

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

February 27, 2017

1:01 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Zach Fansler, Vice Chair
Representative Jonathan Kreiss-Tomkins
Representative Gabrielle LeDoux
Representative David Eastman
Representative Chuck Kopp
Representative Lora Reinbold

MEMBERS ABSENT

Representative Charisse Millett (alternate)
Representative Louise Stutes (alternate)

COMMITTEE CALENDAR

CONFIRMATION(S) :

Alaska Commission on Judicial Conduct

Jeannine Jabaay - Hope
Melanie Rose Bahnke - Savoonga

- CONFIRMATIONS ADVANCED

HOUSE BILL NO. 69

"An Act repealing the Workers' Compensation Appeals Commission; relating to decisions and orders of the Workers' Compensation Appeals Commission; relating to superior court jurisdiction over appeals from Alaska Workers' Compensation Board decisions; repealing Rules 201.1, 401.1, and 501.1, Alaska Rules of Appellate Procedure, and amending Rules 202(a), 204(a) - (c), 210(e), 601(b), and 603(a), Alaska Rules of Appellate Procedure; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 69

SHORT TITLE: REPEAL WORKERS' COMP APPEALS COMMISSION

SPONSOR(s) : RULES BY REQUEST OF THE GOVERNOR

01/20/17	(H)	READ THE FIRST TIME - REFERRALS
01/20/17	(H)	L&C, JUD
02/06/17	(H)	L&C AT 3:15 PM BARNES 124
02/06/17	(H)	Heard & Held
02/06/17	(H)	MINUTE (L&C)
02/10/17	(H)	L&C AT 3:15 PM BARNES 124
02/10/17	(H)	Moved HB 69 Out of Committee
02/10/17	(H)	MINUTE (L&C)
02/13/17	(H)	L&C RPT 5DP 1NR
02/13/17	(H)	DP: SULLIVAN-LEONARD, STUTES, BIRCH, KNOPP, KITO
02/13/17	(H)	NR: JOSEPHSON
02/22/17	(H)	JUD AT 1:30 PM GRUENBERG 120
02/22/17	(H)	Scheduled but Not Heard
02/27/17	(H)	JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

JEANNIE JABAAY

Hope, Alaska

POSITION STATEMENT: As appointee to the Alaska Commission on Judicial Conduct, discussed her qualifications and answered questions.

MELANIE BAHNKE

Savoonga, Alaska

POSITION STATEMENT: As appointee to the Alaska Commission on Judicial Conduct, discussed her qualification and answered questions.

HEIDI DRYGAS, Commissioner

Department of Labor & Workforce Development (DLWD)

Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 69, offered testimony and answered questions.

DEBBIE BANASZAK, Legislative Liaison

Office of the Commissioner

Department of Labor & Workforce Development (DLWD)

Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 69, explained the changes in Version O.

MARIE MARKS, Director

Division of Workers' Compensation

Department of Labor & Workforce Development (DLWD)
Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 69, answered questions.

NANCY MEADE, General Counsel
Administrative Staff
Office of the Administrative Director
Alaska Court System
Anchorage, Alaska

POSITION STATEMENT: During the hearing on HB 69, answered questions.

CONSTANCE LIVSEY, Attorney
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 69, spoke in opposition.

DON ETHRIDGE, Lobbyist
American Federation of Labor and Congress of Industrial
Organizations, Alaska (Alaska AFL-CIO)
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 69, offered a historical perspective as to push back in the past.

ACTION NARRATIVE

[1:01:12 PM](#)

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 12:48 p.m. Representatives Claman, Kopp, Kreiss-Tomkins, LeDoux, Fansler, Eastman, and Reinbold were present at the call to order.

CONFIRMATION HEARING(S) : **ALASKA COMMISSION ON JUDICIAL CONDUCT**

[1:01:53 PM](#)

CHAIR CLAMAN announced that the first order of business would be a confirmation hearing for the Alaska Commission on Judicial Conduct, appointees Jeannine Jabaay and Melanie Rose Bahnke.

CHAIR CLAMAN opened invited testimony for the confirmation hearing of Jeannine Jabaay.

1:02:37 PM

JEANNIE JABAAY advised that she is a fourth generation Alaskan with six children, owns two Alaskan businesses, is involved in foster care and foster adoption, and served as a public member on the Board of Barbers and Hairdressers for four years while actively involved in two bills signed into law, and she is currently working on SB 4. When considering applying for the Alaska Commission on Judicial Conduct as a public member, she performed research and became knowledgeable about the legal process, the Code of Judicial Conduct, and reviewed complaints the commission had addressed over the last couple of years. She decided to apply and acknowledged that she has no professional background in law, and that her limited experience in the courts included a contested adoption that went before the Alaska Supreme Court, and two small contractual issues regarding her construction company. She said she strongly believes that she is an objective person and is not afraid to make tough decisions and ask hard questions. She commented that she hopes to be confirmed where she can apply her years of experience as a business owner, wife, mother, and life-long Alaskan.

CHAIR CLAMAN closed invited testimony. He then urged the members to exercise real caution in asking hypothetical questions because all appointees should wait until they have all the facts that would come before them in their role on a commission or board.

1:06:12 PM

REPRESENTATIVE KOPP asked how she formed her interest in justice matters, noting that her resume doesn't jump out why justice would be so important to her.

MS. JABAAY related that justice is important to all Americans, and her interest is because she has never been actively involved in the judicial branch of government, and reiterated that she has what it takes to make fair, balanced, and tough decisions. As a public member, she opined, she represents the people who appear before a judge on a civil case, and she would expect and hope that the judge was being held to the highest standards of law. The other three options she listed on her resume have some element of justice and the judiciary, and she opined in this stage of her life she is more keenly interested in the judicial branch of government.

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CHAIR CLAMAN clarified that he had the impression, from his meeting with Ms. Jabaay, she hadn't thought about being on the Alaska Commission of Judicial Conduct until the Alaska Boards and Commission's folks suggested it.

MS. JABAAY responded that Chair Claman was correct in that during the process of advising the Alaska Boards and Commissions folks that she was not seeking reappointment on the Board of Barbers and Hairdressers, she was asked to consider the Alaska Commission on Judicial Conduct.

[1:08:50 PM](#)

REPRESENTATIVE FANSLER thanked Ms. Jabaay for meeting with his office and for being willing to volunteer during her past public service. He asked her understanding of what the Alaska Commission on Judicial Conduct does, its boundaries, and where it fits into the big picture for Alaska.

MS. JABAAY remarked that the Alaska Commission on Judicial Conduct is actively involved in self-policing the judicial branch with three judges, three lawyers, and three public members representing different facets within its decision making. The role of the commission is to investigate allegations against a judge, not their decisions, but any kind of impropriety on or off the bench. In the event the allegation merits some sort of censure, the commission would make a recommendation to the Alaska Supreme Court for its [final] determination, she said.

REPRESENTATIVE FANSLER related that his only follow-up for the record would be to have her confirm that she believes she is capable.

[There was no response.]

[1:10:49 PM](#)

REPRESENTATIVE LEDOUX acknowledged that Ms. Jabaay is a personal friend of hers and related that she would do a great job. Representative LeDoux then advised that she was unsure whether she needed to declare a conflict of interest based on friendship but, just in case, she declared their friendship.

REPRESENTATIVE REINBOLD said she looks forward to meeting Ms. Jabaay and thanked her for being willing to step up.

1:11:24 PM

REPRESENTATIVE EASTMAN thanked her for making herself available to his office, and that all of his questions had been answered.

CHAIR CLAMAN advised that Melanie Bahnke was now available on line and he reopened invited testimony for the confirmation hearing of Melanie Bahnke.

1:12:10 PM

MELANIE BAHNKE, advised she is a life-long rural Alaskan, the President/CEO of Kawerak, Inc., married with three children, and has a master's degree in rural development.

CHAIR CLAMAN closed invited testimony.

1:13:14 PM

REPRESENTATIVE EASTMAN asked, out of all the various boards and commissions, why she chose this commission.

MS. BAHNKE replied that first and foremost her choice was due to the fact that her area enjoyed "a really good judge here for years, the late Ben Esch," who was an excellent judge. Unfortunately, after Judge Esch's tenure there were several issues with the next judge and he ended up being sanctioned by the Alaska Supreme Court. That, she commented, opened her eyes to the Alaska Commission on Judicial Conduct while she was serving on the governor's Tribal Advisory Council in the justice seat. Alaska Natives are overrepresented in both the court and correctional system and, she remarked that she should do her part to lend her unique perspective and experience. She continued that she should take an active role in contributing to the state working toward solutions, and through this council, identifying and recognizing any misconduct at the judicial level, and being part of bringing that misconduct forward and recommending action by the Alaska Supreme Court.

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REPRESENTATIVE EASTMAN inquired as to whether she would have any reticence in recommending removal of a judge for serious misconduct.

MS. BAHNE answered that she would review the circumstances and facts in the case, and the nine member commission would deliberate and make recommendations commensurate with the offenses committed. She remarked, "No, I wouldn't have any hesitancy" if the actions committed by a judicial officer warranted removal.

[1:15:40 PM](#)

REPRESENTATIVE KOPP thanked her for applying, for her diverse background in tribal justice issues, that she has a degree, and that she is active in justice matters currently.

[1:16:10 PM](#)

REPRESENTATIVE KREISS-TOMKINS noted that similar to Representative LeDoux, he has the fortune of knowing the appointees and has respect and gratitude for both women.

[1:16:38 PM](#)

REPRESENTATIVE FANSLER thanked Ms. Bahnke for volunteering and asked her exact thought process on what the Alaska Commission on Judicial Conduct does, and what role she would play.

MS. BAHNKE noted that during her first meeting of participation, the commission took a look at whether or not to recommend physical and/or mental disability retirement for a judge, and make recommendations to the Alaska Supreme Court. She reiterated that the commission also explores whether or not misconduct occurred, whether there was improper courtroom behavior, whether there was improper or illegal influence, and/or whether there was impropriety on or off the bench and, she pointed out that the commission does not address legal errors because that determination goes to the appellate court. A judge must swear, when they sign their pay affidavits, that they haven't fallen behind on their cases, and in the event there is a pattern, the commission recommends certain sanctions, she explained.

[1:18:42 PM](#)

REPRESENTATIVE REINBOLD commented that there has been interest in changing the makeup of the Alaska Judicial Council because currently it is three attorneys, and three non-attorneys, and the ...

CHAIR CLAMAN stopped Representative Reinbold and advised that this hearing is on the Alaska Commission on Judicial Conduct, not the Alaska Judicial Council.

REPRESENTATIVE REINBOLD thanked Chair Claman for the clarification. She asked, as a member of the Alaska Commission on Judicial Conduct, what she feels would warrant the removal of judge.

MS. BAHNE reiterated that there are nine members to determine recommendations, and that she has only participated in one full meeting, but she would look at whether illegal behavior had occurred, corruption, collusion, and such. She commented that the commission would review how it had handled the issue in the past because it must be careful of setting precedence; therefore, it looks at similar situations and treats them similarly, and does not let emotions rule the final recommendation.

REPRESENTATIVE REINBOLD referred to the Constitution of the State of Alaska, Art. IV, Section 10, related to the Alaska Commission on Judicial Conduct and said it discusses disqualifications for judges. She said she wanted to be sure Ms. Bahnke reads and follows the constitution, and asked Ms. Bahnke to keep the committee "in the loop if there is any really big issue." Sometimes the legislative branch is not kept in the loop for Judicial Council or even the Commission on Judicial Conduct, she related.

MS. BAHNKE said she would be happy to do that and imagined that most of the communications would go through the executive director to the legislature, and she would make herself available.

[1:22:11 PM](#)

CHAIR CLAMAN thanked both appointees for their willingness to serve. He noted that he knows Ms. Jabaay through her work with the Board of Barbers and Hairdressers and he was impressed that she gets fully engaged and doesn't do anything half-way. He commented that he gets the sense from Ms. Bahnke that she has the same attitude and approach.

[1:22:47 PM](#)

REPRESENTATIVE FANSLER advised that the House Judiciary Standing Committee reviewed the qualifications of the governor's

appointees and recommends that the following names be forward to a joint session of the Senate and House of Representatives for consideration: Melanie Bahnke and Jeannine Jabaay to the Alaska Commission on Judicial Conduct. This does not reflect intent by any of the members to vote for or against these individuals during any further sessions for the purposes of confirmation.

[1:23:32 PM](#)

The committee took an at-ease from 1:23 p.m. to 1:25 p.m.

HB 69-REPEAL WORKERS' COMP APPEALS COMMISSION

[1:25:49 PM](#)

CHAIR CLAMAN announced that the final order of business would be HOUSE BILL NO. 69, "An Act repealing the Workers' Compensation Appeals Commission; relating to decisions and orders of the Workers' Compensation Appeals Commission; relating to superior court jurisdiction over appeals from Alaska Workers' Compensation Board decisions; repealing Rules 201.1, 401.1, and 501.1, Alaska Rules of Appellate Procedure, and amending Rules 202(a), 204(a) - (c), 210(e), 601(b), and 603(a), Alaska Rules of Appellate Procedure; and providing for an effective date."

[1:26:38 PM](#)

HEIDI DRYGAS, Commissioner, Department of Labor & Workforce Development (DLWD), read her statement into the record as follows:

HB 69 will repeal the Workers' Compensation Appeals Commission and return the appeals process from the Workers' Compensation Board to the courts. The commission was created to streamline the appeals process from the Workers' Comp Board and provide expertise in handling workers' comp cases. Since its creation in 2005; however, 50 percent of the commission's decisions have been reversed by the Alaska Supreme Court. This high reversal rate underscores the fact that the commission is ineffective. The commission is, essentially, an appellate court just like the superior court and almost every appellate court in the country is composed of a panel of lawyers. Yet, the commission's lay-commissioners have no legal training and contribute very little in the way of legal analysis to

the issues being decided by the commission. It falls to the commission's chair alone to resolve the legal issues with minimal input from the lay-commissioners. Further, the chair also writes the commission's decisions; therefore, the commission's decisions are really the work of one person and not the work of a panel with legal expertise in workers' compensation, a further departure from the original intent of the legislation.

By eliminating the commission, the department anticipates a cost savings of over \$220,000 for the remainder of FY18, due to the transition provisions in the legislation, and over \$440,000 in subsequent years. The impact on the public will be minimal. By repealing the commission, the appeals process will revert back to the superior court, which was the process in place from statehood until 2005. The court system would see an increase of approximately 20-30 cases, give or take a few, per year. This volume can be absorbed by the court system.

[1:28:57 PM](#)

DEBBIE BANASZAK, Legislative Liaison, Office of the Commissioner, Department of Labor & Workforce Development (DLWD), explained the changes from Version A to Version O, and clarified that the word "board" refers to the Workers' Compensation Board and the word "commission" refers to the Workers' Compensation Appeals Commission. This bill repeals the Workers' Compensation Appeals Commission, she advised.

MS BANASZAK explained that the summary of changes between HB 69 Version A, and CSHB 69 Version O are as follows [original punctuation provided]:

Page 1, line 5 inserts two inadvertently omitted court rule references, Appellate Procedure Rule 602(c) and (h) into the bill title.

Page 3, lines 4 - 9 simplifies the paragraph structure and wording of the language clarifying when a board order becomes effective and is final.

Page 3, lines 10 - 19 clarifies the wording of when a board order may be stayed.

Page 3, line 20 removes the first sentence from AS 23.20.126(c). The sentence is unnecessary because it restates a provision already found in the Alaska Workers' Compensation Act.

Page 3, lines 28 - Page 4, line 6 amends AS 23.30.155(f) directly, instead of repealing subsection (f) and creating a new subsection (r) as version A was written.

Page 4, lines 14 - 23 that was Section 8 in the original bill was completely deleted. In Version A, Section 8 addressed "direct" court rule amendments relating to cost bonds and the court system suggested that it would be more efficient and more consistent to instead address these through "indirect" court amendments in the new Section 10. Because Section 8 of the original bill was deleted in the CS, the Section numbers from that point on are renumbered in the CS (Ex: the previous Section 9 is now Section 8, etc.)

Page 4, line 12 removes AS 23.30.155(f) from the list of statutes being repealed because changes are now being made directly to AS 23.20.155(f), instead of the original bill which repealed subsection (f) and made those changes in a new subsection (r) as discussed.

Page 4, line 15 - line 30 simplifies the description of how the court rules are amended and adds a description of how Appellate Procedure Rules 602(c) and (h) are amended. The Indirect Court Rule Amendments in the original bill were too wordy and potentially confusing, and the court system suggested it be rewritten.

Page 4, line 31 - Page 5, line 17 simplifies the paragraph structure and wording of the applicability language.

[1:32:58 PM](#)

REPRESENTATIVE FANSLER moved to adopt the committee substitute for HB 69, Version 30-GH1773\0 as the working document. There being no objection, Version 0 was before the committee.

CHAIR CLAMAN opened public testimony on [CSHB 69].

[1:33:58 PM](#)

REPRESENTATIVE KOPP asked whether there was any pushback to her statements regarding the 50 percent Alaska Supreme Court reversal, long wait times, and the Workers' Compensation Appeals Commission otherwise not realizing the potential the 2005 legislature anticipated.

COMMISSIONER DRYGAS responded that no one, including insurers, employers and plaintiff's counsel, have come to the department with opposition. She related that there is a chart the previous chair put together summarizing the caseloads for the Workers' Compensation Appeals Commission since its inception in 2005. It can be a bit confusing, she described, and as far as the 50 percent reversal rate, "of the cases that the Alaska Supreme Court has decided on the merits," roughly 50 percent have been overturned, and there have been dismissals for various reasons not relating to the merits of the case. In her opinion, she advised, the fact that no one has stated opposition to this bill is recognition that the Workers' Compensation Appeals Commission is not working as hoped because it is not resulting in more efficient hearings. It is not resulting in this expertise that was believed would be seen, the commissioners have to have three years of experience on the Workers' Compensation Board which is how the legislature came up with the expertise to put on the commission. It never realized itself in actuality, she said.

[1:36:55 PM](#)

CHAIR CLAMAN, in response to Representative Eastman, noted that the chairman of the commission is not on the list to testify at this point, and that his office would look into having the commissioner testify. The bill is not being moved today.

[1:37:26 PM](#)

REPRESENTATIVE EASTMAN asked the general makeup of the commission, length of terms, and whether the positions are filled or vacant.

COMMISSIONER DRYGAS deferred to Marie Marks, Division of Workers' Compensation, and advised that to her knowledge there are currently no vacancies and there is a new chair of the commission.

[1:38:12 PM](#)

MARIE MARKS, Director, Division of Workers' Compensation, Department of Labor & Workforce Development (DLWD), responded there was a vacancy when the past commission chair, Andrew Hemingway, retired, and it is currently filled by Commissioner Deirdre Ford. She explained that the chair is a fulltime Division of Workers' Compensation attorney staff member who rules on the evidence, drafts the decisions, and so forth. In addition to the chair, there are two labor and two industry representative lay members and those seats are not vacant. A board panel consists of three members, the chair and one member each from industry and labor, and there is a pool of five within which to draw from but the chair will always sit, and she opined the terms are five years.

[1:39:44 PM](#)

REPRESENTATIVE EASTMAN asked how individuals are chosen for appointment.

MS. MARKS replied that it is the same as any other boards and commissions seat, and opined that they solicit for applications to fill different seats, and often the departments are active in that process. Subsequently, Alaska Boards and Commissions provides the governor with a list of applicants and the governor appoints the position.

[1:40:25 PM](#)

REPRESENTATIVE EASTMAN opined that there is something of a disparity between the argument being made for why the members of the commission are not experienced enough to be making the decisions, and yet, the governor has the ability to select individuals with the correct credentials to make good decisions. He asked whether there was a reason that hasn't happened.

MS. MARKS argued that she wouldn't say that the individuals are not qualified because they are certainly qualified under the statute. The difficulty is that they are lay commissioners and the Workers' Compensation Board is made up of individuals from the community, some with legal expertise and some without. She explained that the Workers' Compensation Board decides issues of fact, and when a case is appealed it moves to the Workers' Compensation Appeals Commission wherein the commission decides matters of law, which is difficult for a lay person to do. She advised that a retiring chair was honest about his thoughts and basically told her that he is a lone commissioner because he

wrote all of the decisions, and part of the problem is that when a person is not an attorney they are loathe to make changes to a decision. There just has not been input from the lay commissioners and, she reiterated, for a person to qualify to be a commissioner they must have Workers' Compensation Board experience and they do have that. Although, it turns out that a different kind of experience is necessary at the appellate level.

[1:42:45 PM](#)

CHAIR CLAMAN asked whether any of the positions on the commission are paid positions, or whether it is all volunteer.

COMMISSIONER DRYGAS responded that two positions are paid, the attorney chair is a fulltime position and there is a fulltime administrative staff position.

[1:43:16 PM](#)

REPRESENTATIVE KREISS-TOMKINS requested that Commissioner Drygas speak to the extent that HB 69 relates to the omnibus workers' compensation reform bill.

COMMISSIONER DRYGAS opined that it doesn't really relate, and if it relates at all it is through the department's serious effort at making efficiencies wherever possible, and looking for ways to do things better with less money. She related that when she became commissioner, the House Finance Committee Co-Chair tasked the department with the responsibility of going through its statutes to determine what provisions the legislature has "saddled you with" that are no longer working or necessary that could save money. Through that process it was discovered that the Workers' Compensation Appeals Commission was not working, she advised.

REPRESENTATIVE KREISS-TOMKINS thanked her for that context, and noted the uncanny similarity of her comments to that of his colleague's remarks on a piece of legislation heard this morning on the floor of the House of Representatives, that came out of this committee.

CHAIR CLAMAN opened public testimony on HB 69.

[1:45:21 PM](#)

NANCY MEADE, General Counsel, Administrative Staff, Office of the Administrative Director, Alaska Court System, advised that the bill does have an impact on the Alaska Court System, obviously. She pointed out that this bill was sponsored by the executive branch, and last year when it came forward she was surprised by it, but then worked with the department and its representative to ensure that if this were to be the policy adopted by the legislature, that the court system could implement it as smoothly as possible. She commented that the department has been receptive to her comments and, although, this is not something the court system is promoting, it is pleased to follow whatever policy the legislature might put into statute.

[1:46:31 PM](#)

CHAIR CLAMAN said he assumed that where the Department of Labor & Workforce Development (DLWD) was saving money by not having an appeals commission, the court was picking up the cost of hearing those cases.

MS. MEADE agreed, and she explained that the court system submitted a zero fiscal note because it is careful to only include fiscal impact when it actually requires hiring someone or expending actual funds on supplies, for example. This will result in more work for the courts but not the type of work she could monetize into a position that would be required to implement this. Nevertheless, the judges will certainly have more work to do as will the court system's staff, she explained.

[1:47:22 PM](#)

REPRESENTATIVE KOPP commented that the committee received a good presentation from the court system earlier, and asked whether judges are salaried no matter how many hours they work.

MS. MEADE answered in the affirmative.

REPRESENTATIVE KOPP asked how many cases a year the court system anticipates picking up with this workload transfer to the court, and also what is the average workload.

MS. MEADE advised that the average number of cases appealed over the past ten years was approximately 33 cases; therefore, the superior court would anticipate having about 33 additional administrative appeals. She referred to the other workers' compensation bills going through this body, and noted that any

changes in the underlying law may lead to additional appeals, and possibly the more things that are less established, the more things may be appealed. In any case, she said, the court system has been operating under the assumption there would be approximately 33 additional cases. These cases, she explained, are different from many of the other cases the superior court handles, and they are considered by the judges to be more challenging and more time consuming than many other types of cases. These cases do not have the priority or time pressure issues that a child in need of aid case does, or a criminal case does, but are very brief intensive and are often done by judges on a Saturday because they are longer cases to think about and resolve. She stressed that the judges will do whatever comes before them as they did it previously. She offered her belief that the underlying reason for creating the Workers' Compensation Appeals Commission was that the superior court judges took a long time deciding these cases because they were not a high priority in terms of a child case or a criminal case, and such. There were some inconsistent decisions among superior court judges and, she explained, the only consistency would come when something was appealed to the Alaska Supreme Court. Superior court judges do not have particular expertise in workers' compensation law, which she described as unique and a somewhat arcane area of law. Even though the board's factual findings are established, the court does need to determine whether there is substantial evidence for the findings which requires an extensive review of the record, she explained.

[1:50:40 PM](#)

REPRESENTATIVE LEDOUX surmised that currently cases go to the Workers' Compensation Board and if the person does not like the board's decision, they go to the Workers' Compensation Appeals Commission as opposed to the superior court.

MS. MEADE responded in the affirmative.

REPRESENTATIVE LEDOUX continued that if the person does not like the Workers' Compensation Appeals Commission's determination, the person goes straight to the Alaska Supreme Court.

MS. MEADE answered in the affirmative, and explained that this bill would substitute the Workers' Compensation Appeals Commission for the Alaska Superior Court. Therefore, a case could go from the board with the factual findings to the superior court for review, and then to the Alaska Supreme Court for ultimate final review.

REPRESENTATIVE LEDOUX surmised that quite a few of the decisions from the Workers' Compensation Appeals Commission were reversed by the Alaska Supreme Court.

MS. MEADE responded that Commissioner Drygas testified that the reversal rate is approximately 50 percent, and noted that the court system does not keep stats exactly on the reversal rate for certain types of decisions.

[1:52:05 PM](#)

REPRESENTATIVE LEDOUX opined that it is possible there would be less likelihood of an appeal from the superior court because those folks would probably have it legally correct than those from the Workers' Compensation Appeals Commission, which might cut down some of the work for the Alaska Supreme Court.

MS. MEADE commented that, interestingly, the number of cases appealed to the Alaska Supreme Court from the superior court prior to 2005, and the number subsequent to 2005 from the commission, was almost unchanged because these are difficult cases with a lot of facts, and many of the injured workers are self-represented and sometimes have difficulty creating arguments and presenting things in the most effective manner for the court.

[1:53:19 PM](#)

REPRESENTATIVE EASTMAN asked Ms. Meade to speak to the reasons the Worker's Compensation Appeals Commission was created and the court's opinions to begin with.

MS. MEADE remarked that as she alluded to previously, in 2005 there was some dissatisfaction with the way the courts were handling workers' compensation appeals and the reversal rate bothered some people. She reiterated that she does not have the data on that, but within her review of the records from back when, there was the position that superior court judges decided cases in an inconsistent manner, which can happen with superior court opinions when precedent is not really established until the Alaska Supreme Court weighs in. She continued that a sector of the population wanted experts deciding these cases which was those familiar with workers' compensation, and many of the state's judges do not have that expertise but they did their best. It was dissatisfying to some people when cases were decided in a 12-18 month period, and as a result, the Workers'

Compensation Appeals Commission was intended to address those problems. She reiterated that it was hoped the commission would be faster, have consistency, and that people with better expertise in this area would be deciding the cases.

[1:55:10 PM](#)

REPRESENTATIVE EASTMAN opined that the court system has been doing its best to hold down costs in taking voluntary cuts and cutting down hours, and such. He asked her to speak to any impact this change may have on the morale of the court system.

MS. MEADE said she appreciates the question, and the fact is that the state's judges in court accept everything that is legitimately brought to them. In the event it is the legislature's policy decision that the court handle these, the judges, in general - although this is a difficult question to answer, have very good morale. Therefore, she does not anticipate people entering a phase of depression, but it will be additional work, and ultimately, unless the court system must hire a judge to handle these cases, the fiscal impact itself wouldn't be there, she said.

[1:56:44 PM](#)

REPRESENTATIVE KOPP referred to therapeutic court and specialty judiciary training in certain areas of the law, and asked whether, if there were enough cases, it would justify a couple of judges specializing in this area of law similar to an administrative law judge type of approach dealing specifically with a certain area of law. He asked whether the court has discussed this possibility.

MS. MEADE answered that occasionally it is suggested to the courts that there be a specialty judge for certain types of cases, and that is something the court system might consider as it is not a closed door. However, she related, when thinking about how to staff that, the judge would specialize in these type of cases, meaning that the judge would not work on the child in need of aid cases, criminal cases, divorce cases, or the routine cases, and another judge would be taking up that work. She said, the court system may consider doing that in certain areas, although, in the past there has been a reluctance on the part of judges to volunteer to take cases like this. Instead, she explained, it has been expedient and efficient to spread them around, but she was unsure whether that would always

be the case. The Alaska Supreme Court could consider it if the issue comes to the floor, or judges suggest it, she said.

REPRESENTATIVE KOPP commented that it appears this is an intractable problem similar to a tar baby that no one wants when trying to figure out where it is best housed.

[1:58:40 PM](#)

CHAIR CLAMAN observed that a possible solution to a preemptory challenge is to not have judges specialize but, at least in the third judicial district assigned three judges to these cases rather than the whole group. He continued that that would mean if someone exercises a preemptory challenge, the person would still get one of the three judges that hears more of these cases and it would increase the odds of consistency. Although, he acknowledged, it probably doesn't do much in the first, second, and fourth judicial districts due to less judges to spread the cases around.

[2:00:05 PM](#)

MS. MEADE related that all options are possible and should this legislation become law, the court system would anticipate handling these appeals like other agency appeals and spread them around. She agreed that most happen in the third judicial district which is where most of the decisions come out of, and is where most of the injured workers and employers are located because that is the population center. In the event issues arose such as timeliness or something else, the court would be open to considering the most efficient way to handle these. She also agreed that the preemptory challenge could be a challenge.

[2:00:49 PM](#)

REPRESENTATIVE KREISS-TOMKINS referred to Representative Kopp's description of this as a tar baby and noted he was interested in terms of comparative policy. Given the high rate of reversal in both of the regimes to address workers' compensation appeals, he asked whether there are systems hybridized or otherwise in other states that seem to be successful and keep down rates of reversal, and otherwise be judicially and administratively efficient.

MS. MEADE advised that she is not familiar with how workers' compensation cases are handled in other states. Although, she said she is aware that many other states have an appeals

commission within its executive branch. Nonetheless, she remarked, she was probably not qualified to answer how well those work, whether they've been changed, or gone back and forth.

[2:02:05 PM](#)

REPRESENTATIVE LEDOUX asked whether she has any idea if the Workers' Compensation Appeals Commission was more or less generous to workers than the superior court.

MS. MEADE answered that she does not know and she should not speculate because it is not within her area of expertise.

[2:02:32 PM](#)

REPRESENTATIVE LEDOUX asked whether Commissioner Drygas or Ms. Marx knows the answer to her question.

CHAIR CLAMAN noted that they are both shaking their heads [no].

[2:02:52 PM](#)

MS. MEADE expressed that the court is willing to take on whatever the legislature gives them to resolve, and although they are difficult cases, the court system's judges are ready to take it on without fiscal impact, and hopefully without any impact on their morale.

[2:03:41 PM](#)

COMMISSIONER DRYGAS advised that she did not have any information to answer Representative LeDoux's question, and the cases would have to be surveyed from statehood to 2005 to answer.

[2:04:02 PM](#)

REPRESENTATIVE LEDOUX explained that she was in the legislature in 2005, and it was part of an attempt by Governor Frank Murkowski to get down the workers' compensation rates, and there was a feeling amongst some in the business community that this would help. The unions fought it tooth and nail and there was basically a big blow up in the building, it was the oil taxes of 2005, and it was created with a bang and it is interesting that it will end with a whimper, she remarked.

2:05:08 PM

REPRESENTATIVE KREISS-TOMKINS asked Commissioner Drygas the same question he asked Ms. Meade regarding comparative policy and whether the department has a perspective on models that work in other states more efficiently than Alaska, and to what extent that information informed this legislation.

COMMISSIONER DRYGAS responded that the department has not investigated what other states have done, and she couldn't presume to say what happened 12 years ago when they looked to other regimes. She said she guesses this is what they came up with. For the department's purposes, it wanted to go back to the way it was without having a fiscal impact. She stressed that she wouldn't want to ever speak for the court system, and acknowledged that the department does not take lightly that the bill would essentially burden the court system with an additional roughly 20-30 cases a year. The system was functioning for many years and the attempt to make it better did not make it better, she said.

2:07:20 PM

REPRESENTATIVE REINBOLD asked Representative LeDoux why the unions were concerned about this commission.

REPRESENTATIVE LEDOUX responded that she is not here to give public testimony.

2:07:46 PM

CONSTANCE LIVSEY, Attorney, advised that she is an Anchorage attorney and the overwhelming part of her practice is workers compensation defense. She said she speaks with that perspective and her comments are her own, although certainly she has been contacted by a number of clients both employers and insurers who are concerned about HB 69. Ms. Livsey spoke in opposition to HB 69, and she related that she is in favor of retaining the Workers' Compensation Appeals Commission. With approximately 17 years of workers' compensation experience in the superior court appeals system, and 11 years with the Workers' Compensation Appeals Commission in place, and from a practitioner's perspective, she pointed out that the Workers' Compensation Appeals Commission is absolutely a better mousetrap. She described it as more efficient, more consistent, the quality of the decision making is better and the chairs of the commission, with the exception of Andrew Hemingway who was an experienced

administrative law judge, the others have all been experienced lawyers with a workers' compensation background. Stephen T. Hagedorn, and Philip Ulmer were lay members of the workers' compensation board for many years before they became commissioners. While two of the three commission members are not lawyers, it is nonetheless the case that on appeal sometimes the question is whether the board's factual findings are supported by substantial evidence. She said she does not discount the input and importance of the lay members, but without arguing their individual merit, the commission chair is an experienced workers' compensation practitioner. She described this as an arcane, esoteric, and bizarre area of law that a person does not wake up one morning understanding. The reality of the state's superior court bench is they are people with criminal law and civil law backgrounds and no wealth or depth of expertise in this area. She described the appeals as complicated and related that in court, she would offer an oral argument to a superior court judge who was a bright, talented, respected member of the bar, but they would have no idea what she was talking about and the commission brings a level of expertise not found elsewhere. She stressed that any claim of cost savings through eliminating the commission is simply illusory because there will not be fewer appeals, they will simply be shifted to the superior court that is less familiar with this area of law thereby taking longer to decide a case. She described this as cost shifting and not cost savings even though certainly the Workers' Compensation Appeals Commission line item may jump out in a budget, and she described it as an attack on the commission with a misguided attempt to go back to a system that was not working well in the eyes of practitioners. She expressed concern over the loss of the wealth of expertise that will be hard to replace and will not be replaced by taking matters back to superior court. She urged the committee to not pass this bill.

[2:12:57 PM](#)

REPRESENTATIVE EASTMAN stated that arcane and esoteric are words of great interest to lawmakers, and asked her to speak to whether the difficulties with the law deal with things the state is responsible for, or whether these more federally driven complications that make it esoteric.

MS. LIVSEY pointed out that workers' compensation is a creature of state law in every state, unless the person is a federal employee. Alaska laws are not any more complex and strange than that of any other state, it is just a body of statutory law with

which the average lawyer that does not practice in this area is unfamiliar. She said she compares it to her trying to survive a bankruptcy law case because she would have no idea of what she was talking about, and that is basically the world of workers' compensation.

[2:14:16 PM](#)

REPRESENTATIVE LEDOUX asked whether there is an association or group of workers' compensation lawyers in Alaska.

MS. LIVSEY responded that there is a section of the bar association that meets the first Friday of every month, and it includes workers' compensation practitioners representing employees and employers. There is no other association of workers' compensation lawyers, she said.

[2:14:54 PM](#)

REPRESENTATIVE LEDOUX inquired as to whether her opinions would be reflective of the opinions of the section of the workers' compensation bar association.

MS. LIVSEY related that there are a range of opinions as to the commission being perceived to be under fire, some members are somewhat resigned to its disappearance, other practitioners are not particularly fans, and others are. She stated that she would not say there is any split down employer/employee lines.

REPRESENTATIVE LEDOUX queried as to whether the Workers' Compensation Appeals Commission tends to lean more favorably to employees versus employer than the superior court. She asked how that has turned out as far as her practice is concerned.

MS. LIVSEY opined that the high degree of variability in superior court decisions makes it a difficult question to answer. As Ms. Meade alluded, one of the realities of going before the superior court is that each judge could decide a case how he/she saw fit without a great deal of consistency in the interpretation of the law. Whereas, the commission has developed a more consistent body of law and its decisions do have precedential value over subsequent board cases. She opined that the commission is not perceived by practitioners as being pro-employer or pro-employee.

[2:17:37 PM](#)

REPRESENTATIVE KREISS-TOMKINS said that after hearing this testimony he is curious, pre-2005, if there was any judiciary system to allow certain judges to develop more familiarity and expertise with this esoteric and arcane realm of law to create the best possible adjudication process.

[2:18:31 PM](#)

MS. MEADE replied that the answer to that is "No," their cases are randomly assigned to judges based on a random computer procedure and, thereafter, there is generally not trading because judges are ethically and otherwise required to take the cases assigned to them. She said that is not to say there cannot be some shuffling or reassignment for efficiency or other reasons. It is not for a judge to say they don't like these cases or that they would prefer Judge X take these cases instead because they are time consuming. At the time, they were handled just like any other agency appeal, randomly assigned, and decided by that judge.

[2:19:38 PM](#)

REPRESENTATIVE KREISS-TOMKINS asked whether an idea along the lines of a mechanism designating a certain number of judges to take these cases to develop familiarity and consistency could have potential.

MS. MEADE answered that as she previously mentioned, that can happen and it may be decided amongst the presiding judges or the Alaska Supreme Court that these particular cases should be assigned or decided in a different manner from other cases. She reiterated that it is not out of the realm of possibilities and in the past there has not been a lot of interest in having specialty judges in certain areas, for one thing it would be hard to get judges to volunteer to take these cases at the expense of their other cases, and the organization may be challenging. She advised that she is not saying that it can't happen, but it hasn't happened in the past.

[2:21:43 PM](#)

REPRESENTATIVE REINBOLD asked whether she believes, in the event this bill passes, it is in the best interest of the courts and those judges that will be handling this, to get any type of training so they are more aware of the innuendos of this type of case.

MS. MEADE said the court system does have a judicial training conference once a year and this could certainly be a topic on the agenda. Every year it is decided what needs to be included within the judicial training, focusing on issues with the most impact to the most people. When considering that 33 new cases will come to the court, and there are 42 superior court judges, she said she was unsure it was something that would be focused on at a judicial conference. She offered that that is not to say that if a certain sitting judge, or soon to be appointed judge, decides that they love these cases and they could be sent to specialized training, possibly.

[2:23:27 PM](#)

REPRESENTATIVE REINBOLD requested a historic perspective as to why there was pushback in the past.

[2:24:07 PM](#)

DON ETHRIDGE, Lobbyist, American Federation of Labor and Congress of Industrial Organizations, Alaska (Alaska AFL-CIO), advised that the main issue at that particular time was that a massive change in workers' compensation was happening. The union objected because they were afraid it would get political with changes in administrations, and who would be appointed to the commission. He acknowledged that so far it has not been political, but the union still does not think it works right. He explained that the union was sold a bill of goods that the commission would be so much faster, better decisions. Except, he pointed out, the unions are seeing the same number of people going to the Alaska Supreme Court as before 2005, and the unions do not believe it is worth the cost.

[2:25:20 PM](#)

REPRESENTATIVE REINBOLD said she was pleased to hear it did not get political. She asked whether there are any resolutions from the members supporting getting rid of the commission, and whether he was speaking on behalf of the union representatives, the union bosses, or whether he thinks the members would want the commission. She asked who this is impacting.

[2:25:49 PM](#)

MR. ETHRIDGE advised that he was speaking on behalf of the AFL-CIO, which is the umbrella of all of the unions under the AFL-CIO. He remarked that no members have come out and said they

don't support the bill, it was discussed it and there has been absolutely zero discussion against the bill. Most of the AFL-CIO members are neutral on it because they don't have any concern one way or the other. When looking at the overall package of "how many members wind up going to the appeals it is a limited number." The AFL-CIO does support the department in the fact that they do not believe it works correctly.

[2:26:41 PM](#)

REPRESENTATIVE REINBOLD surmised that there has not been a vote amongst the membership, and asked whether he believes that most of the members or all of the members are aware of this bill with zero push back.

MR. ETHRIDGE answered in the affirmative. He advised that the bill was brought up during the legislative conference, it was discussed amongst the leadership with 140 members present, and there has been zero push back.

REPRESENTATIVE REINBOLD asked for clarification that it included leadership with 140 members present, yet there are 55,000 members. She commented that she was worried about the other members and wanted to know whether there was any resolution or any vote or any issues at all, and whether he believes the superior court can handle this without specializing in this area of law.

MR. ETHRIDGE advised that it was not brought to a vote, there was no resolution in support of the bill and in the event they did do a resolution it would have been the same 140 people voting on it and they did not believe a resolution was necessary. The superior court is where appeals were before and they had no problems going through the superior court. He explained that when they were sold the bill of goods on this, they were told it would be so much faster with claims going in and out, and for some of the claims it is considerably faster, but for those that wind up going to the Alaska Supreme Court it lengthens the case.

[2:28:28 PM](#)

REPRESENTATIVE REINBOLD said not to be redundant, but she was not at the meeting and doesn't know who was there. She asked whether the 140 members were all leadership, or were they regular AFL-CIO union members. She said she cares about whether

the members are having a say or whether they think this is working, it is an important policy call.

[2:28:52 PM](#)

MR. ETHRIDGE explained that many members of the locals were also at this meeting, it wasn't just all union representatives at the meeting. He described it as the biggest bunch of new faces he had ever seen at one of their conferences, and that younger union members showed up.

[2:29:45 PM](#)

CHAIR CLAMAN, after ascertaining no one further wished to testify, closed public testimony on HB 69.

CHAIR CLAMAN advised that the committee will not be moving the bill and he is receptive to opening public testimony in the future.

[2:30:09 PM](#)

REPRESENTATIVE LEDOUX related that she would like to hear from the workers' compensation plaintiff's bar, someone who typically represents the employee rather than the employer.

CHAIR CLAMAN referred to the meeting of the workers' compensation section and encouraged Ms. Livsey to let folks know if they are interested in testifying to contact his office because the committee would like to hear from different people.

MS. LIVSEY said she would pass the word along.

[2:31:26 PM](#)

REPRESENTATIVE EASTMAN commented that the state has an esoteric set of law that has been bandied around from the courts to the commission and perhaps now going back to the courts. He related that if the law is esoteric and arcane it is the legislature's job to make it more understandable. He noted there is workers' compensation legislation before the House of Representatives currently, and he does not yet have a position on that particular bill, but if any representatives are sitting on committees dealing with that bill perhaps what has been heard today might be good to inject to that conversation. In the event that bill offers an opportunity to make the law less arcane and esoteric everyone would benefit, he said.

CHAIR CLAMAN noted that Representative Eastman should be pleased that the workers' compensation reform bill is coming to the House Judiciary Standing Committee and he will have an opportunity to learn more.

REPRESENTATIVE LEDOUX commented to make it less arcane.

CHAIR CLAMAN noted that some of the features in which workers' compensation is arcane and complicated is many years of precedent in not only this court, but other courts. There is probably only so much the legislature can do to make it less unique because there are complicated rules that apply only to workers' compensation. It becomes like someone who does criminal appeals knows more about criminal appeals than someone that does civil appeals, he said.

[HB 69 was held over.]

[2:34:19 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:34 p.m.