

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

April 4, 2016

3:22 p.m.

**MEMBERS PRESENT**

Representative Kurt Olson, Chair  
Representative Shelley Hughes, Vice Chair  
Representative Jim Colver  
Representative Gabrielle LeDoux  
Representative Cathy Tilton  
Representative Andy Josephson  
Representative Sam Kito

**MEMBERS ABSENT**

Representative Mike Chenault (alternate)

**COMMITTEE CALENDAR**

CS FOR SENATE BILL NO. 125(RES)

"An Act adding legislative nonvoting members to the board of directors of the Alaska Gasline Development Corporation."

- MOVED HCS CSSB 125(RES) OUT OF COMMITTEE

HOUSE BILL NO. 372

"An Act relating to insurance; relating to expenses for insurance examinations; relating to regulations for insurance utilization review, benefits determination, health care insurance grievance resolution procedures, independent review of adverse determinations or final adverse determinations, independent review organizations, and continuing education providers; relating to required provisions for health care insurance contracts and policies, including health care provider choice; establishing civil penalties for insurers for failure to provide requested records; amending the definition of 'wet marine and transportation' insurance; amending provisions on limited licenses to include crop insurance; relating to third-party administrator notification requirements; relating to certification filing by reinsurance intermediary brokers; relating to rate filings, delivery of insurance policies or endorsements; relating to refunds of variable life insurance policies and variable annuities; establishing limitations on issuance of long-term care insurance; relating to requirements for group health insurance policies; amending the definition of

'group health insurance'; relating to motor vehicle service contracts; relating to notice requirements for meetings of stockholders or members of a domestic insurer; establishing a definition of 'bona fide association'; relating to requirements and penalties for committing a fraudulent or criminal insurance act; updating criteria for examinations; relating to rate filing deviations; establishing civil penalties for certain wilful violations; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 299

"An Act excluding certain persons from participating in the Public Employees' Retirement System of Alaska."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 125

SHORT TITLE: LEGISLATIVE MEMBERS OF AGDC BOARD

SPONSOR(S): SENATOR(S) COSTELLO

01/19/16	(S)	PREFILE RELEASED 1/15/16
01/19/16	(S)	READ THE FIRST TIME - REFERRALS
01/19/16	(S)	L&C, RES
02/02/16	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)
02/02/16	(S)	Heard & Held
02/02/16	(S)	MINUTE(L&C)
02/04/16	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)
02/04/16	(S)	Moved CSSB 125(L&C) Out of Committee
02/04/16	(S)	MINUTE(L&C)
02/08/16	(S)	L&C RPT CS 4DP SAME TITLE
02/08/16	(S)	DP: COSTELLO, GIESSEL, MEYER, STEVENS
03/02/16	(S)	RES AT 3:30 PM BUTROVICH 205
03/02/16	(S)	Moved CSSB 125(RES) Out of Committee
03/02/16	(S)	MINUTE(RES)
03/04/16	(S)	RES RPT CS 4DP 1DNP 1NR SAME TITLE
03/04/16	(S)	DP: GIESSEL, COGHILL, MICCICHE, COSTELLO
03/04/16	(S)	DNP: WIELECHOWSKI
03/04/16	(S)	NR: STOLTZE
03/23/16	(S)	TRANSMITTED TO (H)
03/23/16	(S)	VERSION: CSSB 125(RES)
03/25/16	(H)	READ THE FIRST TIME - REFERRALS
03/25/16	(H)	RES, L&C
03/30/16	(H)	RES AT 1:00 PM BARNES 124

03/30/16 (H) Heard & Held  
03/30/16 (H) MINUTE(RES)  
04/01/16 (H) RES AT 1:00 PM BARNES 124  
04/01/16 (H) Moved HCS CSSB 125(RES) Out of  
Committee  
04/01/16 (H) MINUTE(RES)  
04/04/16 (H) L&C AT 3:15 PM BARNES 124

BILL: HB 372

SHORT TITLE: OMNIBUS INSURANCE

SPONSOR(s): LABOR & COMMERCE

03/21/16 (H) READ THE FIRST TIME - REFERRALS  
03/21/16 (H) L&C  
03/28/16 (H) L&C AT 3:15 PM BARNES 124  
03/28/16 (H) Heard & Held  
03/28/16 (H) MINUTE(L&C)  
03/30/16 (H) L&C AT 3:15 PM BARNES 124  
03/30/16 (H) Heard & Held  
03/30/16 (H) MINUTE(L&C)  
04/04/16 (H) L&C AT 3:15 PM BARNES 124

BILL: HB 299

SHORT TITLE: PERS PARTICIPATION: CONTRACTORS

SPONSOR(s): WILSON

02/05/16 (H) READ THE FIRST TIME - REFERRALS  
02/05/16 (H) STA, L&C  
03/22/16 (H) STA AT 8:00 AM CAPITOL 106  
03/22/16 (H) Moved HB 299 Out of Committee  
03/22/16 (H) MINUTE(STA)  
03/23/16 (H) STA RPT 5DP  
03/23/16 (H) DP: SPOHNHOLZ, STUTES, KELLER, VAZQUEZ,  
LYNN  
04/04/16 (H) L&C AT 3:15 PM BARNES 124

**WITNESS REGISTER**

SENATOR MIA COSTELLO  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Speaking as the sponsor of SB 125,  
introduced the bill.

WESTON EILER, Staff  
Senator Mia Costello  
Alaska State Legislature

Juneau, Alaska

**POSITION STATEMENT:** On behalf of Senator Costello, sponsor of SB 125, presented the sectional analysis of CSSB 125(RES).

EMILY NAUMAN, Legislative Legal Counsel  
Legislative Legal and Research Services  
Legislative Affairs Agency  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on HCS CSSB 125(RES).

REPRESENTATIVE LIZ VAZQUEZ  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Testified during the hearing on HCS CSSB 125(RES).

LORI WING-HEIER, Director  
Division of Insurance  
Anchorage Office  
Department of Commerce, Community & Economic Development  
Anchorage, Alaska

**POSITION STATEMENT:** Presented the committee substitute for HB 372, and answered questions.

JEANNIE MONK, Senior Program Officer  
Alaska State Hospital and Nursing Home Association  
Juneau, Alaska

**POSITION STATEMENT:** Testified during the hearing on HB 372.

JON ZASADA, Policy Integration Director  
Alaska Primary Care Association  
Anchorage, Alaska

**POSITION STATEMENT:** Testified during the hearing on HB 372.

REPRESENTATIVE TAMMIE WILSON  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Speaking as the sponsor, introduced HB 299.

MITCH FLYNN, Fire Chief  
Steese Volunteer Fire Department  
Fairbanks, Alaska

**POSITION STATEMENT:** Testified in favor of HB 299.

KATHY LEA, Chief Pension Officer  
Division of Retirement and Benefits

Central Office  
Department of Administration  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on HB 299.

**ACTION NARRATIVE**

[3:22:43 PM](#)

**CHAIR KURT OLSON** called the House Labor and Commerce Standing Committee meeting to order at 3:22 p.m. Representatives Olson, Tilton, Kito, Josephson, Hughes, and LeDoux were present at the call to order. Representative Colver arrived as the meeting was in progress.

[3:23:13 PM](#)

**SB 125-LEGISLATIVE MEMBERS OF AGDC BOARD**

[3:23:01 PM](#)

CHAIR OLSON announced that the first order of business would be CS FOR SENATE BILL NO. 125(RES), "An Act adding legislative nonvoting members to the board of directors of the Alaska Gasline Development Corporation."

[3:23:31 PM](#)

SENATOR MIA COSTELLO, Alaska State Legislature, speaking as the sponsor, informed the committee [HCS CSSB 125(RES)] is a bill that strengthens and diversifies the board of directors (board) for the Alaska Gasline Development Corporation (AGDC), which is the state's primary representative in the Alaska LNG project, and will be the focal point for policy decisions in the coming years. She said the bill would facilitate communication and a teamwork approach between the board and the legislature by adding three legislators as nonvoting members to the board, one from the Senate, one from the House, and one from either minority caucus. The bill also ensures the original intent of the legislature by reserving four out of the five public seats on the board for appointees with expertise in natural gas, pipeline construction, finance, project management, or other relevant experience. Senator Costello stated that having legislators on a board as important as AGDC would provide perspective, institutional knowledge, and continuity. She read from a memorandum provided in the committee packet from

Legislative Legal Services, Legislative Affairs Agency, dated 3/30/16, and signed by Emily Nauman, as follows [in part]:

Given the split in how other states treat nonvoting legislative members, perhaps nothing can be relied upon to divine the outcome in this state.

SENATOR COSTELLO then referred to a ruling in South Carolina in 2013 that upheld legislators having an ex-officio role on state boards and commissions [document not provided]. She opined that legislators serving in nonvoting positions alleviates constitutional concerns, and pointed out that precedent has been established by the fact that legislators currently serve on state boards and commissions, including state corporations such as the Knik Arm Bridge and Toll Authority, the Alaska Aerospace Corporation, the Alaska Seafood Marketing Institute, the Alaska Commission on Postsecondary Education, the Alaska Health Care Commission, the Alaska Criminal Justice Commission, and the Alaska Tourism Marketing Board. She urged for the committee's support.

[3:27:07 PM](#)

WESTON EILER, staff to Senator Mia Costello, Alaska State Legislature, on behalf of Senator Costello, paraphrased the sectional analysis for SB 125, Version S, as follows: [original punctuation provided]

Section 1: Amends AS 31.25.020(a), (Alaska Gasline Development Corporation), Governing body. Adds a member of the House, appointed by the Speaker, a member of the Senate, appointed by the Senate President and a member of the minority caucus jointly-appointed by the presiding officers, as nonvoting members to the AGDC Board.

Section 2: Amends AS 31.25.020(b), (Alaska Gasline Development Corporation), Governing body. Requires four of the five public board members to have qualifications in natural gas pipeline construction, operation and marketing; finance; large project management; or other expertise and experience relevant to the corporation.

Section 3: Amends AS 31.25.020(d), (Alaska Gasline Development Corporation), Governing body. States legislative members of the board may not be reimbursed

or compensated by AGDC for their service on the board and related costs.

Section 4: Adds new subsection AS 31.25.020(e), (Alaska Gasline Development Corporation), Meetings of the board. Specifies legislative members of the board may participate in all board activities except voting. Legislative members may not be excluded from executive sessions, and may not be appointed for a term longer than two years.

Section 5: Amends AS 31.25.030(a), (Alaska Gasline Development Corporation), Meetings of the board. Conforming language outlining that only voting members of the AGDC Board may be selected to serve as chair, secretary or treasurer. Also defines a quorum as a majority of voting members of the board.

Section 6: Amends AS 31.25.040(a), (Alaska Gasline Development Corporation), Administration of affairs; program directors. Conforming language that Sectional Analysis - SB 125 2 allows only voting members of the board to manage the assets and business of the corporation and that voting members will delegate supervision of the administration of the corporation to the executive director.

MR. EIHER noted that conforming changes are also found in Sections 7, 8, and 9, and Section 11 provides an immediate effective date.

[3:29:14 PM](#)

REPRESENTATIVE JOSEPHSON directed attention to a memorandum provided in the committee packet from the Department of Law (DOL) dated 3/20/16, that referred to AGDC as an executive branch entity. He then directed attention to a table provided in the committee packet by Senator Costello entitled, "Legislative Membership on State of Alaska Boards and Commissions" and asked whether the entities listed thereon were executive branch agencies.

MR. EILER deferred to Legislative Legal and Research Services on the definition, and opined the entities complied on the list are a variety of capacities in which legislators, as nonvoting members, advise the functions of the administration through commissions, independent state corporations, divisions, and

departments of state government, "by which the legislature is advising the administration, and the overall process of state government."

REPRESENTATIVE LEDOUX inquired as to any boards and commissions on which legislators serve that are identical - legally - to the corporate structure of AGDC.

MR. EILER offered to provide additional information comparing state corporations; he added that there are many similarities between state corporations involved in large projects, and legislators are serving in a nonvoting, ex-officio manner on boards of directors that make business decisions.

REPRESENTATIVE JOSEPHSON referred to another memorandum (memo) [document not provided] dated 12/7/15 in which Emily Nauman, an attorney for Legislative Legal and Research Services, concluded that the proposal related to the bill was likely not constitutional; however, in the 3/30/16 memo she said it may not be constitutional when "... speaking to nonvoting membership ...." He asked for the basis for her change in position.

[3:34:51 PM](#)

MR. EILER recalled that the issue of "voting legislative members" was the subject of an earlier Legislative Legal and Research Services memo.

REPRESENTATIVE JOSEPHSON remarked:

... legislative lawyers on the seventh of December were inclined to say, "This proposal, broadly speaking, doesn't, is not consistent with the constitution." Last week, the same attorney said, "Well, it may very well be consistent with the constitution." And I'm asking, whether you know ... what the difference is.

MR. EILER offered to research previous Legislative Legal and Research Services opinions on this matter. He acknowledged that voting legislative members "would run into conflict, with regards to the constitutional issues." He directed attention to page 4 of the memo dated 3/30/16, which read [in part]:

What is clear is that the issue of nonvoting legislative members on executive branch boards is unsettled. ... I do not believe the risk is great

enough that I would advise removing the legislative board members from the bill.

REPRESENTATIVE LEDOUX suggested the committee address questions directly to Ms. Nauman in this regard.

3:37:12 PM

The committee took an at ease from 3:37 p.m. to 3:39 p.m.

3:40:00 PM

EMILY NAUMAN, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency, directed attention to page 3 of a memo dated 12/7/15 [document not provided], and pointed out that she noted ex-officio members may possibly reduce the infringement on executive branch powers, thereby lessening the constitutional issues. The main point of the 12/7/15 memo addressed legislative members serving on the AGDC board that would be voting and participating in officer selection and other duties. The 3/30/16 memo deals with legislative members who are ex-officio and nonvoting members. Ms. Nauman opined that a court opinion is needed to determine whether nonvoting legislative members are unconstitutional.

REPRESENTATIVE JOSEPHSON said the aforementioned attorney general's opinion relies upon 1968 and 1976 State of Alaska decisions, and on several attorney's general opinions (AGOs). He said AGO's are presumptively law and asked whether Ms. Nauman does not rely on state opinions "as sort of an overall jurisprudential analysis."

MS. NAUMAN said correct. She added that there is no AGO that addresses nonvoting legislative members seated on boards and commissions.

REPRESENTATIVE KITO questioned the need for legislative representation on the AGDC board because legislators can attend any AGDC meeting, and request and receive information from the corporation. Furthermore, if legislative members do not have the ability to vote, he inquired as to the role of legislative board members.

SENATOR COSTELLO reminded the committee of the importance of the gasline project to Alaska's future. Recently, there has been a high turnover of AGDC board members, and members of the legislature have held a long interest in the project, and

developed the project's guiding documents. She acknowledged that legislative members can attend meetings, except the board meetings often go into executive sessions that exclude members of the legislature. She opined service on the AGDC board is no different than that on the Alaska Seafood Marketing Institute or the Alaska Travel Industry Association boards. Senator Costello restated the intent of the bill is to foster communication, cooperation, and trust, and legislative members are needed on the board to represent the people of Alaska and advise the corporation.

3:45:08 PM

REPRESENTATIVE KITO turned to the following concerns: legislative members in attendance during executive sessions; the continuity of the board; the qualifications of the board members. He pointed out that legislators are lay leaders and although his personal expertise is in engineering, he would not presume to understand the technicalities of, for example, a gas liquefaction plant, and cautioned that "we're relying on lay legislators like ourselves that might not have technical expertise in natural gas pipelines to be that continuity." In addition, legislators could be called on by the board to participate in decisions whenever necessary. He pointed out that although a legislative member of the board could participate in an executive session, he/she would be unable to share information with the full legislature, which calls into question the benefits thereof. Representative Kito restated his question as to the role of the legislative board member.

SENATOR COSTELLO said legislators have to decide whether to "agree ... with the premise of the bill which is the people's branch has a seat at the table, no matter if that table is inside a locked door or outside in the public view." Regarding the value, she recalled that the legislature passed [Senate Bill 138, passed in the Twenty-Eighth Alaska State Legislature] - the guiding structure for the project - and legislators are interested in further participation in the project.

CHAIR OLSON stated his and other members' concern with the current structure of the board, which has board members with experience limited to serving on the Alaska Gasline Port Authority. He reviewed the qualities of two unsuccessful appointees to the AGDC board, and said legislators want to see legislative members on the board because " ... the direction that it may be going may not be the direction that was envisioned by the bulk of the people that got the ball rolling."

REPRESENTATIVE HUGHES expressed strong support for the provision of the bill that requires expertise and experience. She inquired as to the nature of executive sessions, and asked for the reasons the AGDC board would go into executive session.

MR. EILER advised that AGDC is exempt from many parts of the Administrative Procedure Act, except for the open meetings law. He deferred to AGDC.

[3:51:36 PM](#)

REPRESENTATIVE HUGHES asked whether the bill sponsor can assure the committee that if there are nonvoting legislative members on the board, the board would remain apolitical.

SENATOR COSTELLO pointed out that the legislature votes on the appointments of members of the board, except for the commissioners. She remarked:

I would like to see the people's branch be represented there. Whether you see that as political ... I see it as only adding value to, to the board, and adding some depth in terms of the history of the legislation, the history of the project.

REPRESENTATIVE HUGHES then asked whether the sponsor is confident that if during executive sessions with legislative board members present, the other AGDB board members would be free to "lay things out on the table."

SENATOR COSTELLO opined that all board members would follow guidelines and procedures.

REPRESENTATIVE JOSEPHSON inquired as to the laws related to when executive branch officials can listen to legislative executive sessions; for example, whether they can attend an executive session of a Legislative Budget and Audit (JBUD) committee meeting.

SENATOR COSTELLO declined to answer.

MS. NAUMAN said she was not aware of any law that allows a member of the executive branch to sit in on a legislative committee executive session. In further response to Representative Josephson, she restated her answer.

REPRESENTATIVE JOSEPHSON questioned whether other commissions and boards such as the Alaska Aerospace Corporation, Department of Military & Veterans' Affairs, and the Knik Arm Bridge and Toll Authority, Department of Transportation & Public Facilities, have been challenged by a claim that legislators should not serve.

SENATOR COSTELLO said, "Not that I am aware."

[3:57:16 PM](#)

CHAIR OLSON was told that Commissioner Sheldon Fisher, Department of Administration, was invited to the last Legislative Council meeting executive session but declined to attend at the direction of the governor.

REPRESENTATIVE KITO advised that Legislative Council and Legislative Budget and Audit committees have the ability to invite any individual, but an individual must be invited to participate in executive sessions.

CHAIR OLSON understood that any member of the House and Senate can attend, but not participate in, an executive session.

REPRESENTATIVE LEDOUX asked whether the committee would hear testimony from the administration in opposition to the bill. She gave her history of serving on the Aerospace Corporation board of directors.

[3:59:56 PM](#)

CHAIR OLSON opened public testimony.

[4:00:22 PM](#)

REPRESENTATIVE LIZ VAZQUEZ, Alaska State Legislature, reminded the committee that the board is not set up as part of the executive branch - reporting directly to the governor - but is set up as an independent corporation and is exempt from personnel and procurement regulations, and statutes that pertain to the rest of the state. She opined AGDC is only required to comply with the open meetings law; in fact, if a legal decision rendered in the state were found, it would relate to an entity closer to or within the executive branch, as opposed to AGDC, which is "totally distinct."

[4:01:53 PM](#)

CHAIR OLSON, after ascertaining that no one further wished to testify, closed public testimony.

REPRESENTATIVE COLVER expressed his concern that with a constitutional issue outstanding, AGDC board actions may be subject to litigation, and "cloud business that we expect AGDC to do." He read from the Constitution of the State of Alaska, Article II, Section 5, as follows [in part]:

No legislator may hold any other office or position of profit under the United States or the state.

REPRESENTATIVE COLVER continued, noting that AGDC is supposed to look and act like a business, and should not be encumbered with politics.

CHAIR OLSON advised that there are "at least a dozen other boards, similar boards, and to the best of my knowledge, we've never had that issue arise ...."

REPRESENTATIVE KITO questioned the benefit of adding members to a board that is operating. Adding three additional members, especially legislative members whose appointments will change every two years, does not provide continuity. He said the bill is not necessary.

REPRESENTATIVE JOSEPHSON stated the following concerns: 1.) memos written by Legislative Legal Services that cite two other states are persuasive authority, however, the memo written by the Department of Law cites actual state authority on dual office holding and separation of powers, and is supported by three AGO statements; 2.) turnover on the board due to legal requirements of residency; 3.) politicizing of the agency; 4.) the inability of legislative board members to share executive session comments; 5.) constitutionality; 6.) possible litigation. He said he was a "no vote."

REPRESENTATIVE HUGHES gave her experience serving on the board of directors of the Alaska Travel Industry Association, and said the addition of legislative members to the AGDC board could improve communications.

[4:09:34 PM](#)

REPRESENTATIVE HUGHES moved to report [HCS CSSB 125(RES), Version 29-LS1250\S, out of committee with individual recommendations and the accompanying fiscal notes.

[4:09:44 PM](#)

REPRESENTATIVE JOSEPHSON objected.

[4:10:26 PM](#)

A roll call vote was taken. Representatives Tilton, Hughes, LeDoux, Colver, and Olson voted in favor of HCS CSSB 125(RES). Representatives Kito and Josephson voted against it. Therefore, HCS CSSB 125(RES) was reported out of the House Labor and Commerce Standing Committee by a vote of 5-2.

[4:10:47 PM](#)

The committee took an at ease from 4:10 p.m. to 4:14 p.m.

### **HB 372-OMNIBUS INSURANCE**

[4:14:57 PM](#)

CHAIR OLSON announced that the next order of business would be HOUSE BILL NO. 372, "An Act relating to insurance; relating to expenses for insurance examinations; relating to regulations for insurance utilization review, benefits determination, health care insurance grievance resolution procedures, independent review of adverse determinations or final adverse determinations, independent review organizations, and continuing education providers; relating to required provisions for health care insurance contracts and policies, including health care provider choice; establishing civil penalties for insurers for failure to provide requested records; amending the definition of 'wet marine and transportation' insurance; amending provisions on limited licenses to include crop insurance; relating to third-party administrator notification requirements; relating to certification filing by reinsurance intermediary brokers; relating to rate filings, delivery of insurance policies or endorsements; relating to refunds of variable life insurance policies and variable annuities; establishing limitations on issuance of long-term care insurance; relating to requirements for group health insurance policies; amending the definition of 'group health insurance'; relating to motor vehicle service contracts; relating to notice requirements for meetings of stockholders or members of a domestic insurer; establishing a

definition of 'bona fide association'; relating to requirements and penalties for committing a fraudulent or criminal insurance act; updating criteria for examinations; relating to rate filing deviations; establishing civil penalties for certain wilful violations; and providing for an effective date."

[4:15:15 PM](#)

REPRESENTATIVE HUGHES moved to adopt the committee substitute (CS) for HB 372, Version 29-LS1379\H, Wallace, 3/30/16, as the working document.

CHAIR OLSON objected for discussion purposes.

[4:15:27 PM](#)

LORI WING-HEIER, Director, Division of Insurance, Anchorage Office, Department of Commerce, Community & Economic Development, presented changes made by the CS for HB 372, Version H, as follows:

- Beginning on page 3, Section 4 is amended by adding to the title "relating to health care insurance policies" in order to clarify that workers' compensation is not included in the definition of health care insurance policies.
- Section 5 is deleted, affecting subsequent section numbers.
- Beginning on page 19, Section 31 is changed by adding the words, "the specific" and "the exact change in" in subsection (b). Sections 46 and 50 were deleted, and the foregoing added to clarify that insurers give notice to the consumer of 45 days after changes in the premium and form filings are known.
- Beginning on page 7, Section 8 was Section 5, and now applies to obstetrics/gynecology (OB/GYN) in order to avoid federal preemption, and adds the words "a participating health care professional who specializes in obstetrics or gynecology shall agree to adhere to the health care insurer's policies and procedures, including procedures regarding referrals, obtaining prior authorization and providing services under a treatment plan, if any, approved by the health care insurer."

MS. WING-HEIER said the above are all the changes made by the CS except for renumbering.

[4:20:38 PM](#)

REPRESENTATIVE JOSEPHSON asked for the reason to avoid federal preemption.

MS. WING-HEIER explained that federal preemption threatens state-based insurance regulations. In addition, state compliance with the [Patient Protection and Affordable Care Act of 2010 (PPACA)] aids in health care reforms, a possible waiver or other provisions, in providing better and more affordable insurance products for consumers, and in interaction with the Centers for Medicare and Medicaid Services (CMS).

REPRESENTATIVE HUGHES asked whether the statement needed to comply with federal law is specific to OB/GYN providers.

MS. WING-HEIER said yes. Previous iterations of the bill used substantially similar language.

REPRESENTATIVE HUGHES questioned whether there has been a reaction from OB/GYN providers in Alaska.

MS. WING-HEIER said providers were previously aware of the provision. In further response to Representative Hughes, she offered that the purpose of the provision directed at OB/GYN providers was to provide transparency and avoid miscommunication between the provider, consumer, and the insurer.

REPRESENTATIVE HUGHES restated her previous concern that the insurer must not dictate a patient's care; she posed a situation in which an insurer approved a treatment plan and the provider deviated from the plan, and asked whether the insurer would pay for the approved parts of the plan without penalty.

MS. WING-HEIER said the consumer always has the right to go out of network for a different procedure, and the insurance company retains the right to pay from the benefit plan; the provision clarifies for the consumer what to expect "so there will not be a surprise billing."

[4:25:28 PM](#)

REPRESENTATIVE HUGHES restated her concern that this provision is a federal requirement.

REPRESENTATIVE LEDOUX confirmed that original Section 5 had been deleted.

MS. WING-HEIER said correct.

REPRESENTATIVE JOSEPHSON surmised that subsection (h) is part of the policy and values of PPACA to ensure that women's health care is fundamental, and is "part and parcel of a general package of, of primary care."

MS. WING-HEIER said she did not disagree in this regard, but declined to explain the intent of PPACA.

[4:27:27 PM](#)

CHAIR OLSON opened public testimony on HB 372.

[4:27:44 PM](#)

JEANNIE MONK, Senior Program Officer, Alaska State Hospital and Nursing Home Association (ASHNHA), informed the committee that HB 372 is a complex bill, of which ASHNHA has not had sufficient time to fully understand or vet. The stated intent of the bill is to conform Alaska Statutes to federal law and to the National Association of Insurance Commissioners (NAIC) standards; however, which portions of the bill are based on what model is unknown to ASHNHA. Ms. Monk expressed appreciation that Section 5 had been deleted. However, two areas of concern remain: 1.) on page 8, lines 15-22, Section 11, the definition of emergency medical condition does not include the prudent layperson standard which is a standard in federal law that addresses the need for insurance to cover a visit to an emergency room based not on diagnosis, but on the possibility of serious illness, and ASHNHA urged for the bill to conform with the definition in PPACA; 2.) on page 20, lines 15 and 20, Section 32, add the term "or omits information" to the definition of a fraudulent insurance act, and ASHNHA is concerned that adding this could turn "any average bill submission into a fraudulent claim," and seeks the deletion of "or omits information," or the addition of "intentionally."

REPRESENTATIVE JOSEPHSON returned attention to Section 11, and asked whether the present proposed definition of emergency medical condition is too restrictive, and sets too high a standard for a visit to the emergency room.

MS. MONK said yes. The prudent layperson standard is a lower standard.

REPRESENTATIVE JOSEPHSON surmised ASHNHA seeks to protect patient rights in Section 11.

MS. MONK said that's exactly right. In further response to Representative Josephson, she said in Section 32, ASHNHA's interest is to protect the person who submits an insurance bill, which could be a patient or a provider.

REPRESENTATIVE HUGHES pointed out on page 20, line 8, Section 32, read:

(b) A fraudulent insurance act is committed by a person who, with intent to injure, defraud, or deceive

REPRESENTATIVE HUGHES asked if ASHNHA considered that this language addresses the concern of intent.

[4:34:26 PM](#)

MS. MONK offered to consult with others on this matter and respond.

REPRESENTATIVE LEDOUX opined that the new language, "or omits information" would lead to litigation on whether a claim should be accepted.

MS. MONK agreed.

MS. WING-HEIER advised that part of addressing the cost of health care is addressing fraud; in fact, any fraudulent act has to have intent and cannot be a simple clerical error, a misstatement, or a one-time occurrence. She said this is not about insurance companies failing to pay claims, but about someone who is committing fraud.

REPRESENTATIVE KITO asked how the division determines intent if an insurance company makes an accusation of fraud.

MS. WING-HEIER explained the division would not look at one claim or claimant, but the provider would have to file multiple claims against an insurer and establish a pattern of fraud.

REPRESENTATIVE HUGHES suggested that the word "incomplete" found on page 20, line 15, equates to "or omits information."

MS. WING-HEIER said no, incomplete information is missing information. In further response to Representative Hughes, she added that "incomplete information" could be a form that was

half completed, but "omits information" is withholding information that has been requested.

[4:40:00 PM](#)

JON ZASADA, Policy Integration Director, Alaska Primary Care Association (APCA), informed the committee APCA is the statewide membership organization of Alaska's community health centers. Because APCA members are safety-net health providers, his organization's comments are focused on the potential impact of the bill on its members. Mr. Zasada said APCA members appreciate the deletion of Section 5. Returning attention to page 20, Section 32, subsection (b), paragraphs (2) and (3), he said APCA suggested adding the word "intentionally" in front of "or omits information" after consulting with community health associations in other states.

REPRESENTATIVE HUGHES questioned whether page 20, lines 8 and 9 take care of APCA's concern related to fraudulent intent.

MR. ZASADA said APCA seeks to add the word intentionally to make the paragraphs "crystal clear."

REPRESENTATIVE JOSEPHSON returned attention to page 8, Section 11, and asked whether APCA agrees with ASHNHA's inclusion of the prudent layperson standard in Section 11.

MR. ZASADA disclosed that APCA does not provide emergency services, but does agree with ASHNHA.

[4:43:56 PM](#)

CHAIR OLSON, after ascertaining that no one further wished to testify, closed public testimony.

[HB 372 was held over.]

[4:44:41 PM](#)

The committee took an at ease from 4:44 p.m. to 4:46 p.m.

**HB 299-PERS PARTICIPATION: CONTRACTORS**

[4:46:27 PM](#)

CHAIR OLSON announced that the final order of business would be HOUSE BILL NO. 299, "An Act excluding certain persons from

participating in the Public Employees' Retirement System of Alaska."

[4:46:44 PM](#)

REPRESENTATIVE TAMMIE WILSON, Alaska State Legislature, speaking as the sponsor of HB 299, paraphrased the sponsor statement, as follows: [original punctuation provided]

HB 299, is being brought forward on behalf of the 501(C)3, nonprofit corporation volunteer fire departments within the Fairbanks North Star Borough, operating as "independent contractors". They are currently under contract with the borough to provide emergency response services. Each nonprofit fire department has both full time paid employees and trained volunteers as emergency responders. Each of these organizations provides benefit plans for all members. Dolan vs King County was a lawsuit between the County and independent non-profit organizations which provided indigent legal services to the county. Over a period of thirty years, King County asserted increasing budgetary and day to day authority over the formerly independent non-profit organizations. In doing so, it asserted more control over the groups that provided the services. Employees of the organizations sued the County for the state employee benefits. They argued that the County's funding and control over their "independent" organizations essentially made them state employees for the purposes of participating in the Public Employees Retirement System (PERS) and under pertinent statutes and common law principles, the Supreme Court agreed that employees of the organizations were "employees" under state law, and, as such, were entitled to be enrolled in the PERS. HB 299 would clearly define who is eligible for the Public Employees' Retirement System of Alaska and give added protection to municipalities against such liability. In times of such fiscal strife this legislation would encourage the exploration and utilization of cost effective measures for services and promote independent organizations and business. This bill emphasizes the need, however, to maintain the proprieties of the independent relationship when contracting for the provision of essential public service. I would appreciate your support of HB 299.

REPRESENTATIVE WILSON added that Washington passed a similar law to prevent further litigation.

[4:49:05 PM](#)

CHAIR OLSON asked how many fire service areas would be affected.

REPRESENTATIVE WILSON responded that Fairbanks has five and Ketchikan has the same issue.

CHAIR OLSON indicated that the Matanuska-Susitna region may have as well.

REPRESENTATIVE WILSON, as an aside to Representative Colver, said Fairbanks North Star Borough has approximately 109 road service areas. Representative Wilson pointed out [Identifier: DOA-DRB-HB299-03-18-16] is a zero fiscal note. She paraphrased the sectional analysis, as follows:

- Section 1 Contractors and employees of contractors are excluded from this plan
- Section 2 "same thing"
- Section 3 adds "a person who is compensated on a contractual or fee basis"

REPRESENTATIVE WILSON advised that Section 3 would not impact the "university fire service area" employees, who are members of the Public Employees' Retirement System (PERS), because the contract with FNSB is with the University of Alaska.

REPRESENTATIVE KITO inquired as to whether individuals are covered under another retirement plan.

REPRESENTATIVE WILSON said yes. She added that those affected by the bill have their own medical and retirement plans; however, they are not employees of FNSB and would not qualify for PERS. In further response to Representative Kito, she explained that in Washington, a nonprofit that was providing services sued for coverage under the county system and prevailed. Subsequently, Washington clarified its laws related to who is a contractor and who is an employee; the purpose of HB 299 is to clarify that contractors who contract with municipalities are separate entities, and therefore are not eligible for membership in PERS.

[4:52:38 PM](#)

REPRESENTATIVE JOSEPHSON directed attention to the sponsor statement and read [in part]:

In times of such fiscal strife this legislation would encourage the exploration and utilization of cost effective measures for services and promote independent organizations and business.

REPRESENTATIVE JOSEPHSON asked whether HB 299 was designed to help privatize employees who are now public employees.

REPRESENTATIVE WILSON said absolutely not.

REPRESENTATIVE HUGHES asked whether a problem related to this issue has arisen.

REPRESENTATIVE WILSON answered that "being proactive is much better and much more affordable."

REPRESENTATIVE COLVER questioned how contracts with firefighters are established.

REPRESENTATIVE WILSON explained that there is a mill rate for each fire service area, which is separate of the contract between FNSB for emergency medical services (EMS) that are paid by the number of ambulance calls made.

REPRESENTATIVE COLVER surmised EMS is provided by the private sector or a 501(c) 3 nonprofit entity that is not housed in a FNSB fire department facility.

REPRESENTATIVE WILSON clarified that EMS is part of the fire department; the fire service protection is based on a mill rate and EMS is a different area paid by a contract with FNSB. The ambulances, and volunteer and paid responders, are housed in the fire station.

[4:55:29 PM](#)

REPRESENTATIVE COLVER concluded that EMS coverage is not by a service area, but is area-wide. He asked about the chain of command.

REPRESENTATIVE WILSON said the staff is directed by the fire chief and an EMS (indisc.). In further response to Representative Colver, she affirmed that the contractual relationship is just between FNSB and the fire service area.

REPRESENTATIVE COLVER questioned whether previous part-time employees have asked to be covered by PERS.

REPRESENTATIVE WILSON said no. The employees are covered by their own plans and work fulltime or part-time for the fire service area.

REPRESENTATIVE COLVER recalled that in the Matanuska-Susitna (Mat-Su) Borough, EMS staff is hired by the borough; however, in order to avoid paying benefits and retirement, employees were kept on part-time status, and this led to a legal action against the Mat-Su Borough over employees' right to PERS. He cautioned that "this area of this PERS with the fire department and the EMS employees is a very expensive proposition for, for government."

REPRESENTATIVE WILSON restated that the proposed legislation addresses independent contractors, and none of these [employees] are employees of FNSB. The Mat-Su Borough hired people on a part-time status, but these [individuals] are hired by the fire service areas as independent contractors.

[4:58:48 PM](#)

MITCH FLYNN, Fire Chief, Steese Volunteer Fire Department (SVFD), informed the committee SVFD is a 501(c)3 nonprofit organization in Fairbanks, and an independent contractor with the Fairbanks North Star Borough (FNSB) that provides fire and EMS services within a service area on an annual basis. Recently, FNSB revealed problems with SVFD's contracts that may pose a financial liability risk to fire service and EMS service area taxpayers. Although improvements to its contracts have been made, SVFR remains concerned about a possible claim from a current or past employee who may sue for PERS benefits. The purpose of HB 299 is to eliminate the aforementioned threat to PERS, and is not to prevent the fulfillment of current contracts, or to remove employees currently receiving PERS benefits from the system. Mr. Flynn said there are six nonprofit fire departments statewide which contract with municipal governments to provide fire and EMS services. The Steese Volunteer Fire Department has its own medical and retirement benefits programs and members do not intend or expect to participate in PERS. He asked the committee to support HB 299 in order to protect PERS and those employees who are rightfully entitled to PERS membership.

REPRESENTATIVE COLVER asked whether it is problematic for municipalities to contract with nonprofits or others, and seek an exclusion from PERS.

[5:02:37 PM](#)

KATHY LEA, Chief Pension Officer, Division of Retirement and Benefits, Department of Administration, said it is common for municipalities to contract-out for certain aspects of their work; however, from the perspective of PERS, it is important for independent contractors to remain independent from the control of the municipality related to finances, behavior, or physical arrangement. If not, the independent contractor is no longer independent, and can be considered an employee.

REPRESENTATIVE COLVER inquired as to the hours an employee is required to work to be entitled to PERS.

[5:03:49 PM](#)

MS. LEA said the threshold for part-time service is a minimum of 15 hours regularly scheduled every week, and fulltime service requires at least 30 hours of work regularly scheduled every week.

[5:04:21 PM](#)

CHAIR OLSON announced that public testimony would remain open.

[HB 299 was held over.]

[5:04:35 PM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 5:04 p.m.