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Governor Bill Walker
STATE OF ALASKA

January 19, 2017

The Honorable Pete Kelly
President of the Senate
Alaska State Legislature
State Capitol, Room 111
Juneau, AK 99801-1182

Dear President Kelly:

Under the authority of Article III, Section 18, of the Alaska Constitution, I am transmitting a bill that would repeal the Workers' Compensation Appeals Commission (Commission). Established in 2005, the Commission has jurisdiction over appeals from decisions and orders of the Alaska Workers' Compensation Board (Board). The Commission was created to streamline the appeals process for injured employees and their employers; however, it has instead created unnecessary costs and delays, and has not streamlined the appeals process.

The bill would reinstate superior court jurisdiction as the first level for review of decisions and orders of the Board. No changes are made to Board procedure, only to the forum for review of a Board decision. Moreover, no changes are made to the longstanding standards governing stays of payments and attorney fee awards under AS 23.30.145(c) in a workers' compensation benefits appeal. The superior court would apply the same standards of review used by the Commission and by the superior court when it had jurisdiction. Also consistent with longstanding practice, a cost bond on appeal would be waived for an employee appealing a denial of workers' compensation benefits. However, in terms of attorney fee awards in appeals of civil penalty orders against employers for a failure to insure for workers' compensation liability, the bill's repeal of the Commission's fee provision, AS 23.30.008(d), would result in overruling *State of Alaska, Division of Workers' Compensation v. Titan Enterprises, LLC*, 338 P.3d 316 (Alaska 2014). Instead, Rule 508(e)(4), Alaska Rules of Appellate Procedure, would govern attorney fee awards in civil penalty appeals. This change means that a prevailing party in an appeal of a civil penalty order – the employer or the Division of Workers' Compensation – could receive 20 percent of its actual attorney fees, instead of fully compensatory and reasonable fees that a prevailing injured employee would receive in a benefits appeal.

The bill would amend the Alaska Rules of Appellate Procedure to remove references to the repealed Commission that would no longer have subject matter jurisdiction over these appeals, to reinstate the standard for stays that the superior court applied when it previously reviewed these appeals, and

The Honorable Pete Kelly
Transmittal Repeal Workers' Compensation Appeals Commission
January 19, 2017
Page 2

to change the name of the agency issuing the final administrative decision from the Commission to the Board. Legislative amendment of the court rules will ensure a smooth transition for workers' compensation appeals after the repeal of the Commission.

Also, to facilitate a smooth transition, the bill would require that new appeals and petitions for review of a board decision be filed with the superior court beginning on June 1, 2017, but would retain the Commission's jurisdiction over pending matters through December 1, 2017. If the Commission does not conclude pending matters on or before December 1, 2017, the bill provides that the matters would be transferred to the superior court for further proceedings.

In the spirit of streamlining government processes and protecting citizen rights, the bill would protect the right to challenge a decision of the Alaska Workers' Compensation Board, but without the unnecessary and inefficient step of appearing before the Workers' Compensation Appeals Commission.

I urge your prompt and favorable action on this measure.

Sincerely,



Bill Walker
Governor

Enclosure