

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

March 6, 2017

3:16 p.m.

MEMBERS PRESENT

Representative Sam Kito, Chair
Representative Adam Wool, Vice Chair
Representative Andy Josephson
Representative Louise Stutes
Representative Chris Birch
Representative Gary Knopp
Representative Colleen Sullivan-Leonard

MEMBERS ABSENT

Representative Mike Chenault (alternate)
Representative Bryce Edgmon (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 79

"An Act relating to workers' compensation; repealing the second injury fund upon satisfaction of claims; relating to service fees and civil penalties for the workers' safety programs and the workers' compensation program; relating to the liability of specified officers and members of specified business entities for payment of workers' compensation benefits and civil penalties; relating to civil penalties for underinsuring or failing to insure or provide security for workers' compensation liability; relating to preauthorization and timely payment for medical treatment and services provided to injured employees; relating to incorporation of reference materials in workers' compensation regulations; relating to proceedings before the Workers' Compensation Board; providing for methods of payment for workers' compensation benefits; relating to the workers' compensation benefits guaranty fund authority to claim a lien; excluding independent contractors from workers' compensation coverage; establishing the circumstances under which certain nonemployee executive corporate officers and members of limited liability companies may obtain workers' compensation coverage; relating to the duties of injured employees to report income or work; relating to misclassification of employees and deceptive leasing; defining 'employee'; relating to the Workers' Compensation Board's approval of attorney fees in a settlement agreement; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 141

"An Act relating to allocations of funding for the Alaska Workforce Investment Board; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 132

"An Act relating to transportation network companies and transportation network company drivers."

- SCHEDULED BUT NOT HEARD

SENATE BILL NO. 14

"An Act relating to transportation network companies and transportation network company drivers."

- BILL HEARING CANCELED

PREVIOUS COMMITTEE ACTION

BILL: HB 79

SHORT TITLE: OMNIBUS WORKERS' COMPENSATION

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/25/17	(H)	READ THE FIRST TIME - REFERRALS
01/25/17	(H)	L&C, JUD, FIN
02/20/17	(H)	L&C AT 3:15 PM BARNES 124
02/20/17	(H)	Heard & Held
02/20/17	(H)	MINUTE(L&C)
03/01/17	(H)	L&C AT 3:15 PM BARNES 124
03/01/17	(H)	<Bill Hearing Canceled>
03/06/17	(H)	L&C AT 3:15 PM BARNES 124

BILL: HB 141

SHORT TITLE: AK WORKFORCE INVESTMENT BOARD;FUNDS

SPONSOR(s): FANSLER

02/22/17	(H)	READ THE FIRST TIME - REFERRALS
02/22/17	(H)	L&C, FIN
03/06/17	(H)	L&C AT 3:15 PM BARNES 124

WITNESS REGISTER

REPRESENTATIVE ZACH FANSLER
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As sponsor, presented HB 141.

PALOMA HARBOUR, Director
Central Office
Division of Administrative Services
Department of Labor & Workforce Development (DLWD)
Juneau, Alaska

POSITION STATEMENT: Answered questions regarding HB 141.

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

POSITION STATEMENT: Answered questions regarding HB 141.

FRED VILLA, Associate Vice President
Workforce Programs
University of Alaska Fairbanks

POSITION STATEMENT: Testified in support of HB 141.

PEARL BROWER, Ph.D., President
Ilisagvik College
Barrow, Alaska

POSITION STATEMENT: Testified in support of HB 141.

DENNIS DISHION, Executive Director
Yuut Elitnaurviat
Bethel, Alaska

POSITION STATEMENT: Testified in support of HB 141.

JOEL ALOWA, Community Health Services Director
Maniilaq Association
Kotzebue, Alaska

POSITION STATEMENT: Testified in support of HB 141.

ANISHA ELBIE, Co-executive Director
Southwest Alaska Vocational Educational Center (SAVEC)
King Salmon, Alaska

POSITION STATEMENT: Testified in support of HB 141.

ANNETTE CARUSO, Co-executive Director
Southwest Alaska Vocational Educational Center (SAVEC)
King Salmon, Alaska

POSITION STATEMENT: Testified in support of HB 141.

D'ANNE HAMILTON, Personnel Officer
Teck Alaska
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 141.

CHERYL EDENSHAW, Director
Alaska Technical Center (ATC)
Kotzebue, Alaska

POSITION STATEMENT: Testified in support of HB 141.

KAREN CEDZO
Partners for Progress in Delta
Delta Junction, Alaska

POSITION STATEMENT: Testified in support of HB 141.

DEBBIE BANASZAK, Legislative Liaison
Office of the Commissioner
Department of Labor & Workforce Development (DLWD)

POSITION STATEMENT: Presented the proposed changes in HB 79.

MARIE MARX, Director
Division of Workers' Compensation
Department of Labor & Workforce Development (DLWD)
Juneau, Alaska

POSITION STATEMENT: Answered questions regarding HB 79.

ACTION NARRATIVE

[3:16:51 PM](#)

CHAIR SAM KITO called the House Labor and Commerce Standing Committee meeting to order at 3:16 p.m. Representatives Wool, Knopp, Sullivan-Leonard, Stutes, Josephson, and Kito were present at the call to order. Representative Birch arrived as the meeting was in progress.

HB 79-OMNIBUS WORKERS' COMPENSATION

[3:17:37 PM](#)

CHAIR KITO announced that the first order of business would be HOUSE BILL NO. 79, "An Act relating to workers' compensation; repealing the second injury fund upon satisfaction of claims; relating to service fees and civil penalties for the workers' safety programs and the workers' compensation program; relating to the liability of specified officers and members of specified business entities for payment of workers' compensation benefits

and civil penalties; relating to civil penalties for underinsuring or failing to insure or provide security for workers' compensation liability; relating to preauthorization and timely payment for medical treatment and services provided to injured employees; relating to incorporation of reference materials in workers' compensation regulations; relating to proceedings before the Workers' Compensation Board; providing for methods of payment for workers' compensation benefits; relating to the workers' compensation benefits guaranty fund authority to claim a lien; excluding independent contractors from workers' compensation coverage; establishing the circumstances under which certain nonemployee executive corporate officers and members of limited liability companies may obtain workers' compensation coverage; relating to the duties of injured employees to report income or work; relating to misclassification of employees and deceptive leasing; defining 'employee'; relating to the Workers' Compensation Board's approval of attorney fees in a settlement agreement; and providing for an effective date."

[3:17:56 PM](#)

CHAIR KITO closed public testimony on HB 79.

[HB 79 was set aside and taken up again later in the meeting.]

HB 141-AK WORKFORCE INVESTMENT BOARD;FUNDS

[3:18:23 PM](#)

CHAIR KITO announced that the next order of business would be HOUSE BILL NO. 141, "An Act relating to allocations of funding for the Alaska Workforce Investment Board; and providing for an effective date."

[3:18:43 PM](#)

REPRESENTATIVE ZACH FANSLER, Alaska State Legislature, as sponsor, presented HB 141. He read from the sponsor statement, which read as follows [original punctuation provided]:

AS 23.15.820 authorizes the Alaska Workforce Investment Board to administer the Alaska Technical and Vocational Education Program (TVEP). This legislation reauthorizes the allocation of the TVEP funding for five years.

TVEP was established by Legislature in 2000 with the purpose of enhancing the quality and accessibility of job training across the state, and aligning training with regional workforce demands. TVEP funds are obtained from a portion of employee contributions to the unemployment insurance trust fund.

The TVEP funds are allocated to technical and vocational education entities across Alaska designated by AS 23.15.835. Each entity receives a set percentage of the TVEP funds available each fiscal year. The current allocation sunsets June 30, 2017. Unless the allocation is reauthorized this funding will sit unused in the TVEP account instead of being used by these entities to train Alaskans.

TVEP recipients are required by statute to track and report program outcomes to the Alaska Workforce Investment Board. Each year the Board compiles and provides to the legislature a TVEP performance report containing this information. In Fiscal Year 2016, the ten TVEP recipients were allocated \$12,510,900 and served 10,295 youth and adults. A statewide network of training providers is critical to developing an Alaskan workforce.

This legislation is necessary to help educate and train Alaskans for Alaska's jobs.

REPRESENTATIVE FANSLER listed the programs that currently receive TVEP funds: University of Alaska statewide receives 45 percent, Galena Interior Learning Academy (GILA) receives 4 percent, the Alaska Technical Center in Kotzebue receives 9 percent, Alaska Vocational Technical Center (AVTEC) in Seward receives 17 percent, the Northwestern Alaska Career and Technical Center (NACTEC) in Nome receives 3 percent, the Southwest Alaska Vocational and Education Center (SAVEC) in King Salmon receives 3 percent, Yuut Elitnaurviat in Bethel receives 9 percent, Partners for Progress in Delta receives 3 percent, the Amundsen Educational Center in Soldotna receives 2 percent, and Ilisagvik College in Utqiagvik receives 5 percent.

REPRESENTATIVE FANSLER explained that the bill would reauthorize funding for five years and the distributions would be set until June 30, 2022. He expressed that the bill is important to many communities around the state and is important to the state's

resource development systems. The bill would ensure that Alaskans are trained to perform the jobs in their regions.

[3:23:12 PM](#)

REPRESENTATIVE BIRCH asked where the funds come from.

REPRESENTATIVE FANSLER described that TVEP is funded by a portion of the contributions to unemployment insurance paid by every working Alaskan. The funds are distributed to technical and vocational education entities across Alaska's regions in accordance with AS 23.15.835.

REPRESENTATIVE BIRCH asked how TVEP benefits his constituents who have funds taken out of their wages.

REPRESENTATIVE FANSLER noted that unemployment [insurance contributions] are currently pulled out for "unemployment reasons." He said that one benefit of TVEP is the ability to train a worker for a well-paying job, like those on the North Slope. He added that the programs are regionally based and target the industries of each region. He explained that the Yuut Elitnaurviat in Bethel does a lot of [Commercial Driver's License] (CDL) training. He proposed one might consider the TVEP program as an opportunity for upward mobility for employees to get better jobs, for Alaska to keep its high-paying jobs within the state, and [to have the wages from such jobs remain] in Alaska's economy.

[3:25:25 PM](#)

REPRESENTATIVE BIRCH offered his interpretation that [TVEP funding] "comes out of the hide of the working person" and the money is taken out of an individual's paycheck to fund training for someone that might replace him/her. He said he is not convinced that is a good thing. He acknowledged the pot of money is big, but he questioned what the return value is for the person who is working and seeing his/her paycheck diminish.

REPRESENTATIVE FANSLER responded that there is a wide distribution of jobs around the state that require a professional degree. He said that TVEP is a program designed specifically for jobs that would utilize resource development industries to provide skills to Alaskans. He stated that the funding mechanisms for [TVEP] have been in place for many years. He remarked:

Ideally, I think what we all want as Alaskans is to [at] some point get to a place where workers can ... get that upward mobility and be able to say, "I no longer ... qualify for ... just the bare minimum wage job."

REPRESENTATIVE FANSLER suggested that TVEP provides an opportunity for such a worker to get a job with a respectable living wage to bring back to the community and help the overall economy of Alaska. He noted that billions of dollars leave the state each year with people that don't live in Alaska: He said, "They're working two on, and then they're flying down to live their two off." He observed that such money is being taken out of the Alaskan economy and is directly impacting Alaskans. He remarked:

We want those jobs to being going to folks that are going to - if they are taking a two on, two off, they're going to return to your ... region; they're going to come back, and they're going to put that money back ... into the economy locally.

REPRESENTATIVE FANSLER offered that the goal of HB 141 is to train Alaskans to do Alaska's jobs.

[3:28:53 PM](#)

REPRESENTATIVE STUTES asked whether the funds for the program come from "the unemployment that is paid."

REPRESENTATIVE FANSLER answered yes.

REPRESENTATIVE STUTES offered her understanding that unemployment insurance would not be reduced even if the TVEP program were discontinued.

REPRESENTATIVE FANSLER agreed. He remarked:

This is not going to be a means of putting money back in the pockets of currently working Alaskans. This is money that is simply designated from that unemployment removal to make sure that we can get as many Alaskans back to work as possible.

[3:29:56 PM](#)

REPRESENTATIVE WOOL asked where the Alaska Technical Center is located.

REPRESENTATIVE FANSLER said it is in Kotzebue, Alaska.

[3:30:14 PM](#)

REPRESENTATIVE JOSEPHSON asked if other states make similar investments with unemployment insurance benefits. He also asked what percent of all the collected unemployment insurance TVEP receives.

REPRESENTATIVE FANSLER said he would follow up with information on other states' unemployment investments. He noted that TVEP receives .16 percent of the employee unemployment insurance contributions.

[3:31:34 PM](#)

REPRESENTATIVE BIRCH asked if [paying unemployment] is optional to the employee. He said, "Obviously, if people ... choose to have a benefit, then they can opt to." He offered his understanding that the program is basically just "layered into" what is perceived to be unemployment insurance; however, the program takes \$5 million from working people's paychecks to fund training all over the state.

REPRESENTATIVE FANSLER responded that there is a good chance the working Alaskans [who contribute to unemployment insurance] have passed through TVEP programs to qualify for their jobs. He suggested that they are paying back into a system that has already benefited them. He mentioned that the program provides training at a reasonable price close to communities allowing individuals to become a "very important part of our fiscal climate."

REPRESENTATIVE BIRCH pointed out that employees don't have a choice to participate.

[3:33:33 PM](#)

CHAIR KITO indicated that the money is being paid by the employees regardless of whether or not the TVEP program continues. He commented that the program provides opportunities for retraining individuals who might need to change career paths. He remarked:

Not having that opportunity, I think, is going to be a challenge for Alaska, especially when we see a contraction in the economy where people might need to be retrained. So, we could we let the program go away, but then we're not going to have opportunities for individuals in Alaska that could get the training that could get them into productive careers in the future. So I do think that the idea is ... keep the program going so we can keep some training available for people that might need to change careers.

REPRESENTATIVE BIRCH asked for clarification that the program is paid for with unemployment insurance.

CHAIR KITO answered, "Correct."

[3:34:34 PM](#)

REPRESENTATIVE KNOPP expressed that Representative Birch's concerns are unrelated to HB 141. He noted that the bill extends the deadline by five years and allocates a percentage of money already collected.

[3:35:05 PM](#)

REPRESENTATIVE FANSLER agreed that the bill does not affect how much is taken out of the unemployment compensation. Rather, the bill designates a method to use those funds for vocational and technical education programs.

[3:36:17 PM](#)

REPRESENTATIVE WOOL asked if the approximately \$4 million [of TVEP funds] represents .016 of all [unemployment insurance] (UI) contributions.

REPRESENTATIVE FANSLER clarified that it is .16 percent.

[3:37:28 PM](#)

REPRESENTATIVE SULLIVAN-LEONARD asked how much unemployment insurance is captured on an average yearly basis since it began in 2000.

[3:37:49 PM](#)

PALOMA HARBOUR, Director, Central Office, Division of Administrative Services, Department of Labor & Workforce Development (DLWD), responded that she does not have a rolling total from 2000. She explained that the amount projected to be available in the fund for distribution in fiscal year 2018 (FY 18) is almost \$12 million, which is similar to the last three years.

[3:38:49 PM](#)

CHAIR KITO asked whether \$12 million is the entire collection of unemployment insurance or the amount available for TVEP.

MS. HARBOUR clarified that it is the amount available for TVEP.

[3:39:03 PM](#)

REPRESENTATIVE BIRCH asked what flexibility the legislature has in designating the use of the TVEP funds.

MS. HARBOUR reported that the entities are designated in statute; therefore, the legislature decides who receives the funding and what percentage they receive. She noted that HB 141 is a straight reauthorization of the current distribution for five more years.

REPRESENTATIVE BIRCH asked if the .16 percent is the percentage of the total unemployment insurance received by TVEP.

MS. HARBOUR responded that .16 percent is the percent of each employee's UI taxable wage base - which is close to \$40,000 - that goes into the TVEP fund for each employee. She noted that overall UI employment contributions vary each year, but on average they are about .5 percent of the taxable wage base.

REPRESENTATIVE BIRCH asked, "So .16 goes into .5 about 3 times, so it's like 30 percent?"

MS. HARBOUR responded, "That would makes sense."

REPRESENTATIVE BIRCH concluded that 30 percent of the unemployment insurance is being redirected to TVEP funds.

MS. HARBOUR answered no. She explained that 30 percent of an employees' contribution goes to TVEP, and the employer pays another .7 percent.

REPRESENTATIVE BIRCH described that one-third of employee's contribution is being directed by the legislature to these programs. He asked whether there are any constraints on the percentages. He said he is challenged by the idea that unemployment insurance is funding education.

MS. HARBOUR stated that [the legislature] could direct up to 100 percent of the employee contribution to TVEP. She explained that doing so would impact the amount contributed by the employer: There is a formula describing how much money needs to be collected to support unemployment insurance. She remarked, "If you decide to divert more of the employee's contribution to training programs, then the employer will have to fund more of that total contribution that's needed to fund unemployment insurance."

REPRESENTATIVE BIRCH said that unemployment insurance is supposed to be available to those who are unemployed. He offered his belief that using a third of the insurance to fund an education program for those who are already employed is not using the funds as they were originally intended.

[3:43:24 PM](#)

HEIDI DRYGAS, Commissioner, Department of Labor & Workforce Development (DLWD), said she will follow up with the percentage of overall UI [that goes to TVEP]. She offered her understanding that TVEP has been working since 2000. She offered that the adage 'A rising tide lifts all boats' really encapsulates what the TVEP program is about. She stated that UI is an insurance program which kicks in when someone is out of work. She explained that the TVEP programs fall "squarely within the ambit of unemployment insurance." She opined that the idea is for people to collectively have a portion of their insurance syphoned off to help all Alaskans go back to work. She noted that TVEP has 10 recipients across the state who use the money to train Alaskans for jobs - which is why UI was created. She noted that the program has been extremely successful and the department fully supports the program.

REPRESENTATIVE BIRCH expressed that he buys insurances which benefit him or his beneficiaries. He opined that the one-third of employees' contributions to unemployment insurance is being taken away to train other people, which does not benefit the payers. He offered that [the TVEP program] doesn't fill the role of insurance since it does not benefit the payer. Syphoning off a third of \$12 million to support colleges and

learning academies is not insignificant. He again noted that he is not comfortable with using unemployment insurance for that purpose.

[3:46:24 PM](#)

CHAIR KITO offered that he pays for auto insurance without receiving a benefit unless he is in an accident. He stated, "I can pay for many years and not receive a benefit of that insurance." He added that [employees] pay to try and benefit the overall program which provides education and retraining for unemployed individuals.

[3:47:10 PM](#)

FRED VILLA, Associate Vice President, Workforce Programs, University of Alaska Fairbanks (UAF), testified in support of HB 141. He stated that the university uses TVEP funding to respond to the needs of the state of Alaska with outreach, academic, certification, and professional development programs. He said that the funding is critical to provide the size, scope, and quality of the programs and is critical to the access to programs throughout the state. He relayed that the university is focused on career pathways, opportunities for economic development, and high-demand jobs in areas throughout the state. He remarked:

We work specifically based on the priorities established by the [Alaska] Workforce Investment Board, in priority industries and occupations. So this is a critical[ly] important program to the university as we look at addressing issues across the state.

MR. VILLA drew attention to documents [included in the committee packet] which show the milestones and contributions TVEP has made across the university system. He explained that TVEP has helped all health related fields, which is the largest industry sector in the state; TVEP has helped double the number of engineers; and it has helped high school students receive double credit for technical skills.

[3:49:53 PM](#)

PEARL BROWER, Ph.D., President, Ilisagvik College, testified in support of HB 141. She explained that Ilisagvik College is Alaska's only tribal college and only independent community

college. In the fall of 2016, it was rated the number two community college in the nation and Alaska's number one community college. Ilisagvik College is a public institution accredited by the Northwest Commission on Colleges and Universities. She stated that Ilisagvik College advocates for the reauthorization of the TVEP funds through HB 141. Ilisagvik College is among nine other organizations that are part of the [TVEP] program and that all have a mission of providing quality, workforce development designed education to support the needs of Alaskans.

DR. BROWER noted that Ilisagvik College receives five percent of the allocated TVEP funding. The funding has allowed Ilisagvik to serve over 700 students. She stated that Ilisagvik College ranks the highest in 2016 performance measures among the programs that receive TVEP funding. She relayed that 82.7 percent of Ilisagvik's TVEP students were employed with a median wage of over \$24,000 within seven to twelve months of exiting the program.

DR. BROWER explained that TVEP allows Ilisagvik College to offer training opportunities to residents across the state in order to get credentialed for jobs or to advance in their current jobs. Due to the many required certifications, many employed residents must get certified and recertified every year. She stated that without TVEP funding, Ilisagvik College would not be able to reach as many Alaskans or provide as many workforce development training opportunities. She remarked:

As we look to the future, I believe we all know that education must be a priority for all of us Alaskans. We must continue to support programs that provide opportunity for the future of our state. At Ilisagvik, we say, "More education, more options, more out of life."

[3:52:44 PM](#)

DENNIS DISHION, Executive Director, Yuut Elitnaurviat, testified in support of HB 141. He explained that Yuut Elitnaurviat translates to "The people's learning center." The center educates local people for family-wage jobs locally. Various programs use TVEP funding for new training and incumbent worker training, and several programs operate on an as-needed basis. He remarked, "All of our programs are structured to where people go to work at the completion of their program." In FY 16, Yuut

Elitnaurviat serviced 724 individual students with 1,082 services given.

MR. DISHION noted that the programs at Yuut Elitnaurviat include: National Center for Construction and Education Research certifications, adult basic education, [General Educational Development](GED) training, dental assistant and health aid therapy training, certified nursing training, federal apprenticeship programs for plumbers and electricians, driver's license and CDL programs, and other various on-demand trainings that lead directly to employment. He said that TVEP is important to Yuut Elitnaurviat to maintain its structure and the ability to train local Alaskans close to their home for high-paying jobs.

[3:54:44 PM](#)

CHAIR KITO opened public testimony on HB 141.

[3:55:08 PM](#)

JOEL ALOWA, Community Health Services Director, Maniilaq Association, testified in support of HB 141. He explained that the Maniilaq Association is a regional non-profit that provides medical, social, and tribal services for the 8,500 residents of the Northwest Arctic Borough and the community of Point Hope. He said that the Maniilaq Association has an important working relationship with the Alaska Technical Center (ATC) in Kotzebue, which provides training and training facilities for regional medical providers and water sanitation and infrastructure technicians. He observed that the medical and health field is continually changing with new practices and technology. He remarked, "Our partnership with ATC enables our staff to be trained and be provided with the best medical and health environment services possible to all of our regional and state residents." He stated his support of HB 141 and urged the reauthorization of funds for technical training.

[3:56:39 PM](#)

ANISHA ELBIE, Co-executive Director, Southwest Alaska Vocational Educational Center (SAVEC), urged the committee's support of HB 141. She stated that with large declines in taxable wages, TVEP will have a shortfall of \$1.32 million, and SAVEC will have a detriment of \$39,600 for FY 18. She said that providing training and retraining Alaskans for Alaskan jobs becomes more important as more workers get displaced. She explained that

SAVEC provides workforce training for 31 villages within its service area, which has a direct impact on the local economy. She remarked:

In the state's 2014 wage report for SAVEC, 115 [Hazardous Waste Operations and Emergency Response] (HAZWOPER) trainees contributed over \$5 million to the state's economy in the first year after training. This April, SAVEC will have three HAZWOPER restructure courses and one 40-hour HAZWOPER class. These students ... will continue to add to the local and state economy.

MS. ELBIE noted that SAVEC is working to improve the hiring of Alaskans in the seafood processing industry. She acknowledged that the state has made gains in hiring residents but still battles [high] non-resident hire. She pointed out the Bristol Bay Borough has a non-resident hire rate of 93.8 percent, Dillingham 84.6 percent, and Lake and Peninsula Borough 91.3 percent. This amounts to over 3,300 jobs and over \$29 million that could have stayed in the state and multiplied in the local economy. She expressed that SAVEC provides workforce training through strong partnership funding including TVEP and local contributions from regional organizations: the Bristol Bay Native Corporation, the Bristol Bay Native Association, the Bristol Bay Borough, and the Bristol Bay Housing Authority. She stated that the [University of Alaska Fairbanks] (UAF) Bristol Bay Campus and the Bristol Bay Economic Development Corporation provide contributions directly for training. Since the fall of 2016, 152 students have been trained in 22 classes at SAVEC, and there are 12 more trainings planned this spring. She thanked the committee and the bill sponsor.

[4:00:06 PM](#)

ANNETTE CARUSO, Co-executive Director, Southwest Alaska Vocational Educational Center (SAVEC), testified in support of HB 141. She stated that she had nothing further to add to Ms. Elbie's testimony.

[4:00:19 PM](#)

D'ANNE HAMILTON, Personnel Officer, Teck Alaska, testified in support of HB 141. She explained that Teck Alaska operates the Red Dog mine in Northwest Alaska and employs 600 people at its busiest time of the year. She stated that Teck Alaska works closely with the Alaska Technical Center and provides input to

develop [Alaska Technical Center's] (ATC) process technology program. She noted that the ATC responded quickly to Teck Alaska's request for more soft skill development, which was important to Teck Alaska. She explained that ATC revised its schedule to demonstrate to students what working long days at a mine would be like and show a realistic viewpoint of life in a mine.

MS. HAMILTON offered her belief that [training at ATC] improves employee retention. She noted that Teck Alaska recently brought 11 ATC students to the mine to build on ATC training by providing job shadow experience and allowing the students to see firsthand the work they could be doing after completing training. She remarked that ATC helps students gain access to high-paying jobs and make connections to the industry that would likely not have happened without ATC. Through its process technology and millwright maintenance programs, ATC works very hard to teach the skills needed at the mine. She expressed that TVEP funding is important for ATC to continue its work and she urged the committee to reauthorize funding for TVEP by passing HB 141.

[4:02:28 PM](#)

CHERYL EDENSHAW, Director, Alaska Technical Center (ATC), testified in support of the reauthorization of funding for TVEP proposed under HB 141. She noted that ATC is recognized by the state as a statewide post-secondary training center eligible for TVEP funding. She thanked the committee and the State of Alaska for the support of workforce development by investments to ATC over the years. She stated that ATC has key partnerships with business and industry to train safe and responsible Alaskan workers and to help develop and sustain the state's economy. She remarked:

Without the TVEP funds, we would not be in a position to maintain our long-term commitment to meet employers' needs in the local and statewide economy that we fulfilled since our inception in 1981. Without TVEP funding, we would not be able to provide training necessary for jobs in the ... areas of health care, resource development, process technology, culinary arts, and construction training. We would also be not poised to respond to employers' market-driven, on-demand training needs in a timely fashion to align with those job opportunities. I urge you to support reauthorization of TVEP and, with the state's

help, we can build a future for Alaskans strengthening our families and communities across the state.

4:04:35 PM

KAREN CEDZO, Partners for Progress in Delta, testified in support of HB 141. She explained that Partners for Progress in Delta has been a part of TVEP's regional training center group since 2008. Partners in Progress for Delta came about as a result of the U.S. Department of Defense (DoD) identifying a lack of skilled workers in Delta Junction when it was making the decision whether to establish a ground-based military installation in Delta Junction. She noted that the DoD completed an economic development report identifying a lack of skilled workers, which resulted in the Delta/Greely School District taking the lead to bring educational partners together. This led to a very formal educational consortium which includes partners such as: the Delta/Greely School District, the Alaska Works Partnership, the UAF Community and Technical College, and the UAF Cooperative Extension Service. She stated that all the partners have a dedicated vision of building Alaska's workforce through education and training.

MS. CEDZO stated that "the board" remains committed to that mission. She stated her interviews with students involved in the program have shown her how life-changing the program is, especially for the young people in the community. She stated, "Many would not have the opportunity to go on and get real jobs and be able to contribute to a fund that makes it possible for those in need to be assisted." She noted that some young people who do not plan on attending college are not sure what to do with their lives. The quality of the augmented career and technical classes at the Delta/Greely High School operated by Delta/Greely School district and Partners for Progress in Delta would be at risk without TVEP funding.

MS. CEDZO explained that some high school students are taking dual-credit courses such as occupational endorsements for welding, certificates in applied business, expanded health classes, construction trade, math for a trade, English 111, and other core requirement classes. Additionally, a wealth of programs are offered through [UAF] Cooperative Extension for pesticide certification and agricultural related programs. She relayed that there are adults in Delta who are not able to go to Fairbanks to earn a degree, but can work towards a degree in Delta with the local access to the facility. She stated, "It's an amazing experience to walk into that building and see young

people's eyes light up getting an idea of what might be an option for a career path in their future." She added that a significant component of the program is the entry-level summer construction trade academy which is a three-week intensive training program in Delta. It is an approved training program from which some participants might have direct opportunities.

MS. CEDZO explained that since the inception of the academy in 2006, more than 125 participants have been accepted for opportunities in apprenticeships or construction trade related industry [positions]. She indicated that the academy's twelfth program would be offered in June as a three-week intensive program. Students walk away from the program with work ethic and safety skills, as well as certifications in such things as [Mine Safety and Health Administration] (MSHA), [Occupational Safety and Health Administration] (OSHA), and forklift training. She listed that participants of the program have come from North Pole, Delta, Tok, Glen Allen, Valdez, Juneau, and some rural villages. She stated that the program has a very successful working relationship with the operating engineers.

[4:10:13 PM](#)

CHAIR KITO announced that HB 141 was held over.

HB 79-OMNIBUS WORKERS' COMPENSATION

[4:10:23 PM](#)

CHAIR KITO announced that for its final order of business, the committee would return to HOUSE BILL NO. 79, "An Act relating to workers' compensation; repealing the second injury fund upon satisfaction of claims; relating to service fees and civil penalties for the workers' safety programs and the workers' compensation program; relating to the liability of specified officers and members of specified business entities for payment of workers' compensation benefits and civil penalties; relating to civil penalties for underinsuring or failing to insure or provide security for workers' compensation liability; relating to preauthorization and timely payment for medical treatment and services provided to injured employees; relating to incorporation of reference materials in workers' compensation regulations; relating to proceedings before the Workers' Compensation Board; providing for methods of payment for workers' compensation benefits; relating to the workers' compensation benefits guaranty fund authority to claim a lien; excluding independent contractors from workers' compensation

coverage; establishing the circumstances under which certain nonemployee executive corporate officers and members of limited liability companies may obtain workers' compensation coverage; relating to the duties of injured employees to report income or work; relating to misclassification of employees and deceptive leasing; defining 'employee'; relating to the Workers' Compensation Board's approval of attorney fees in a settlement agreement; and providing for an effective date."

4:10:44 PM

REPRESENTATIVE WOOL moved to adopt the proposed committee substitute (CS) for HB 79, Version 30-GH1789\D, Wallace, 3/3/17. There being no objection, version D was before committee as a working document.

4:11:59 PM

DEBBIE BANASZAK, Legislative Liaison, Office of the Commissioner, Department of Labor & Workforce Development (DLWD), presented the proposed changes in HB 79, Version D. She explained that the title was changed to reflect the proposed changes in the bill. Section 9 added language stating that a person "actively in charge of the operations of the business entity" or a person that has "the authority to insure the business entity" would be liable for penalties for an employer's failure to insure. The change would ensure that if a business entity has 11 members, all with less than 10 percent ownership interest, then that person would still be accountable for uninsured injuries and penalties for failing to insure. She added that Section 11, in Version D, adds language to clarify the Division's civil penalty assessment, which must be based on substantial evidence. The section also clarifies that an employer's civil penalty assessment is based on the amount the employer would have paid had the business been insured as required by law, including properly classifying its employees.

MS. BANASZAK relayed that Section 13 deals with civil penalty assessment appeal process and does not have substantial changes; the previous language in HB 79 was a bit unclear. She stated that Section 16 addresses preauthorization by adding language to clarify that the preauthorization request's estimated fee would be subject to the Alaska medical fee schedule just like any other workers' compensation medical bill. Section 18 addresses the hearing schedule and gives the [Alaska] Workers' Compensation Board control of the scheduling of hearings.

Having the parties control the hearing scheduling process has led to inefficiencies and protracted resolution.

[4:14:34 PM](#)

MS. BANASZAK noted that Section 19 simplifies the self-representation language of the previous version. Section 23 addresses the reporting of a change in compensation and adds language stating that the division would provide notice to an employee when an employer has terminated or changed compensation. She explained that Section 24 clarifies how an employee would be notified that his/her employer denied benefits. Section 25 addresses penalties for failure to timely preauthorize medical care: the penalty would be 25 percent of the amount in the preauthorization request.

MS. BANASZAK drew attention to Section 27, which repeals an earlier section addressing how benefits are paid. The previous section required payment by check, but with so many current options for payment, it was determined that this section was no longer needed. She noted that Section 28 revises language to allow the Benefits Guaranty Fund to file a lien within one year of its knowledge of an employee's injury or death. She explained that sometimes the fund may not become aware of an injury or death when it occurs. She stated that Section 30 refines the definition of independent contractor to ensure that true independent contractors can continue to operate as independent contractors.

[4:16:11 PM](#)

REPRESENTATIVE BIRCH recalled a letter from the Alaska Trucking Association - an association that relies on independent contractors. He asked if the association's concerns have been addressed.

[4:16:40 PM](#)

MARIE MARX, Director, Division of Workers' Compensation, Department of Labor & Workforce Development (DLWD), answered yes: the department believes the current definition addresses the concerns. She added that truckers and other stakeholder groups such as the [Alaska State Home Building] Association relayed their concerns to the department and she offered to detail how the concerns were met.

[4:17:23 PM](#)

MS. BANASZAK continued presenting the changes in the bill. She noted that Section 36 discusses persons liable for criminal penalties for failure to pay compensation and adds language similar to language in Section 9. She explained that Section 37 talks about persons liable for criminal penalties for transferring assets. It adds a person "actively in charge of the operations of the business entity" or a person that has "the authority to insure the business entity" as persons liable for criminal penalties for knowingly transferring assets with the intent to avoid the payment of compensation. She said that Section 39 changes the definition of employee by removing "in the service of" and inserting "employed by".

[4:19:10 PM](#)

REPRESENTATIVE JOSEPHSON asked Ms. Marx to go through the changes to the definition of employee.

MS. MARX explained that the new revision is found in Section 30, page 17, line 7, which states that the definition is intended to apply only to workers' compensation definitions, not [Internal Revenue Service] (IRS) or other labor law definitions. She noted that line 8 addresses a relayed concern by adding "for the purposes of this chapter only". She noted that another change was made on page 17, lines 13-15, to address concerns raised about required control and direction; the new language clarifies that control and direction performed as a result of a requirement of law or contract would be allowed. An independent contractor could still have control and oversight without impacting whether the individual is determined to be an independent contractor.

MS. MARX offered an example in response to a question: If hard hats are required for health and safety reasons, then the business for whom the services are being provided can control whether the independent contractor wears a hard hat. Such business control would not disqualify the individual from being considered an independent contractor.

[4:21:45 PM](#)

MS. MARX noted that another change was made on lines 16-18, page 17 of Version D. A concern was raised that contractors may provide materials or equipment for use but an independent contractor provides all the other tools and labor. She remarked:

After hearing from various stakeholder groups, this clarified that an independent contractor is a person who provides tools, labor, and other operational costs necessary, and recognized now that materials and equipment can be supplied by the contractor to the independent contractor without pushing that person - that independent contractor - out of the definition.

MS. MARX mentioned another change found on page 17, line 23, which clarifies that any license, permit, or certification required by the work the independent contractors does would suffice: the previous version had only mentioned a business license. She said that based on input from various stakeholder groups and researching other states' determining tests, the department eliminated the requirement to meet 11 or 12 factors to be considered an independent contractor. Instead of 11 or 12 necessary factors, Version D provides 7 required factors that must be met, and 5 optional factors, of which 3 must be met. She offered her opinion that such a test allows a wide enough net to capture the true independent contractors, but still narrow enough to make sure that employees are not included in the definition. Subparagraph (H), on page 18, lists the optional "prongs" which allow for more flexibility.

[4:24:31 PM](#)

REPRESENTATIVE WOOL asked if the earlier test had required 11 factors.

MS. MARX answered that there were 11 factors, although one factor was a two-part requirement, so she indicated [that could be considered a total of 12].

REPRESENTATIVE WOOL asked if the 7 required factors and the 5 optional factors are the same 12 that were in the original description. He asked if it is accurate to say that the description went from 12 [factors] to 10 out of 12.

MS. MARX answered, "That's correct." She noted that the most controversial and complicated "prong" for stakeholder groups was (H)(v), which read as follows:

the person engages in a trade, occupation, profession, or business to provide services that are outside the usual course of business for the individual

MS. MARX explained that prong is optional under the current version. She stated that stakeholder feedback indicated that this "prong" would be complicated to apply; therefore, it was reclassified from a mandatory to an optional factor. If a person does not meet that factor but he/she does meet three of the other factors, then he/she could still qualify as an independent contractor.

[4:26:30 PM](#)

REPRESENTATIVE JOSEPHSON offered his assumption that if the independent contractor [requirements are] met by an individual who has employees, then he/she would also need to buy workers' compensation.

MS. MARX stated that is correct. She added that the test is used to determine whether a person providing services is an independent contractor. She said that whether or not the independent contractor has employees is a separate inquiry.

[4:27:46 PM](#)

REPRESENTATIVE KNOPP asked if home-based businesses, such as plumbers, are classified as a separate place of business.

MS. MARX responded that sub-subparagraph (ii), on page 18, line 10, states that the business location has to be separate from the location for which [the independent contractor] is providing service. She explained that the department investigates whether or not the independent contractor operates out of the contractor's business or receives mail at the contractor's business. She remarked:

In this day and age, I think it is very common for people to have merely a website as their base, but it has to be just different from that contractor, so we would look to where that contractor's business is and see if they are there.

REPRESENTATIVE KNOPP asked what was amended in Sections 9 and 11.

MS. MARX explained that Sections 9 and 11 have been repealed and reenacted in full.

[4:30:01 PM](#)

REPRESENTATIVE KNOPP read from a confidential letter he received from a municipal attorney, as follows:

I see no benefit from deviating from the Federal Labor Standards Act guidance in Alaska court jurisprudence regarding the distinction between employees and independent contractors. ... Subsection 11 of Section 31 of the bill deviates substantially from existing status quo and adds unreasonable additional requirements defining someone as an independent contractor that exceeds federal guidance and prior decisions by our Alaska Supreme Court.

REPRESENTATIVE KNOPP added that the attorney has not seen the committee substitute. He asked if the committee substitute alleviates the concerns mentioned by the attorney. He asked if the bill would be substantially more restrictive than federal labor standards.

MS. MARX answered that HB 79 has a very narrow application: It does not apply to all labor standards, it applies to workers' compensation. She stated that in the last 10 years, other states have found that multi-factored balancing tests are not effective in tackling the misclassification issue. She explained that the IRS has a 20-factor balancing test [to determine the status of an independent contractor]. She suggested that although that test may work for the IRS, the multi-factor balancing tests aren't working for workers' compensation, which has a goal of protecting employees from severe injury or death and protecting employers from huge uninsured losses. She said that some employers have contacted the Division of Workers' Compensation in order to be proactive about determining whether their employees are independent contractors. She remarked:

They want to be proactive, and we want to be proactive. And we give them a balancing test where no one factor is determinative. It is very difficult for these employers - especially small business employers - to know whether they meet that test without going to an attorney and perhaps getting some legal advice. Our goal is to make this a ... much clearer test so employers know ahead of time what the requirements are - and employees or independent contractors can know and protect themselves So it is different and it was intended to be a change.

REPRESENTATIVE KNOPP pointed out that within the letters of support [included in the committee packet], some components of the bill were supported and some were not. He asked for a breakdown of the areas of concern.

[4:33:23 PM](#)

CHAIR KITO stated that he plans to weigh the issues of concern and determine whether the committee will move forward or cover the issues in a future committee meeting. He said he does not intend to move the bill today and the bill will have public testimony in the future.

[4:33:54 PM](#)

REPRESENTATIVE JOSEPHSON expressed that the multi-factor tests sound like a continuum of behavior or acts undertaken by an employee; however, HB 79 lays out clear statements. He analyzed that in the current system, which Ms. Marx claimed is unsuccessful, the employer must sort out the employee's classification based on tasks and actions.

[4:34:41 PM](#)

MS. MARX responded that the current test set in regulation defines "employee". She explained that some states narrowly define "independent contractor" instead of defining "employee" with a broad definition. Defining "employee" has led to complications and misclassification. She stated that misclassification is being dealt with throughout the United States. She assessed that the tests defining "employee" are more difficult to apply. States defining "independent contractor" have a much clearer application. She said that HB 79 defines "independent contractor" and revises the definition of "employee" to mean someone that is not an independent contractor that has a contract for hire.

[4:35:54 PM](#)

REPRESENTATIVE KNOPP offered that a constituent of his is a real estate broker, and all of his brokers are independent contractors. He asked how HB 79 would apply to such an organization in regard to minimum wage and [the Federal Insurance Contributions Act] (FICA).

MS. MARX answered, "He would be safe." She explained that persons who perform services for real estate have an exemption

under AS 23.30.230 paragraph (10), and therefore the Workers' Compensation Act does not apply to them.

[4:37:14 PM](#)

CHAIR KITO announced that there will be more updates to the expansive bill.

[4:37:38 PM](#)

REPRESENTATIVE WOOL said, "Basically there's two types of people in this world - employees and independent contractors. Trying to define employee got complicated, so you're going to define what an employee isn't."

MS. MARX responded that there are more than two types of people involved. Someone could be a volunteer or a trespasser, but for the purpose of the bill, there are two categories. She added that since 2007, states have found that multi-factor tests defining "employee" don't work and have led to misclassification and confusion for employers. She explained that HB 79 is in line with what many states are doing - defining "independent contractor" instead of "employee".

REPRESENTATIVE WOOL asked if doing so basically defines what an employee isn't.

MS. MARX responded that an employee would be someone who is not an independent contractor but also has a contract for hire. It differentiates them from a volunteer or trespasser. In response to a comment, she added that babysitters would also be exempted.

[4:39:21 PM](#)

REPRESENTATIVE JOSEPHSON stated his understanding that the term "contract for hire" would include lawn-mowing 12-year-olds and could be complicated in court.

MS. MARX responded that HB 79 applies to employers, and employers are those who conduct business. She explained that as a homeowner, unless you do business out of your house, you are not an employer and would not fall under HB 79.

[4:40:57 PM](#)

CHAIR KITO announced that HB 79 was held over.

4:41:40 PM

ADJOURNMENT

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