



THE STATE  
of **ALASKA**  
GOVERNOR BILL WALKER

**Department of Labor and  
Workforce Development**

Office of the Commissioner

Post Office Box 111149  
Juneau, Alaska 99811  
Main: 907.465.2700  
Fax: 907.465.2784

April 11, 2017

The Honorable John Coghill  
Senate Judiciary Chair  
State Capitol Building  
Juneau, AK 99801

Dear Chair Coghill,

Thank you for hearing Senate Bill (SB) 29 in the Senate Judiciary Committee on April 5, 2017. Provided herein as well as enclosed is additional information in response to testimony given and inquiries raised during the hearing and better reflect the importance of realizing the savings that would result from SB 29.

What is the impact of the savings that will be realized by this legislation?

There is currently less revenue collected into the Workers' Safety and Compensation Administration Account (WSCAA) fund than it costs to run the state's workers' safety and compensation programs each year. The reason for this is primarily the legislation that passed in 2005, which implemented a number of changes to the Workers' Compensation Act including establishing the Workers' Compensation Appeals Commission (WCAC). The WCAC costs the department almost half a million dollars each a year with outcomes that have not significantly improved the Workers' Compensation system. Due to WSCAA fund sufficiency concerns, the state can no longer afford this specialty appeals tribunal. Returning Workers' Compensation Board appeals to the Superior Court, as occurred prior to 2005, would save the department \$443,300 per year and would cost the court system \$0 per year, per the fiscal notes attached to SB 29. Without this reduction in spending, the WSCAA fund will be facing a shortfall in FY20 of about \$365,000 and that shortfall will grow to \$2.3 million in FY21. This shortfall will require the state to either significantly reduce or eliminate its workers' safety and compensation programs, or supplant WSCAA with unrestricted general funds (UGF).

The savings that would result from passing SB 29 this year would delay the shortfall to FY21 and reduce it to around \$735,000. This will give the department more time to identify additional cost savings. Delaying action on SB 29 to next year will grow the shortfall amount in FY21 to \$1.2 million. This legislation is not the only cost cutting measure the department is taking to address WSCAA fund sufficiency concerns. The Governor's proposed FY18 budget included a cut of \$190,800 to Workers' Compensation resulting from the elimination of a Hearing Officer and an Office Assistant. The state's workers safety programs have also been reduced by \$151,000 since FY15. Without these efforts, the WSCAA fund would have been facing an even more significant shortfall. Finally, the Governor has also introduced SB 40, which would result in further Workers' Compensation efficiencies and savings.

Honorable John Coghill

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How long does it take for the WCAC to resolve a workers' compensation case?

In calendar year (CY) 2016, the average time period between initial filing and final WCAC decision was 347 days (11.6 months). In the last five years, the duration from initial filing to decision ranged from a low of 315 days in CY2013 to a high of 369 days in CY2015 and the average for all five years was 343 days.

How will case law precedent be impacted by this change?

The case law precedent established by WCAC decisions since 2005 (and which have not been reversed or overruled by a court) will remain binding on the Workers' Compensation Board. The Superior Court would not be bound by the WCAC precedent.

Why should Alaska Workers' Compensation (WC) Board appeals be sent to the Superior Court and not the Office of Administrative Hearings (OAH)?

First as mentioned previously, returning WC Board appeals to the Superior Court, as occurred prior to 2005, would save the department \$443,300 per year and would cost the court system \$0 per year, per the fiscal notes attached to SB 29. Sending WC Board appeals to OAH would prevent this cost savings and may actually increase the department's costs. OAH has to cover its costs by charging billable hours for its administrative judges' work. The department would have to pay OAH for administrative judges' time spent on WC Board appeals, because these costs cannot be charged to other state agencies and OAH does not have general funds to cover the cost as the Superior Court does.

Second, OAH primarily serves the same function for other administrative agencies that the WC Board serves for Workers' Compensation. OAH is an adjudicatory agency that conducts formal hearings and make final agency decisions similar to those conducted by the WC Board, the Alaska Labor Relations Agency, Regulatory Commission of Alaska, Commercial Fisheries Entry Commission, and Division of Motor Vehicles. These final agency decisions may be appealed to the Superior Court and then to the Alaska Supreme Court. Third, WCAC decisions are appealed to the Alaska Supreme Court, and OAH does not hear any matters today in which there is a direct appeal to the Alaska Supreme Court.

Fourth, the Superior Court hears administrative appeals as a matter of course and the WC Board should be treated the same as OAH and other similar adjudicatory agencies. Other final agency decisions, whether from OAH or from another adjudicatory agency, may be appealed to the Superior Court by any party, and then may be appealed to the Alaska Supreme Court. Similarly, WC Board decisions should be appealed to the Superior Court. In a perfect world, we would have a specialty tribunal for every different area of law, but we cannot afford it. Please let me know if you have further questions. I welcome the opportunity to speak with you and your committee on this or any other topics related to the department.

Sincerely,



Heidi Drygas  
Commissioner

Enclosure

## Workers' Safety and Compensation Administration Account Fund Balance

Prepared April 6, 2017

SB 29 "Repeal Workers' Comp Appeals Commission" reduces the state's expenditures by \$221.8 in FY2018 and \$443.3 annually FY2019 and beyond. Without this reduction in spending, the WSCAA fund will be facing a shortfall in FY2020 that will grow significantly in the years to follow. This will require the state to significantly reduce its workers' safety or compensation programs or supplant WSCAA with UGF. This legislation is not the only cost cutting measure the department is taking to address WSCAA fund sufficiency concerns. The Governor's budget included a cut of \$190.8 to Workers' Compensation resulting from the elimination of a Hearing Officer and Office Assistant. The state's workers safety programs have also been reduced by \$151.0 since FY2015. Without these cost cutting efforts the WSCAA fund would have been facing an even more significant shortfall. Finally, the Governor has also introduced SB 40, which would result in further WC efficiencies and savings. However, delaying action on SB 29 grows the shortfall amount that will have to be addressed in FY2021.

FY2018 Beginning Balance \$ 5,398.0		FY2018	FY2019	FY2020	FY2021
Senate's Budget					
Revenue Projection		\$ 7,203.4	\$ 7,203.4	\$ 7,203.4	\$ 7,203.4
Expenditure Projection		\$ 9,124.3	\$ 9,124.3	\$ 9,124.3	\$ 9,124.3
Ending WSCAA Balance with no Action		\$ 3,477.1	\$ 1,556.2	\$ (364.7)	\$ (2,285.6)
SB 29 Savings if Adopted Now		\$ (221.8)	\$ (443.3)	\$ (443.3)	\$ (443.3)
Governor's Budget w/ SB 29 Savings					
Revenue Projection		\$ 7,203.4	\$ 7,203.4	\$ 7,203.4	\$ 7,203.4
Expenditure Projection		\$ 8,902.5	\$ 8,681.0	\$ 8,681.0	\$ 8,681.0
Ending WSCAA Balance if Adopted Now		\$ 3,698.9	\$ 2,221.3	\$ 743.7	\$ (733.9)
SB 29 Savings if Adopted Next Year			\$ (221.8)	\$ (443.3)	\$ (443.3)
Governor's Budget w/ SB 29 Savings					
Revenue Projection		\$ 7,203.4	\$ 7,203.4	\$ 7,203.4	\$ 7,203.4
Expenditure Projection		\$ 9,124.3	\$ 8,902.5	\$ 8,681.0	\$ 8,681.0
Ending WSCAA Balance if Adopted Next Year		\$ 3,477.1	\$ 1,778.0	\$ 300.4	\$ (1,177.2)