

HOUSE FINANCE COMMITTEE
March 8, 2011
9:07 a.m.

9:07:26 AM

CALL TO ORDER

Co-Chair Stoltze called the House Finance Committee meeting to order at 9:07 a.m.

MEMBERS PRESENT

Representative Bill Stoltze, Co-Chair
Representative Bill Thomas Jr., Co-Chair
Representative Anna Fairclough, Vice-Chair
Representative Mia Costello
Representative Mike Doogan
Representative Bryce Edgmon
Representative Les Gara
Representative David Guttenberg
Representative Reggie Joule
Representative Mark Neuman
Representative Tammie Wilson

MEMBERS ABSENT

None

ALSO PRESENT

Representative Kurt Olson, Sponsor; Representative Alan Austerman; Representative Mike Chenault; Linda Hall, Director, Division of Insurance, Department of Commerce, Community and Economic Development; Mike Monagle, Director, Division of Workers' Compensation, Department of Labor and Workforce Development; Rena Delbridge, Staff, Representative Mike Hawker; Pat Davidson, Legislative Auditor, Division of Legislative Audit; Don Habeger, Director, Division of Corporations Business and Professional Licensing, Department of Commerce, Community and Economic Development.

SUMMARY

HB 13 WORKERS' COMPENSATION: MEDICAL FEES

HB 13 was REPORTED out of committee with a "do pass" recommendation and with one new fiscal note by the House Finance Committee for the Department of Labor and Workforce Development.

HB 80 SELF DEFENSE

HB 80 was HEARD and HELD in committee for further consideration.

HB 126 OMNIBUS BOARD EXTENSIONS

CSHB 126(FIN) was REPORTED out of committee with a "do pass" recommendation and with a new fiscal note by the Department of Commerce, Community and Economic Development.

#hb13

HOUSE BILL NO. 13

"An Act relating to fees and charges for medical treatment or services as they relate to workers' compensation; and providing for an effective date."

9:08:33 AM

REPRESENTATIVE KURT OLSON, SPONSOR, discussed HB 13. He explained that the existing extension to the workers' compensation fee schedule would have expired on December 31, 2010, but it had been extended by emergency regulation until June 30, 2011. He communicated that staff and employees of the Department of Commerce, Community and Economic Development (CCED) were available to discuss the bill.

LINDA HALL, DIRECTOR, DIVISION OF INSURANCE, DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT, addressed the bill and the purpose of the fee schedule. In 2007 anticipated legislation, which would have addressed the inadvertent deletion of the fee schedule, had not been introduced. Over time three provisions had been implemented that made cost of living increases to the fee schedule. The procedure codes in the schedule had not been kept up-to-date; currently there were approximately 2,000 fee codes that were not covered. She referred to several charts (copy on file) that showed current medical fees related to

workers' compensation in Alaska. The first handout was titled "Medical Benefits Constitute the Majority of Total Benefit Costs in Alaska." She shared that a significant portion of workers' compensation cost was due to the high cost of medical care; the chart showed that the total medical costs in Alaska represented 75 percent of the system costs compared to the countrywide average of 58 percent. The second graph from the National Council on Compensation Insurance was titled "Alaska Medical Average Cost per Case vs. Countrywide." The average cost in Alaska for a workers' compensation case in 2009 was \$37,000 compared to the average countrywide cost of \$27,000, which represented a 37 percent cost differential. She discussed that it was important to restructure the fee schedule in order to address the high costs. The third handout was the "2010 Oregon Workers' Compensation Premium Rate Ranking Summary." Alaska no longer held the number-one rank in the study that it had occupied during the prior four years. There had been rate decreases for the last five years.

Ms. Hall discussed the general overview of the provisions in the legislation. She detailed that the bill would replace the past Consumer Price Indexes (CPI) with a sustainable schedule, which would limit the division's need to request CPI increases from the legislature every year or so. A full fee schedule that included the missing procedure codes would be provided and was a step back to the methodology that had been in place in 2004. The schedule was adopted by the Workers' Compensation Board and was constructed by an outside vendor that collected data based on geographical areas. The fee schedule was a base schedule that was not to exceed the usual reasonable and customary fees that were established by the board; it was based on a credible profile of billed charges to ensure actuarial credibility. The schedule reflected the cost differences in the four geographical areas in Alaska. Categories were expanded under the bill to ensure that all types of medical services were incorporated, including transportation costs.

[9:16:06 AM](#)

Ms. Hall detailed that some transportation costs such as emergency medevac and ground transportation were extremely expensive. She had received a number of anecdotal cases from Alaskans related to high transportation costs for health insurance and workers' compensation. She did not think the transportation costs would be reduced through

their inclusion in the fee schedule. She added that the fee schedule would be based on the 90th percentile of bill charges. The number was higher than most medical health insurance fee schedules and ensured that injured workers would have access to good treatment.

Representative Neuman asked how the bill would impact employer insurance costs. He had heard from employers that unemployment benefits and workers' compensation contributed to their high insurance costs.

Ms. Hall replied that the bill stabilized the fee schedule. She did not think that it would reduce costs, but it had the potential to cap costs. The 2,000 procedure codes that were not covered in the fee schedule were currently paid at 100 percent and would be capped at the 90th percentile under the legislation; therefore, a small cost increase could occur initially. She opined that the stability of the fee schedule would be beneficial to the system and the system costs.

Representative Neuman wondered whether the Physicians Board had been consulted on the proposed fee schedule. He believed that the stability could help to bring more insurance companies into the state, which would offer increased competition and help to stabilize costs.

Ms. Hall responded that HB 13 was identical to a bill that passed the House the prior year and changes had been made to the language in response to concerns from the medical society. She added that she had not heard the concerns during the current year.

Co-Chair Stoltze observed that North Dakota had cheaper premiums.

[9:20:05 AM](#)

Representative Guttenberg wondered whether there was an analysis that showed how providers would be impacted by fee schedule or capping cost shifts related to Medicaid and other. He asked whether charges would increase in other areas. Ms. Hall did not believe that an analysis had been done, given that the division's statistical agent National Council on Compensation Insurance had not conducted one. She did not think that any significant cost shifting would occur with a fee schedule at the 90th percentile. She noted

that a potential reduction to the rates of Medicare and Medicaid could result in rates that were lower than the service costs.

Co-Chair Stoltze OPENED and CLOSED public testimony.

Co-Chair Stoltze pointed to the \$75,000 fiscal note.

MIKE MONAGLE, DIRECTOR, DIVISION OF WORKERS' COMPENSATION, DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT (DLWD), discussed that the \$75,000 estimated cost associated with producing a medical fee schedule was based on the costs of the last contractor the department had used in 2003 (Engenics).

Co-Chair Stoltze asked what the previous fee schedule had cost. Mr. Monagle responded that it had been ten years since the last fee schedule had been produced and the department did not have record of the costs associated with its production. The department had contacted Engenics for a general quote on the costs, but did not have specific details because DLWD was planning to submit a request for proposal and anticipated that the company may enter a bid.

Co-Chair Stoltze was surprised about the missing record because workers' compensation had not been a low profile issue in 2003 and 2004.

Vice-chair Fairclough wondered whether the committee should zero-out FY 13 through FY 17 on the fiscal note in order to make it more relevant.

Co-Chair Stoltze thought the recommendation represented a good compromise.

Representative Doogan wondered whether the first year would help to provide information necessary for a more complete fiscal note. Mr. Monagle replied in the affirmative. He explained that after the department awarded its first contract bid it would have more solid cost data.

Co-Chair Stoltze remarked that the cost would be at least \$75,000.

[9:26:31 AM](#)

Vice-chair Fairclough observed that it was possible the awarded bid would come in higher than the projected cost on the fiscal note, which would not look good; however, the bid could be less than the projected amount.

Co-Chair Stoltze communicated that the fiscal note would be modified to reflect the committee's changes. The FY 13 through FY 17 columns would be zeroed-out.

Representative Gara commented that medical costs in workers' compensation and across the board were high in Alaska. He had been told that most states allowed an average insurance compensation at the 50th percentile and that Alaska allowed compensation at the 70th percentile. He did not know whether the insurance compensation played a part in Alaska's high medical costs, but he thought it would be worth hearing about as the committee discussed Medicare and medical costs.

Vice-chair Fairclough MOVED to report HB 13 out of committee with individual recommendations and the accompanying fiscal note.

HB 13 was REPORTED out of committee with a "do pass" recommendation and with new fiscal note by the House Finance Committee for the Department of Labor and Workforce Development.

[9:29:34 AM](#)

AT EASE

[9:30:45 AM](#)

RECONVENED

#hb126

HOUSE BILL NO. 126

"An Act extending the termination dates of the Board of Nursing, the Board of Dental Examiners, the Board of Barbers and Hairdressers, the Regulatory Commission of Alaska, and the Alcoholic Beverage Control Board; and providing for an effective date."

[9:30:45 AM](#)

Co-Chair Stoltze discussed that there was a CS for HB 126 that amended the omnibus sunset extension bill and removed

the Regulatory Commission of Alaska (RCA) and the Alcohol Beverage Control Board (ABC).

Vice-chair Fairclough MOVED to ADOPT Work Draft CSHB 126(FIN) 27-LS0321\I (Kirsh, 3/1/11).

There being NO OBJECTION, it was so ordered.

RENA DELBRIDGE, STAFF, REPRESENTATIVE MIKE HAWKER, discussed that Representative Hawker was the Legislative Budget and Audit chairman and that he supported the omnibus extension. She relayed that Representative Hawker believed the omnibus was the most efficient mechanism for routine board and commission extensions.

Co-Chair Stoltze noted that noncontroversial sunset bills usually came before the committee one at a time and had individual sponsors.

Representative Gara commented that he did not need a verbal review of the reports in the file, given that the extensions were noncontroversial.

Co-Chair Stoltze asked for a brief explanation of the bill.

PAT DAVIDSON, LEGISLATIVE AUDITOR, DIVISION OF LEGISLATIVE AUDIT, discussed the division's recommendation that boards should make timely investigations. She explained that health and safety issues were dealt with first and there were long periods of inactivity associated with investigations of complaints for boards.

Ms. Davidson notified the committee that the financial status of the Board of Barbers and Hairdressers was generally alright; however, the division recommended that the public member either resign or surrender their license because board members were not supposed to engage in the profession they were actively regulating. The member was no longer an active hairdresser, but according to statute the surrender of a license or the resignation from the board was required. Apart from the timely investigations there had been no recommendations for the Board of Dental Examiners. The board's accumulated surplus was addressed by the reduction of fees during the FY 09 renewal cycle.

Ms. Davidson pointed to the Board of Nursing which had three specific recommendations. First, the appropriate

entities should be notified when an advanced nurse practitioner's authority to write prescriptions was revoked or suspended by the board. Second, the board needed to improve its oversight of certified nurse's aide training programs. Sporadic onsite reviews had been conducted; however, there had been no processing or review of the self-evaluation forms that were submitted biannually. Third, the current licensed practical nurse (LPN) appointed to the board did not meet the statutory qualifications. She explained that according to statute the board position was to be held by an LPN working in an institutional nursing situation, but the current board member was working as an emergency medical technician. The board had built up a substantial financial surplus as a result of past accounting errors and had indicated its intention to drop fees as much as 20 percent in the FY 11/FY 12 renewal cycle.

[9:36:57 AM](#)

Representative Wilson asked how long the division gave a board to fill a position when a member was asked to resign.

Ms. Davidson replied that the Division of Legislative Audit did not have the ability to enforce its recommendations. She specified that once the issue had been identified that it was up to the appropriate division to take corrective action.

Representative Gara wondered whether the boards that had received recommendations for a member to resign would report to the committee once the resignation had occurred.

Co-Chair Stoltze explained that Don Habeger with the Department of Commerce, Community and Economic Development (CCED) would address the question.

Vice-chair Fairclough wondered whether it would be helpful for Representative Hawker to issue a letter to the department on behalf of the House Finance and Legislative Budget and Audit Committees that requested compliance on the recommendations and asked it to follow-up with the committee no later than the end of session or the following year. She discussed the ability to know whether boards were in compliance prior to a bill vote on the House floor.

Representative Guttenberg wondered about the purpose of the prohibition that existed in AS 44.66.050 (e) that prevented the bill from reestablishing more than one board or commission.

Ms. Davidson replied that according to statute, a bill should have no more than one board extension associated with it. She did not know the history of the statute.

Co-Chair Stoltze remembered a bill that had included 12 to 15 board extensions before his time in the legislature.

9:40:21 AM

DON HABEGER, DIRECTOR, DIVISION OF CORPORATIONS BUSINESS AND PROFESSIONAL LICENSING, DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT, addressed an earlier question from Representative Gara. He believed that the member in question had surrendered the license, which brought the Board of Barbers and Hairdressers into compliance. He would get back to the committee with an affirmative answer.

Mr. Habeger examined other issues and concerns that had been discussed. The division was working diligently to correct the timely investigation issue that had been highlighted in each legislative audit. As a result of the audit the division had replaced an old database that lacked a mechanism to flag older cases. The division was working to implement a new system that was specifically made for licensing activities nationwide. The division hoped to report the following year that the timely investigation problems had been resolved.

Mr. Habeger communicated that there had been a \$1.4 million roll-forward related to nurses' fees. Fees were reviewed and adjusted on an annual basis. Some of the fees he had reviewed had increased and others had remained the same. He explained that any existing surpluses were used to amortize licensing fees.

Representative Neuman recalled that the Board of Nursing had lacked the ability to resolve a situation in which a non-licensed nurse practitioner had written prescriptions. He wondered whether Mr. Habeger was familiar with the situation.

Mr. Habeger replied that he was familiar with one case that the division had recently handled. He relayed that licensing actions had been brought against the individual. He had worked with the board's chair and executive director to develop a way to make reporting available to a broader group. He added that the Board of Nursing website included information on licensing action.

[9:45:12 AM](#)

Representative Neuman asked about the inappropriately occupied positions on the Board of Nursing that had been cited in the audit. He contemplated whether a reduction to the eight-year board term was necessary in order to increase the legislature's oversight. He wondered how to deal with the board positions that were filled inappropriately.

Mr. Habeger responded that he did not recall the issue with the Board of Nursing. He agreed that it was a challenge to keep track of the 129 board members on approximately 20 boards. He noted the concern and would keep it in mind.

Representative Wilson cited the Legislative Budget and Audit recommendation that the director of boards should fill the LPN position with an individual that was currently involved in institutional nursing services. She understood that the current Board of Nursing LPN position was filled by an individual in the emergency field and asked CCED to notify the committee when the issue had been corrected.

Representative Gara asked how quickly CCED could let the committee know about the course of action related to removing the board member. He noted that once the committee approved the board that it had no authority to get the department to replace the position.

Mr. Habeger replied that he would work with the governor's office, as it was responsible for the appointment of board positions. He believed that the issue had been rectified shortly after the legislative audit had been released. He would provide the committee with a detailed answer as soon as possible.

Co-Chair Stoltze referenced earlier commentary regarding the eight-year board term and noted that any member on the

committee could introduce legislation to address a dysfunction.

Representative Gara requested that CCED notify the Legislative Audit Division when the issues related to the Board of Barbers and Hairdressers and the Board of Nursing had been resolved. He asked the Legislative Audit Division to let the committee know whether it felt that the concern had been addressed.

Mr. Habeger responded in the affirmative.

Co-Chair Stoltze observed that the governor's office was ultimately responsible for making the substantive changes.

Vice-chair Fairclough communicated that the committee could zero-out the fiscal note or ask the House Rules Committee chair to hold the bill until the requested answers had been provided.

Co-Chair Stoltze was comfortable moving the fiscal note forward. He reflected on more challenging issues related to boards and commissions in the past. He opined that the current issues were substantive, but solvable.

[9:51:09 AM](#)

Representative Doogan expressed his expectation that affirmative answers would be provided prior to a bill hearing on the House floor.

Co-Chair Stoltze responded that the committee would ask the House Rules Committee chair to hold the bill until the answers had been received.

Representative Doogan did not anticipate any problems, but was aware that problems did happen.

Ms. Delbridge responded that the Legislative Budget and Audit Committee would be happy to make certain that concerns were addressed and to ensure that audit recommendations were followed.

Vice-chair Fairclough MOVED to report CSHB 126(FIN) out of committee with individual recommendations and the accompanying fiscal note.

Representative Gara OBJECTED for purpose of discussion. He wanted to make certain that the controversial RCA and ABC boards were voted on during the current session, given that both boards sunset in the current year.

Co-Chair Stoltze believed the issues related to the boards were more substantive, but not controversial. He relayed that the committee would address each of the boards.

Representative Gara WITHDREW his OBJECTION.

CSHB 126(FIN) was REPORTED out of committee with a "do pass" recommendation and with a new fiscal note by the Department of Commerce, Community and Economic Development.

[9:54:12 AM](#)

AT EASE

[9:57:12 AM](#)

RECONVENED

#hb80

HOUSE BILL NO. 80

"An Act relating to self defense in any place where a person has a right to be."

[9:57:12 AM](#)

REPRESENTATIVE MARK NEUMAN, SPONSOR, discussed that Alaska statute provided the right to use deadly force to protect family, person, and property. House Bill 80 clarified that the right applied to the home and in any place a person had a right to be. The bill clarified an individual's right to protect their life and the lives of their family. The proposed legislation strengthened the legal recognition of a human's basic right for self-defense and placed the responsibility of retreat on the perpetrator. He relayed that 18 states had introduced similar legislation; HB 80 closely followed language suggested by the other states which was included in member packets.

Representative Wilson asked whether the bill forced people to retreat. She referred to email correspondence that had expressed concern about the issue.

Representative Neuman responded that currently the duty to retreat was included in Alaska statute, but it was being examined in the judicial system. The bill put the ability into the hands of the individual responsible for making a "split-second decision" and protected their rights.

Representative Wilson asked whether an attempt to retreat would still be required or whether a person could stand their ground without worrying about being prosecuted. She shared that constituents in her community wanted to be able to protect their families and did not want to be faced with making a decision to retreat in an emergency situation.

Representative Neuman replied that there was a justification clause in statute that specifically stated how self-defense could be applied; however, the duty to retreat language was somewhat vague. He explained that the bill worked to clarify a person's ability to stand their ground.

Representative Gara believed that the current law only required a duty to retreat in situations that would allow an individual to retreat safely. He did not want to provide individuals with the right to shoot someone in all cases. He wondered what the standard would be if there was no duty to retreat even in cases where safe retreat would have been possible.

Representative Neuman responded that AS 11.81.330 specifically listed situations in which self-defense was justified, including the use of force with mutual combat, and against death, serious physical injury, kidnapping, sexual assault in the first and second degree, abuse of a minor, and robbery in any degree. The statute also stated that a person may not use deadly force under the section if a person knew that "with complete personal safety and with complete safety as to others being defended, the person can avoid the necessity of using deadly force by leaving the area." He thought it was up to the judicial branch to provide interpretation on when deadly force could or could not be used. The goal of the bill was to clarify that a person did not have to second guess their right to self-defense.

[10:03:21 AM](#)

Representative Gara wanted to ensure that fair standards existed that did not allow a person to shoot someone for no good reason. He stated that the law was circular because there was a duty to not shoot a person if it was possible to safely retreat, but the bill allowed a person in safety to shoot a person. He thought the other circumstances in which a person was not allowed to shoot someone were most likely listed somewhere in statute that had not been provided. He wanted to ensure that a definition was included in statute.

Co-Chair Stoltze asked Representative Neuman to make the materials he was reading from available to the committee at future hearings on the bill.

Representative Neuman responded in the affirmative. He clarified that the bill did not attempt to change any existing justification clauses; full justification was still required for a person to use deadly force.

Representative Gara asked whether the justification clause was under AS 11.81.330.

Representative Neuman responded in the affirmative.

Co-Chair Stoltze noted that the Department of Law (DOL) and Department of Public Safety (DPS) would be active participants in the next committee hearing on the legislation.

Representative Gara wanted to also hear from the Public Defender Agency.

Co-Chair Stoltze responded that Quinlan Steiner, Public Defender was available for questions via teleconference, but the committee would discuss the bill more thoroughly at the next hearing.

Vice-chair Fairclough asked to hear from DOL regarding the proposed two new full-time attorney positions listed in its fiscal note. She asked the department to provide information that supported the fiscal note.

Representative Guttenberg wondered whether the bill would have changed the outcome of any specific situations if it had been implemented in the past. He did not know whether the bill made life safer or more complex.

Representative Neuman did not believe there would be changes in past convictions. He asked for clarification on the question.

Representative Guttenberg wondered about the impetus for the bill and whether specific incidents had occurred in the past that the bill could have helped.

Co-Chair Stoltze notified the sponsor that he could provide the committee with an answer at the next meeting on the bill. He believed that the purpose of the bill was to reduce the amount of prosecutions related to self-defense. He reiterated that he would talk to DOL.

[10:08:39 AM](#)

Representative Wilson asked how the 1,155 cases in 2010 that were listed in the fiscal note were relevant to the department's calculation of costs. She wondered whether there were past cases that may not have been prosecuted if the bill had existed at the time.

Co-Chair Stoltze replied that the committee would get the answer from DOL and DPS.

Vice-chair Fairclough asked the sponsor to provide a definition for self-defense in Alaska statute. She thought it would help to clear up members' questions about the benefit of the legislation.

Representative Joule referenced the state's law that gave people the right to conceal a weapon. He wondered how the bill would impact a person carrying a concealed weapon without a permit who acted in self-defense in a place they had a right to be.

Co-Chair Stoltze responded that there was currently a dual system that allowed individuals with or without a permit the right to carry a concealed weapon in most circumstances.

Representative Neuman answered that a person could not use a handgun for deadly force if they did not have the legal right to have a handgun. The bill did not protect a person that was not legally permitted to have a handgun, such as felons and other.

HB 80 was HEARD and HELD in committee for further consideration.

ADJOURNMENT

10:11:58 AM

The meeting was adjourned at 10:11 AM.