

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

February 3, 2014

3:20 p.m.

MEMBERS PRESENT

Representative Kurt Olson, Chair
Representative Lora Reinbold, Vice Chair
Representative Mike Chenault
Representative Bob Herron
Representative Charisse Millett
Representative Dan Saddler
Representative Andy Josephson

MEMBERS ABSENT

All members present

OTHER LEGISLATORS PRESENT

Representative Doug Isaacson

COMMITTEE CALENDAR

HOUSE BILL NO. 234

"An Act extending the termination date of the Regulatory Commission of Alaska; and providing for an effective date."

- MOVED HB 234 OUT OF COMMITTEE

HOUSE BILL NO. 242

"An Act extending the termination date of the State Physical Therapy and Occupational Therapy Board; and providing for an effective date."

- MOVED HB 242 OUT OF COMMITTEE

HOUSE BILL NO. 141

"An Act setting the fee for medical treatment or services performed outside the state under the Alaska Workers' Compensation Act, requiring a provider of medical treatment or services under the Alaska Workers' Compensation Act to submit bills for treatment or services to employers within 180 days after the date the treatment or services are rendered, and

limiting the time for appealing an employer's denial or reduction of a bill; and providing for an effective date."

- MOVED HB 141 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 234

SHORT TITLE: EXTEND REGULATORY COMMISSION OF ALASKA

SPONSOR(s): REPRESENTATIVE(s) HAWKER, ISAACSON, SADDLER

01/21/14	(H)	PREFILE RELEASED 1/10/14
01/21/14	(H)	READ THE FIRST TIME - REFERRALS
01/21/14	(H)	L&C, FIN
01/31/14	(H)	L&C AT 3:15 PM BARNES 124
01/31/14	(H)	-- MEETING CANCELED --
02/03/14	(H)	L&C AT 3:15 PM BARNES 124

BILL: HB 242

SHORT TITLE: EXTEND PT & OCCUPATIONAL THERAPY BOARD

SPONSOR(s): REPRESENTATIVE(s) REINBOLD

01/21/14	(H)	PREFILE RELEASED 1/10/14
01/21/14	(H)	READ THE FIRST TIME - REFERRALS
01/21/14	(H)	L&C, FIN
01/31/14	(H)	L&C AT 3:15 PM BARNES 124
01/31/14	(H)	-- MEETING CANCELED --
02/03/14	(H)	L&C AT 3:15 PM BARNES 124

BILL: HB 141

SHORT TITLE: WORKERS' COMPENSATION MEDICAL FEES

SPONSOR(s): LABOR & COMMERCE

02/25/13	(H)	READ THE FIRST TIME - REFERRALS
02/25/13	(H)	L&C
01/31/14	(H)	L&C AT 3:15 PM BARNES 124
01/31/14	(H)	-- MEETING CANCELED --
02/03/14	(H)	L&C AT 3:15 PM BARNES 124

WITNESS REGISTER

REPRESENTATIVE MIKE HAWKER

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented HB 234 as joint prime sponsor.

KRIS CURTIS, Legislative Auditor

Legislative Audit Division
Legislative Agencies and Offices
Juneau, Alaska

POSITION STATEMENT: Presented auditor findings and recommendations and answered questions during the discussion of HB 234.

T. W. PATCH, Commissioner, Chair
Regulatory Commission of Alaska (RCA)
Department of Commerce, Community & Economic Development (DCCED)
Anchorage, Alaska

POSITION STATEMENT: Testified during the discussion of HB 234.

TED MONINSKI, Attorney
Alaska Communications Systems (ACS)
Anchorage, Alaska

POSITION STATEMENT: Testified during the discussion of HB 234.

MARK MODEROW, Senior Counsel
Legal & Regulatory Department
GCI

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 234.

CRYSTAL KOENEMAN, Staff
Representative Lora Reinbold
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 242 on behalf of the prime sponsor.

KRIS CURTIS, Legislative Auditor
Legislative Audit Division
Legislative Agencies and Offices
Juneau, Alaska

POSITION STATEMENT: Presented auditor findings and recommendations and answered questions during the discussion of HB 242.

LEANNE CARROTHERS, President
Alaska Physical Therapy Association
Las Vegas, Nevada

POSITION STATEMENT: Testified in support of HB 242.

KATHLEEN LIND, Chair
State Physical Therapy and Occupational Therapy Board
Anchorage, Alaska

POSITION STATEMENT: Testified during the discussion of HB 242.

ANNA LATHAM, Staff
Representative Kurt Olson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 141 on behalf of the sponsor, the House Labor & Commerce Committee, Representative Kurt Olson, Chair.

MICHAEL MONAGLE, Director
Central Office
Division of Workers' Compensation
Department of Labor & Workforce Development
Juneau, Alaska

POSITION STATEMENT: Testified during the discussion of HB 141.

JULIE CISCO, Risk Manager
Kenai Peninsula Borough School District (KPBSD)
Soldotna, Alaska

POSITION STATEMENT: Testified during the discussion of HB 141.

SALLY STUVEK, Human Resources Director
Fairbanks North Star Borough (FNSB)
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 141.

ACTION NARRATIVE

[3:20:03 PM](#)

CHAIR KURT OLSON called the House Labor and Commerce Standing Committee meeting to order at 3:20 p.m. Representatives Saddler, Josephson, Millett, Herron, Reinbold, and Olson were present at the call to order. Representatives Chenault arrived as the meeting was in progress. Representative Isaacson was also in attendance.

HB 234-EXTEND REGULATORY COMMISSION OF ALASKA

[3:20:25 PM](#)

CHAIR OLSON announced that the first order of business would be HOUSE BILL NO. 234, "An Act extending the termination date of the Regulatory Commission of Alaska; and providing for an effective date."

[3:20:29 PM](#)

REPRESENTATIVE MIKE HAWKER, Alaska State Legislature, as joint prime sponsor, stated that HB 234 proposes a reauthorization of the Regulatory Commission of Alaska (RCA) for eight years, consistent with the recommendations made by the legislative auditor. The legislative auditor determined that the RCA has met all the requirements for the extension. The scope of the sunset audit is to determine demonstrated public need for the RCA to continue and if it has been operating in an efficient and effective manner. Obviously it has since the legislative auditor has recommended extending the RCA for the maximum extension time. Others have characterized the bill as being complex, but it really is a straightforward reauthorization bill. Differences exist between disagreeing with the outcomes of a regulatory process, including a specific ruling, and a dysfunctional agency that is not operating well in accordance with statutes. He acknowledged that stakeholders often have disagreements with the RCA's outcomes, although it is universally recognized that the RCA is operating well in accordance with statutes.

REPRESENTATIVE HAWKER summarized that this bill recognizes that the RCA is functioning well and extends the commission for eight years. He specifically referred to the appendixes on pages 23-30 of the legislative audit [Audit Control Number 08-20079-13 dated July 19, 2013] in members' packets to the tariff survey results. This survey provides ratings by the users affected by the filings and dockets and user responses are very supportive. More specifically, he turned to pages [18-19] and reported that 70 percent answered that the RCA is operating between "good" or "very good" with only 8 percent answering "poor" or "very poor." Again, he said that the RCA has come a long way in maturity, personnel, and staffing, and its ability to meet the state's needs. He referred to page 31 of the audit to the financial analysis emphasizing that it is critical that the commission operates in a solvent manner. This analysis shows that regulatory cost charges are sufficient at this time to support the RCA's operations, he said.

[3:23:36 PM](#)

REPRESENTATIVE HAWKER pointed out the legislative audit identified two issues. He brought up audit recommendation 1, which read: RCA's chair should improve and enforce written procedures to ensure case management system data is accurate, consistent, and complete. He responded that this has been an

ongoing recommendation. In fact, this recommendation identifies a continuing process for every agency in the state. The aforementioned audit point is about the paperwork process, not about the functioning of the organization, how its rulings are achieved, or a dysfunction in the organization. He acknowledged that we can all improve, but this recommendation does not speak to a critical point on the commission's ability to function.

[3:24:50 PM](#)

REPRESENTATIVE HAWKER brought up the second audit recommendation, which read: The legislature should consider clarifying AS 42.05.175(e) to ensure RCA fulfills legislative intent when processing regulatory dockets. He offered his belief that this recommendation represents an honest difference of opinion between the RCA and its auditors on the interpretation of the RCA's process. He highlighted the legislature's prior issues with the RCA were related to the length of time it took to resolve issues and dockets that come before the RCA. He recalled in past years hearing constant concerns on the length of time to process a docket; however, he has not heard any concerns expressed from stakeholders in many years. He suggested the commission and auditors should sort out these details; however he argued that the aforementioned issues should be considered separate from the reauthorization of the commission. This audit recommendation raises the issue of whether the legislature would like to add more statutory guidance on how the commission operates. He concluded by urging members to pass out a "clean reauthorization" of the RCA and advised that any policy issues be addressed in a separate vehicle.

[3:26:25 PM](#)

REPRESENTATIVE MILLETT referred to the second recommendation and said the legislature has often debated the length of time it takes the RCA to complete a docket. While she understood the importance of timely decisions, it's also important to allow the RCA sufficient time on dockets. She characterized the issue as one of the toughest decisions for the commission to make, noting the difficulty the RCA must face to determine the appropriate time to spend. She said she somewhat disagrees with the auditors on this recommendation since opinions vary with respect to the time the RCA should take but, in fact, it's important that the RCA have sufficient time to thoroughly review dockets and arrive at the right decisions. She concluded by supporting

Representative Hawker's assessment of the second audit recommendation.

[3:28:34 PM](#)

KRIS CURTIS, Legislative Auditor, Legislative Audit Division, Legislative Agencies and Offices, reported that the division conducted a sunset audit of the RCA, [Audit Control Number 08-20079-13] dated July 19, 2013. The purpose of the audit was to determine whether the commission was operating in the public's interest and if the RCA's termination date should be extended. Overall, the audit concluded that the RCA is operating in the public's interest and the division determined the commission fulfills a public need and is serving Alaskans. The legislative audit recommended extending the RCA's termination date the maximum eight years until June 30, 2022. The audit does include two recommendations, but neither impacted the recommendation for extension.

MS. CURTIS reviewed the two recommendations. First, the audit found the commission only partially resolved a prior audit recommendation the RCA improve its case management system data. Essentially, auditors reviewed the data and found high error rates, that the audit recommended improvements.

MS. CURTIS informed members that the sunset audit made a new recommendation to clarify statutory timelines on rulemaking proceedings. Currently, the statutes require the RCA to issue a final order on a rulemaking docket no later than 730 days after complete petition for a regulatory change is filed or after the commission issues an initiating order for such proceedings. The statutes contain a provision for one 90-day extension for good cause; however, the statutes prohibit the RCA from terminating a proceeding and a docket and subsequently opening a proceeding in another docket on essentially the same matter. Auditors used statutory criteria to provide guidance when conducting the audit. The legislative auditors found that at times the RCA will split rulemaking proceedings into two dockets. First, the RCA will open a docket and consider whether a need for regulation exists in an area of interest and then close the docket after receiving testimony and comments. In instances in which the RCA determines regulations are needed, the RCA will open a second docket to consider adopting regulations. The auditors found this practice allows the RCA to take up to 4.5 years to complete its proceedings. However, the RCA's management has argued that including intent language in a regulatory docket's initiating order makes the process

transparent and complies with statutes. Granted, the legislative audit confirmed that the RCA included intent language as part of its dockets, which provides transparency; however, the sunset audit raises this issue for legislative consideration because it appears this practice evades the statutory timelines; however, it does not appear to serve the regulated community or the public's interest. She paraphrased the audit's second recommendation, which read: The legislature should consider clarifying AS 42.05.175(e) to ensure RCA fulfills legislative intent when processing regulatory dockets.

[3:31:40 PM](#)

REPRESENTATIVE HERRON asked whether the legislature has tried to clarify this provision.

MS. CURTIS answered that she did not know.

[3:32:02 PM](#)

REPRESENTATIVE REINBOLD acknowledged that exceeding the 720 days by taking up to 4.5 years on dockets could potentially be excessive. She asked whether this needs to be addressed by the legislature immediately or if the review could wait.

MS. CURTIS responded that the timing is up to the legislature to decide. She clarified that the legislative auditor raised the issue since during the audit the auditors test the RCA's dockets for compliance with statutes. In this regard, the statutes are open to interpretation, which highlights an area to further consider, she said.

[3:33:02 PM](#)

CHAIR OLSON remarked that the RCA's timeline was adjusted several years ago. He recognized that representatives of several regulated utilities are present today, as well as the RCA's chair. He deferred to the RCA's users and the RCA to testify on whether the process is working. He recalled complaints that were registered a number of years ago, in particular, one docket continued for a considerable time, somewhere between six and eight years. He further recalled a new timeline was started when each action taken on the aforementioned dockets; however, he has not received any recent complaints. He asked whether the audit would capture any complaints.

MS. CURTIS answered that a survey is conducted with stakeholders as part of the sunset audit and the results were overwhelmingly positive, which was reflected in the eight-year recommendation for the RCA's extension.

[3:34:11 PM](#)

REPRESENTATIVE JOSEPHSON asked whether the legislative auditor has any sense on whether rulings are typically issued within 18 months, which then lead to a second phase that subsequently results from facts.

MS. CURTIS reiterated that the RCA will open a docket to consider whether there is a need for regulation and once testimony is taken and reviewed, that docket is closed. At times, if regulations are needed the RCA will open a subsequent docket, she said.

[3:34:59 PM](#)

REPRESENTATIVE JOSEPHSON remarked that it appears as if the parties had a resolution on the dispute and the question is whether some regulation should be adopted to apply to all parties, which is the reason for the second docket.

MS. CURTIS elaborated that the RCA has four types of dockets, including complaints and regulatory dockets. She clarified that the second audit recommendation is solely related to regulatory dockets.

[3:35:35 PM](#)

REPRESENTATIVE MILLETT questioned the need for the second audit recommendation since there haven't been any recent complaints on lengthy decisions.

MS. CURTIS explained that the audit recommended extending the RCA for eight years, which definitely reflects the positive responses. She explained the process, such that auditors are required to determine whether the commission is serving the public's interest. The sunset audits typically accomplish this in different ways, and testing compliance with the statutory timeline is one. She pointed out that timelines are an important part of the RCA's statutes. More specifically, the aforementioned audit recommendation is not addressed to the commission but to the legislature. It highlighted the issue so the body can decide if it wants to clarify the timeline based on

legislative intent. If the legislative intent was for a docket to be completed within 730 days with one 90-day extension from beginning to end, well, that is not happening. However, if policymakers are satisfied with the RCA's interpretation of the statutes then no action will need to be taken.

REPRESENTATIVE MILLETT reiterated her point that there isn't any complaint and the process seems to be working so the matter doesn't seem to need to be addressed.

MS. CURTIS emphasized that the legislative audits will always highlight instances in which legislative intent does not appear to be met.

[3:37:57 PM](#)

T. W. PATCH, Commissioner, Chair, Regulatory Commission of Alaska (RCA), Department of Commerce, Community & Economic Development (DCCED), commended Ms. Curtis on the audit team's rigor and fairness. The first finding is simple and the RCA's response is included in members' packets. He said, "We can all do better." In fact, the RCA has been editing, revising, and cross training its staff on policies and procedures. Additionally, the RCA has been working on a new manual that will allow the RCA to accept tariff filings electronically, which should be completed later this year or early next year. He acknowledged that the change will save the regulated utilities time and money, as well as aid the RCA in the processing of its documents. He stated the electronic filing change has been more troublesome than he thought it would be; however, it is in process.

[3:40:30 PM](#)

MR. PATCH agreed that the second recommendation is made to the legislature; still, the RCA takes note of it. The enabling statutory provision dealing with timelines for the processing of dockets and AS 42.05.175(1) reads, "The commission may not evade the requirement of this section by terminating a proceeding in a docket and opening a proceeding in another docket on substantially the same matter." He contended that the consideration of a docket as to whether the need exists for additional regulation is one matter; whereas the consideration of the specific regulations to achieve an objective is another matter. He offered his belief that the RCA has not done anything to evade the legislative intent. He highlighted the specific case that led to this recommendation. He related a

scenario in which Representative Gruenberg once remarked that the discovery process made it easier for everyone. He agreed with Representative Gruenberg so the RCA subsequently opened a docket to consider whether the commission should adopt written regulations to set forth the RCA's discovery process. He recalled that the regulatory institution prior to the RCA, the Alaska Public Utilities Commission (APUC), also had discovery rules, but its rules were not written in regulation. The RCA responded to a subsequent legislative audit recommendation and opened a docket to consider whether the RCA should adopt regulations and if the commission should codify its existing practices in regulation or if it should identify the regulatory language. The RCA obtained public comment and the regulated utilities, and for purposes of clarity, terminated the first docket timely, and opened a new docket to adopt specific regulations.

[3:44:11 PM](#)

MR. PATCH concluded that the RCA and the Department of Law agreed that the RCA did not evade the legislature's intent. He further reported that the RCA ultimately adopted its regulations well within the timeline for the second docket. Certainly the process the RCA uses for its timeline could exceed the limits, but the RCA strives for appropriate timeliness. He characterized this issue as something the legislature doesn't need to worry about. Additionally, the RCA has adopted its own regulation that allows the RCA to gather information. He assured members that the RCA's record speaks for itself and the public is served.

[3:46:49 PM](#)

MR. PATCH detailed that reports to the legislature highlight that the timeline was cut to less than 300 days without the need for additional funding, staff, or authority. He offered his belief that there has not been any adverse impact to present a rate case, nor has there been any deterioration of the RCA's protection obligation for consumer impact. Therefore, for the most part, the RCA has reduced any regulatory risk. The consequences have resulted in improved credit ratings for larger public utilities, which in turn have improved the borrowing power for every business in Alaska. He encouraged members to review the report. He concluded that he hoped members would recognize the RCA's progress and vote to extend the RCA for eight years.

[3:49:49 PM](#)

REPRESENTATIVE HERRON asked whether Mr. Patch would object to clarification of "Recommendation No. 2."

MR. PATCH answered that he does object.

[3:50:49 PM](#)

TED MONINSKI, Attorney, Alaska Communications Systems (ACS), provided his background, noting he spent 10 years serving on the Alaska Public Utilities Commission - five as executive director - with an additional 22 years spent representing telecommunication companies including Alascom, the Anchorage Telephone Utility, and ACS before state and federal regulators. He offered Alaska Communications qualified support for HB 234. He offered two specific recommendations. First, given the importance of the RCA's work and the dynamics of utility regulation, it is imperative that the legislature review the performance of the commission at least every four years.

MR. MONINSKI stated the second recommendation is driven by the highly competitive nature of telecommunications markets in Alaska. He urged the legislature to take a meaningful step and relieve a significant paperwork burden on the RCA and regulated utilities by removing mandatory written tariffs and special contracts. He said that utilities require some level of government oversight, in particular, since monopolies have dissolved, the need for regulation has lessened and eventually will be eliminated. He provided background information on telephone markets, such that even the Federal Communications Commission (FCC) recognizes that Alaska has robust local competition. In response to the changing circumstances, the RCA has made limited procedural modifications to its regulations governing tariff filings, which became effective in 2005, he said.

[3:53:46 PM](#)

MR. MONINSKI explained that by allowing tariffs and contracts to go into effect more quickly, the regulations continued the requirement, that virtually every aspect of local exchange operations and pricing be supported by a currently effective tariff. In addition to preparing and filing these special contracts, the RCA and regulated companies must maintain virtually "thousands of pages of tariff documents" and update them each time a change is made. However, in the ten years

since regulations were modified there hasn't been any consumer complaint on tariff filings and only limited request for clarification from the RCA's staff. He asked, "What's the problem?" He answered the aforementioned question by stating that in highly competitive markets with satisfied consumers, companies must document every aspect of their businesses and spend countless hours of unnecessary preparation time. Further, the RCA must use its scarce resources and also maintain its tariff documents. He urged the legislature to alleviate this issue and modify the RCA's enabling statute to remove tariff requirements in instances in which market forces are at work through competition. He concluded that with these qualifiers, the Alaska Communications supports the reauthorization of the RCA.

[3:56:14 PM](#)

MARK MODEROW, Senior Counsel, Legal & Regulatory Department, GCI, indicated that the RCA has built a solid record of performance and responsiveness under the timelines adopted. He testified in support of HB 234 as written. He said the new issue raised by ACS of an apparent de-tariffing seems premature. He highlighted that ACS hasn't brought this issue to any industry discussion nor has it availed itself of any agency process. Based on his 23 years of working within this industry, the level of competition varies greatly by geographic and project market, even within Alaska. He asserted that in terms of telecommunications, Alaska does not have a uniform playing field. He further said that determinations and assessments are based on facts, appropriately made by the RCA, which is a process that is functioning quite well.

MR. MODEROW noted that de-tariffing at the state level is not entirely covered by the state jurisdiction and depending on the issue may still be directed by the federal jurisdiction, which would take the RCA out of this equation. In those instances, the companies would lose local control and be guided by the federal jurisdiction. He concluded that the RCA has built a solid record and performance; thus, GCI supports "a clean extension" bill.

CHAIR OLSON reiterated that the committee has established a record by keeping sunset bills clean. He said he plans to continue do so. Other issues are best placed on "stand alone" bills.

[4:00:12 PM](#)

CHAIR OLSON, after first determining no one else wished to testify, closed public testimony on HB 235.

REPRESENTATIVE REINBOLD indicated the ACS testified and requested reducing unnecessary paperwork. She asked whether there is any way to streamline this process.

MR. PATCH answered that he did not come prepared to discuss the ACS tariff today. He offered that Mr. Moninski could bring petition to the RCA to deregulate any specific market that was adequately competitive, on the basis of fact determination. He recalled an instance of the RCA deregulating competitive refuse collection utility services, which has worked well. He anticipated the same for deregulated telecommunication markets. He further anticipated that handling tariff filings electronically will also help, but that effort is still in testing. He hoped to move towards electronic filings, which may not eliminate the concern, but will be a positive step.

[4:04:09 PM](#)

MR. PATCH offered to further consider how to reduce unnecessary paperwork.

REPRESENTATIVE REINBOLD remarked that anything that can be done to modernize the process and not burden businesses would be appreciated.

MR. PATCH responded that one benefit of written tariff books is that it informs the RCA and the public. It provides a promise to ratepayers and customers how business will operate. He assured members that having rules in writing provides business clarity and customer protection; however, that doesn't mean additional improvements can't be made.

[4:05:51 PM](#)

REPRESENTATIVE REINBOLD remarked that she enjoyed visiting the RCA and thanked Mr. Patch.

MR. PATCH responded that he could not do anything without his tremendously dedicated staff.

[4:06:47 PM](#)

REPRESENTATIVE REINBOLD moved to report HB 234 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 234 was reported from the House Labor and Commerce Standing Committee.

The committee took an at-ease from 4:06 p.m. to 4:10 p.m.

HB 242-EXTEND PT & OCCUPATIONAL THERAPY BOARD

[4:10:20 PM](#)

CHAIR OLSON announced that the next order of business would be HOUSE BILL NO. 243, "An Act disapproving all recommendations of the State Officers Compensation Commission relating to the salaries of state officers; and providing for an effective date."

[4:10:37 PM](#)

CRYSTAL KOENEMAN, Staff, Representative Lora Reinbold, Alaska State Legislature, stated that HB 242 would extend the state Physical Therapy and Occupational Therapy Board and the Legislative Audit Division recommended full eight-year extension until June 30, 2022. The audit determined that the Physical Therapy and Occupational Therapy Board is operating in the public's interest by licensing and regulating physical therapists, physical therapy assistants, occupational therapists, and occupational therapy assistants. The audit recommended that the Division of Corporations, Business & Professional Licensing within the Department of Commerce, Community & Economic Development (DCCED) continue efforts to improve the integrity and confidentiality of the division's investigative case management system.

[4:11:41 PM](#)

KRIS CURTIS, Legislative Auditor, Legislative Audit Division, Legislative Agencies and Offices, reported that the division conducted a sunset audit of the State Physical Therapy and Occupational Therapy Board [Audit Control Number 08-20083-13] dated June 17, 2013. Ms. Koeneman accurately summarized the results of the audit. The legislative audit made one recommendation, that the Division of Corporations, Business & Professional Licensing (DCBPL) within the Department of Commerce, Community & Economic Development (DCCED) continue efforts to improve the integrity and confidentiality of the division's investigative case management system and the

division's investigative support to the board. She acknowledged that the system has some problems; however, the DCBPL has been working at addressing them. She related that the division has made the same recommendation to all five occupational sunset audits conducted in 2013.

[4:13:11 PM](#)

LEANNE CARROTHERS, President, Alaska Physical Therapy Association, said she would like to testify in support of the bill and the extension of the State Physical Therapy and Occupational Therapy Board, which serves efficiently and effectively in its role of providing public protection.

[4:14:17 PM](#)

KATHLEEN LIND, Chair, State Physical Therapy and Occupational Therapy Board, thanked the audit team for the fairness of its audit. She concluded by saying she appreciated the auditor's recommendation.

[4:15:05 PM](#)

CHAIR OLSON, after first determining no one else wished to testify, closed public testimony on HB 242.

REPRESENTATIVE REINBOLD moved to report HB 242 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 242 was reported from the House Labor and Commerce Standing Committee.

[4:15:39 PM](#)

The committee took an at-ease from 4:15 p.m. to 4:18 p.m.

HB 141-WORKERS' COMPENSATION MEDICAL FEES

[4:18:29 PM](#)

CHAIR OLSON announced that the final order of business would be HOUSE BILL NO. 141, "An Act setting the fee for medical treatment or services performed outside the state under the Alaska Workers' Compensation Act, requiring a provider of medical treatment or services under the Alaska Workers' Compensation Act to submit bills for treatment or services to employers within 180 days after the date the treatment or services are rendered, and limiting the time for appealing an

employer's denial or reduction of a bill; and providing for an effective date."

4:18:54 PM

REPRESENTATIVE JOSEPHSON declared a conflict of interest. He stated that he has an ongoing workers' compensation claim that is unresolved.

CHAIR OLSON asked whether the case is an out-of-state claim.

REPRESENTATIVE JOSEPHSON answered yes.

CHAIR OLSON responded that he did not think any conflict of interest exists.

4:19:20 PM

CHAIR OLSON stated that the committee will be reviewing the original bill rather than a proposed amendment [not offered, but in members' packets]. The bill contains "180 days versus 45 or 90 days," which will make sense to some public members listening today. He explained that the difference in that breakdown was not significant to the overall goal of the bill and the proposed changes could have further complicated matters which might have adversely impacted Alaska's hospitals more than out-of-state hospitals.

4:19:53 PM

ANNA LATHAM, Staff, Representative Kurt Olson, Alaska State Legislature, read the bill title, as follows:

An Act setting the fee for medical treatment or services performed outside the state under the Alaska Workers' Compensation Act, requiring a provider of medical treatment or services under the Alaska Workers' Compensation Act to submit bills for treatment or services to employers within 180 days after the date the treatment or services are rendered, and limiting the time for appealing an employer's denial or reduction of a bill; and providing for an effective date.

MS. LATHAM explained that HB 141 does two things. First, the bill will set the fee schedule for workers' compensation claims treated outside Alaska. Second, the bill establishes workers'

compensation billing timelines. She provided background information, including that in 2011, the legislature passed House Bill 13, which established a comprehensive workers' compensation fee schedule. The schedule couldn't exceed usual, customary, and reasonable (UCR) rates, based on the UCR fee schedule and was reflective of the geographical areas for the services rendered at the 90th percentile. However, the aforementioned bill failed to identify any parameters for locations for which the fee schedule could be used. She reported that Alaska has the highest workers' compensation rates in the nation. Since 1986, the Oregon Department of Business and Consumer Services has conducted a biennial study that is considered the industry standard. Unfortunately, for the past ten years, Alaska has been ranked in the first or second place for the highest workers' compensation insurance premium rates in the nation.

[4:21:44 PM](#)

MS. LATHAM provided some discrepancies between Alaska's rates and those in the Lower 48. She drew attention to the top 25 procedure codes in members' packets entitled, "Top 25 Surgery Procedure Codes Ranked by Paid Amounts (47% of total surgical payments)" and asked members to compare Alaska's workers' compensation fee schedule to Washington, Oregon, and Idaho's fee schedules. While rates vary somewhat, Alaska's rates are extremely high. She referred to page 40 of the report entitled, "Medical Data Report for the state of Alaska dated September 2013." She explained that this chart ranks the top ten diagnostic codes by total claim payments and the International Classification of Diseases (ICD-9) codes by total claim payments. She specifically referred to the ICD-9 code 722.10 for displacement of lumbar intervertebral disc without myelopathy [at the bottom of page 40], and pointed out that the National Council on Compensation Insurance (NCCI) indicated that the average payment in Alaska at \$31,177 compared to \$17,049 nationwide. She reported that this represents a \$14,128 cost difference for only one procedure, noting Alaska's rates are 182 percent higher than the national average. Further, nothing in Alaska's statutes prevents a claim treated outside Alaska from being billed at Alaska's rates; however, HB 141 would change that practice. Medical services treated in Alaska would be charged using the UCR fee schedule established in 2001. Any medical services treated outside Alaska couldn't exceed the charges set by the workers' compensation statutes of the state where services were rendered.

MS. LATHAM said the bill would also set billing timelines and require a provider submit bills for treatment to employers within 180 days after the date the treatment is rendered. It would also limit time to appeal an employer's denial of a reduction of a bill to 60 days. The bill has an immediate effective date and contains a retroactivity clause, as well as transition language. The transition language allows medical providers to submit bills for service within 180 days of the effective date, irrespective of the date of service, and allows providers to submit an appeal for denied payment within 60 days of the effective date. She summarized that HB 141 will set reasonable timelines for billings, provides certainty for employers and insurers, fixes some loopholes in House Bill 13, and makes incremental changes to existing statutes. These changes should provide stability and prevent further increases to workers' compensation insurance rates.

[4:24:39 PM](#)

REPRESENTATIVE JOSEPHSON pointed out that the high cost of medicine and the 182 percent disparity goes far to address Alaska's high premium rates.

MS. LATHAM agreed premium rates are an issue.

CHAIR OLSON said medical costs are approximately 80 percent of the amount paid on workers' compensation cases. The costs are significant. He informed members that the committee will consider three additional workers' compensation bills that could impact workers' compensation laws. This bill provides the "first leg" of the stool. He offered his belief that when the bills are considered in their entirety, they could provide consumers some reasonable savings. He advised members that he has held discussions with the national organization that sets rates, NCCI, and if the bills pass the state will move in the right direction. He said he would be happy with a 15-20 percent reduction in insurance rates, which has happened in other states that have implemented serious reform. Again, he cautioned that this bill is only one segment. He reported that about 20 percent of the workers' compensation injuries are treated outside Alaska. He explained that this issue arose when an original billing used a lower rate [based on the Lower 48 state's rate], but once an audit was done, the claim was subsequently rebilled [using Alaska's higher rate]. However, the Alaskans were treated in the Lower 48 state and not in Alaska.

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REPRESENTATIVE JOSEPHSON appreciated the explanation. He asked whether the medical providers find 60 days to be sufficient to appeal or reject a bill. He added that he represents the business interests of most of the medical community in his district.

MS. LATHAM said the sponsor has not received any letters from the medical community.

CHAIR OLSON remarked that the bill was introduced last legislative session.

[4:28:14 PM](#)

REPRESENTATIVE HERRON asked how many states have a provision that allows them to bill at the Alaska rate rather than using their own workers' compensation rates.

MS. LATHAM answered none. She explained that states use one of two fee schedules, either the UCR or else a Resource Based Relative Value Scale (RBRVS), noting 43 states have adopted one of the two schedules. Additionally, some states have reciprocal agreements with other states, but to her knowledge no other state has adopted this approach.

[4:29:02 PM](#)

REPRESENTATIVE HERRON asked how much money the state has lost in the past few years because of the workers' compensation billing practices used by other states.

MS. LATHAM answered that she did not have any quantifiable data; however, she offered to provide data on cases that have been "back billed." She reported that about 24 percent of workers' compensation cases seek treatment outside Alaska.

CHAIR OLSON estimated the companies impacted probably represent approximately 80 percent of the workers' compensation premiums in the state. He characterized this as a "right and wrong" issue since the claims are initially billed out for an Alaska patient being treated outside Alaska. This bill attempts to try to fix an "abuse" of the system issue.

REPRESENTATIVE HERRON agreed. He thought it was appropriate and also characterized the current practice as "a matter of right and wrong."

[4:30:40 PM](#)

MICHAEL MONAGLE, Director, Central Office, Division of Workers' Compensation, Department of Labor & Workforce Development, in response to Chair Olson's question, on whether the division tracks the percentage of claims being treated outside Alaska, answered no. He explained that the National Council on Compensation Insurance (NCCI) began a medical data call several years ago. The NCCI released its first data cut for Alaska in January 2013, with a follow-up report in September 2013. He reported that the NCCI's figures show that 24 percent bills are out-of-state billings. He stated that the division performs a cost of living adjustment every three years. Additionally, the division extracts the numbers of people living outside Alaska and he reported that approximately 300 claimants are currently receiving ongoing benefits out-of-state, but in most instances people are treated out-of-state and return to Alaska. He did not believe that the aforementioned Alaska residents are permanently residing outside Alaska.

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REPRESENTATIVE JOSEPHSON asked whether the department is concerned about bills that may be lost due to clerical errors or third-party payer systems, relative to the 60-day deadline. For example, part of the HB 141 is designed to respond to a recent Seattle decision in which the courts ordered that a \$199,000 workers' compensation bill be paid. He remarked that is a big bill to have "lost in the mail." He wondered if the provider should receive certified mail.

MR. MONAGLE said the division rarely reviews medical records since the billing is between the provider and the payer. The division receives medical records when there is a dispute between the provider and the payer, either through a reduction or a denial of the bill. In those instances the provider will come before the Workers' Compensation board to file a claim.

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REPRESENTATIVE JOSEPHSON characterized the division as serving as a referee in disputes.

MR. MONAGLE answered yes; that the division serves as a records' custodian and keep case files for the 19,000 reports of workers' compensation injuries and the subsequent reports as well as administering the adjudication process when disputes occur.

[4:35:06 PM](#)

JULIE CISCO, Risk Manager, Kenai Peninsula Borough School District (KPBSD), referred to a letter in members' packets from Dave Jones, Assistant Superintendent of the KPBSD. She reported that the KPBSD's per claim costs have increased approximately 400 percent in the past four years, of which approximately 80 percent is for medical cost. The school district needs some way to contain costs. In the past, one option was to send people out-of-state for treatment and pay the lower state fees. That option vanished several years ago when a Lower 48 hospital discovered a loophole and re-billed the KPBSD for several years' worth of procedures. She urged members to support HB 141.

CHAIR OLSON asked whether the KPBSD is a member of a pool or if the borough is a qualified self-insurer.

[4:36:48 PM](#)

MS. CISCO answered that the KPBSD is self-insured for the first \$250,000 per claim, but above that the district buys excess insurance through the Alaska Municipal League's (AML) pool.

CHAIR OLSON said that explains why the KPBSD has been tracking the claims so closely.

MS. CISCO agreed; noting that this represents "first dollar" for the first \$250,000, without any aggregate limit. Thus, the KPBSD could have 100 claims breach that limit.

[4:37:14 PM](#)

CHAIR OLSON highlighted that in the past couple of weeks that his office has been contacted by a number of self-insurers or pool members with a large retention who have been "hit" by outside hospitals so it is not just primary insurers who have been adversely affected.

[4:37:39 PM](#)

SALLY STUVEK, Human Resources Director, Fairbanks North Star Borough (FNSB), said she oversees risk management, which handles

workers' compensation for the FNSB and the FNSB School District (FNSBSD). The combined plans for the FNSB and the school district's workers' compensation plan is a self-funded program. She reported that the FNSB spends approximately \$1 million on workers' compensation benefits. The FNSB continues to see medical costs increase. The regulation of fees and charges for medical treatment, medical equipment, and prescription drugs would reduce overall workers' compensation costs. She stated that assuring a schedule for out-of-state provided service would have a positive impact on the overall costs for workers' compensation. She said the administration of the FNSB fully supports the components listed in HB 141. She concluded her testimony by reporting that the FNSB assembly will consider a resolution on February 13, 2014. She offered her belief that this bill creates a reasonable timelines for billing services and for the appeal period.

CHAIR OLSON, after first determining no one else wished to testify, closed public testimony on HB 141.

[4:39:39 PM](#)

REPRESENTATIVE JOSEPHSON offered his sense that HB 141 makes positive adjustments to existing practice. He noted that subsection (f) of the aforementioned statute, makes it clear that if something is a covered event under the workers' compensation law, such that any delay by the provider submitting the bill can't fall on the worker.

CHAIR OLSON indicated Mr. Monagle has nodded yes.

[4:40:39 PM](#)

REPRESENTATIVE JOSEPHSON referred to decision he previously read the Barrington decision [Alaska Workers' Compensation Appeals Commission - Dr. Edward Barrington, Appellant, vs. Final Decision February 12, 2007] that makes it a little murky, but ultimately reaches that conclusion. He said that sometimes a provider doesn't know a settlement has occurred. He remarked that HB 141 is simple enough; however, the law of workers' compensation, including regulations and procedures is "utterly complicated." Thus, even though HB 141 looks straightforward, it isn't clear how the bill will ultimately affect the outcome; although it seemed reasonable that six months will allow sufficient time for providers to submit a bill. He further noted that a worker is still allowed to go to the nearest point for adequate help even if it is in California. He offered his

belief that Alaska is improving [in providing all types of medical procedures], especially in Anchorage.

[4:42:04 PM](#)

REPRESENTATIVE REINBOLD moved to report HB 141 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 141 was reported from the House Labor and Commerce Standing Committee.

[4:42:27 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:42 p.m.