

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

January 30, 2020

1:30 p.m.

MEMBERS PRESENT

Senator Click Bishop, Chair
Senator Gary Stevens, Vice Chair
Senator Mia Costello
Senator Joshua Revak
Senator Elvi Gray-Jackson

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 50

"An Act imposing an annual educational facilities maintenance and construction tax on net earnings from self-employment and wages; relating to the administration and enforcement of the educational facilities maintenance and construction tax; and providing for an effective date."

- MOVED CSSB 50(L&C) OUT OF COMMITTEE

SENATE BILL NO. 76

"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), 602(c) and (h), and 603(a), Alaska Rules of Appellate Procedure; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 50

SHORT TITLE: EMPLOYMENT TAX FOR EDUCATION FACILITIES

SPONSOR(s): SENATOR(s) BISHOP

02/11/19 (S) READ THE FIRST TIME - REFERRALS
 02/11/19 (S) L&C, FIN
 04/16/19 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
 04/16/19 (S) Heard & Held
 04/16/19 (S) MINUTE(L&C)
 01/28/20 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
 01/28/20 (S) Heard & Held
 01/28/20 (S) MINUTE(L&C)
 01/30/20 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 76

SHORT TITLE: REPEAL WORKERS' COMP APPEALS COMMISSION

SPONSOR(s): SENATOR(s) WIELECHOWSKI

03/06/19 (S) READ THE FIRST TIME - REFERRALS
 03/06/19 (S) L&C, JUD, FIN
 01/28/20 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
 01/28/20 (S) Heard & Held
 01/28/20 (S) MINUTE(L&C)
 01/30/20 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

BRANDON SPANOS, Deputy Director
 Tax Division
 Department of Revenue (DOR)
 Anchorage, Alaska

POSITION STATEMENT: Responded to questions related to SB 50.

NANCY MEADE, General Council
 Administrative Staff
 Alaska Court System (ACS)
 Juneau, Alaska

POSITION STATEMENT: Provided the Alaska Court System's perspective on SB 76.

DEIRDRE FORD, Chair
 Alaska Workers' Compensation Appeals Commission (WCAC)
 Anchorage, Alaska

POSITION STATEMENT: Provided the commission's perspective on SB 76.

ERIC CROFT, Attorney
 representing self
 Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 76.

HANNA LAGER, Director
Administrative Services Division
Department of Labor and Workforce Development
Juneau, Alaska

POSITION STATEMENT: Provided information about the fiscal note for SB 76.

SENATOR WIELECHOWSKI
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As sponsor of SB 76, provided statistical information on the number of workers' compensation cases.

DAVID DUNSMORE, staff
Senator Bill Wielechowski
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearing on SB 76, commented on statistical information on the number of workers' compensation cases, on behalf of the sponsor.

ACTION NARRATIVE

[1:30:50 PM](#)

CHAIR CLICK BISHOP called the Senate Labor and Commerce Standing Committee meeting to order at 1:30 p.m. Present at the call to order were Senators Stevens, Gray-Jackson, Costello, Revak, and Chair Bishop.

SB 50-EMPLOYMENT TAX FOR EDUCATION FACILITIES

[1:32:07 PM](#)

CHAIR BISHOP announced the consideration of SENATE BILL NO. 50, "An Act imposing an annual educational facilities maintenance and construction tax on net earnings from self-employment and wages; relating to the administration and enforcement of the educational facilities maintenance and construction tax; and providing for an effective date."

He stated that this is the third hearing for SB 50, public testimony was taken during the last hearing [and the committee adopted a committee substitute (CS) for SB 50, Version S]. He noted that Mr. Spanos was online to respond to questions Senator Stevens posed during the last hearing.

SENATOR STEVENS asked how the fees would be collected for self-employed individuals.

1:33:25 PM

BRANDON SPANOS, Deputy Director, Tax Division, Department of Revenue (DOR), Anchorage, Alaska, said the Department of Labor & Workforce Development currently collects unemployment insurance from employers and employees. SB 50 would implement a tax of \$30 for each individual. The DOR's fiscal note reflects collecting from employers and self-employed individuals, so it would do both. He envisioned that self-employed individuals would submit some type of a return. Currently, the administrative section in AS 43 requires an electronic filing of any tax return or report. Unless the bill adds a paper option, filing for the \$30 head tax would require an electronic filing. A provision in the bill would allow individuals who cannot file electronically to obtain a waiver. He anticipated that most self-employed individuals would file their return through DOR's online system to pay the \$30 tax. The portal already exists for this secure submission, he said.

SENATOR STEVENS asked how DOR will ensure this happens and how fishermen will know they must pay this tax, particularly those from out of state.

MR. SPANOS said the information would likely be included when fishermen obtain their licenses. He explained that to collect taxes from marijuana-grower taxpayers, the division works with the Department of Commerce, Community and Economic Development (DCCED) since these individuals obtain licenses. He envisioned the process to collect the annual \$30 tax would be similar.

SENATOR STEVENS commented that everyone on commercial boats is required to have a license, so notices would be sent to everyone. He asked whether DOR would be able to withhold licenses if fishermen did not pay.

MR. SPANOS replied the department has the ability to assess taxpayers who are not paying their taxes. He envisioned that DOR would likely do a cost-benefit analysis to determine if it was in the state's best interest to try to collect. He anticipated that the collection efforts would likely cost more than the \$30 tax.

SENATOR STEVENS commented that if word got out that the DOR would not pursue collections, no one would pay their taxes.

MR. SPANOS responded that the department might consider other options. One option would be for payors to withhold the tax. The tax code states that professional licenses in the state will be suspended for those in arrears. The DOR notifies the Department of Commerce, Community and Economic Development (DCCED) when corporate taxpayers are in arrears and subsequently DCCED has suspended their licenses. It certainly would be possible to suspend fishermen's licenses, he said.

SENATOR STEVENS said he was comfortable with the answers, but the Senate Finance Committee may want to consider this further to ensure that licenses are suspended for nonpayment.

CHAIR BISHOP agreed. He commented that possible tax collection mechanisms exist, because the education head tax was collected from 1959-1980.

SENATOR GRAY-JACKSON mentioned that during the last hearing she indicated she would contact the Anchorage School Board to submit comments on the bill. She related that she had a conversation with the board chair who will look into the matter.

CHAIR BISHOP said he heard that ASD would be submitting testimony in response to her query.

[1:41:11 PM](#)

CHAIR BISHOP found no further comments or questions and solicited a motion.

[1:41:17 PM](#)

SENATOR STEVENS moved to report CSSB 50, work order 31-LS0383\S, from committee with individual recommendations and attached fiscal note(s).

[1:41:28 PM](#)

CHAIR BISHOP found no objection and CSSB 50(L&C) was reported from the Senate Labor and Commerce Standing Committee.

[1:41:35 PM](#)

At ease

SB 76-REPEAL WORKERS' COMP APPEALS COMMISSION

[1:43:32 PM](#)

CHAIR BISHOP reconvened the meeting and announced the consideration of SENATE BILL NO. 76, "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), 602(c) and (h), and 603(a), Alaska Rules of Appellate Procedure; and providing for an effective date."

He stated that this is the second hearing on SB 76 [and the committee previously adopted a committee substitute (CS)]. He invited Ms. Meade to give the Alaska Court System's perspective of SB 76.

[1:44:22 PM](#)

NANCY MEADE, General Council, Administrative Staff, Alaska Court System (ACS), Juneau, Alaska, stated that passage of SB 76 will increase the case load for superior court judges, but the policy decision of where cases are best handled is within the purview of the legislature. Superior court will handle any cases that are assigned, but additional cases will impact the ACS. She said she anticipated 30-40 additional appeals per year, although it is difficult to predict. Prior to 2005, the superior court handled these cases, so the court system has experience in this area. Although limited in number, these are some of the most challenging and time-consuming cases and can take up to 12-18 months. The reason is because workers' compensation law is unique, large, and somewhat arcane. The cases contain significant documentation, including medical records. It would seem each superior court judge would have just one or two extra cases a year. However, since most of the cases occur in the population centers, it is more likely that judges in Anchorage, Juneau, and Fairbanks would handle most of the cases.

She said that workers' compensation appeals cases were taken from the court in 2005 because decisions took so long and because the decisions lacked consistency since the judges were not subject matter experts in workers' compensation. She said she cannot promise this would change if the policy decision is to return these cases to the superior court. The ACS handles other agency appeals and these would be handled the same way. The change to superior court would not require any new rule types or forms. She related that when this bill was brought forward by a previous legislature, she worked with workers' compensation on the language so the wording in this bill is acceptable.

[1:49:38 PM](#)

SENATOR GRAY-JACKSON reiterated that prior to creation of the WCAC, parties were not satisfied with the way cases were handed.

MS. MEADE agreed.

SENATOR GRAY-JACKSON asked whether there had been any dissatisfaction with the commission.

MS. MEADE replied that was not her area of expertise.

SENATOR GRAY-JACKSON asked whether she could estimate the extra cost to the ACS.

MS. MEADE explained that the Alaska Court System (ACS) submitted a zero fiscal note because an increased workload does not necessarily increase cost unless it is something new. Judges receive the same salary regardless of the workload, even if they work on weekends. A bill that anticipates 30 new cases a year would not require a new judge and would use the current infrastructure.

[1:51:32 PM](#)

SENATOR STEVENS asked if Workers' Compensation Appeals Commission (WCAC) cases that are appealed would be referred to the superior court, not the Alaska Supreme Court.

MS. MEADE replied the workers' compensation cases start with the Workers' Compensation Board (WCB), then go to the WCAC, and then the Alaska Supreme Court. If this bill passes, the cases will go to the WCB then to superior court if appealed and finally to the Alaska Supreme Court if the lower court decision is appealed.

[1:53:10 PM](#)

DEIRDRE FORD, Chair, Alaska Workers' Compensation Appeals Commission (WCAC), Anchorage, Alaska, introduced herself. She said that she was available for questions but could make a statement if the Chair would like her to do so.

CHAIR BISHOP asked for the commission's opinion of SB 76.

MS. FORD began by saying she practiced as an employer defense attorney before the Workers' Compensation Board for approximately 20 years. She represented employers and insurers. She subsequently served as a hearing officer for three and a half years holding hearings before the WCB and then retired. She was appointed chair in October 2016 and was recently reappointed by Governor Dunleavy. She had experience with appeals before the

superior court, but she did not have experience with appeals to the commission.

MS. FORD said she has three concerns with SB 76, which would bring the cases before the superior court instead of the Commission. First, WCAC decisions have precedential value, which gives some finite parameters to employees and employers as to how the board should handle disputes. As Ms. Meade said, there were often inconsistencies with the superior court decisions. Since these cases did not set precedence, the issue could be argued again before the Workers' Compensation Board (WCB) and the superior court.

When the Workers' Compensation Appeals Commission issues a decision on a particular issue, the decision applies to the WCB and other WCAC decisions, unless the Alaska Supreme Court decides otherwise.

MS. FORD said the commission is required to issue a decision within 90 days from the completion of briefing or oral argument, whichever is later. She related her understanding that the superior court judges have six months from that date to issue a decision.

She highlighted her third concern, which is how self-represented litigants would be handled. She commended the commission's clerk, who does an outstanding job working with self-represented litigants. She helps ensure their forms are completed, that their briefing is done, and shows them how to file an appeal to the commission. She said she has no way of knowing, but she did not believe the superior court would provide the same hands-on assistance that the WCAC or WCB provides.

[1:58:12 PM](#)

CHAIR BISHOP thanked Ms. Ford and opened public testimony on SB 76.

[1:58:34 PM](#)

ERIC CROFT, Attorney, representing self, Anchorage, Alaska, offered to send the material he compiled this morning on the decisions by the commission. He said he served in the legislature at the time the WCAC was created and was an opponent of the change. In the first seven years, the WCAC averaged 25 published decisions per year, but in the last seven years the number has decreased to approximately 14 published decisions per year. He acknowledged that Chair Ford does a good job but maintained that there was not the burden of work to justify the

cost of the commission. He compared it to the Criminal Court of Appeals, which is a three-member commission that handles about 220 cases per year.

CHAIR BISHOP asked Ms. Lager to discuss the designated general fund list in the fiscal note.

[2:02:29 PM](#)

HANNA LAGER, Director, Administrative Services Division, Labor and Workforce Development, Juneau, Alaska, stated that the current FY 2021 governor's request is for \$425,900 for the WCAC. The change in FY 2021 would be half of that because of the December 31, 2020 sunset date for the appeals commission. In FY 2022 and forward, the full amount would be removed from the budget. That includes deleting two positions associated with this component and the associated funding necessary to operate the WCAC.

CHAIR BISHOP asked for the source of the funds.

MS. LAGER said the workers' safety compensation administration account consists of receipts paid by employers into the fund, based on a 2.9 percent premium. An additional 2.5 percent is paid in on insurance premiums to the Department of Commerce, Community and Economic Development (DCCED), Division of Insurance, and is transferred to the fund every year.

CHAIR BISHOP recalled that two years ago the multiplier was increased for the funds for the premiums.

MS. LAGER said that predates her time at the department, but she believes that is correct. She said the department is closely monitoring the fund sufficiency and anticipates some issues arising in a few years.

[2:05:11 PM](#)

CHAIR BISHOP reiterated that the funding comes from premiums paid in by the employers.

CHAIR BISHOP stated that he would leave public testimony on SB 76 open. He asked the sponsor and staff to come to the table.

[2:05:56 PM](#)

SENATOR WIELECHOWSKI, Alaska State Legislature, Juneau, Alaska, introduced himself.

[2:06:00 PM](#)

DAVID DUNSMORE, Staff, Senator Bill Wielechowski, Alaska State Legislature, Juneau, Alaska, introduced himself.

SENATOR STEVENS asked for the length of time to go through the process and how this bill would save time in workers' compensation cases that are appealed.

[2:06:42 PM](#)

SENATOR WIELECHOWSKI explained that if the WCB issues a decision and one of the parties appeals the decision, the case would go before the superior court. He then referenced the sheet in members' packets, "Cases Before the Alaska Workers' Compensation Appeals Commission, 2005-2018." He read the number of cases filed: in 2012 - 29, in 2013 - 26, in 2014 - 30, 2015 - 31, in 2016 - 20, in 2017 - 26, and in 2018 - 26. The most public decisions that were issued since 2010, because parties may settle the cases, has been about 15. He reviewed the timeframe: a party files and the appeals commission has 90 days, which Ms. Ford stated. Testimony in 2005 was that the average time for superior court cases was 7-18 months. The WCAC's report indicates that the average time is 371 days for public decisions to be issued, or approximately 12 months. The ACS testified that the average length of time for agency appeals is 12-18 months, which he did not dispute. He reiterated that his figures were from 2005. He was unsure if statistical records were available and surmised that this was likely based on an estimate.

[2:09:48 PM](#)

MR. DUNSMORE added that the 2005 data showed just 25 percent of cases were appealed to the Alaska Supreme Court, but since its inception, 50 percent of the WCAC's published decisions have been appealed. In recent years, this figure has increased so a majority of the WCAC's are appealed. This indicates more cases would be resolved by the superior court because parties did not appeal them to the Supreme Court.

CHAIR BISHOP remarked that that is the reason the committee is discussing the bill.

[2:11:12 PM](#)

SENATOR WIELECHOWSKI agreed. He said the chart shows the number of WCAC's published decisions that were appealed to the Supreme Court. He related that in 2011, all 13 published opinions were appealed, in 2012, 15 of 16 published decisions were appealed, in 2013, 11 of 17 decisions were appealed, and in 2014, 12 of 15 published decisions were appealed. He concluded that a very high percentage have been appealed to the Supreme Court. He said this

takes up the Supreme Court's resources since its five members must prepare for these cases and it adds to the total length of time it takes to resolve workers' compensation cases.

CHAIR BISHOP thanked the sponsor and stated that he would hold SB 76 in committee for further consideration.

2:13:08 PM

There being no further business to come before the committee, Chair Bishop adjourned the Senate Labor and Commerce Standing Committee meeting at 2:13 p.m.