. Lohr highlighted that this method has been found permissible under ERISA.

REPRESENTATIVE MEYER said that he hoped [the legislation] doesn't penalize one group in an effort to help another.

MR. LOHR responded that he didn't believe that to be the case. He reiterated his belief that the legislation would broaden the base of assessment as far as is possible under federal law in order to more fairly distribute the burden of the uncovered expenses of ACHIA.

REPRESENTATIVE CRAWFORD informed the committee that one of the large self-insured unions, which contend that this legislation will double the cost of their stop loss insurance each year. This particular union is considering dropping its stop loss insurance if this legislation passes, which would result in the pool getting smaller.

MR. LOHR deferred to the numbers [provided] by Ms. Campbell [in the March 13, 2002, document].

Number 1130

JOHN GEORGE, Lobbyist, American Family Life Assurance Company (AFLAC), began his testimony by informing the committee that AFLAC is a major underwriter of supplemental benefit insurance policies. He explained that supplemental benefits offer very narrow inexpensive coverage. He announced AFLAC's support of this legislation. The current formula for ACHIA assessments assess insurance companies based on their entire premium base, not just the major medical premiums. The current definition specifies that a Medicare supplement policy is a major medical policy, and AFLAC writes four of those. The assessments for those are \$25,000-\$30,000 a year. Mr. George pointed out that the burden of this social problem shouldn't be placed on the backs of the employees of small employers, which is where it falls because those are the folks who purchase major medical insurance. Mr. George related that [AFLAC] believes spreading

the costs of this social problem is fair and the right thing to do.

MR. GEORGE turned to the Division of Insurance's projections that AFLAC writes 14,500 lives while AFLAC believes that 5,000 lives will fall under this definition. Mr. George expressed the need to change the definition of "major medical" to exclude the limited benefit policies that AFLAC provides. He explained that AFLAC's belief that its assessment should be much less than \$30,000 a year based on the four major medical policies it writes. Mr. George suggested that the definition of major medical should return to the definition [that already exists]. It doesn't seem fair to pay [the same as the major medical policies] for those policies that aren't major medical policies. Mr. George concluded by saying that the concept of spreading the burden across a much broader segment and to include more than just small employers and their employees is laudable.

Number 1324

REPRESENTATIVE ROKEBERG pointed out that the Division of Insurance's estimates predict that [under this legislation] AFLAC will pay substantially more than it's now. Representative Rokeberg said he understood that AFLAC would like to change that. Notwithstanding that, he asked, would AFLAC still support the legislation.

MR. GEORGE clarified that the Division of Insurance was unable to determine which policies were on an expense base and which were on another base. Mr. George reiterated AFLAC's belief that there are about 5,000 policies. Still, overall the bill has positive effects. He announced that AFLAC would offer 100 percent support if the definition of [major medical] was changed to its [existing] definition. In further response to Representative Rokeberg, Mr. George said that going to a base of covered lives is the most fair way to address this.

REPRESENTATIVE ROKEBERG noted his disappointment that there are only 260,000 [covered lives].

Number 1419

DON EHTERIDGE, Lobbyist, Alaska State American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), informed the committee that the AFL-CIO's trustees still oppose this legislation because most of them view it as an additional cost on their members. In fact, if it is an expense that is

passed through to the members, the public employee groups will renegotiate the issue. Although the organization is fully supportive of the idea, the organization believes the costs should be spread to everyone in the state, not just to those fortunate enough to have insurance.

REPRESENTATIVE ROKEBERG related his understanding that the AFL-CIO is sympathetic, but is concerned that there would be impacts to existing contracts as well as the future cost to the membership.

MR. ETHERIDGE replied yes.

REPRESENTATIVE ROKEBERG surmised then that the AFL-CIO would suggest looking to the general fund or general taxation rather than have a premium or covered lives assessment.

MR. ETHERIDGE replied yes. He mentioned that even \$1 could be taken from everyone's PFD in order that everyone pays, including those that aren't insured. In further response to Representative Rokeberg, Mr. Etheridge confirmed that AFL-CIO's board recognizes that perhaps one or two of the members may benefit from this pool. However, the AFL-CIO's membership will be covered by the plans that it has now.

REPRESENTATIVE ROKEBERG noted his disappointment that organized labor has taken this position.

VICE CHAIR HALCRO, determining that there was no one else to testify, closed public testimony.

REPRESENTATIVE ROKEBERG noted that the committee packet includes two amendments.

Number 1592

REPRESENTATIVE ROKEBERG moved that the committee adopt Amendment J.2 [22-LS1150\J.2, Ford, 3/22/02], which reads as follows:

Page 1, line 2, following "**Association**":
Insert "**; and providing for an effective date**"

Page 4, following line 12:
Insert new bill sections to read:
"*** Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION. (a) Until January 1, 2003, the Comprehensive Health Insurance Association shall determine member assessments under AS 21.55.220(c) as that provision existed before the effective date of this Act.

(b) Notwithstanding AS 21.55.220(f), enacted by sec. 6 of this Act, information required to be reported under AS 21.55.220(f), enacted by sec. 6 of this Act, must initially be reported to the director of insurance by September 30, 2002.

* **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: REGULATIONS. The director of insurance may immediately proceed to adopt regulations necessary to implement the changes made by this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date of the statutory change.

* **Sec. 11.** This Act takes effect immediately under AS 01.10.070(c)."

The committee took an at-ease from 3:50 p.m. to 3:54 p.m.

REPRESENTATIVE CRAWFORD objected.

REPRESENTATIVE ROKEBERG explained that the amendment establishes a transition period and requires that all the reporting required by this must report to the director of the Division of Insurance by September 30, 2002, in order to determine the correct amount of covered lives. He noted that the current mandatory insurance reports have deadlines in April.

REPRESENTATIVE CRAWFORD withdrew his objection.

There being no objection, Amendment J.2 was adopted.

REPRESENTATIVE ROKEBERG turned attention to Amendment J.1 [22-LS1150\J.1, Ford, 3/22/02]. He explained that under the current draft employees would pay about \$.96 a month or potentially \$2 per family a month. Amendment J.1 would result in the state "eating it" [paying it] and thus those costs are shifted to the general fund. This amendment would create a fiscal note.

Number 1708

REPRESENTATIVE ROKEBERG moved that the committee adopt Amendment J.1, which reads as follows:

Page 4, following line 12:

Insert new bill sections to read:

"* **Sec. 9.** AS 39.30.095(b) is amended to read:

(b) After obtaining the advice of an actuary, the commissioner of administration shall determine the amount necessary to provide benefits under AS 39.30.090, 39.30.091, and 39.30.160 and, subject to (e) **and (g)** of this section, shall set the rate of employer contribution and employee contribution, if any. With money in the fund, the commissioner of administration shall pay premiums, claims, and administrative costs required under the insurance policies in effect under AS 39.30.090 and 39.30.160, or required under self-insurance arrangements in effect under AS 39.30.091.

* **Sec. 10.** AS 39.30.095(e) is amended to read:

(e) Notwithstanding (b) of this section **and subject to (g) of this section**, the rate of employer contribution to provide hospital, surgical, dental, audiovisual, and other medical care benefits under AS 39.30.091 is \$515 monthly beginning July 1, 2000; \$575 monthly beginning July 1, 2001; and \$630 monthly beginning July 1, 2002, for the following employees and officials:

(1) employees in the executive branch of the state government, including the governor and lieutenant governor, who are not members of a collective bargaining unit established under the authority of AS 23.40.070 - 23.40.260 (Public Employment Relations Act);

(2) officials and employees of the legislative branch of state government under AS 24;

(3) employees in the judicial branch of state government, including magistrates and other judicial officers, who are not members of a collective bargaining unit established under AS 23.40.070 - 23.40.260 (Public Employment Relations Act).

* **Sec. 11.** AS 39.30.095 is amended by adding a new subsection to read:

(g) In setting the rate of contribution by an employer and employee under (b) and (e) of this section, the commissioner may increase the amount of the employer contribution under (e) of this section and may exceed the amount set in that subsection, but may not increase the amount of the employee contribution if the amount necessary to provide

benefits under AS 39.30.090 and 39.30.160, or for a self-insurance arrangement under AS 39.30.091, increases as a result of an assessment against the state as a member of the Comprehensive Health Insurance Association under AS 21.55.220."

REPRESENTATIVE MEYER objected.

REPRESENTATIVE ROKEBERG reiterated that Amendment J.1 would be paid by the state rather than the individual employee.

REPRESENTATIVE CRAWFORD related his belief that the legislation attempts to bring in everyone.

REPRESENTATIVE ROKEBERG clarified that Amendment J.1 speaks only to the state [employees]. He pointed out that the legislature can establish the terms and conditions of the health program established by the state government. This decision would be made by a private employer as well.

VICE CHAIR HALCRO surmised that Amendment J.1 would include those who aren't covered by collective bargaining, members of the executive, legislative, and executive branches.

Number 1789

REPRESENTATIVE CRAWFORD specified that his concern is in regard to the self-insureds who have already bargained for a contract and already receive a set amount from the employers.

REPRESENTATIVE ROKEBERG suspected that those employers would have to pay for [the increase] until the end of the contract.

REPRESENTATIVE CRAWFORD predicted that all the employers he deals with will say that they bargained for an established amount per hour and that's all they will pay. Therefore, he predicted that it would come out of the pool of premiums that are available. He said he wasn't sure how [the money] could be obtained from the employers until the end of the contract.

REPRESENTATIVE ROKEBERG remarked, "We'd pass a law and they would have to pay." He said he didn't think the employers could assess the employees if in a sharing basis under an existing contract.

REPRESENTATIVE CRAWFORD asked if Representative Rokeberg was going to amend the language in order to assess the employers.

REPRESENTATIVE ROKEBERG reiterated that Amendment J.1 does that for the State of Alaska, which is the only group the legislature can legally control.

REPRESENTATIVE CRAWFORD surmised then that the legislature can't assess employers through legislation, other than the State of Alaska.

REPRESENTATIVE ROKEBERG disagreed and said that is what is being done [with this legislation]. However, whether to pass the cost on to employees is the decision of the employer, he suspected.

REPRESENTATIVE CRAWFORD expressed the need to know how that would be handled because if an employer has a contract then the employer is only liable for that until the end of the contract.

REPRESENTATIVE ROKEBERG specified, "He's liable to his employees, but not to the State of Alaska if we pass this bill."

Number 1891

REPRESENTATIVE MEYER related his view that this is a direct cost of doing business. He posed a situation in which the owner of a rental car business decides to pass on the increased cost in insurance to the consumer via increased rental costs.

REPRESENTATIVE ROKEBERG agreed with Representative Meyer's analysis.

REPRESENTATIVE MEYER remarked that Representative Rokeberg has been opposed to such in the past.

REPRESENTATIVE ROKEBERG said that unless the funding source for ACHIA is changed, the entire program is going to be jeopardized.

REPRESENTATIVE MEYER inquired as to the fiscal note were Amendment J.1 to pass.

REPRESENTATIVE ROKEBERG estimated that the fiscal note would amount to \$690,000 per the Division of Insurance, which assumes inclusion of all the retirees.

REPRESENTATIVE MEYER said he could appreciate Representative Rokeberg protecting the state membership. However, he questioned why other memberships shouldn't be protected as well.

REPRESENTATIVE ROKEBERG related that the legislature's arm only extends so far.

Number 2006

A roll call vote was taken. Representatives Kott, Rokeberg, Hayes, and Halcro voted for the adoption of Amendment J.1. Representatives Meyer and Crawford voted against the adoption of Amendment J.1. Therefore, Amendment J.1 was adopted by a vote of 4:1.

REPRESENTATIVE HAYES requested an explanation in regard to what the amendments actually accomplish.

REPRESENTATIVE ROKEBERG explained that the amendments provide a transition period and shift the cost of this to the state administration versus to the state employees. He noted that this legislation will probably receive a fiscal note now. Representative Rokeberg emphasized that he introduced the bill to generate discussion with regard to the needs of ACHIA and what needs to be done in Alaska [in order] to ensure that Alaska has an insurance program that works in this state. Without an insurer of last resort many won't have insurance. He stressed that the federal government requires that Alaska have some sort of single-payer type system like ACHIA, and without such a program the state would lose primacy in the regulation of health insurance in the state. In conclusion, Representative Rokeberg asked for the committee's support of the bill.

REPRESENTATIVE HAYES informed the committee that he may have a conflict [of interest] because his company may be impacted by this legislation.

Number 2137

REPRESENTATIVE CRAWFORD applauded Representative Rokeberg for attempting to do this, which he believes needs to be done. However, there are a number of employers who choose not to provide insurance and who will not be impacted by this legislation. Representative Crawford expressed the need to bring in those employers who aren't providing insurance. With regard to contracts already in effect, Representative Crawford said he didn't see how any extra charge could be passed [on to anyone] until the end of the contract. Therefore, he predicted this would be an area waiting for lawsuits. He questioned how things would proceed when there is an existing contract.

REPRESENTATIVE MEYER echoed Representative Crawford's sentiments with regard to Representative Rokeberg's work on this matter. He suggested that perhaps the simplest way to deal with this is to withdraw \$1 from each individual's PFD. Representative Meyer pointed out that businesses have been hit hard this year with an increase in the minimum wage and unemployment compensation. He expressed concern that employers will be reluctant to pass this cost on to their employees and thus will pass the cost on to the consumers. Therefore, there is the potential to raise the cost of goods in the state. He reiterated that he applauded Representative Rokeberg's efforts, but mentioned that [this legislation] doesn't seem to be the appropriate vehicle.

VICE CHAIR HALCRO remarked, "We're treading on some very dangerous ground here." He pointed out that labor unions, through collective bargaining, have been given permission to self-insure and [through this legislation] the state is going to become involved in their policy. Furthermore, adoption of Amendment J.1 basically exempted the legislature and its employees, the executive branch, and the judicial branch from paying this out of their own checks and thus the state will have to come up with \$690,000.

The committee took a brief at-ease at 4:11 p.m. in order to return the gavel to Chair Murkowski.

Number 2319

REPRESENTATIVE HALCRO moved to report CSHB 290, Version 22-LS1150\J, Ford, 2/28/02, as amended out of committee with individual recommendations and the accompanying fiscal note. There being no objection, CSHB 290(L&C) was reported from the House Labor and Commerce Standing Committee.

HB 504-WAGES FOR WORKERS IN FISHERIES

TAPE 02-43, SIDE B

CHAIR MURKOWSKI announced that the next order of business would be HOUSE BILL NO. 504, "An Act relating to the wages of people working in the fisheries business."

REPRESENTATIVE KOTT, Chair, House Rules Standing Committee, Alaska State Legislature, testified as the sponsor of HB 504. He informed the committee that the packet should include a committee substitute (CS) for the committee's consideration.

Number 2272

REPRESENTATIVE MEYER moved to adopt Version 22-LS1595\L, Craver, 3/25/02, as the working document. There being no objection, Version L was before the committee.

REPRESENTATIVE KOTT recalled his remarks at a meeting regarding an increase in minimum wages for all Alaskans. He recalled specifying that increasing the minimum wages for all Alaskans would harm the fishing industry, primarily the processors. This legislation attempts to provide processors the ability to reduce the minimum wage equal to a fair value associated with room and board. Representative Kott directed attention to AS 23.10.055, which houses a number of exemptions that don't include [the fishing industry], which he estimated to be an oversight. Representative Kott emphasized that this legislation doesn't seek complete exemption from the [Alaska Wage and Hour Act], rather it attempts to carve out a small niche for the seafood processing industry. Representative Kott informed the committee that when the original statute was passed the department was allowed to adjust the minimum wage, although it was never done. In the current state of affairs for the fishing industry, this matter needs to be addressed.

CHAIR MURKOWSKI related her understanding that although other industries provide room and board, this legislation doesn't intend to expand this [minimum wage adjustment] to other industries.

REPRESENTATIVE KOTT agreed that there is no intent to expand this beyond the fishing industry. He pointed out that other industries that provide room and board, such as mining and logging, often pay well above the minimum wage. Furthermore, there is a provision in regulation that allows the [employer] to approach the department in order to adjust the wage for the food and lodging, although that wage can't fall below the minimum wage.

Number 2056

LINDA SYLVESTER, Staff to Representative Kott, Alaska State Legislature, testified on behalf of the sponsor, the House Rules Standing Committee. Ms. Sylvester explained that Version L adds a new section to the Alaska Wage and Hour Act. However, it doesn't tamper with AS 23.10.085. Ms. Sylvester pointed out that when the Fair Labor Standards Act was enacted it included an exemption for fishery processor workers. However, the Alaska

Hour and Wage Act in 1959 didn't include the aforementioned exemption. There doesn't seem to be any indication that there was an intention to exempt the rural areas.

MS. SYLVESTER directed attention to AS 23.10.085(c), which reads as follows: "(c) The regulations may permit deductions by an employer from the minimum wage applicable under AS 23.10.050 - 23.10.150 to employees for the reasonable cost, as determined by the director on an occupation basis, of furnishing board or lodging if board or lodging is customarily furnished by the employer and used by the employee." This language comes directly from the federal Fair Labor Standards Act. The enabling regulations, 8 AAC 15.160, which says "(a) AS 23.10.085 (c) does not limit the right of an employer and employee to enter into a written agreement to provide for deductions of monetary obligations of an employee." Furthermore, 8 AAC 15.160(a) specifies that [an employer] can't negotiate a wage that falls below the minimum wage. Moreover, 8 AAC 15.160(d) specifies the following:

(d) Nothing in (a) of this section prohibits deductions from earnings, based on a written agreement, to reimburse an employer for the reasonable cost of furnishing board and lodging, if

(1) alternative public board and lodging facilities are accessible to the worksite and the employee has declined to use such facilities;

(2) the board and lodging facilities of the employer are customarily furnished by the employer and used by the employees; and

(3) the cost to the employee for the use of the employer's board and lodging facilities, is reasonable and without profit to the employer.

MS. SYLVESTER continued by pointing out that 8 AAC 15.160(f) specifies that the director will make the determination regarding the cost of board and lodging based on 29 C.F.R. 531.3-531.5 and 531.29-531.35, which provide the definitions of all the terms in the [related] statutes and regulations. Ms. Sylvester informed the committee that the department is unwilling to remove 8 AAC 15.160(g)(1) because without it there is no indication that the employee has voluntarily accepted the room and board as an adjustment to their wage. She then turned attention to Title 29, Chapter 8, Sec. 203(m) [Section 3(m)] and pointed out that it speaks very generally with regard to how the fair value [for the room and board] is determined. She interpreted the intent of the Fair Labor and Standards Act and

the Alaska Hour and Wage Act as to allow an employer who provides room and lodging to consider a fair value for that room and board [and factor it in] the wage paid. However, with the pending increase in the minimum wage, the seafood processors are unable to absorb the costs of room and board. This legislation attempts to correct the inability of some rural processors to factor in the costs of room and board.

REPRESENTATIVE KOTT clarified that this legislation is independent of the legislation increasing the minimum wage. Regardless of the outcome of the minimum wage, the [processors] are in a depressed situation.

MS. SYLVESTER noted that during the work on the minimum wage, she received many phone calls requesting exemptions. Often it seemed that there was nothing to offer. However, this situation with the [processing industry] is unique because this industry has been part of Alaska's fabric since before the turn of the Twentieth Century, not to mention that this industry was factored in with the federal regulations. Recently, the industry was precluded and in the current environment, the industry needs the statutes to return to the original intent that allowed these remote processors to operate under their unique situations. In closing, Ms. Sylvester pointed out that employees of the processing industry are akin to migratory workers, both of which don't require much education or training. These positions can be filled with individuals off the street while offering practical [employment].

CHAIR MURKOWSKI noted the hour and announced that HB 443 wouldn't be taken up today.

Number 1490

STEPHANIE MADSEN, Vice President, Pacific Seafood Processors Association, informed the committee that the Pacific Seafood Processors Association has been in existence since 1914. This association represents shore-side throughout the state as well as three mother ship operations in the Bering Sea. Ms. Madsen stated the association's support for this legislation, which she characterized as critical for the seafood processing industry. Ms. Madsen pointed out that the European union has very stringent import requirements, and those requirements have increased as has their concern for food safety. The European union is one of the largest markets for canned salmon. As of December 1, 2003, [the processors] will no longer be able to fill cans that they currently own. From that point in time, the

can coating will have to be changed. Furthermore, since the September 11, 2002, tragedy, food has been of particular interest with regard to ensuring that it's tamper proof. Therefore, the Food and Drug Administration (FDA) has provided lengthy guidance documents with regard to educating employees and ensuring that products are tamper proof. Along with the aforementioned, the industry is trying to adapt to a global market, which means that [Alaska] needs to be cost-competitive. Every increment that is added to the cost is an increment that prevents the industry from being a cost-competitive producer in the global market place. Ms. Madsen stressed that this [inability to reduce wages based on the room and board that's provided] does place the industry over the edge. The cumulative effect is disastrous for the industry. This legislation merely offers an expansion of what is already authorized. She pointed out that there are some seafood processors that lived in communities with facilities that are accessible to the work site and have traditionally charged employees for room and board, as determined by the department. Those processors typically pay higher than the minimum wage and thus were able to deduct that room and board from the wage. However, the situation has drastically changed and the industry is faced with trying to internalize increased costs. She expressed hope that there would be consideration for those remote operators who have historically provided room and board by allowing the deduction for the room and board even if it falls below the minimum hourly rate and the overtime level. Ms. Madsen highlighted that there are two tests: the minimum wage hourly rate and overtime. She mentioned the costs associated with transportation, and pointed out that transportation costs can be deducted if the wage doesn't fall below the minimum wage requirement. Ms. Madsen noted that the committee packet should include a letter from Trident Seafoods. In closing, Ms. Madsen informed the committee that [seafood] is the state's number one export and [the seafood processing industry] is the largest private employer in the state and the second largest taxpayer in the state.

Number 1232

REPRESENTATIVE HAYES inquired as to who would determine what would be considered the reasonable cost or fair market value.

MS. MADSEN deferred to the commissioner of the Department of Labor & Workforce Development. She pointed out that AS 23.10.085 directs the division director to have oversight on [determining the reasonable cost or fair market value]. She related her understanding that the current practices involve

either producing a detailed analysis of the company's costs, which would be reviewed by the department, or utilizing the standard federal allowance of \$10 a day. Customarily, the seafood processors have chosen a reasonable standard approved by the department, and that standard ranges from \$12-\$15 a day.

MS. MADSEN, in response to Representative Meyer, answered that traditionally the employer provides room and board. She mentioned that services such as laundry are also offered by the processor. She explained that if a seafood processor has public facilities accessible to the work site and those seafood processors make a deduction on their employee's room and board, then those processors have the option to live in company housing or find alternative housing. The difficulty is in the places where no public facilities are accessible. In further response to Representative Meyer, Ms. Madsen agreed that legislation such as this is important in order to be competitive in today's seafood market. She stressed that the seafood industry is in competition with seafood from around the world as well as every other protein source.

Number 0938

REPRESENTATIVE CRAWFORD surmised that the seafood industry is also in competition with other industries for workers. He asked if the industry felt that it [could compete] for workers if say \$15 a day was withdrawn for room and board. He also inquired as to whether workers have to pay for their room and board on days when there is no work.

MS. MADSEN highlighted that the market drives what is paid. She noted that Alaska competes with Washington and California as well as with other processors. Therefore, Ms. Madsen informed the committee that [seafood processors] are nervous about charging employees for something that has been received in the past. She noted that those employees at the minimum wage are entry level employees and thus can become employed with no education or work experience. She reiterated that the market would drive the wage and what can reasonably be deducted.

REPRESENTATIVE CRAWFORD asked if it would be better to have a level playing field rather than having one [company in a particular area] deduct more than another.

MS. MADSEN agreed that it would be nice to have a level playing field, although it probably isn't practical because of price differences.

CHAIR MURKOWSKI restated Representative Crawford's question with regard to whether an employee would be charged room and board on days in which the employee has no work.

MS. MADSEN related her belief that this situation currently exists and probably varies from plant to plant. Ms. Madsen informed the committee that seafood processors often use the room and board deduction as an incentive for employees to complete their contract. When such an incentive is offered, upon completion of a contract an employee's room and board deduction is reimbursed. This type of information would be in the agreement signed by the employee prior to going to work.

CHAIR MURKOWSKI mentioned horror stories she has heard with regard to employees who don't speak English well and because of room, board, and transportation charges end up owing the company.

MS. MADSEN clarified that such situations probably occur on a catcher processor because those employees are paid by crew-share and thus an employee could end up owing the boat. Ms. Madsen mentioned that it's in the employer's best interest to keep the employee working and thus [plants] often have employees painting or doing various other "work" when no fish are coming through the plant.

Number 0552

ED FLANAGAN, Commissioner, Department of Labor & Workforce Development (DLWD), announced the department's strenuous opposition to HB 504. Commissioner Flanagan submitted that the language [in statute and regulation] was written such that seafood processing employees were covered by the Alaska Wage and Hour Act, including overtime and minimum wage. The exclusions were for the piece-work or crew-share exemptions. Commissioner Flanagan said that he found the discussion with regard to the definitions found in the Federal Labor Standards Act irrelevant. The statute allows [the department], absent regulation or statute, to utilize definitions and determinations found in the Federal Labor Standards Act. To say that the state can't differ from the Federal Labor Standards Act is incorrect. Commissioner Flanagan turned to the 1959 legislation that clearly specifies that the department "may" develop regulations to allow for some deductions. Historically, the department practice has been not to allow the [room and board] deduction for remote site employers where the housing is provided for the convenience of

the employer. The regulation basically codified the practice in 1985.

COMMISSIONER FLANAGAN said:

I find it a little chilling to talk about the place of certain people or workers and what they're here for ... -- basically to be guest workers or something. I'll push the envelope as far as anybody on trying to use every legal means to give preference to Alaskan workers. But once workers are in our state and working, we don't distinguish between them on the protections they're entitled to under state law, including minimum wage.

COMMISSIONER FLANAGAN refuted the notion provided in the sponsor statement with regard to college students working in canneries. Commissioner Flanagan highlighted the work that has been done to encourage Alaskan hire in this industry. He informed the committee that Alaskan employment in this industry has risen from 24 percent of workers in 1995 to 30 percent [in 2002]. The wages [paid to Alaskans] have risen from 36 percent to 45 percent. Commissioner Flanagan expressed empathy for the industry and the challenges it faces. However, there will be canneries that won't operate this year and that doesn't have anything to do with the minimum wage. Commissioner Flanagan pointed out that those workers receiving close to the minimum wage don't benefit when the prices are good, although the fisherman, the processor, and the local community does. Commissioner Flanagan related that these workers are making 25 percent less in real dollars than they were 15 years ago. "To ... have the brunt of the hardship that the industry is facing be borne by the low-wage workers, I think, is unconscionable," he said.

COMMISSIONER FLANAGAN related his belief that the lack of an effective date was inadvertent because if this passes next month, it would take effect four to six months before there is a minimum wage increase, if there is one. Therefore, an employer could utilize this [legislation before the minimum wage increase]. Commissioner Flanagan charged that [were this exemption granted] other industries would line up to receive an exemption from the onerous minimum wage. With regard to the amenities of laundry, television, and overtime, Commissioner Flanagan stressed that these workers are working 80 hours a week. Therefore, these workers receiving minimum wage may have a little time to eat, sleep, watch a little television, and do

laundry -- all for the sum of \$715 a week with the increase. He discussed the difference in the camps from subsistence level housing to the year round facilities.

TAPE 02-44, SIDE A

COMMISSIONER FLANAGAN discussed the "recruitment crunches" during which the camps offer to pay transportation and as the recruitment becomes more difficult payment for things such as room and board are offered as incentives. He noted that the processors [near cities] usually pay higher wages than those in the remote sites paying near the minimum wage. To start excluding people before the minimum wage is even raised, is [inappropriate], he related.

Number 0179

REPRESENTATIVE KOTT asked if Commissioner Flanagan was familiar with the "Davis brothers case" [Davis Brothers, Inc., a Georgia Corp Plaintiff/Appellant v. Raymond Donovan, Secty of Labor, et al.], a federal case in which the courts held it reasonable that employers could deduct board [from an employee's wage].

COMMISSIONER FLANAGAN answered that he believes that such is allowed under federal law, although he said he wasn't familiar with the case.

REPRESENTATIVE KOTT said that this legislation, to a large extent, mirrors what is in federal law. Representative Kott turned to the statute passed in 1959 in which the legislature specified that the regulations to be promulgated may permit deductions. He expressed confusion with regard to why [in 8 AAC 15.160] (d)(1) was included when it was specifically [left out] of the statute.

COMMISSIONER FLANAGAN related his understanding that the department, through 26 years, had chosen not to promulgate regulations. Rather, the department had a policy that it would recognize deductions, but not in remote sites. Clearly [8 AAC 15.160] (d)(1) differentiates between a remote site and one where alternative housing is available. Commissioner Flanagan indicated that this may have been a situation in which a regulation was based on policy, and therefore the regulation codified the policy. The statute is permissive in regard to which regulations the department could promulgate. "We're just being consistent with interpretation," he said. With regard to differences between the federal and state law, Commissioner

Flanagan said that Alaska's level of remote employment makes it entirely appropriate for the state to have different standards than the federal government.

REPRESENTATIVE KOTT agreed that the statute is permissive. However, he said he believes that the legislature's intent was moving in the opposite direction. Representative Kott asked if the department has the ability to enter the non-remote sites and make adjustments.

COMMISSIONER FLANAGAN deferred to Richard Mastriano, Director, Division of Labor Standards & Safety, DLWD, with regard to enforcement. However, he noted that depending upon the wages paid, the fees may be nominal enough that minimum wage isn't an issue.

CHAIR MURKOWSKI announced her intention to hold HB 504 and bring it back before the committee on Wednesday, March 27, 2002.

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 5:10 p.m.