

MINUTES
SENATE FINANCE COMMITTEE
February 27, 2004
9:06 AM

TAPES

SFC-04 # 23, Side A
SFC 04 # 23, Side B

CALL TO ORDER

Co-Chair Gary Wilken convened the meeting at approximately 9:06 AM.

PRESENT

Senator Lyda Green, Co-Chair
Senator Gary Wilken, Co-Chair
Senator Con Bunde, Vice Chair
Senator Ben Stevens
Senator Lyman Hoffman
Senator Donny Olson

Also Attending: DOUG LETCH, Staff to Senator Gary Stevens; JACQUELINE TUPOU, staff to Co-Chair Green; CHRIS ROBINSON, Executive Director, Special Education Service Agency; PAT DAVIDSON, Director, Division of Legislative Audit; LINDA HALL, Director, Division of Insurance, Department of Community and Economic Development; PAUL F. LISANKIE, Director, Division of Workers Compensation, Department of Labor and Workforce Development;

Attending via Teleconference: From offnet sites: DOUG GRIFFIN, Director, Alcoholic Beverage Control Board, Department of Revenue; MIKE BARRY, Chair, Board of Directors, Alaska Industrial Development and Export Authority, Department of Community and Economic Development; CRAIG NORDTVEDT, Alaska Insurance Guarantee Association; From Anchorage: DUANE GUILLEY, Finance Officer, Special Education Service Agency;

SUMMARY INFORMATION

SB 194-LIQUOR DELIVERED TO HOTELS/CRUISE SHIPS

The Committee heard from the sponsor, the Alcoholic Beverage Control Board, and an industry representative. The bill was held in Committee.

SB 289-EXTENDING THE SPECIAL ED SERVICE AGENCY

The Committee heard from the sponsor, the Division of Legislative Audit and the Special Education Service Agency. The bill was reported from Committee.

SB 276-ALASKA INSURANCE GUARANTY ASSOCIATION

The Committee heard from the Department of Community and Economic Development, the Alaska Industrial Development and Export Authority, the Alaska Insurance Guarantee Association and the Department of Labor and Workforce Development. The bill was held in Committee.

#SB194

SENATE BILL NO. 194

"An Act authorizing delivery of up to two bottles of distilled spirits to a cruise ship passenger or hotel guest."

This was the first hearing for this bill in the Senate Finance Committee.

Co-Chair Wilken stated this bill, sponsored by Senator Gary Stevens, "allows a licensed, packaged store in Alaska to deliver up to two bottles of distilled spirits in a gift basket to a hotel guest or cruise ship passenger."

DOUG LETCH, Staff to Senator Gary Stevens, read the sponsor statement into the record as follows.

SB 194, "An Act authorizing delivery of up to two bottles of distilled spirits to a cruise ship passenger or hotel guest", is a straightforward bill that brings distilled spirits on par with wine or champagne. Current Alaska liquor laws allow a package store to deliver not more than two bottles of wine or champagne in a gift basket with a floral arrangement to a cruise ship passenger or a hotel guest. When this statutory change was made, distilled spirits were inadvertently omitted from the bill.

SB 194 corrects this omission by allowing a package store to deliver not more than two bottles of distilled spirits in a gift basket with a floral arrangement to a cruise ship passenger or a hotel guest.

Senator Hoffman asked about the initial legislation that inadvertently overlooked the inclusion of distilled spirits.

DOUG GRIFFIN, Director, Alcoholic Beverage Control Board, Department of Revenue, testified via teleconference from an offnet site that the initial statute was enacted in 1999. He recalled that Senator Torgerson sponsored this bill at the request of an entrepreneur in Seward who wanted to provide this service, although no provision to do so existed. Mr. Griffin noted only one permit has been issued to date and was issued to the Seward business. He emphasized that the Board was conscious of the need to control access to alcohol and prevent widespread delivery and to avoid situations such as taxicabs "shuttling" alcohol to parties, etc.

Senator Hoffman noted the sponsor expressed that this was provision was inadvertently omitted and asked if the witness shared this observation.

Mr. Griffin was unsure, noting the original legislation was drafted at the direction of Senator Torgerson and the issue of distilled spirits never arose.

Senator Olson wanted assurance that this was an inadvertent omission rather than purposeful.

BERMAN OBALDIA, Still Spirits, testified via teleconference from an offnet location that the intent is to allow passengers of cruise ships to purchase alcohol in the event such products were not readily available at their home location to share with family and friends.

Co-Chair Green asked how beer is related to this statute.

Mr. Letch responded that beer is not considered a distilled spirit.

Co-Chair Wilken suggested that this could therefore be another unintended omission.

Mr. Letch commented that he had given the matter consideration as well.

Co-Chair Wilken asked if bill should be held in Committee to allow for and amendment

Mr. Letch indicated this would be acceptable.

Amendment #1: This amendment inserts a new bill section on page 1, line 4 to read as follows.

Section 1. This Act shall be known as the Gary Stevens two-pack act of 2004."

Senator Olson moved for adoption

Senator Olson WITHDREW the amendment.

Co-Chair Wilken asked if Mr. Griffin would be willing to work with the sponsor to address the inclusion of provisions for beer in the legislation.

Mr. Griffin affirmed he would.

Co-Chair Wilken ordered the bill HELD in Committee.

#SB289

SENATE BILL NO. 289

"An Act extending the termination date of the special education service agency; and providing for an effective date."

This was the first hearing for this bill in the Senate Finance Committee.

Co-Chair Wilken stated this bill, sponsored by Co-Chair Green, "extends the termination date of the Special Education Service Agency (SESA) until June of 2013, an additional nine years."

JACQUELINE TUPOU, staff to Co-Chair Green, testified as follows.

The Alaska Legislature had established the Special Education Service Agency in '86. And the purpose of it was to help schools and infant learning programs that had children with severe disabilities where they had no local expertise to provide that for them. They make it possible for those districts that either a low or remote attendance or, for instance if you were in a school district that had one blind child, or one disabled child. It enables those students to receive those services in their community. Those students would otherwise have to leave their families and communities and go into costly residential treatment programs, which would be at a huge cost to the State. So as intended by the Legislature, they deliver student-specific services specifically to small school districts, but they have lots of programs that are available statewide, such as workshops,

courses, library, newsletter, and a website, that all schools have available to them.

We recognize at this time that the availability of the personnel that have specialization in student disabilities has really decreased. At the same time, the incidences of students that have these severe disabilities has really increased, causing a lot of problems in different states.

We have this bill before you that will extend the SESA education service agency for another nine years until June 30, 2013.

CHRIS ROBINSON, Executive Director, Special Education Service Agency, testified that he was available to respond to questions.

PAT DAVIDSON, Director, Division of Legislative Audit testified to the report published December 18, 2003 auditing the Agency [copy on file]. She relayed that during the course of conducting this audit the Division found that almost all school districts gave statements in support of SESA operations and the continuation of the Agency, as well as requests for increased funding of the Agency. She stated that based on the findings of the audit, the Division issued a recommendation to extend the termination date for four years to the year 2008.

Ms. Davidson spoke to recommendations included in the report, mostly to address efficiency issues; primarily a recommendation to expand the use of teleconferencing "between the SESA expertise and the school districts". She noted this would result not only in cost savings, but would also provide more services to school districts, a request expressed by the districts. She suggested that through the utilization of teleconferencing services, the Agency would have increased contact with school districts. She predicted that over the next four to six years, the Agency would substantially change its delivery of services, which could be assessed at the time the recommended four-year extension neared completion.

Ms. Davidson characterized efficiency issues identified in the audit as "minor", including a recommendation that managers pursue the availability of the "e-government discount" for telecommunications expenses. She said the report also encourages SESA to stress its status as a State agency rather than a not-for-profit organization in securing lower prices with vendors as well as in filing paperwork with the federal Internal Revenue Service.

Ms. Davidson said the Audit found that representatives of the Department of Education and Early Development and the Governor's

Council on Disabilities and Special Education were not attending SESA meetings. She stressed this is a crucial element of State oversight of SESAs operations.

Senator Olson asked what specific changes were necessary to measure the delivery of services.

Ms. Davidson replied that pilot programs must be implemented to start delivering those services. She explained that specialists were helping onsite instructors and teachers.

Senator Olson asked if the current activities are ineffective.

Ms. Davidson corrected they are very effective; however the audit suggests that the contact could be increased. She noted the availability of video conferencing equipment currently used for telemedicine.

Senator Olson noted the legislation provides a nine-year extension and asked the consequences of the longer extension.

Ms. Davidson gave two reasons for a shorter extension. She admitted that the existence of a federally mandated program is an argument for a longer extension, although a four-year extension allows the legislature to review SESA operations. She qualified that the longer extension could be granted and the legislature could request periodic audits in addition to the automatic audits conducted when an entity reaches completion of its current term. She stated, however, that statutory changes to programs are usually offered in conjunction with extensions under the theory that legislation would pass easier to avoid sun-setting the entity.

Co-Chair Green noted she was troubled by the amount of time taken and required of SESA to receive extensions. She remarked that a nine-year extension would provide the organization stability in the knowledge that it would continue.

Co-Chair Wilken asked if other entities have been given nine-year extensions.

Ms. Davidson responded that the previous extension of SESA was ten years.

Co-Chair Wilken shared that he was intrigued by Commissioner Sampson's assertion that SESA was unable to conclude that video conferencing would become "the norm" at this time, given the over 80 sites with this capacity.

Ms. Davidson relayed that it would require a substantial change in the method in which SESA delivers services. She furthered that without "history" in the process, the Commissioner was unwilling to "recognize that as the new norm for service delivery without more experience."

DUANE GUILLEY, Finance Officer, Special Education Service Agency, testified via teleconference from Anchorage that he was available to answer questions.

Mr. Robinson expressed that an extension of only four years would have a negative impact on recruitment of staff. He told of the several specialists vacancies, with up to six more anticipated, based on the average tenure of 9.8 years. He detailed his 20 years in this field and 14 years recruiting specialists for SERA. He informed of the national shortage of qualified specialists, cautioning, "it is not a seller's market". He remarked on the difficulty in convincing specialists to relocate to Alaska without certainty that the program would continue. He indicated that if the agency were understaffed, financial consequences would occur.

Mr. Robinson also pointed out that other recommendations contained in the audit appear to be long term and in conflict with a short-term sunset date on the Agency.

Co-Chair Wilken asked the witness to address the reluctance to commit to a videoconference process.

Mr. Robinson responded that only a minority of schools in the State has videoconference capability. He speculated that focus on utilizing these could result in an uneven distribution of services. He also reminded that many efforts to implement a videoconferencing system have been unsuccessful and stressed that SESAs capacity to utilize the systems relies on "end user capacity". He was uncertain whether schools in some villages could comply. He qualified, however, that the Board of SESA has indicated intent to utilize teleconferencing systems, especially for training purposes. He was skeptical that videoconferencing could ever replace all onsite visits. He explained the need for the specialists to understand not only the student, but also the environment surrounding the student.

Mr. Robinson spoke to the benefits of allowing students to remain in their homes and attend their local schools, rather than be moved, as is done in other states.

Co-Chair Wilken pointed out that the first videoconferencing systems were installed ten years prior, and agreed that many were disappointed in its performance. However, he noted that the

original technology did not involve fiber optic cables, as are currently available and significantly improved performance.

Co-Chair Wilken noted a spreadsheet titled, "SESA Outreach Methods by School District" [copy on file] that listed each school district and asked if any of the sites have been identified for videoconferencing programs.

Mr. Robinson answered yes and referenced a spreadsheet titled, "Student-Specific Consultations Caseload Count, FY 2004 2nd Quarter" [copy on file]. He told of a competitive grant awarded to SESA to develop an Alaska Autism Resource Center. He stressed that this contract was "highly technology intensive" and specifically proposed the use of videoconferencing to maximize an "under-funded contract given the State need for information and assistance in autism." He told of contracts with General Communications Incorporated (GCI) to implement videoconferencing services in the Bering Strait, Chugiak, Lower Kuskokwim, Lower Yukon, Northwest Arctic, and Southwest Region school districts.

Co-Chair Wilken knew of a demand for autism spectrum disorders services in Fairbanks, although no services were available. He expressed intent to discuss the matter further at a later date.

Mr. Robinson informed that the Center is a resource to Fairbanks and other communities. He told of the high attendance at a recent two-day course and seven conferences.

Co-Chair Wilken asked whether the Legislature should mandate attendance of Department of Education and Early Development and Governor's Council on Disabilities and Special Education representatives at SESA board meetings.

Mr. Robinson detailed the collaboration and working relationship between SESA, the Department and the Council. He attributed the lack of attendance to the multiple competing responsibilities and high turnover rates of the particular staff. He surmised that because SESA functions successfully, it is not a "problem area" and therefore not of concern for the Department or the Council.

Co-Chair Wilken again asked whether attendance should be mandatory.

Mr. Robinson responded it should not, noting that "the point has been made" and that both agencies were represented at the SESA meeting held in February. He predicted the board would become more assertive in its response to any future nonattendance.

Co-Chair Green offered a motion to report the bill from Committee

with individual recommendations and accompanying fiscal note.

There was no objection and SB 289 MOVED from Committee with zero fiscal note #1 from the Department of Education and Early Development.

#SB276

SENATE BILL NO. 276

"An Act relating to the Alaska Insurance Guaranty Association; relating to joint insurance arrangements and assessments to the association; relating to the powers of the Alaska Industrial Development and Export Authority concerning the association; and providing for an effective date."

And

CS FOR SENATE BILL NO. 276(L&C)

"An Act relating to the Alaska Insurance Guaranty Association; relating to the powers of the Alaska Industrial Development and Export Authority concerning the association; and providing for an effective date."

This was the first hearing for this bill in the Senate Finance Committee.

Co-Chair Wilken stated this bill "increases the Alaska Insurance Guarantee Association's ability to pay workmans' comp claims of insures that become insolvent."

Co-Chair Wilken noted bill would not be passed out of Committee at this hearing. He announced the original version of the bill would be discussed first, followed by discussions of the changes proposed in the Senate Labor and Commerce committee substitute.

Co-Chair Wilken directed attention to a spreadsheet titled, "Alaska Insurance Guarantee Association, Workers' Compensation Account, Cash Flow Projection as of 12/31/2003" [copy on file] prepared by the Division of Insurance.

LINDA HALL, Director, Division of Insurance, Department of Community and Economic Development, testified as follows.

I would like to give a brief explanation of the situation that has caused the need for some form of funding mechanism to clear the deficit in the Alaska Insurance Guarantee Association.

The Alaska Insurance Guarantee Association is formed under statutes. Its members are insurance companies who write property casualty business in Alaska. The purpose of the Association is to minimize financial loss to the claimants or policyholders when there is an insolvency of an insurance carrier. Assessments are done by the guarantee association to provide funds to pay the claims of insolvent insurers. The guarantee fund does not have money set aside to do that; it's called a "post loss assessment". So there's no money-they don't bank money in case there's an insolvency. They do assessments after they receive claims from an insolvent insurance company.

In July of 2003, Freemont Indemnity was declared insolvent by the Los Angeles Superior Court and while they had not actively written workers' compensation for almost three years, our original claims were estimated to have long-term payouts of approximately \$60 million. When Freemont originally stopped - their certificate was pulled in Alaska - they had approximately 27 percent of the Alaska marketplace. The magnitude of that Freemont insolvency far surpassed any prior insolvency and exceeded the resources of the Association, which is the creation then of the cash flow deficit.

Insolvencies are not new in Alaska in the insurance industry. There have been insolvencies for 20 years. Currently today, there are three other insolvent insurance workers' compensation carriers in the Guarantee fund. Nationally there have been 46 insolvencies over the last three years, so this is not a unique Alaska problem. I would also submit to you that as of February 12, we had another insolvency of an insurance company. They in fact had not written business here actively since 1991, so this is 13 years old [and] adds another \$1.6 million to claims that need to be handled in the Guarantee Association.

When there are insufficient funds in the Association, the current statute allows for the pro rating of claims payments. In August, as the director of the Division of Insurance, I received a formal letter from the Guarantee Association indicating since they were not anticipating having sufficient monies to pay claims in full, they would be pro rating payments to injured workers. Everyone involved felt that that is a very objectionable solution and an objectionable action. But when there was no money, there was no money. It would mean that injured workers would receive less than their - some pro rated amount of their weekly wage payments; medical providers

would be paid a portion of their bill. As of February 2 of this year, there are 598 open claims in the Guarantee Association from the four insolvent carriers. So we're dealing with a substantial number of injured workers.

The other piece to that however, the workers' compensation obligation is that of the employer, who generally satisfies that obligation with the purchase of a workers' compensation policy. When the carrier becomes insolvent, the claims are transferred to the Guarantee fund of the State. When the Guarantee fund has no funds to continue to pay claims, the obligation for those benefits will fall back to the employers. These are employers who, in good faith, purchased a workers' compensation policy to meet their obligation. They now are going to be faced with an additional, unanticipated costs-the cost of those workers' compensation benefits. Again, as of February 2 of this year, we have 380 Alaskan employers who are exposed to this potential financial obligation.

I believe on the second page of the handout I've provided you, there's a chart giving you some idea of the magnitude of those claims. Generally, we find most businesses in Alaska - not all by any means - are small employers. The prospect of a small employer receiving back benefits totaling \$100,000 for an injured worker, it's fairly daunting.

The pro ration of claims was averted by a couple [of] loans the Guarantee fund received. [The] California Office of the Liquidator provided a \$5 million loan: \$4.5 million from the estate of Freemont [and] \$.5 million from the estate of Paula Insurance, another insolvent carrier. In December, [the State of] Pennsylvania provided \$2.6 million as a distribution of assets from the Reliance estate. Between assessments that are currently allowed under statute and loan proposals, we did have enough money that we have not, to date, had to pro rate claims or stop paying them totally.

Senate Bill 276 - and you've asked me to speak, Mr. Chairman, to the original bill, which I will do - the goal was to find a funding mechanism to avert the disastrous outcome to injured workers and employers. We attempted to find a method of securing a stream of funds without requesting a bailout of the industry by the State. With the fiscal issues being faced by Alaska, we looked for something other than general fund revenues to fill this gap.

The philosophy behind the original bill was that all employees and employers across the state are involved in workers'

compensation regardless of how that obligation is met; whether its through insurance, whether its through self insured, or whether its through other funding mechanisms. The proposal in this bill spread the cost of the funding across the entire workers' compensation environment.

There is no question a proposed solutions are not popular. As first consideration, I don't know anybody who steps up and says, "oh, let me pay." But we do have a painful problem and in the long run and in the short run I thing the solutions are painful. The Guarantee fund is a safety net. Not only the Alaska Legislature has adopted this safety net, but every other state in the country has adopted as public policy the creation of a guarantee fund whose goal is to protect claimants and policy holders. The mechanism to provide that safety net is the assessment capability.

As a general overview of the Guarantee fund, I would like to point out one aspect of it that will become clearer as I talk about specific bill proposals. There are three accounts in the Guarantee fund. One is workers' compensation, one is auto and one is labeled "other". "Other" includes everything except, of course, work comp and auto. Each separate account is assessed when there is an insolvency of a carrier writing that line of business. As an example, when Reliance was declared insolvent about two and one half years ago, they wrote workers' compensation, they wrote general liability, so two accounts were assessed for those lines of business.

SB 276 proposes three things. One is an increase and a change in the methods of assessment. The first piece of that would be to increase the current two percent cap to four percent in the account where there is a shortage of funds to pay claims. In this particular case that would be the workers' compensation fund. If that did not produce sufficient monies to pay claims, the other two accounts could also then be assessed up to a maximum of two percent. These provisions expand the current statutory provisions for assessments. Taking this approach however, is not unique in other states and is not unique in Alaska.

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Ms. Hall continued as follows.

Any insolvency should mean any insolvency could be spread over

all lines of property casualty business. Today in Alaska, we have the "other" account, and I'm going to call it a bucket, because it's an easier term. Today currently, we have a [one-half] percent assessment in that other account. That means every policy - your homeowners policy, general liability, boats, commercial property, anything that's not work comp and auto - that is with an admitted insurer, is being assessed today a half a percent to cover the cover the insolvency - primarily the insolvency of a medical malpractice insurer.

So I would submit to you that it's very unpopular to discuss somebody's auto policy for the insolvency of a workers' compensation company. We do that today. Your homeowners' policy is being assessed for an insolvency of a [medical malpractice insurance] carrier. So it's not something that is particularly unusual even under our statute today.

The second piece of the assessment process in the original bill proposes to assess other entities that are not traditionally assessed. This is probably even more controversial than the first provision. It is to assess the self-insures and the JIAs [Joint Insurance Arrangement]. These entities do not receive the benefits of the Guarantee fund. We have considered bringing them into the Guarantee fund. We have looked at other states who have self-insured Guarantee Funds. The latter has not been particularly successful; there are no legs to enforce payment into those funds. It's also my personal point of view - we have no oversight ability in the Division of Insurance of those entities. With a traditional insurance company, if we see signs of financial distress, we can stop them from doing business here. We can pull their certificate of authority. We can't do that with a self-insured or the JIAs. So it's something that I think is appropriate to bring them under the Guarantee Fund statute. I realize they did not create this situation; they are not part of the Guarantee Fund.

What we looked at was finding the broadest possible base to make this assessment to make it not as cumbersome to anybody. The traditional theory of insurance is to spread the risk.

Senator Hoffman interjected to ask the amount the self-insured would be assessed under the original legislation.

Ms. Hall listed the total funds for the self insured, including the State, and the JIAs would have been approximately \$1 million.

Senator Hoffman asked the assessment percentage.

Ms. Hall answered two percent of the cost of all claims as reported to the Department of Labor and Workforce Development. She noted that because these entities do not have policies they do not pay premiums.

Senator Bunde noted that the three insurance accounts (workers' compensation, auto and other) would be assessed and asked the percentage of the contribution would be assessed to the workers' compensation account.

Ms. Hall responded that the workers' compensations account is the smallest by a significant margin. She stated the workers' compensation account currently generates approximately \$4.2 million based on a two percent assessment. She compared this to the auto and other accounts, which are "more closely aligned in total premium volume" and would each generate approximately \$7.5 million.

Senator Bunde commented that the beneficiaries of this proposal would pay the smallest amount, and those who are not beneficiaries would pay the largest amount. He agreed that the broadest possible base must be utilized for a successful resolution.

Ms. Hall continued with her testimony as follows.

Generally, I've been asked, "is this fair" in speaking to the self-insured and JIAs. Our point was to spread the cost as equally as possible and at this point we have an ugly situation. I'm not sure if fairness enters the equation at this point. Is it fair for an injured worker to have at least a minimum a termination of benefits? Is it fair for an employer to get back a \$100,000 claim? Is the whole concept of the Guarantee Fund fair? I'm not sure any of it's fair. I think there has to be a safety net. I think there has to be a policy.

The last component of the bill would, as a final safety net, propose to allow AIDEA [Alaska Industrial Development and Export Authority] to provide guarantees for the Association to obtain loans to meet their cash requirements.

The Guarantee Fund currently under statute has authority to borrow but they're not a viable commercial loan prospect. They have no assets. The only assets they have are a stream of future assessments, which in current estimates are probably needed until about 2008. There was a substantial amount of work done exploring other options, from bonds to loans. When you approach a commercial lender to talk about a loan to

somebody who's knowingly not going to have any money to start paying it back until 2008, they don't get a very positive response.

At any rate, the third part of this would be to allow AIDEA to do a guarantee of loan, which would ultimately be paid back. Maximum principle balance outstanding at any one time would be \$30 million.

We worked with some financial experts to find the most economical, efficient way to provide access to money to pay claims. I believe you indicated, Senator Wilken, that Mike Barry is on the phone. Mr. Barry is the chair of AIDEA and he has worked with me very diligently to help me understand the intricacies of the financial world and to find ways to provide funding.

My close typically, which won't be today, is that this bill contains some painful, expensive and very unpopular provisions. I don't think the provisions are nearly as painful as the consequences of no action. I would urge you to focus on the overall need to find a funding mechanism and to consider what will happen if we take no action.

Senator Bunde reiterated conversation that occurred in the Senate Labor and Commerce Committee, in which it was determined that a "perfect storm" caused the current crisis. He asked the witness to address the potential for another situation in which the Guarantee Fund would be unable to absorb insolvencies.

Co-Chair Wilken also asked the witness to reference the aforementioned table and explain how it relates to the future.

Ms. Hall informed that medical compensation claims remain open indefinitely. She qualified that settlements typically address portions of workers' compensation benefits, although the medical provisions remain open. She noted the spreadsheet provides estimates of incoming assessments according to current statutory requirements and "outgoes" for the claims that are currently in the Guarantee Fund. She stated these figures are based on reserves "to the best of the ability of the people who work with claims reserves and actuarial analysis." She pointed out that the figures are subject to changes as claims are settled and as injured workers heal and return to work. She furthered that the data on the spreadsheet reflects the projections of the amount required incoming and outgoing claims for a calendar year. She said the information assumes an increase in payments, which also indicates an increase in assessments as premiums increase.

Ms. Hall then remarked that the current crisis was "precipitated by the magnitude of the Freemont insolvency" i.e. the market share held by that company." She noted that other insolvencies have occurred that the Guarantee Fund has been able to sustain over a number of years. She informed that only three insurance companies have a market share near the significance of that Freemont Indemnity had when it became insolvent. She had no reason to surmise that any of the current carriers have financial distress and that they are stable, solvent companies. She therefore did not anticipate another situation, but would not guarantee that it would never again occur.

Senator Hoffman referenced the witness' earlier comments about notification of the necessity of pro rating benefit payments. He asked if the payments were actually pro rated and if so, why.

Ms. Hall answered that pro rating did not occur and again indicated the loans and distributions from solvent states, which provided adequate funding to pay those claims. However, she warned that the Guarantee Fund would run out of money.

Senator Hoffman asked whether it was envisioned in August 2003 that the Guarantee Fund would be depleted.

Ms. Hall replied that the managers of the Guarantee Fund anticipated such and subsequently notified her. She again told of efforts of the Association and the Division to secure funding to ensure that the pro ration of claims did not occur. She clarified that statute allows for the pro ration of claims if the Guarantee Fund becomes depleted or is predicted to do so. She noted that the Fund had sufficient funds to pay claims through the year 2003 and into a portion of 2004.

Senator Hoffman noted that statute allows for the pro ration of funds and asked why pro rationing did not occur.

Ms. Hall responded that sufficient funding became available shortly after notification of the shortage from the Association. She stressed that no state has ever prorated workers' compensation claims and that other states assisted in ensuring this would not occur in Alaska.

Senator Hoffman wondered why the witness was testifying that the payments must be pro rated, when they were in fact not pro rated.

Ms. Hall replied that statute does not mandate that pro rationing occur, but rather allows it to occur. In this instance, she stated,

assistance was received from other states and the pro rationing was not necessary.

Co-Chair Wilken returned to the spreadsheet and asked if the current assessment rate were increased from two percent to four percent if the figures would be doubled.

Ms. Hall affirmed.

Co-Chair Wilken asked if the Fund would still be short approximately \$20 million if the assessment percentage were increased from two to four percent.

Ms. Hall answered that the Guarantee Fund would have a cumulative deficit in the year 2008 of \$20, which would be the maximum amount. At this point, she stated the trend would reverse and the assessment income would exceed the "outgo".

Co-Chair Wilken requested an updated chart to demonstrate a four percent assessment, as well as another column to indicate the inclusion of self-insures and the JIAs. He added another funding source as an assessment on the "other" insurance account and requested data reflecting this source also be included for comparison.

Senator Bunde noted the witness testified that the Guarantee Fund would be depleted and he surmised this would occur "much sooner than later", likely in April 2004.

Ms. Hall relayed updated information indicates the Fund would have sufficient monies until June 2004.

Senator Olson spoke of the overall affect of this situation on small businesses. He warned that if too much pressure were placed on small business to contribute to the Guarantee Fund in the form of increasing the two percent assessment to four percent, and the assessment of self-insures, small businesses would become insolvent as well.

Ms. Hall shared this concern. She informed that as of January 1, 2004, the Division approved a "very needed" rate increase in workers' compensation that added an additional two percent to each premium that applied even to small businesses. She told of separate legislation that would reform the workers' compensation program to reduce costs. She stated this issue was addressed separately because of the importance of acquiring funding in a timely manner.

Senator Olson asked if consideration had been given to exempting

smaller businesses.

Co-Chair Wilken shared that the workers' compensation premium for his business rose 23 percent this year.

Co-Chair Green asked if increases to the auto and other insurance account groups would be "passed on" to consumers.

Ms. Hall answered the costs would be passed along to consumers and noted this practice is allowed in statute.

Co-Chair Green pointed out that this proposal would not only increase costs to small businesses but homeowners, vehicle owners, etc., as well.

Ms. Hall affirmed.

Senator Bunde asked what portion of the funding would be generated from self-insured entities, such as municipalities and school districts.

Ms. Hall replied that an assessment on the total group would be approximately \$1 million.

MIKE BARRY, Chair, Board of Directors, Alaska Industrial Development and Export Authority, Department of Community and Economic Development, testified via teleconference from an offnet location that AIDEA supports this bill as well as the other legislation to reform the workers' compensation program. He pointed out that SB 276 would resolve the temporary funding crisis, although the other legislation is necessary to avoid future crises.

CRAIG NORDTVEDT, Alaska Insurance Guarantee Association, testified via teleconference from an offnet site that the Association considers pro rationing of benefits as a last option. He relayed that the Association has not recommended implementation of pro rationing for the current year only because it has been advised that the Legislature is investigating additional funding. However, he warned that the Association must consider pro rationing on an annual basis anytime the Guarantee Fund has inadequate funds to pay claims for the entire year.

Senator Bunde understood the concept of pro rata payment of benefits to injured workers. He also perceived another situation in which an employer inadvertently breeches its obligation to provide benefits to injured workers and could be sued for payment by an injured worker who has received pro rata payments.

Ms. Hall deferred to Mr. Lisankie.

PAUL F. LISANKIE, Director, Division of Workers Compensation, Department of Labor and Workforce Development, informed that the Workers' Compensation Act provides that employers are required to provide insurance. He surmised the issue would become whether an employer who purchased workers' compensation insurance would be recognized as complying with its obligation in good faith. He preferred that a judgment would be made that there was no failure to provide insurance.

Senator Bunde noted injured workers currently are prohibited from suing their employers under the provisions of the workers' compensations laws. He asked if in an instance of pro rata payment of benefits as the result of the insurer's insolvency whether lawsuits would be permitted.

Mr. Lisankie commented that in the United States many opportunities exist for filing lawsuits.

Co-Chair Green asked if funds were "infused" to the Guarantee Fund system, whether the problem would be solved or if an ongoing need for assessment changes would remain.

Ms. Hall responded that the system must be changed to ensure this situation does not reoccur in the future.

Co-Chair Green asked if the calculations provided in the backup material provide for the repayment of the loans made by other states to Alaska. She wanted to know whether repayment is expected or if the funds were grants or settlements.

Ms. Hall replied that the funds received from the State of Pennsylvania were an "early distribution of assets" and repayment is not necessary. She furthered that the funds received from the State of California are intended for repayment. She explained the distribution of assets remaining in the Freemont Indemnity estate, of which Alaska would be entitled to a portion. She clarified that the assets are not "dollar for dollar," otherwise the carrier would not be insolvent.

Co-Chair Green asked if the federal government operates a fund comparable to the State Guarantee Fund. She recalled instances of major life insurance carriers becoming insolvent and other carriers "stepped in".

Ms. Hall was unaware of such a federal program. She noted the State operates two separate guarantee funds: the fund in question, which

is a property casualty fund, and another life health guarantee fund. She stated that each state operates two such funds. She told of a national association, but qualified it does not provide funding. She qualified that the matter has been discussed on national and regional levels.

Co-Chair Green clarified the life health assessment would not be included in the proposed solution to the workers' compensation situation.

Ms. Hall affirmed.

Senator Bunde spoke to prevention of a similar situation in the future noting a provision in this bill would allow the fund to receive a loan from the Alaska Industrial Development and Export Authority (AIDEA). He furthered that the other legislation would realize cost savings beneficial to both injured workers and employers.

Co-Chair Wilken requested an updated chart showing the information he earlier described relating to a four percent assessment and assessments to JIAs and self-insured entities, to be used for comparison.

Ms. Hall indicated she would provide this.

Senator Olson asked if self-insured pertains to self-employed small business owners who are not required to purchase workers' compensation insurance for themselves.

Ms. Hall answered no and defined self-insured as "companies who apply to the Department of Labor and Workforce Development for exemption and they have to meet certain financial criteria to do that."

Co-Chair Wilken asked for an explanation of the changes contained in the Senate Labor and Commerce committee substitute.

Senator Bunde remarked the changes are based on the premise applied to insurance, that the risk payments must be spread over a large group of people. He relayed that during Senate Labor and Commerce Committee hearings, he listed attentively as the director explained the problem with the Guarantee Fund and outlined the need to include other participants in the solution. He learned that if the auto and other accounts were assessed, the costs would be passed to consumers. He relayed intent to "cut out the middle man. We could make life less stressful for those who are trying to do business in Alaska to avoid what I had heard mentioned earlier from Senator

Olson that businesses being driven into bankruptcy because they can't afford their insurance payments". Therefore, he decided to spread the expense to all Alaskans, who are potential recipients of the benefits of the Guarantee Fund, through the use of the excess earnings of the permanent fund. He informed that the excess earnings are already used to pay dividends, administrative costs, inflation proofing of the fund, and to pay hold harmless provisions.

Co-Chair Wilken noted the committee substitute also removes the assessment of self-insured entities and JIAs.

Senator Bunde opined that because these entities are receiving no direct benefit from the Guarantee Fund, they should not be required to contribute.

Senator Bunde added that the committee substitute retains the ability to access AIDEA loans in the event of another insolvency crisis.

Co-Chair Wilken asked whether this legislation should be held to await action on the other bill reforming the workers' compensation program.

Senator Bunde answered this bill, SB 276, should not be held and that a solution should be timely. He noted the other legislation proposes significant changes to the current system and may require additional consideration.

Co-Chair Green asked if a supplemental appropriation would be required for FY 04.

Ms. Hall responded that the original version of SB 276 includes a fiscal note for FY 04 supplemental funding.

Senator Bunde referenced the letter of intent adopted by the Senate Labor and Commerce Committee that indicates payments are not required all at once.

Co-Chair Wilken announced this bill would receive another hearing after the following week.

Senator Bunde asked the witness if the Senate Labor and Commerce committee substitute were so substantially different that it would not solve the problem.

Ms. Hall answered it is not so different and that it would solve the problem.

Co-Chair Wilken ordered the bill HELD in Committee.

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ADJOURNMENT

Co-Chair Gary Wilken adjourned the meeting at 10:35 AM