

HOUSE FINANCE COMMITTEE
March 22, 2010
1:36 p.m.

[1:36:05 PM](#)

CALL TO ORDER

Co-Chair Stoltze called the House Finance Committee meeting to order at 1:36 p.m.

MEMBERS PRESENT

Representative Mike Hawker, Co-Chair
Representative Bill Stoltze, Co-Chair
Representative Bill Thomas Jr., Vice-Chair
Representative Allan Austerman
Representative Mike Doogan
Representative Anna Fairclough
Representative Neal Foster
Representative Les Gara
Representative Reggie Joule
Representative Woodie Salmon

MEMBERS ABSENT

Representative Mike Kelly

ALSO PRESENT

Konrad Jackson, Staff, Representative Kurt Olson, Sponsor; Linda Hall, Director, Division of Insurance, Department of Commerce, Community and Economic Development; Trena Heikes, Director, Division of Workers' Compensation, Department of Labor and Workforce Development; Anne Carpeneti, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law; Michael Ford, Liaison, Department of Law; Representative Mike Chenault, Sponsor; Tom Wright, Staff, Representative Mike Chenault; Frank Richards, Deputy Commissioner, Highways & Public Facilities, Department of Transportation and Public Facilities; Bob Swenson, Manager, In-State Gasline Project, Office of the Governor; Konrad Jackson, Staff, Representative Kurt Olson, Sponsor; Trena Heikes, Director, Division of Workers' Compensation, Department of Labor and Workforce Development.

PRESENT VIA TELECONFERENCE

Erin A. Pohland, Assistant Attorney General, Department of Law.

SUMMARY

HB 314 WORKERS' COMPENSATION

CSHB 314(FIN) was REPORTED out of Committee with a "do pass" recommendation and with two previously published fiscal notes: FN1 (LAW); FN2 (LWF).

HB 346 WORKERS' COMPENSATION ADVISORY BOARD

HB 346 was HEARD and HELD in Committee for further consideration.

HB 369 IN-STATE PIPELINE MANAGER/TEAM/COMMITTEE

HB 346 was HEARD and HELD in Committee for further consideration.

#hb314

HOUSE BILL NO. 314

"An Act relating to fees and charges for medical treatment or services, the crime of unsworn falsification, investigations, and penalties as they relate to workers' compensation; and providing for an effective date."

[1:37:05 PM](#)

KONRAD JACKSON, STAFF, REPRESENTATIVE KURT OLSON, SPONSOR, reported that HB 314 addresses medical treatment, service fees, and penalties related to worker's compensation. He informed the committee that the Medical Services Review Committee met a number of times the previous year to address the issues and generated a report with a recommendation to set up a medical services fee schedule. House Bill 314 sets up the schedule and addresses civil penalties. The current fee schedule cap expires at the end of the year.

LINDA HALL, DIRECTOR, DIVISION OF INSURANCE, DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT, provided an

overview of the background and contents of HB 314. She noted that when changes were made to the workers' compensation law in 2005, there was an inadvertent deletion of the basis of the Worker's Compensation Board to adopt a fee schedule. An expectation that stakeholders would convene and propose legislation before August 1, 2007 was not met; subsequently, the department has twice requested increases to the old 2004 fee schedule. She called the 2006 and 2008 increases "artificial, across-the-board." The most recent fee schedule will expire December 31, 2010. After expiration, there will not be a cap on charges by providers for services given to injured workers.

Ms. Hall referred to handouts before the committee, beginning with "Workers Compensation Medical Losses Are More Than Half of Total Losses; All Claims--NCCI States" (copy on file). She explained that NCCI is the National Council on Compensation Insurance, the statistical agent for Alaska and 35 other states. Data collected by NCCI in the 36 states show medical expenses in 2008 being 58 percent of the total system cost with indemnity (lost wages) at 42 percent.

Ms. Hall directed attention to the second chart, "Workers Compensation Benefit Split in Alaska; All Claims--Alaska" (copy on file), with pie charts focusing on statistics in Alaska only. She noted that Alaska's medical cost is at 72 percent; the equivalent of \$0.72 of every dollar spent on workers' compensation benefits is spent on medical services. She emphasized that this was significantly higher than the national average.

Ms. Hall turned to the third chart, "Alaska Medical Average Cost per Case vs. Countrywide" (copy on file). She pointed out that in 2008, Alaska spent approximately \$40,000 per case; the national average is \$26,000.

Ms. Hall referred to the final chart, "Oregon Worker's Compensation Premium Rates Ranking, Calendar Year 2008" (copy on file) and emphasized that Alaska ranks number one in both 2006 and 2008 for workers' compensation premium rates. She believed that much of the high premium costs are driven by medical costs.

Ms. Hall acknowledged that the proposed new fee schedule in HB 314 was not a "fix" that would lower the premiums, but she asserted it would replace the consumer price index

(CPI) increases that have created a static schedule with a sustainable schedule adding back missing procedure codes, language for medical supplies, and transportation costs, which have seen dramatic increases. Ms. Hall asserted that the fee schedule in the bill would be complete. In addition, a vendor would supply the information to the Division of Workers' Compensation. She pointed out that there would not be changes in the process.

[1:43:32 PM](#)

Ms. Hall remarked that the second part of the bill would update fraud prosecution language. She noted that current language is insufficient to prosecute in cases of fraud.

Ms. Hall provided a sectional analysis, beginning with the first section addressing the fee schedule:

Section 1. Amends AS 23.30.097(a) to provide that after December 31, 2010, the fee may not exceed the usual, customary and reasonable charges in a fee schedule adopted by the board which must include the most recent Current Procedural Terminology codes maintained by the American Medical Association for category I, II and III medical services and the Health Care Procedure Coding System for medical supplies, injections, emergency transportations and other medically related services. The fee schedule must reflect the cost in the geographical area where services are provided and is set at the 90th percentile.

Ms. Hall detailed that fees in Alaska are based on 90 percent of the predominant charges in an Alaskan geographical area.

Ms. Hall turned to the next section providing language regarding fraud:

Section 2. Amends AS 23.30.250(a) to clarify that the behaviors outlined are workers' compensation fraud which may be punished under AS 11.46.120 - 11.46.150 (criminal law).

Ms. Hall detailed that crimes committed in false representation is considered to be a felony and subject to criminal prosecution.

Ms. Hall noted that the next section separates criminal penalties in Section 2 from civil penalties:

Section 3. Amends AS 23.30.250 (c) clarifies that in addition to criminal penalties, a violation of this chapter may result in civil liability with an award of three times the amount of compensatory damages.

[1:46:47 PM](#)

Ms. Hall detailed that Section 3 enables a civil action in addition to criminal penalties, noting that attorney fees are on top of the three times the amount of compensatory damages.

Ms. Hall referred to the next sections:

Section 4. Amends AS 23.30.280(a) to change the specific statute citation of AS 23.30.250 to "this chapter" to broaden the investigative authority to the entire chapter.

Section 5. Amends AS 23.30.280(b) to delete reference to AS 23.30.250(a) to broaden the reporting of fraudulent acts to the employer.

Section 6. Provides for an immediate effective date under AS 01.10.070(c) Section 1. Amends AS 23.30.097(a) to provide that after December 31, 2010, the fee may not exceed the usual, customary and reasonable charges in a fee schedule adopted by the board which must include the most recent Current Procedural Terminology.

Representative Austerman asked for clarification related to Page 2, line 9 and the new fee structure. Ms. Hall responded that the fee schedule is based on procedure codes done by the American Medical Association and are standard throughout the industry. She explained that GENEX Services takes all the Alaska charges in geographical areas and sets the schedule at the 90th percentile and replaces the current schedule only in that it updates and adds codes and makes the charges in line with what is actually being billed.

Representative Austerman queried the meaning of the 90th percentile. Ms. Hall provided the example of putting ten charges for knee surgery in a line; 90 percent would fall under the 90th percentile. She detailed that the number is

not a percentage but becomes a maximum amount. She agreed the number was basically 90 percent.

Ms. Hall added that the current fee schedule is missing approximately 2,000 procedure codes that have been added to practice since the last update.

[1:50:29 PM](#)

Vice-Chair Thomas had questions about the measure related to seasonal workers. He asked whether damages can be recovered if a seasonal worker intentionally injures himself, makes a claim, and then leaves the state. Ms. Hall replied that there are more workers' compensation claims at the end of the season and in difficult economic times. She explained that an employer can go before the Workers' Compensation Board to challenge a claim. The board is able to go out of state and investigate. She thought the ability to extradite would depend on the amount of benefits collected. The claim can be challenged even if the person has moved within the states; she was not sure about what would happen to a person who has left the country.

Vice-Chair Thomas relayed personal experience and expressed concerns.

[1:53:30 PM](#)

Representative Fairclough queried costs on the current fee structure. Ms. Hall answered that the structure had been in place since 2004. She estimated that it did not cost much to update the schedule, although it has been ineffective.

Representative Fairclough asked about letters of opposition the committee had received related to payment methodology. Ms. Hall replied that she had worked with two groups with concerns. Revisions were made in response to concerns by the state medical association. She noted additional opposition from those who felt the original language about fraud prosecution was too narrow. The department had made changes in the language that were satisfactory.

Representative Fairclough quoted from a February 2, 2010 letter from the Alaska Spine Institute dated in February 2010 related to the language currently before the committee:

This revised language provides "the board" with an undefined and unlimited scope of authority to make changes and establish policy with respect to the medical fee schedule.

Representative Fairclough pointed out that the only difference she could see is an "and" provision on line 14 [page 2] regarding the coding system. She questioned whether the issues raised had been addressed.

Representative Gara directed attention to Section 3 (Page 3, line 10) and language regarding liability of a person guilty of fraud. He noted that current law says a person is "entitled to compensatory damages and an award of three times the amount of those damages." He compared the proposed language: "economic damages as a result of the award and three times the amount of the compensatory damages." He questioned the reason for the language change.

[1:58:12 PM](#)

ERIN A. POHLAND, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW (via teleconference), explained that the change was for clarification. The change is that the person who suffers from economic harm as a result of workers' compensation fraud would be entitled to three times economic damages as compared to essentially four times the compensatory damages.

Representative Gara pointed out that original statute does not have the word "economic." He noted that generally statutes talk in terms of compensatory damages a person is entitled. He suggested reverting to compensatory damages plus an award of three times the amount of compensatory damages. He asked the policy reason for the new language. Ms. Hall did not know any reason not to have the original language in the bill.

Representative Gara understood the intent was to make it clear that the amount of compensatory language was three times and not four. Ms. Hall believed old language had been interpreted as four times the damages. Representative Gara pointed out that a person usually does not get the three times unless they got the compensatory damages; he wanted to know if the goal was to take away the right to compensatory damages. Ms. Hall responded that taking away compensatory damages was not the goal.

2:02:18 PM

Representative Austerman asked whether eliminating Section 3 would make the old language law.

Representative Gara commented that the bill says a person would be given criminal penalties. In addition, a person would get compensatory damages plus a three times multiplier. To be consistent with current statute, he proposed starting with the word "person" on line 9 to read: "person for compensatory damages as a result of the violation and an award of three times compensatory damages resulting from the violation".

Co-Chair Stoltze requested an explanation of the difference between economic and compensatory damages. Ms. Hall explained that compensatory damages are broader than economic damages and potentially more subjective.

Representative Gara described "compensatory damages" as resulting when someone hits a person in a car; the person hit is entitled to compensation for losses such as physical damages and lost wages, although lost wages tend to be called economic damages. He was concerned that the bill was written just in terms of economic damages. He asked whether the attorney had problems with going back to compensatory damages plus three times the amount of those compensatory damages. Ms. Pohland believed there should be a discussion with the Department of Labor and Workforce Development in terms of the policy change. She opined that damages that would be considered in a workers' compensation fraud case would be economic damages.

Representative Gara described a hypothetical situation in which there could be medical damages as opposed to economic damages. Ms. Pohland agreed and pointed out that there are provisions already in place addressing an insurer or employer's failure to insure (AS 23.30.155 and AS 23.30.255). Penalties and damages are already in place; for example, there is usually a penalty provision (essentially an extra interest) that is tacked on when an employer or an insurer have unfairly controverted a claim. The legislation was intended to address other situations, such as the intentional misclassification of employees to avoid paying workers' compensation premiums, or lying in a case.

2:08:25 PM

Ms. Hall added that one of the reasons for the section was a "co-mingling" of civil and criminal language, which had presented difficulty in attempted prosecution. The language attempted to clear up the confusion between criminal and civil penalties.

Representative Austerman wanted to ask the Department of Labor and Workforce Development about the change in policy.

TRENA HEIKES, DIRECTOR, DIVISION OF WORKERS' COMPENSATION, DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT, did not know why the changes were made in subsection (c). She had recommended a change in the attorney fee language. Currently, attorney's fees allow prevailing party by law, but that is a small percent of costs. She requested adding an award of reasonable attorney's fees, or recovery of full reasonable attorney's fees. Regarding Representative Gara's question, she did not know why the change was made. She recommended deleting the language "economic" and "compensatory" so that damages are not delineated.

Representative Gara summarized that no one had intended to change the damages a person is entitled to. He asked for an evaluation by DLWD of proposed changes: line 9 to 10 (page 3) cross out "who suffers economic" and insert "for compensatory" after "person" on line 9; on line 10 after "violation" put "and" instead of "for". The result would be: "a person for compensatory damages as a result of the violation and an award of three times". Ms. Heikes replied that her first reaction was that she did not have a problem with the proposal.

Ms. Hall felt the proposed change left the intent intact and clarified the issue in a way that would resolve concerns.

2:14:06 PM

Ms. Pohland concurred that the proposal clarified the language and makes clear what damages a person is entitled to without changing the original intent.

Representative Doogan understood that the legislation would get rid of the application of theft by deception in the statute and replaces it with being guilty of perjury and

related offenses. He asked why the change was being made in terms of the criminal code.

Ms. Hall noted that another amendment was pending that would provide further clarity. She stated that the goal was to make workers' compensation fraud more than a paperwork problem or theft by deception but closer to real workers' compensation fraud on the part of an employee, provider, or employer. In making the change, DCCED was attempting to clarify that it was talking about other specific things in Section 2.

Ms. Heikes explained that the need for the change in AS 23.30.250 arose out of a problem DLWD had in prosecuting for fraud. The statute currently says that the intent element of the crime is to "knowingly" make a false statement, etc., that the person is guilty of theft by deception. However, theft by deception is a higher intent. The law appears to establish two different intents, which makes prosecution difficult, if not impossible. For that reason, DLWD wanted just one intent. In the re-write, AS 23.30.250(a) provisions were gutted.

Representative Doogan queried whether the proposal would make a misdemeanor a felony or affect other "penalty creep." Ms. Heikes answered that under the new statute, the felony or misdemeanor status would depend on amount of damage or the amount taken.

[2:19:12 PM](#)

Co-Chair Stoltze MOVED to ADOPT Amendment 1 (26-LS1354\R.1, Bailey, 3/9/10):

Page 1, line 2:

Delete "investigations,"

Page 2, line 24, through page 3, line 6:

Delete all material and insert:

"*Sec. 2. AS 23.30.250(a) is amended to read:

(a) A person who (1) knowingly makes a false or misleading statement, representation, or submission related to a benefit under this chapter; (2) knowingly assists, abets, solicits, or conspires in making a false or misleading submission affecting the payment, coverage, or other benefit under this chapter; (3) knowingly misclassifies employees or engages in deceptive

leasing practices for the purpose of evading full payment of workers' compensation insurance premiums; or (4) employs or contracts with a person or firm to coerce or encourage an individual to file a fraudulent compensation claim [IS CIVILLY LIABLE TO A PERSON ADVERSELY AFFECTED BY THE CONDUCT, IS GUILTY OF THEFT BY DECEPTION AS DEFINED IN AS 11.46.180, AND] may be prosecuted under AS 11 [PUNISHED AS PROVIDED BY AS 11.46.120 - 11.46.150}.

Vice-Chair Thomas OBJECTED

Co-Chair Stoltze remarked that he offered the amendment by request of the Department of Law.

Ms. Hall explained that the amendment further refines language to clarify and separate potential criminal behavior vs. civil behavior. She noted the word "investigations" would be removed from the title. The deletion of Section 2 would remove references to civil liability in order to streamline the legislation. Adoption of the changes would make Section 4 and Section 5 on page 3 unnecessary.

Representative Doogan wondered if the changes mean the entire criminal code would apply.

[2:22:36 PM](#)

ANNE CARPENETI, ASSISTANT ATTORNEY GENERAL, LEGAL SERVICES SECTION-JUNEAU, CRIMINAL DIVISION, DEPARTMENT OF LAW, explained that a person who commits a crime under any pretext is subject to prosecution under Title 11. She reported that the department thought it would be clearer to simply state a person who commits a crime in relation to this type of activity is prosecutable under Title 11, since theft by deception under Title 11 has particular elements that need to be proven.

Representative Doogan reiterated his concern regarding the amendment and asked if a more discrete definition of the offences was warranted. Ms. Carpeneti related that the Department of Law's view of violations that occur in the context of the worker's compensation law is already subject to prosecution under Title 11. It is unnecessary to list the specific offences in the legislation. The Department's

intent in recommending that Title 11 be cross referenced in relation to these types of crimes was to keep the bill clear , inclusive, and expand their ability to prosecute fraud. Representative Doogan appreciated the Department's approach.

[2:28:56 PM](#)

Representative Gara asked why Sections 4 and 5 must be deleted if Amendment 1 is adopted. He assumed the sections broadened the Department's investigative and prosecutorial authority.

[2:30:01 PM](#)

RECESS

[2:30:57 PM](#)

MICHAEL FORD, LIAISON, DEPARTMENT OF LAW, explained that sections 4 and 5 were in the bill accidentally. Changes were made in the Judiciary Committee that removed the reference to those sections, therefore Sections 4 and 5 should have been removed in the CS. He added that the sections could remain as a matter of policy. Representative Gara implied that he did not want Worker's Compensation investigators feeling constrained. Mr. Ford believed that removal of Sections 4 and 5 simply reflect technical changes to correct an oversight.

Representative Gara requested assurance from the Department of Labor and Workforce Development. Ms. Heikes replied that the DLWD supports removal of Sections 4 and 5. She confirmed that previously the investigators could not get prosecutions because of confusion regarding intent and the bill clarifies that.

Vice-Chair Thomas WITHDREW his OBJECTION. There being NO OBJECTION, Amendment 1 was adopted.

Representative Gara MOVED to ADOPT Conceptual Amendment 2:

Page 3, lines 9-10:

Delete "who suffers economic" and replace with "for compensatory"

Page 3, line 10:

Replace "for" with "and"

Co-Chair Stoltze OBJECTED

Representative Gara read the changes, "on behalf of a person for compensatory damages as a result of the violation and an award of three times the amount of compensatory damages..."

Ms. Hall agreed with the amendment.

Co-Chair Stoltze WITHDREW his OBJECTION. There being NO OBJECTION, Amendment 2 adopted.

Co-Chair Stoltze requested discussion of the fiscal notes.

Ms. Heikes explained FN 2 (LWF) that the \$75 thousand was for development of the new medical fee schedule.

Vice-Chair Thomas MOVED to report CSHB 314(FIN) out of Committee with individual recommendations and the accompanying fiscal notes.

CSHB 314(FIN) was REPORTED out of Committee with a "do pass" recommendation and with two previously published fiscal notes: FN1 (LAW); FN2 (LWF).

[2:37:31 PM](#)

RECESS

[2:51:26 PM](#)

RECONVENED

#hb369

HOUSE BILL NO. 369

"An Act relating to an in-state natural gas pipeline, the office of in-state gasline project manager, the Joint In-State Gasline Development Team, and the In-State Gasline Steering Committee; and providing for an effective date."

[2:51:47 PM](#)

Vice-Chair Thomas MOVED to ADOPT CS for HB 369 (FIN), 26-LS1527\C, Cook, 3/18/10, as a working draft.

Co-Chair Stoltze OBJECTED

TOM WRIGHT, STAFF, REPRESENTATIVE MIKE CHENAULT, highlighted the changes in the CS described in the CS Sectional Analysis (copy on file).

"An Act relating to an in-state natural gas pipeline, the office of in-state gas line project manager, the Joint In-State Gasline Development Team; requiring the development of an in-state natural gas pipeline plan, to be delivered to the legislature by July 1, 2011, that provides for a gas line that is operational by December 31, 2015; directing the Joint In-State Gasline Development Team to assume responsibilities under sec. 19, ch. 14, SLA 2009; requiring expedited review and action by state agencies or entities relating to the in-state natural gas pipeline project; and providing for an effective date."

Mr. Wright noted the change to the title of the bill. The title was tightened up to differentiate the legislation from other bills dealing with natural gas development. He continued with the sectional.

Section 1: Adds a new chapter, Chapter 34: In-State natural Gas Pipeline, to AS 38, Public Land.

Sec. 38.34.010. In-state gas line project manager. (a) Creates the position of in-state gas line project manager within the governor's Office. This position will continue until one year after commercial operation of the in-state natural gas pipeline begins. (b) The Governor appoints an individual to the position of an in-state gas line manager and may be removed at the Governor's discretion. (c) Describes the duties of the in-state gas line project manager.

Sec. 38.34.020. Expedited review and action by state agencies or entities. (a) States that any state agency or entity conducting and taking action relating to the in-state gas line shall be expedited. (b) A state agency or entity may not include in any project certificate, right of way, permit or other authorization issued to a licensee a term or condition that is not required by law if the in-state project manager determines the term or condition would prevent or impair the expeditious construction and operation or expansion of the in-state gas line. (c) A state agency or entity may not, unless required by law, amend or abrogate any certificate, right of way, permit or other authorization issued to a licensee if the project manager determines the action would

prevent or impair the expeditious construction and operation or expansion of the in-state gas line. In Section 1 Sec.38.34.020., The word entity was added to "review and action by state agencies". The inclusion allows for involvement of entities such as ANGDA (Alaska Natural Gas Development Authority).

Sec. 38.34.030. Joint In-state Gasline Development Team. (a) Establishes the Joint In-State Gasline Development Team in the Governor's Office. The team consists of the commissioner of the Department of Transportation and Public Facilities or designee, the chief executive officer of the Alaska Railroad Corporation or designee, the chief executive officer of the Alaska Natural Gas Development Authority, the in-state gas line project manager and the chief executive officer of the Alaska Housing Finance Corporation. (b) Names the Alaska Housing Finance Corporation's chief executive officer as chair. (c) Allows the development team to hire staff, enter into contracts and exercise other powers to carry out its functions.

The chief executive Officer of the Alaska Housing Finance Corporation was added as a fifth member and chair to the Joint In-state Gasline Development Team in Sec.38.34.030.

Mr. Wright explained that Dan Fauske, (CEO/Executive Director, Alaska Housing Finance Corporation, Department of Revenue) would bring his finance and leadership experience to the team.

[2:55:31 PM](#)

Co-Chair Stoltze interjected that he believed in the value of having a Development Team member who is familiar with the legislative and budget process.

Mr. Wright elaborated further.

Sec. 38.34.040. Duties of the Development Team. (a) Ensure a project plan for the development of an in-state gas line is completed and delivered to the legislature by July 1, 2011. The project plan must specify and document how an in-state gas line can be designed, financed, constructed and made operational by December 31, 2015. (b) The Joint In-State Gasline

Development Team is to assume all executive authority over and managerial responsibility for all activities enumerated under sec. 19, ch. 14, SLA 2009, including work previously completed, work in process, and work for which money has been encumbered but that is not completed on the effective date of this subsection. (c) Describes specific plans that are to be included within the project plan for an in-state gas line that will serve Fairbanks, the south central region of the state, and other communities whenever practicable, connecting with or enhancing the existing gas pipeline system, and reaching to tidewater. (d) The development team's work product is to include an analysis of alternative possible routes and select a route that is consistent with the following requirements: (1) is the most economical, (2) will provide gas to residents at a reasonable cost, (3) allows for connecting lines to serve industrial, residential and utility customers along the entire route and in other regions of the state that can be served at commercially feasible rates, (4) uses state land and existing state highway and railroad rights of way to the maximum extent feasible, (5) uses existing highway and railroad bridges, gravel pits equipment yards and maintenance facilities and other existing facilities and resources to the maximum extent feasible. (e) With the intent that any project-related assets acquired or developed be available for transfer or sale to the entity best able to complete the project, the development team is to: (1) prepare plans and designs necessary for the construction of the in-state gas line; (2) coordinate with entities qualified to build, own and operate the gas line; (3) identify, apply for and obtain rights-of-way and other permits for the project route; (4) work with other entities to promote gas supply and purchase contracts required for the project to be commercially viable; (5) prepare cost estimates for project design, construction and operation to determine the project's feasibility and the projected cost of natural gas to consumers; (6) coordinate with and use, to the fullest extent, possible existing work by other state agencies and entities before contracting for new reports and research and analysis; (7) determine regulatory authority over the pipeline project and perform any necessary compliance requirements; (8) identify and apply for, or support extension of, existing permits

for export of Alaska natural gas if that export improves project economics and will reduce the price of natural gas to in-state consumers. (f) Any rights to a gas line corridor obtained by a state agency under eminent domain may be transferred to a private entity. (g) Describes the various aspects of the in-state gas line project the development team may consider.

Sec.38.34.040, changes the July 1, 2011 deadline from construction ready to a completed project plan delivered to the legislature. He added that the change accommodated concerns raised by the impending deadline.

Mr. Wright also pointed out that in subsection(c) "the south central region" includes Valdez. He read the final change in Sec.38.34.060. Subsection b that dealt with conflicts of interest.

[3:00:22 PM](#)

Sec. 38.34.060. Conflicts of interest. (a) If a member of the Development Team acquires, owns or controls a direct or indirect interest in property, an organization or business that might be affected by the in-state gas line project or other matters under consideration by the Development Team shall immediately disclose the interest to the Development Team. This disclosure is part of the public record and shall be included in the minutes of the first meeting of the Development Team held after the disclosure. (b) Members of the development team are subject to AS 39.50 (Public Official Disclosure) and AS 39.52 (Alaska Executive Branch Ethics Act).

Representative Gara referred to page 4, line 8 of the CS that calls for analysis of "alternative possible routes". He explained that alternatives might not be routes. The alternatives could include importation of liquefied natural gas or Cook Inlet gas subsidies. He asked the sponsor if he would change the language to reflect other possibilities. Representative Chenault wanted time to consider the request.

Representative Gara understood the goal to be ready to move forward but wanted to avoid spending money unnecessarily.

He did not want to see gas pipeline engineering plans discarded. On page 4 line, 23 he requested to insert the word "preliminary", that would read, "prepare [preliminary] plans and designs for construction of the in-state natural gas line project." Representative Chenault argued that even though he dislikes wasting money the state should pay for whatever plans are necessary to determine costs.

[3:04:17 PM](#)

Representative Gara referred to line 27, of the CS, regarding obtaining right-of-ways. He wondered if it was a waste of money to obtain right-of-ways that might not be used. Representative Chenault believed that in order for the project to move forward the state will need to spend money up front to develop right-of-ways. He felt resolving right-of-way issues was essential to promoting the project to a private entity.

Co-Chair Stoltze WITHDREW his OBJECTION. There being NO OBJECTION, it was so ordered. The CS for HB 369 (FIN), 26-LS1527\C, Cook, 3/18/10CS was adopted.

[3:06:29 PM](#)

RECESS

[3:07:45 PM](#)

RECONVENED

Representative Chenault recalled Representative Gara's request to change the language in the CS on page 4, line 8 to delete the word "routes". He stated that he did not want to change the language. He felt that although liquefied natural gas imports might become a stop gap measure, HB 369 was written specifically, to develop an in-state gas line. Representative Gara announced that he supported leaving HB 369 as a pipeline bill but pointed out that on Page 4, line 8 of the CS the language called for analyzing alternatives. He felt that leaving the word routes narrowed analysis of all options. He wanted the state to be free to analyze any cheaper alternatives. Representative Chenault offered that there are a number of options being evaluated by other sources. His specific bill dealt with the development of in-state gas pipeline routes not alternative options. He felt that all of the options will be evaluated once all of the information and cost analysis is gathered.

Co-Chair Hawker interjected that Speaker Chennault's intention was to present legislation to promote an in-state

gas line not liquefied natural gas importation. Speaker Chenault affirmed.

[3:11:44 PM](#)

Representative Doogan asked if the pipeline project will be limited in size by AGIA. Representative Chenault stated that the project would not be limited to the 500 bcf (billion cubic feet) specified by AGIA depending on the state's involvement.

Representative Gara referred to page 4, lines 23 and 27 of the CS. He asked the sponsor to consider adding the word "preliminary" before plans on line 23. On line 27, he requested adding "applying" for and omit "and obtain rights-of-way and". He stated that he offered these conceptual amendments as cost saving measures to limit ineffectual effort by the state. Speaker Chenault reiterated that it is imperative to have the rights-of-ways in place in order to transfer or sell the project to a private entity. He read the following:

Page 4, lines 20-21, "With the intent that any project-related assets acquired or developed be available for transfer or sale to the entity best able to complete the project..."

Speaker Chenault stressed that if the state must own or control right-of-ways to support project completion it was a valuable use of state funds.

Co-Chair Hawker interjected that there are not mandates in HB 369. He emphasized that the bill only requires a project plan be delivered to the legislature by July 1, 2011. He cautioned that prescribing limits to a dynamic process could hurt the outcome of the project.

[3:16:49 PM](#)

Mr. Wright explained that any private entity interested in the feasibility of the project will do its own analysis.

Representative Austerman asked if the bill allows the state to build and own the pipeline and lease it out for operation.

Representative Chenault asserted that he would not want the state to build the in-state gas line. However the legislation does not preclude the state from participating in any form.

Representative Fairclough referred to page 5, lines 12-13, that allows for a state agency to transfer any acquired gas line corridor rights to a private entity. She wondered if that was a normal process for state. Representative Chenault stated he did not know the answer.

Co-Chair Hawker added that the language was added at the request of the Department of Transportation and Public Facilities to clarify the department's ability to do so.

[3:20:51 PM](#)

FRANK RICHARDS, DEPUTY COMMISSIONER, HIGHWAYS & PUBLIC FACILITIES, DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES, explained that the state is currently prohibited to transfer land obtained by a state agency through eminent domain to a private entity.

Representative Fairclough referred to Sec.38.34.050 that dealt with confidentiality. She observed that the development team will have access to confidential information and pointed out that the bill would add a new layer of access by someone other than commissioners. Representative Chenault read lines 30-31 of Sec.38.34.050.

"Confidential information received by the development team shall be kept confidential."

Co-Chair Hawker closed public testimony. He called for discussion of the fiscal notes. He referenced the new FN (OOG) dated 3/12/2010 (copy on file) and noted it was indeterminate.

Bob Swenson, Manager, In-State Gasline Project, Office of the Governor; relayed that the fiscal note was outdated and no longer applied to the CS version of the legislation. Co-Chair Hawker asked if the updated fiscal note information was available. Mr. Swenson stated it was.

Representative Kelly pointed out that the legislature previously approved the Governor's requests for in-state pipeline development funds. He requested Mr. Swenson

delineate the expenditure of the funds as it relates to the current project.

Co-Chair Hawker elaborated that the Governor requested an additional \$6.5 million dollars in this year's operating budget for in-state gas line development. He informed the committee that a fiscal note for the legislation would incorporate the appropriation request. He requested Mr. Swenson provide a recap of the overall fiscal requirements to move the project forward under the authority of HB 369.

Mr. Swenson summarized the projected fiscal note expenditures. He stated that the fiscal note total is \$ 8,000,053. Incorporated in that total is \$ 1,000,095 for personal services. He highlighted the positions deemed necessary due to the accelerated timeline for completion of the project plan. He listed them as follows: project manager, engineering manager, commercial manager, legislative liaison/public outreach officer, finance and budget analyst, schedule coordinator, and finally a technical writer. He added that \$6.8 million was requested for contractual services. He noted the contractual services request was similar to the entire operating budget request of 6.5 million with the additional amount intended for market analysis. He expounded that the contractual services request was divided into four components. The first component was completion of environmental and permitting activities and state and federal right-of-way approvals. That includes all of the different issues involved in the permitting process. The second component of the request was project management and engineering data acquisition to further refine the engineering design.

[3:31:24 PM](#)

The third component was refinement of cost of service estimates and tariff modeling. The component was expanded to incorporate both possible routes. The fourth component consisted of a complete documentation of pipeline assets for commercial offering.

Co-Chair Hawker wondered if the mandates could be completed in one year for the additional approximately \$1.2 million over the Governor's original operating budget request. He noted the additional funds were for personal services to get the work done. Mr. Swenson stated that was correct. He offered that in reference to the fiscal note the years out

from FY 2011 remain indeterminate dependent upon outcomes of the plan. Co-Chair Hawker robustly concurred.

Representative Austerman asked if it was possible to project the expenditures for the out years. Mr. Swenson voiced that the "what if" scenario is incredibly broad and depends on what part of the project the state is willing to undertake. He believed it would be impossible at this time.

[3:35:25 PM](#)

Co-Chair Hawker asked that in reference to the fiscal notes, if the mission of the bill is essentially the same as the intent directive from the legislature except for the accelerated timeline and creation of clear management hierarchy and authority. Mr. Swenson affirmed. He stated the accelerated timeline was worrying. The assurance that an in-state gas pipeline operational by December 31, 2015 was of particular concern. The permitting process was out of the state's control and difficult to submit to an aggressive timeline.

Mr. Swenson shared that another issue is optimization. He explained that the earliest phase of a massive project is the most important and affects the costs of the project over time. Significant optimization effort must be taken early on in a project to save money in the long term. Optimization is not always conducive to an accelerated timeline. He stated that these issues should be addressed before moving forward.

Co-Chair Hawker agreed. He commented that in terms of the fiscal note it was basically the same project that the administration had all ready been working on. He ascertained that there was coordination of fiscal note preparation with the other departments involved in the project.

Representative Kelly asked how the role of project manager would interact with the Development Team. Mr. Swenson was not certain how the management structure was going to be set up.

[3:44:53 PM](#)

RECESS

[3:51:39 PM](#)

RECONVENED

Representative Fairclough referenced page 5, lines 12 and 13 of the CS regarding eminent domain.

Representative Fairclough wondered what transferring gas line corridor rights to a private entity means to the state. She asked if the state could recover those rights if necessary. Mr. Richards understood that the contract with the private entity developer would provide a construction right-of-way and contain a reverter clause. He revealed that when construction is completed the property will revert back to state ownership. Representative Fairclough asked if the contract language adequately protects the states interest. Mr. Richards answered that the contract reverts the property rights back to the state even in a scenario that the project is not completed. Representative Fairclough wondered if the state's interest is protected if the private entity sells their assets to another party. Mr. Richards did not know the answer.

HB 369 was HEARD and HELD in Committee for further consideration.

#hb346

HOUSE BILL NO. 346

"An Act establishing the Workers' Compensation Advisory Board; and providing for an effective date."

[3:57:30 PM](#)

KONRAD JACKSON, STAFF, REPRESENTATIVE KURT OLSON, SPONSOR, reported that the Medical Services Review Committee recommended that the Legislature establish a Worker's Compensation Advisory Council. The council would replace the Medical Services Review Committee. He noted the word "Board" was changed to "Council" in the Labor and Commerce Committee.

TRENA HEIKES, DIRECTOR, DIVISION OF WORKERS' COMPENSATION, DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT, noted that the council consists of four members each who represent organized labor and employers and three members who represent medical care providers. She remarked that Alaska is the only state that allows the medical providers to vote on such matters.

Representative Austerman referred to the fiscal note, FN 1 (LWF) and asked if Medical Services Review Committee members needed to travel. Ms. Heikes responded that two of the members were from Ketchikan. The Department brought them up for monthly and bi-monthly meetings from May to November of last year.

Representative Austerman queried Ms. Heikes about the \$40 thousand expenditure for travel in the fiscal note. Ms. Heikes explained that it was for the Worker's Compensation Advisory Council members travel to meetings twice a year. She explained that currently the Medical Services Review Committee travel budget is approximately \$10-12 thousand and part of the overall travel budget for the Division of Worker's Compensation.

Representative Doogan asked if the \$40 thousand was the total expenditure for the new Council. Ms. Heikes affirmed. She added that the Medical Services Review Committee will be abolished and their approximately \$10-12 thousand travel budget will be rolled into the \$40 thousand.

Representative Austerman determined that the \$40 thousand is an increase in expenditures. Ms. Heikes affirmed.

Vice-Chair Thomas opined that the fishing and tourism industries were not specifically represented on the Council in the bill. He also felt the bill could allow duplicated union membership in the employer representation language.

[4:05:08 PM](#)

Representative Kelly asked why there is more than one member from organized labor since the majority of Alaskan workers are non-union. Ms. Heikes responded that organized labor had the most experience with worker's compensation. She believed that the experienced members with an established base of knowledge would help the Council work efficiently.

Representative Kelly maintained his concern that the council did not adequately represent the work force.

Representative Fairclough noted that only voting members counted in the quorum. She wondered why the two members who represent insurers were not voting members. Ms. Heikes pointed out that although insurers have an interest in

worker's compensation they are not typically given a vote. Worker's Compensation issues are between employers and employees. The medical providers complete the process.

Representative Gara asked how the ad hoc committee compares to the Worker's Compensation Advisory Council. Ms. Heikes explained that the ad hoc committee is an ad hoc group of members from organized labor and the Worker's Compensation Committee of Alaska, an employer industry organization. The ad hoc Committee did not operate under an official statutory mandate and met behind closed doors. Council meetings will be on the record and invite public involvement.

Representative Gara expressed concern with allowing medical providers to vote on all matters brought to the Council. He felt they should vote exclusively on medical care reimbursement rates, medical care provisions, and other applicable Medical Services Review Committee issues. He believed other council members could leverage their votes. Ms. Hiekes agreed that was a concern of industry and union members on the Medical Services Review Committee. The medical providers felt they were a major participant in the system. The treatment of work related injuries, workers recovery time, degree of permanent impairment, and vocational re-training involve medical opinion. They were given a voice by a bare majority. A vote provides incentive for the medical providers to come to the Council meetings. Representative Gara maintained his concern making medical providers voting members for issues that do not concern them.

[4:13:49 PM](#)

Vice-Chair Thomas felt that Council members should be Alaska residents.

HB 346 was HEARD and HELD in Committee for further consideration.

ADJOURNMENT

The meeting was adjourned at 4:15 PM.