

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

March 19, 2014

3:23 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**

Representative Craig Johnson

**COMMITTEE CALENDAR**

HOUSE CONCURRENT RESOLUTION NO. 15

Relating to the continuation of the Task Force on Unmanned Aircraft Systems.

- MOVED CSHCR 15(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 370

"An Act relating to employer drug testing; requiring the Alaska Workers' Compensation Board to adopt regulations relating to the prescription of controlled substances to employees; and limiting the prescription of controlled substances to employees."

- HEARD & HELD

HOUSE BILL NO. 152

"An Act requiring certain employers who terminate participation in the defined benefit retirement plan or the defined contribution retirement plan of the Public Employees' Retirement System to make contributions related to past service liability and pay termination costs; repealing a requirement that employers who terminate participation in the defined contribution retirement plan or the defined benefit retirement plan of the Public Employees' Retirement System pay for a termination cost study; and providing for an effective date."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HCR 15

SHORT TITLE: TASK FORCE ON UNMANNED AIRCRAFT SYSTEMS

SPONSOR(s): REPRESENTATIVE(s) HUGHES

01/21/14	(H)	READ THE FIRST TIME - REFERRALS
01/21/14	(H)	L&C
02/21/14	(H)	L&C AT 3:15 PM BARNES 124
02/21/14	(H)	Heard & Held
02/21/14	(H)	MINUTE(L&C)
03/05/14	(H)	L&C AT 3:15 PM BARNES 124
03/05/14	(H)	-- MEETING CANCELED --
03/10/14	(H)	L&C AT 3:15 PM BARNES 124
03/10/14	(H)	Scheduled But Not Heard
03/19/14	(H)	L&C AT 3:15 PM BARNES 124

BILL: HB 370

SHORT TITLE: AWCB CONTROLLED SUBSTANCE PRESCRIPTIONS

SPONSOR(s): LABOR & COMMERCE

03/03/14	(H)	READ THE FIRST TIME - REFERRALS
03/03/14	(H)	L&C, JUD
03/19/14	(H)	L&C AT 3:15 PM BARNES 124

BILL: HB 152

SHORT TITLE: PERS TERMINATION COSTS

SPONSOR(s): THOMPSON

03/04/13	(H)	READ THE FIRST TIME - REFERRALS
03/04/13	(H)	L&C, FIN
04/05/13	(H)	L&C AT 3:15 PM BARNES 124
04/05/13	(H)	Heard & Held
04/05/13	(H)	MINUTE(L&C)
03/05/14	(H)	L&C AT 3:15 PM BARNES 124
03/05/14	(H)	-- MEETING CANCELED --
03/10/14	(H)	L&C AT 3:15 PM BARNES 124
03/10/14	(H)	Heard & Held
03/10/14	(H)	MINUTE(L&C)
03/19/14	(H)	L&C AT 3:15 PM BARNES 124

**WITNESS REGISTER**

REPRESENTATIVE SHELLEY HUGHES  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Testified as prime sponsor of HCR 15.

KONRAD JACKSON, Staff  
Representative Kurt Olson  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Explained Amendment 1 to HCR 15 on behalf of the sponsor, House Labor & Commerce Committee, Representative Kurt Olson, Chair.

JANE DALE, Legislative Affairs  
Alaska Air Carriers Association (AACA)  
Willow, Alaska

**POSITION STATEMENT:** Testified during the discussion of HCR 15.

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

**POSITION STATEMENT:** Testified on HB 370 on behalf of the sponsor, the House Labor & Commerce Committee, Representative Kurt Olson, Chair.

LORI WING-HEIER, Acting Director  
Division of Insurance (DOI)  
Department of Commerce, Community & Economic Development (DCCED)  
Anchorage, Alaska

**POSITION STATEMENT:** Testified and answered questions during the discussion of HB 370.

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

**POSITION STATEMENT:** Answered questions regarding HB 370.

SIDNEY SEE  
Juneau, Alaska

**POSITION STATEMENT:** Testified during the discussion of HB 370.

JANE PIERSON, Staff  
Representative Steve Thompson  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Testified during the discussion of HB 152.

MICHAEL BARNHILL, Deputy Commissioner

Department of Administration (DOA)  
Juneau, Alaska

**POSITION STATEMENT:** Testified regarding HB 152.

KATHY LEA, Deputy Director  
Central Office; Retirement and Benefits  
Department of Administration (DOA)  
Juneau, Alaska

**POSITION STATEMENT:** Testified during the discussion of HB 152

KATHIE WASSERMAN, Executive Director  
Alaska Municipal League (AML)  
Juneau, Alaska

**POSITION STATEMENT:** Testified during the discussion of HB 152

#### **ACTION NARRATIVE**

[3:23:42 PM](#)

**CHAIR KURT OLSON** called the House Labor and Commerce Standing Committee meeting to order at 3:23 p.m. Representatives Herron, Josephson, Reinbold, and Saddler and Olson were present at the call to order. Representatives Millett and Chenault arrived as the meeting was in progress.

#### **HCR 15-TASK FORCE ON UNMANNED AIRCRAFT SYSTEMS**

[3:23:56 PM](#)

CHAIR OLSON announced that the first order of business would be HOUSE CONCURRENT RESOLUTION NO. 15, Relating to the continuation of the Task Force on Unmanned Aircraft Systems.

[3:24:56 PM](#)

REPRESENTATIVE SHELLEY HUGHES, Alaska State Legislature, stated that the resolution will allow the Task Force on Unmanned Aircraft Systems to continue. The task force was formed last year and primarily addressed privacy and law enforcement use. She described the technology as emerging technology and anticipated other issues will surface and HCR 15 would allow the task force to continue to operate. The task force's approach has been to address problems as they arise. She said resolution also will change the membership.

[3:26:34 PM](#)

REPRESENTATIVE REINBOLD made a motion to adopt Amendment 1, labeled 28-LS1190\U.2, Strasbaugh, 3/4/14.

Page 1, line 1:

Delete "**the continuation of**"

Page 2, following line 22:

Insert a new paragraph to read:

"(2) the commissioner of commerce, community, and economic development or the commissioner's designee;"

Renumber the following paragraph accordingly.

Page 2, line 23:

Delete "one"

Insert "three"

Delete "member"

Insert "members"

Page 2, line 24, following "representatives":

Insert ", two of whom shall be participants in the unmanned aircraft system industry who have experience operating unmanned aircraft systems"

Page 3, line 13, following "systems":

Insert "to encourage development of the private sector unmanned aircraft system industry"

CHAIR OLSON objected for the purpose of discussion.

[3:26:51 PM](#)

KONRAD JACKSON, Staff, Representative Kurt Olson, Alaska State Legislature, stated that that Amendment 1 was developed in conjunction with the sponsor and other members. He explained the idea is to make the Task Force on Unmanned Aircraft more commerce friendly. Amendment 1 adds the commissioner of DCCED or the commissioner's designee to the task force. It would also add two additional public members to encourage public participation. He referred to lines 18-19 of Amendment 1, which require two public members who have experience piloting unmanned aircraft. He also referred to lines 22-23 of Amendment 1, which encourages the task force to develop the private sector unmanned aircraft system industry in the state.

CHAIR OLSON removed his objection. There being no further objection, Amendment 1 was adopted.

[3:28:41 PM](#)

JANE DALE, Legislative Affairs, Alaska Air Carriers Association (AACA), stated that ACCA has supported the work the Task Force on Unmanned Aircraft has done to clarify privacy issues and to further the integration of the unmanned aircraft systems (UAS) into the system. As they become part of the aviation culture and further commerce in Alaska, the AACA supports the extension of the UAS task force to 2017. The ACCA also supports adding a seat for the ACCA's membership on the task force since its membership currently encounters the craft in national airspace. The U.S. Department of the Interior (DOI) recently received Federal Aviation Administration's (FAAs) approval for unmanned air system use that streamlines past procedures for operation. She related that University of Alaska (UA) is operating UAS under the auspices of research and this past year launched the first commercial endeavor. These successes come with concerns, conflicts, and potential issues from traditional air carriers operations so air carriers would appreciate participating in the task force to research and make recommendations to resolve issues. She thanked members for the opportunity to testify.

[3:30:34 PM](#)

CHAIR OLSON, after first determining no one else wished to testify, closed public testimony on HCR 15.

REPRESENTATIVE HERRON jested that he hoped by the end of task force at least one legislator will know how to operate the UAS.

[3:31:24 PM](#)

REPRESENTATIVE REINBOLD moved to report HCR 15, as amended, out of committee with individual recommendations and the accompanying fiscal note. There being no objection, the CSHCR 15 (L&C) was reported from the House Labor and Commerce Standing Committee.

[3:31:55 PM](#)

The committee took an at-ease from 3:31 p.m. to 3:34 p.m.

**HB 370-AWCB CONTROLLED SUBSTANCE PRESCRIPTIONS**

[3:34:33 PM](#)

CHAIR OLSON announced that the next order of business would be HOUSE BILL NO. 370, "An Act relating to employer drug testing; requiring the Alaska Workers' Compensation Board to adopt regulations relating to the prescription of controlled substances to employees; and limiting the prescription of controlled substances to employees."

[3:34:40 PM](#)

ANNA LATHAM, Staff, Representative Kurt Olson, Alaska State Legislature, stated that HB 370 requires Alaska Workers' Compensation Board (AWCB) to adopt regulations relating to limiting controlled substances to employees. Section 1 would authorize employers to drug test injured workers for controlled substances prescribed to the employee listed in schedule IA under AS 11.70.140 if the employee has been prescribed a controlled substance for more than 90 days as the result of a workers' compensation claim.

MS. LATHAM related that Section 2 requires the Workers' Compensation Board to adopt regulations relating to the prescription of controlled substances to implement Section 3. Section 3 would limit a physician's prescription of a controlled substance listed in schedule IA under AS 11.71.140, or a controlled opium substance in schedule IIIA under 11.71.160, or schedule VA under AS 11.71.180. She stated that HB 370 will discourage the use of long-term opioids by restricting the prescription to a 30-day supply. In addition, the bill would allow employers to drug test employees who have been prescribed schedule IA controlled substances for more than 90 days, primarily to see if the prescription is being diverted. Statistics show that one in four prescriptions are used by someone who has not been prescribed the medication. These prescriptions are paid for by the employer, directly or through insurance premiums.

MS. LATHAM stated that the drugs referred to in HB 370 are synthetic versions of opium derived drugs. Under AS 11, controlled substances are classified into six categories, with schedule IA having the highest degree of danger to the public and Schedule VI having the lowest degree of danger. For example, morphine is classified as a schedule IA drug, marijuana is classified as a schedule VI drug, and schedule IIIA and VA drugs are considered opioid derivatives that vary in strength, including drugs such as codeine. The use of higher dosage can

lead to addiction, increased disability, work loss, and even death. She referred to statistics in members' packets on workers' compensation claims.

[3:37:51 PM](#)

MS. LATHAM stated that last year, approximately 200 deaths due to opioid abuse were a result of workers' compensation claims. Not only is prescription drug abuse a public health and safety issue, prescriptions are also a "cost driver" for workers' compensation premiums. Alaska has the highest workers' compensation insurance premiums in the nation. In 2011, prescription drugs comprised almost 20 percent of medical costs for workers' compensation claims in Alaska. Prescriptions were covered by workers' compensation in 90 percent of the cases of workers who missed a week or more of work. Sixty to 80 percent of workers' compensation injured workers received opioids as part of their prescribed medicines. Alaska, along with many other states, has been working to address the overuse and misuse of opioids, and many states have also implemented reforms. Some states have restricted physician dispensing practices, implementing pain management guidelines and restricting the dosages and length of time that opioids can be prescribed. Additionally, there has been an increase in the use of random drug testing in workers' compensation claimants who use long-term narcotics.

[3:39:19 PM](#)

MS. LATHAM shared statistics in members' packets from the Lockton report [August 2012]. In a 2011 report, based on a sample of 939,000 screenings, 71 percent of workers' compensation claimants on chronic opioid therapy are not taking their pain medication as prescribed due to misuse or abuse; 38 percent of patients were found to have no detectable level of prescribed medication in their system; 29 percent had nonprescribed medication; 27 percent had drug levels that were higher than expected; and 11 percent had illicit drugs in their system. These 2011 statistics were based on a sample of 939,000 screenings, she said. She emphasized that the statistics reiterate the need for opioid prescriptions and allowing employer drug testing in workers' compensation claims.

[3:40:36 PM](#)

CHAIR OLSON reported on other bills the committee has been working on including one that will address physician dispensing

of opioids, including one for possible introduction next year to address best practices for pain management that will tie in with this issue and a fee schedule bill. He reported that many jurisdictions are working on bills similar to HB 370, which is having a significant impact on workers' compensation. He said if patients are not taking their medication they may not be in pain and may have found a new job. He said the intention of this bill is not to step between the doctor and the patient, but to support the belief that doctors should see their patient more often before providing automatic refills on drugs such as Oxycontin.

[3:42:32 PM](#)

REPRESENTATIVE JOSEPHSON asked whether the goal is to look for criminal misconduct.

MS. LATHAM answered no; however, the main intent of the bill is to lower costs for workers' compensation premiums. Thus, one way to cut costs is to restrict insurance from paying for opioid prescriptions that patients have not been taking.

[3:43:11 PM](#)

REPRESENTATIVE JOSEPHSON understood that patients may take too many or too few pills. He asked whether she could identify the stronger goal.

MS. LATHAM answered that the sponsor is particularly concerned with prescriptions that are not being taken by patients. The reason she mentioned the widespread abuse due to widespread prescription drug abuse and that topic could render some familiarity for members. The intent of the legislature is to monitor workers' compensation patients taking opioids and ensure that employers do not pay for prescriptions being paid for under workers' compensation if the patients are not taking the drugs.

CHAIR OLSON commented that urinalysis (UA) has been used in a number of occupations for a variety of reasons. In this instance, if the urinalysis test comes back "clean" and the patient is still collecting prescriptions, it is automatically assumed the injured worker is ready to go back to work or they have a new profession and the drugs are being diverted to someone who is not the patient.

[3:44:34 PM](#)

REPRESENTATIVE JOSEPHSON reported that four major U.S. Supreme Court cases and at least one major Alaska Supreme Court Case have been issued [regarding drug testing]. These are considered searches under the fourth amendment [of the U.S. Constitution]. That doesn't mean that the testing can't sometimes be done, but there is a "special needs" test required. He asked whether anyone has vetted this bill with the legislative legal counsel on whether the "special needs" test has been met.

MS. LATHAM answered no; however, the statute that this bill falls under is within employer policies so it would allow employers to recognize that drug testing will be part of the condition for employment.

[3:45:42 PM](#)

REPRESENTATIVE JOSEPHSON related a scenario in which the patient/workers' compensation claimant simply didn't want to develop a habit and made the decision not to take the prescription. He asked whether it can be inferred that the patients must be "dealing the drugs."

MS. LATHAM answered absolutely not. She indicated that if the patients are restricted to a 30-day supply and the employees chose not to take the drugs, there wouldn't be any reason for the employees to obtain more than a 30-day.

CHAIR OLSON added that the doctor can renew the prescription, but the bill requires some oversight and not allow the patient to have over three months of prescription drugs.

MS. LATHAM offered her belief that approximately 15 states have enacted something similar.

CHAIR OLSON also added that it has been "court-tested" in those states.

[3:46:54 PM](#)

REPRESENTATIVE JOSEPHSON referred to a 2001 EPD decision, which emphasizes the privacy clause. He asked whether this would result in more workers' compensation litigation because employers and their insurance companies said, "You're not truly injured. You couldn't because you're not taking your meds. Your pain must not be that great. Therefore, you're healed." He wondered if there is any concern that this could create other sorts of problems.

MS. LATHAM did not believe that HB 370 would lead to increased litigation, but it most likely will stop extra prescriptions from being written and not being taken by the patients.

CHAIR OLSON noted the departments could also testify.

[3:48:02 PM](#)

REPRESENTATIVE MILLETT related her recent experience with a series of back problems, noting she was shocked at the amount of a 90-day supply of opioids, including Valium and Xanax. Obtaining a 90-day supply meant that she didn't need to see her doctor during that period. Although she acknowledged that she is not on a workers' compensation claim she also recognized a distinct need to keep workers' compensation claims costs down. She suggested limiting the aforementioned prescription drugs to a 30-day supply, which should be sufficient for injured workers in an ongoing workers' compensation claim.

REPRESENTATIVE MILLETT said she was astonished this [limit] hasn't been previously put in place since one problem the police encounters is the sale of illegal prescription drugs. One of her prescriptions got stolen, noting insurance will not pay for it unless the theft was reported to police. She reiterated her surprise at the amount of opioids in a 90 day supply, noting that some of drugs cost upwards of \$2,000. She emphasized the importance to have control over that process to have patients see their doctors for continuation of care, with the outcome and goal to have the workers' compensation claimant go back to work. She appreciated HB 370, especially due to the understanding she gained from her own experience with chronic back problem since it helped illustrate the quantity of drugs. She emphasized that this bill attempts to try to keep illegal drugs off the street and ensure that workers' compensation claimants are using the drugs in an efficient manner with the goal to get workers' compensation claimants back to work, since medical costs is one of the biggest expenditures for employers and the state.

[3:52:03 PM](#)

REPRESENTATIVE SADDLER asked for the level of accuracy of the "UA" or drug tests.

MS. LATHAM offered to report back to the committee.

REPRESENTATIVE SADDLER anticipated some court challenges and thought the accuracy would be important.

[3:52:59 PM](#)

REPRESENTATIVE CHENAULT said this has the makings of a good bill. He offered his belief that some people will commit murder to obtain a 90-day supply of drugs. He has observed illicit drugs become a problem in his community. The legislature needs to do what it can to ensure the drugs are legally used. He did not object to "UA" use for some people. He questioned what happens to full drug prescriptions if the workers' compensation patients are not taking them. He recalled an instance in his family, in which a family member had a prescription for oxycontin that led to excess prescription drugs in the family member's house. Certainly, there must be a way to control drugs from getting into the open market, he said. Although [penalty provisions] are not in the bill, he concluded that if the drugs are being sold on the street that the sellers need to be held accountable. In response to a question, he affirmed that patients possessing a 90-day supply of drugs could be in danger.

[3:55:49 PM](#)

REPRESENTATIVE HERRON echoed that this is a good measure. He found a normal range to be 30-day supply of drugs; however, he asked if this limit is rigid and impractical for some.

MS. LATHAM answered that the contact with the physician is not defined in the bill so prescriptions could be filled by an office visit or by phone. She related his understanding that mailing prescriptions to small communities is also possible.

[3:57:05 PM](#)

REPRESENTATIVE HERRON asked to have on the record that doctors need to know if the pain medication is necessary, but abuses can occur if patients are not taking their medication and are selling the prescriptions. Again, just for the record he wanted to ensure there are "smart ways" exist so patients don't have to submit to a physical contact due to the size of the state and the remoteness of some communities.

CHAIR OLSON welcomed any suggested language changes.

REPRESENTATIVE HERRON respected having a "rigid process," that limits the amount of drugs prescribed, but at the same time he recognized in a lot of ways it might be impractical.

[3:58:50 PM](#)

REPRESENTATIVE JOSEPHSON asked whether the sponsor has seen any evidence that abuse of opioids is greater among workers' compensation claimants than all the other segments of society.

MS. LATHAM answered she not seen specific statistics that have shown abuse on workers' compensation claims are higher than the widespread abuse. She said the trends tend to mirror each other in terms of the national statistics and are similar to workers' compensation in terms of abuse.

[3:59:28 PM](#)

REPRESENTATIVE JOSEPHSON asked whether a wise amendment would be that this principle should apply to all Alaskans.

MS. LATHAM offered her belief that would be a tough sell, but the bill will be brought back up for consideration.

[4:00:10 PM](#)

LORI WING-HEIER, Acting Director, Division of Insurance (DOI), Department of Commerce, Community & Economic Development, related that workers' compensation is a Department of Labor & Workforce Development statute but the employers tend to fund their obligation under the statute by purchasing insurance. The DOI sets those rates. In terms of cost, the DOI's rates are impacted by the cost of prescriptions through workers' compensation claims. As members know, Alaska has the highest workers' compensation rates in the nation. She provided a ranking of the cost and number of claims, noting Alaska ranks 43 of 46 on medical claims and 39 of 46 for indemnity claims - typically the longer term claims with a higher injury. Historically, in reviewing claims for the past five years, Alaska should expect to have 4,800 claims for every 100,000 workers. Of those 4,800 claims, 1,400 would represent long-term claims and these are the claimants who will have long-term prescriptions. The costs have steadily increased with the average amount of \$190 per claim in 2007 having risen to \$265. Most injured employees are receiving up to six prescriptions for an injury, not including renewals. The top ten drugs being prescribed are for pain medications with 25 percent being for

oxycontin. She characterized the statistics as being staggering and employers are paying for these through the workers' compensation costs. The division has been trying to work with the DLWD to reduce costs to an affordable level. She hoped members would consider HB 370 to help reduce workers' compensation insurance rates and costs.

[4:03:07 PM](#)

REPRESENTATIVE JOSEPHSON remarked that when he hears that the average injured worker has been prescribed six medications, that the medical community is absolutely complicit in the problem. He asked whether she agreed.

MS. WING-HEIER answered that she would not disagree with that statement. The statistics prove that prescription drugs are overprescribed and often for 90 days for convenience. She offered her belief that overprescribing is an issue.

[4:04:24 PM](#)

REPRESENTATIVE MILLETT said Aetna insurance members are limited to 90-day supply at a time before refills are authorized. She said that Aetna insurance doesn't allow for prescriptions for a longer timeframe.

MS. WING-HEIER said that limit refers to the personal employer-sponsored health plan. She did not know of any limitation within the statutes with respect to workers' compensation prescriptions, but deferred to the DLWD to respond.

[4:05:23 PM](#)

REPRESENTATIVE MILLETT asked whether doctors can prescribe up to a year under the workers' compensation plan.

MS. WING-HEIER said she was unsure. She said she has not heard of up to a year timeframe, but has heard of prescriptions for some large amounts.

[4:05:59 PM](#)

REPRESENTATIVE CHENAULT asked if the average was for six different prescriptions.

MS. WING-HEIER answered that the average prescription is for six different kinds of medications.

4:06:27 PM

REPRESENTATIVE CHENAULT remarked he has never been in the workers' compensation system. He asked whether it is odd that a doctor would not want to see a patient within 90 days to assess if the patient is healing or getting worse. He offered his belief that in his own community some doctors write too many prescriptions. He asked whether any tracking occurs to compare the average number of prescriptions to the number of prescriptions doctors write for a specific drug.

MS. WING-HEIER answered she was not aware of any study. Unfortunately, prescription drug abuse represents an epidemic throughout the nation that has negatively impacted the state. She said she hopes this bill will start to address this, in particular, due to the costs.

REPRESENTATIVE CHENAULT commented that if the state is concerned about workers' compensation costs, but the first thing that happens is an injured employee is given a 90-day prescription it could be that "we are the problem."

MS. WING-HEIER offered her belief that it would be best practices for the physicians to see their patients more often.

REPRESENTATIVE CHENAULT said he does not want to make disparaging remarks about doctors, but it does seem odd. He suggested that checking back with the patient seems important, although he wondered if the initial prescriptions were for prescriptions for a shorter timeframe.

4:09:30 PM

REPRESENTATIVE HERRON described his own experience at a heart institute, noting he has been prescribed non-opioids for his heart condition, typically for a ten-month timeframe. When it comes to opioids, the patient sees the claimant's doctor. He wondered whether the solution is to require mandatory visits, with a maximum spacing of three months and for the doctors to prescribe three 30-day prescriptions for tighter controls.

MS. WING-HEIER did not disagree that tighter controls would be better to reduce rates. She wasn't sure if that is possible but she thought it might reduce rates.

4:11:06 PM

REPRESENTATIVE MILLETT, with respect to Representative Herron's question, asked whether the workers' compensation regulations require patients to see their doctors every 30 days. She did not understand why the workers' compensation division couldn't require claimants to have more visits to track the injured worker's progress, which could reduce workers' compensation costs. She further wondered if after 30 days rest, whether doctors could release their patients.

MS. WING-HEIER answered that workers' compensation has a third party adjuster who works with the patient and doctor. She was unsure of any requirements since the adjuster is directly involved with the injured worker. She suggested that it is possible in long-term injury workers' compensation cases that the patient might not see the doctor every 30 days. She said that this activity would be monitored by the adjuster.

[4:13:11 PM](#)

REPRESENTATIVE JOSEPHSON asked whether the division has any data relative to costs associated by requiring more doctor office visits. He offered his belief this requirement would drive costs up. He recalled the motivation for a telemedicine bill before the legislature was to decrease the number of office visits and for patients to be able to quickly obtain prescriptions in order to reduce medical costs. He asked whether telemedicine approach will work or if increasing office visits to better monitor injured people is the answer.

CHAIR OLSON answered that the goal is to get injured workers back to work. He offered his belief that the cost savings will occur once the injured worker is back to work and off drugs such as oxycontin, which is a drug that was developed for end-of-life terminal cancer patients that later became a painkiller. He said that drugs like OxyContin are being overprescribed and reiterated that the intent is to get the employee back to work, which saves the state, the worker, and the employer money. He cautioned that once injured workers are on opioids for a lengthy period of time, workers typically don't go back to work.

[4:15:00 PM](#)

REPRESENTATIVE MILLETT remarked that the committee is not advocating telemedicine for workers' compensation claims.

REPRESENTATIVE JOSEPHSON said he was unsure.

CHAIR OLSON agreed telemedicine is not being advocated.

4:15:27 PM

MICHAEL MONAGLE, Director, Central Office, Division of Workers' Compensation, Department of Labor & Workforce Development (DLWD), with respect to an injured workers needing to see the doctor on a regular basis, answered that there is a provision in law that an employer can require an injured worker to see the doctor at least once every two weeks. He acknowledged that most of the time claims are managed by a claims administrator; however, a claims adjuster typically handles over 100 cases. These adjusters tend to pay more attention to serious indemnity claims than a medical only claim. He reiterated that an employer can direct an injured worker to see the doctor semi-monthly. In the event an injured worker has surgery and the normal recovery time is six to eight weeks, it may not make sense to see the doctor any earlier. In response to the question regarding whether problems are more prevalent in workers' compensation than in the general population, he reported that a study by the Workers' Compensation Research Institute indicates the average number of workers receiving opioids for a time-loss claim is over 75 percent.

4:17:19 PM

MR. MONAGLE did not find it unreasonable for patients with strains or breaks to have a need for pain prescriptions. He pointed out that in workers' compensation cases, the problem is that the longer the injured workers are on pain medications, the longer they miss work and for those on pain medications for more than 90 days, the duration of the disability is 30 percent higher than in non-opioid prescription cases. He has encountered some injured workers with serious disabilities who have been on opioids for two to three years. Doctors recognize these patients become addicted, that their doses are increasing, and that the person may be suffering mental disabilities due to prolonged use of the drugs. In addition, patients may encounter physical disabilities, yet the drugs are the only remedy so doctors keep prescribing the drugs. He said the Centers for Disease Control uses the term "epidemic" which is not a term that is used lightly. He said that workers' compensation cases are a reflection of the general health care system, but he suggested that there may be more pronounced problems within workers' compensation than in the general population.

CHAIR OLSON commented that this bill is a result of a meeting put on by Workers' Compensation Research Institute in fact, about 90 percent of the meeting was used to address this issue. He remarked that fatalities involving drivers using opioids is close to surpassing "drunk driving" fatalities so it is a serious problem.

[4:19:48 PM](#)

REPRESENTATIVE JOSEPHSON referred to U.S Supreme Court cases, including [*Vernonia School District 47J v. Acton*, 515 U.S. 646 (1995)], a U.S. Supreme Court decision which upheld the constitutionality of a random drug testing regimen implemented by the local public schools in Vernonia, Oregon, and others, including one related to customs officers and railroad workers based on a New York State rail disaster. He asked what public interest is being served with this bill - perhaps reduced rates and premiums; however, the injured worker at home does not pose any threat to anyone except himself/herself. He asked whether Mr. Monagle has discussed the legality of the bill.

MR. MONAGLE answered that he has not discussed this bill with the agency's attorney general. He offered his belief the purpose for the drug testing is that states who have adopted drug testing discovered that up to 30 percent of the injured workers are not taking the prescribed drugs. Thus, the assumption is that these drugs are making it on the streets. Although nothing in the bill requires the employer to prosecute or take any criminal action, some states have adopted "good Samaritan or safe harbor laws." In those instances a person reported to have a substance abuse problem could be subject to intervention or programs without any criminal charges being involved. He reiterated that he did not think that criminal charges were involved in HB 370.

CHAIR OLSON referred to page 1, lines 7 or 8, of the bill. He pointed out that the language is discretionary, that an employer "may require an employee to undergo drug testing" after 90 days. He summarized work taken on the bill, including holding discussions with legal staff and other legislators. He characterized the approach being taken in the bill as using a "scalpel" rather than a "chain saw" in an attempt to address the workers' compensation injured worker prescription issues.

[4:23:18 PM](#)

REPRESENTATIVE JOSEPHSON noticed an absence of ramifications in the bill for employment, HIPPA issues, and due process. He asked for the penalty if an injured worker shows a lower use of opioids.

MR. MONAGLE answered that typically everything in workers' compensation surrounds the payment of benefits. Thus, if an injured worker has been prescribed narcotics, but the drugs do not show up during testing, some states do not continue to pay for the prescription drug unless convincing evidence indicates the drugs were stolen or substantial evidence indicates the drug should be refilled. Therefore the benefit would be cut off, although it wouldn't impact other aspects of the claimant's care or disability benefits. In terms of employment provisions, which he wasn't very familiar with, he understood one provision provides safeguards from lawsuits being filed against the employer. He further understood that many employers have zero tolerance drug use policies; however, he was unsure if other drugs showed up during urinalysis (UA), whether the employer could take any disciplinary action.

[4:25:51 PM](#)

CHAIR OLSON asked for the percentage of the Alaska workforce is subject to UAs.

MR. MONAGLE said he was unsure.

CHAIR OLSON understood that anyone in the transportation or licensed maritime fields would be subject to UAs.

[4:26:20 PM](#)

REPRESENTATIVE SADDLER said the bill seems to make sense especially due to the compelling narrative that has been laid out. He indicated the benefits seem clear. He recalled that workers' compensation workers absent from work tend to be those on pain medications. He asked whether causality is being confused or is it just that those with serious injuries have longer claims and are absent from work for a longer period.

MR. MONAGLE explained that part of the issue is related to patients taking prescribed opioids for a long time; and most of the medical community concerned about long-term use. The longer injured workers are on drugs the tolerance to dosage for pain and discomfort goes up so the patient needs more medication. The threshold most states use is a 120 milligrams of morphine

equivalent. He agreed that it seems reasonable to have progress reports. If no functional benefit is derived from that sort of dosage, something needs to be done to wean the patient off the drugs. He didn't think the medical and workers' compensation community was as concerned about 30-day use, which is why the bill recommends it. He said this bill doesn't address the overarching problem of drug addiction or other patient issues; however, the bill does allow the division to put in regulation some tools to address long-term use of opioids.

[4:28:51 PM](#)

REPRESENTATIVE SADDLER said he certainly could see the common sense for 30-day prescription use. He reviewed the large list of drugs prescribed. He wondered if the bill should be limited to schedule I drugs since schedule II drugs include some pain relievers.

MR. MONAGLE answered that page 2, lists schedule IA, IIIA, and VA drugs that would be affected under the bill.

[4:29:35 PM](#)

REPRESENTATIVE SADDLER asked whether schedule IA, IIA, and IIIA, are a matter of drug intensity or if they represent categories of drugs.

MR. MONAGLE answered that the drugs are various concentrations of the opioids. He pointed out that class I represents the greatest threat to life and health, particularly if used in combination with other drugs.

REPRESENTATIVE SADDLER understood that schedule I is the most powerful.

[4:30:14 PM](#)

REPRESENTATIVE MILLETT related a scenario in which a person has a serious back injury but doesn't want surgery and continues to take medications. She understood that it isn't possible to force someone to have surgery, but ultimately workers' compensation claim could be never ending if the medical recommendation is surgery.

MR. MONAGLE said the consensus in the medical community is for patients to choose to undergo conservative care such as physical therapy and other types of treatment before deciding on surgery.

He offered his belief that it is not in anyone's interest to stay on opioids indefinitely. In some states, after a prescribed period of time, in consultation with the physician, a plan is put in place to step the patient down to a lower level, and probably to recommend the patient attend a pain management clinic to learn other ways to deal with the pain. He agreed that these drugs were never intended to be long-term drugs and are intended for short-term use.

[4:32:56 PM](#)

REPRESENTATIVE MILLETT asked whether drugs other than OxyContin have the same effect. She said she is aware of people who move to disability benefits when the solution might be to have spinal fusion. She asked how to avoid the path of patients moving to disability.

MR. MONAGLE answered that those patients represent about one percent of the cases. Certainly, it is not in anyone's best interest to stay on these types of drugs for the duration of their lives. He said that the general consensus for chronic pain management is for doctors to work with their patients to minimize the need for these opioid equivalent drugs. In response to a question, he offered to work with Representative Millett on the workers' compensation issue to help get the workers back to work.

[4:36:17 PM](#)

SIDNEY SEE stated that she previously worked for procurement for the University of Alaska, but fell on the ice, had two wrist surgeries, a shoulder surgery, and ten months later doctors discovered she had severed her rotator cuff and suffered bad disc damage. She then had neck surgery. She offered her belief that the money in workers' compensation goes to adjusters who have top paid lawyers and require independent medical exams (IME). She estimated the cost for an IME at \$10,000. She said she was moving boxes and hurt her lower back. She related she has an excellent doctor who has never prescribed more than 30 days of prescriptions. She signs an annual form and the doctors perform random drug tests to avoid drug abuse. She characterized spinal pain as horrific. Fortunately her lumbar issue on October 31 seemed fine, but Northern Adjusters has scheduled another IME to fly in a doctor from San Diego. She said this problem should probably be resolved over time. She has good treatment, her doctor gives her some injections, and her goal is to work. She did not think the big cost is

prescriptions. She said she feels knowledgeable and would like to see the system changed. She offered her belief that patients get the bottom lawyers whereas the insurance adjusters have better lawyers. She offered to provide more details on her five-year recovery from her fall, noting she subsequently had a disc replacement and two spinal fusions. She concluded by saying she had a wonderful job in procurement and her boss and co-workers were very supportive, but she did not find her insurance adjuster helpful.

[HB 370 was held over.]

[4:40:52 PM](#)

The committee took an at-ease from 4:40 p.m. to 4:41 p.m.

### **HB 152-PERS TERMINATION COSTS**

[4:41:53 PM](#)

CHAIR OLSON announced that the final order of business would be HOUSE BILL NO. 152, "An Act requiring certain employers who terminate participation in the defined benefit retirement plan or the defined contribution retirement plan of the Public Employees' Retirement System to make contributions related to past service liability and pay termination costs; repealing a requirement that employers who terminate participation in the defined contribution retirement plan or the defined benefit retirement plan of the Public Employees' Retirement System pay for a termination cost study; and providing for an effective date." [Before the committee was Version Y, labeled 28-KS9272\Y, Wayne, 2/26/14.]

[4:42:23 PM](#)

JANE PIERSON, Staff, Representative Steve Thompson, Alaska State Legislature, explained that HB 152 does away with termination studies, the costs associated with conducting termination studies, the actuarial costs to employers for future benefits to employees whose coverage is terminated, and the past service cost annually on each position terminated until the unfunded obligation is paid off decades from now.

[4:43:07 PM](#)

MICHAEL BARNHILL, Deputy Commissioner, Department of Administration (DOA), stated shortly prior to the last hearing [March 10, 2014] the DOA did not have the backup information

from the actuary, Buck Consultants, but has since received it. He remarked that the fiscal note is complex, but he was somewhat surprised at the \$75 million fiscal note.

MR. BARNHILL explained termination studies. When an employer terminates a group classification under current statute a termination study is required and costs are accrued for three different items. First, a termination study costs from \$2,500-\$5,000. Secondly, costs accrue when a new unfunded liability is created by a new group of employees being terminated. Under Alaska statutes employees have the option of refunding the PERS balance or immediately vesting. The actuary assumes some of the employees will immediately vest; however, when that date is prior to the anticipated date of retirement, an unfunded liability is associated with that because the state hasn't had time to collect enough funds to pay the expected benefit. Third, costs accrue when an employer terminates a group classification in a department. In this instance, an employer must pay the entire past service liability cost, not capped at 22 percent, until the unfunded liability is entirely extinguished, which is currently projected at 2031.

[4:46:08 PM](#)

MR. BARNHILL related that various PERS employers have objected to Senate Bill 125, the statute enacted in 2008. These employers have raised concerns about this impairing their ability to be flexible with their payroll and employers wanting to avoid the unfunded liability costs just described. The department recognizes their concerns but there will be cost shifting from the state. Last year, one version of the bill had a sliding-scale threshold when termination studies would "kick in." Under the prior version of the bill, the sliding scale depended on the size of the payroll. For large employers, with \$5 million or more in annual payroll, the employers would need to terminate 20 percent or more of their payroll before a termination study will "kick in." Anything under that, such as new unfunded liability or past service cost would be picked up by the state. For medium-sized employers with \$1-\$5 million in payroll, the threshold was set at 50 percent or more. Thus, the employers would need to terminate 50 percent or more of their employees in order for a termination study to "kick in." And for small employers, with \$1 million or less in payroll, the state would pick up the costs, he said.

[4:47:59 PM](#)

MR. BARNHILL related that Buck Consultants used an assumption that all employers terminated all employees from PERS service to determine the new unfunded liability when someone retires earlier than expected, which cost \$375 million. Thus the system, due to the early retirements, would not collect \$375 million. The actuary then allocated that amount on the sliding scale using the aforementioned threshold. Buck Consultants determined the state would end up picking up \$99 million and employers would pick up \$375 million. The \$99 million represented the amounts under the sliding scale, including the costs to pick up all the small employer costs, 50 percent of the mid-range employer costs, and 20 percent of the large employer costs, he said.

MR. BARNHILL said that Buck Consultants made another assumption, which was that only 20 percent of the employees would opt out. He acknowledged that the percentage could be debated, but it was the figure that Buck Consultants used, so 20 percent of the costs fall to the state, which is approximately \$20 million. In addition, the past service costs shifted to the state because as the payroll costs shrink the amount of past service cost also shrinks. He related a scenario in which an employer had a \$1 million payroll with 22 percent of the employees terminated. In that scenario, the payroll would be multiplied by the 22 percent contribution rate on \$800,000 instead of \$1 million, which means the state collects less money and must pick up the difference.

[4:50:39 PM](#)

MR. BARNHILL explained last year's fiscal note, which computed the annual cost. The first line referred to the retroactive effect, which is no longer relevant in Version Y; the second line related to the shift of the past service cost payments to the state [due to the repeal of AS 39.35.625] due to a smaller payroll, and the third line represented the new past service costs associated with the new unfunded liability of \$800,000, and when computed would be \$25 million. That is the methodology behind last year's fiscal note, he said.

MR. BARNHILL related that this year under Version Y, the requirement for termination costs and studies all would be repealed. Under this version, all of the costs shift to the state, which means a new unfunded liability of \$75 million; however, since Buck Consultants assumed only 20 percent will terminate, the computation for 20 percent of \$375 million is \$75 million. This provides the background on the \$75 million projected for the unfunded liability, which is reflected on page

2 of Buck Consultants' letter of 3/18/14. He said the effect of shrinking payrolls by 20 percent is that since payroll costs are smaller, that amount is not available to compute past service costs on so the past service costs also shift to the state.

4:52:38 PM

MR. BARNHILL turned to the letter of 3/18/14 from Buck Consultants and noted that line one is incorrect since there is not any retroactive effect in Version Y. The second line relates to the shift of past serve cost payments to the state due to the repeal of AS 39.35.625 due to smaller municipal payrolls. The third line represents the new past service liability associated with the \$75 million new unfunded liability due to people retiring earlier than anticipated.

4:53:17 PM

REPRESENTATIVE HERRON expressed concern about the bill, noting he has served on the Alaska Public Entity Insurance Board. He said that everything is based on 2008 legislation as a starting point and suggested reviewing the figure used as a base for 2008. He further asked whether a six-year window should be defined and updated as the base.

MR. BARNHILL acknowledged a whole variety of approaches could be used to accomplish the objective of the 2008 legislation, which was essentially to prevent or limit cost shifting from municipalities to the state. He explained that effort was taken since the state was picking up a fair amount of additional liability in the form of state assistance under Senate Bill 125. As previously stated, the state has contributed over \$600,000 on behalf of municipalities to PERS. Furthermore, Senate Bill 125 had two ways to address cost shifting: One, through the 2008 salary floor. For example, if a PERS employer payroll dipped below the 2008 salary floor, the 22 percent employer contribution rate would be computed on 2008 instead of the current payroll. Second, the bill would address the cost shifting through the termination cost and study requirements. Both are important since the further removed from 2008, assuming payroll are growing at a rate of two to five percent per year, the 2008 salary floor becomes less and less meaningful. For some PERS employers, the 2008 salary floor is quite meaningful since their PERS payrolls have declined below the 2008 salary floor; however, he estimated that would only affect a handful of employers. He agreed it may be worth it at some point to take a

fresh look at how to preserve a certain portion of the payment of the unfunded liability within the PERS municipal community.

[4:56:36 PM](#)

REPRESENTATIVE HERRON said the fundamental question everyone is facing is that although the 2008 legislation was important at the time, whether it is still relevant six years later.

MR. BARNHILL said that for certain employers it is still quite relevant. The largest employer whose PERS payroll dipped below the 2008 salary floor is the University of Alaska, primarily since it offers other retirement programs to new professors, with a 14 percent employer contribution rate and a 401(k) style retirement plan, which he deemed as being pretty attractive.

[4:57:39 PM](#)

REPRESENTATIVE HERRON commented that the Elected Public Officials Retirement System (EPOR) is almost finished since these legislators are gradually dying. He remarked that those legislators were careful to craft a provision that allowed them to receive raises each time current EPOR members receive raises.

[4:58:36 PM](#)

CHAIR OLSON asked how many people were covered under EPOR.

MR. BARNHILL answered 34 people. He related that this type of linkage is also found in the judicial retirement system so when judges receive a raise, it also boosts benefits for the retired judges. He explained that the department delivers its fiscal note and a letter from the actuary to the legislature. Last week the DOA submitted [dated 3/14/14] the fiscal note with the \$75 million [page 2 of the fiscal note], and the backup letter from Buck Consultants arrived today, he reported.

[5:00:16 PM](#)

REPRESENTATIVE JOSEPHSON said he was pretty convinced that smaller communities have a larger problems with termination costs. He questioned what certainty exists if an agreement was reached in 2008 but now the plan is to "back end" the costs. He asked how the legislature will know that won't be revised.

MR. BARNHILL said he thought Representative Josephson was referring to the governor's proposal to appropriate \$1.9 billion

to PERS, which is part A of the proposal and that Part B is a \$157 million capped payment from 2015-2036. That capped payment is very important since it can secure certainty with respect to the demands on the undesignated general funds of the state. If that were to go into effect, one idea is that it would mean that any new unfunded liability associated with PERS employers - taking 20 percent of payroll out of service - will be tacked on to the end in 2036. He acknowledged that there is a cost to that, but any new unfunded liability will be shared by state and municipalities. He said that hasn't been the case since 2008 when Senate Bill 125 was enacted. Any new unfunded liabilities are borne entirely by the state, which has had some fairly dramatic impacts on the state's general fund. Thus, state assistance to PERS employers has increased substantially so that combining PERS and TRS would place a call on the general fund of upwards of \$1 billion, he said.

REPRESENTATIVE JOSEPHSON asked whether the compromise is that the relief will be afforded to local governments now, but the quid pro quo will be a sharing of new unfunded liability later.

MR. BARNHILL acknowledged that is a fair statement, but the flip side of that is that if the reverse of unfunded liability is created - an actuarial gain - happens it will also be shared and under the governor's proposal these gains will be shared in the form of a shorter amortization term. The municipal employers would pay up to 22 percent contributions rate through 2036 if there were actuarial gains during that time period and the 22 percent employer contribution rate cap could be adjusted prior to 2036. He said this is entirely speculative since the state can't predict the net gains or losses.

[5:04:02 PM](#)

REPRESENTATIVE MILLETT asked what will happen to MOA if the municipality is short funded by \$5 million and HB 152 doesn't pass.

MR. BARNHILL said then the status quo continues and it will depend on whether the MOA pulls PERS employees out of service, for example, if the municipality were to terminate a group classification or department. In smaller municipalities, sometimes a fire chief position is terminated. He related a scenario in which MOA privatized a utility of \$5 million. This would trigger a termination study, the MOA would pay \$5,000 for the study, and Buck Consultants would project how many people will vest early and it would create a new unfunded liability,

for example, perhaps \$600,000. The DOR would bill the MOA, and the entire past service cost for those employees would need to be paid via the final payoff of the unfunded liability in 2036.

[5:06:32 PM](#)

REPRESENTATIVE MILLETT asked whether the MOA could pay this at 22 percent over the life span.

MR. BARNHILL said the current statutes provide municipalities to work out a plan with the Division of Retirement and Benefits. He acknowledged options could be explored.

[5:07:23 PM](#)

KATHY LEA, Deputy Director, Retirement and Benefits, Department of Administration (DOA), answered that the statutes are broad and an increased contribution over time is a possibility.

REPRESENTATIVE MILLETT asked whether a payment plan could be flexible.

MS. LEA answered yes; it would be payable upon receipt or the municipality would work out a payment plan with the division.

[5:08:10 PM](#)

KATHIE WASSERMAN, Executive Director, Alaska Municipal League (AML), stated that the AML represents 161 communities. Depending on what happens with this bill, municipalities will need help and more tools. She anticipated that if lean times are forthcoming, municipalities will need to lay people off. She said that municipalities need help in finding tools to deal with any consequences that might come their way. The AML has been supporting the governor's cash infusion, hoping that termination costs can be tacked on the end of the 25-year amortization. The amount of termination study costs would be so small compared to a potential \$12 billion liability that municipalities could pay the costs. She assured members that they are not "trying to get out of anything" but also to recognize municipalities can only pay so much in order to keep rates at a steady, predictable 22 percent that can be budgeted.

[5:10:42 PM](#)

REPRESENTATIVE MILLETT said that her municipality is concerned that at some point in time it will need to increase property

taxes to the cap, which still won't cover the unfunded liability to PERS. This means that smaller municipalities will need to take on a greater cost percentage based on their property taxes and population base.

MS. WASSERMAN said that is exactly right. She added that some small communities without a tax base don't have any way to make up those costs, which leaves everyone in a bind. She stated that municipalities are not trying to get out of obligations, but the legislature must find an affordable solution.

[HB 152 was held over.]

[5:12:18 PM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 5:12 p.m.