

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

February 27, 2023

1:31 p.m.

**MEMBERS PRESENT**

Senator Jesse Bjorkman, Chair  
Senator Click Bishop, Vice Chair  
Senator Elvi Gray-Jackson  
Senator Kelly Merrick  
Senator Forrest Dunbar

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

SENATE BILL NO. 60

"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 60

SHORT TITLE: REPEAL WORKERS' COMP APPEALS COMMISSION

SPONSOR(s): SENATOR(s) WIELECHOWSKI

02/06/23	(S)	READ THE FIRST TIME - REFERRALS
02/06/23	(S)	L&C, JUD
02/27/23	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

SENATOR BILL WIELECHOWSKI, District K  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Sponsor of SB 60.

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

**POSITION STATEMENT:** Gave a presentation on SB 60.

CHARLES COLLINS, Director  
Division of Workers' Compensation  
Department of Labor and Workforce Development (DOLWD)  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions on SB 60.

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

**POSITION STATEMENT:** Testified in support of SB 60.

#### **ACTION NARRATIVE**

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**CHAIR JESSE BJORKMAN** called the Senate Labor and Commerce Standing Committee meeting to order at 1:31 p.m. Present at the call to order were Senators Gray-Jackson, Dunbar, Merrick, Bishop, and Chair Bjorkman.

#### **SB 60-REPEAL WORKERS' COMP APPEALS COMMISSION**

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**CHAIR BJORKMAN** announced the consideration of SENATE BILL NO. 60 "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."

**CHAIR BJORKMAN** recognized Senator Wielechowski and invited him to introduce the bill.

[This is the first hearing of SB 60.]

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SENATOR BILL WIELECHOWSKI, District K, Alaska State Legislature, Juneau, Alaska, sponsor of SB 60. He said this bill would repeal the Alaska Workers' Compensation Appeals Commission (AWCAC) and return the cases to the Superior Court. The Superior Court handled these cases for decades. In 2005 the legislature created the Alaska Workers' Compensation Appeals Commission with two specific goals:

1. To have a specialized agency to reduce Supreme Court appeals by creating precedent.
2. To save time.

SENATOR WIELECHOWSKI said neither of the goals has happened. Roughly 50 percent of the cases take far longer than they did, and the Supreme Court ruled that the commission cannot set precedent. So, the commission has not met either of the goals.

SENATOR WIELECHOWSKI said the commission handled 14 cases and published five decisions in 2022. Repealing the commission and returning workers' compensation (WC) appeals cases to the Superior Court will:

- save money by eliminating this agency,
- help fill the Alaska workers' compensation budget deficit,
- preserve a worker's right to have their appeals heard in court, and
- save at least \$433,000 per year.

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SENATOR WIELECHOWSKI reviewed the staffing numbers of the Workers' Compensation Appeals Commission. He said it has two full-time staff, an attorney chair, and an administrative support position. The commissioners are entitled to travel and per diem compensation. The court confirmed it would submit a zero fiscal note for SB 70. He said that this year the governor is proposing to increase the commission funding to \$479,000 to pay for the attorney chair and statutory pay raise, so the amount this bill saves would increase.

SENATOR WIELECHOWSKI said the Workers' Compensation Appeals Commission no longer has the workload to justify its existence. The commission received 49 filed cases in the first full year of its existence and issued 42 published decisions in 2006. It received 14 new cases and published five decisions in 2022. A Legislative Research table titled "Cases Before the Alaska Workers' Compensation Appeals Commission (AWCAC), 2005 - 2025"

shows this was not the result of COVID but a long-term trend of falling case numbers. The commission's workload is so small that the Office of Administrative Hearings recommended the chair be assigned non-workers' compensation cases. Workers' compensation claims have fallen consistently over the last decade, and it is reasonable to expect that the number of appeals will continue to fall.

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SENATOR WIELECHOWSKI said returning these cases to the Superior Court would reduce the number of appeals to the Supreme Court, leading to a faster, final resolution. When the Superior Court heard appeals in 2005, 25 percent of the decisions were appealed to the Supreme Court. That number has doubled to 50 percent since 2011 under the Workers' Compensation Appeals Commission. Supreme Court appeals can and often do delay final resolution up to five years.

SENATOR WIELECHOWSKI said the Alaska Workers' Compensation Program has a growing budget deficit; SB 60 will reduce that. Workers' compensation insurance taxes are supposed to fund the Alaska Workers' Safety and Compensation Program, but these taxes are no longer enough to support that program. The program costs \$9.1 million but only raised \$6.1 million in taxes in FY2022 and is expected to decrease to \$5.5 million this year. Unrestricted general funds (UGF) fill the deficit, but a tax increase will likely be necessary if the deficit continues to grow.

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SENATOR WIELECHOWSKI explained the Superior Court is better equipped to handle these cases. The commission primarily handles matters of law; however, the chair is the only staff person required to be an attorney. None of the current commissioners list any legal training in their biographies. The courts have more resources for pro se or low-income parties than the commission. For example, the courts provide translation services for people who speak other languages, and the commission does not.

SENATOR WIELECHOWSKI noted this bill has been around for several years. Previously, it passed the other body unanimously. He brought the bill forward again to save money, help close the state's budget deficit, and eliminate an agency that outlived its efficiency.

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DAVID DUNSMORE, Staff, Senator Bill Wielechowski, Alaska State Legislature, Juneau, Alaska, gave a presentation on SB 60. He spoke to four major points of the bill on slide 2:

Senate Bill 60

Repeals the Alaska Workers' Compensation Appeals Commission

Returns jurisdiction over Workers' Compensation appeals to the Superior Court

Saves \$433,000 per year

Helps fill the Workers' Compensation budget deficit and make Alaska's Workers' Compensation system more solvent

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MR. DUNSMORE reviewed the flowchart on slide 3. The chart illustrates the current flow of a contested workers' compensation claim versus the bill's proposed flow. The flow is the same until a board decision is appealed. Then, it goes either to a commission under the current process or the Superior Court under SB 60. In either case, the Alaska Supreme Court hears final appeals. The flowchart on slide 3 reads:

**Worker Files Workers'  
Compensation Claim**

**Workers' Compensation Board**

(Hearing Panel of Labor member, Management member and Hearing Officer)

If a Party Appeals the Board Decision

**CURRENT SYSTEM**

**Workers' Compensation  
Appeals Commission**

(Hearing Panel of Labor member, Management member, and Full-Time Attorney Chair)

**ALASKA SUPREME COURT**

**SENATE BILL 60**

**Superior Court**

**ALASKA SUPREME COURT**

MR. DUNSMORE noted the Workers' Compensation Board hearing panel consists of a hearing officer who chairs the panel, one labor member, and one management member. The Workers' Compensation Appeals Commission hearing panel consists of an attorney who chairs the panel, one labor member, and one management member.

MR. DUNSMORE explained this bill returns the appeals process to the pre-2005 system where the Superior Court heard workers' compensation appeals. He noted the Alaska Supreme Court hears all final appeals, whether under the current system or SB 60.

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MR. DUNSMORE compared the cost of doing business under the current system versus SB 60 on slide 4:

SB 60 Will Save \$433,000 Per Year

Currently the Commission has 2 full-time employees and pays for commissioners' travel and per diem

Previously, the Court System has testified that they can absorb these cases with a zero fiscal note

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MR. DUNSMORE summarized a graph on slide 5 titled "WCAC Workload has Fallen Dramatically," extracted from Legislative Research Services Report 23-057. The graph shows that cases and decisions have fallen dramatically between 2007 and 2022. Forty-nine cases were filed in 2007 with 42 published decisions, whereas ten were filed in 2022 with five published decisions.

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MR. DUNSMORE reviewed a quote on slide 6 from the 29th Legislature, House Department of Labor and Workforce Development Finance Subcommittee, FY2016 Narrative Report dated February 25, 2015. It identified AWCAC as an ineffective division and recommended its elimination. He pointed out the AWCAC workload was significantly higher at that time than it is today. The quote reads:

"The Worker's Compensation Appeals Commission is an ineffective division... The Commission during the calendar year of 2013 closed 30 cases for a closure rate of 67 percent with an average time from filing to closure of seven months. This closure rate and average time for closure is not demonstrably better than the

process was before the establishment of the commission."

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MR. DUNSMORE reviewed facts on slide 7, substantiating the commission had not achieved its goal of providing final resolutions faster than the courts:

The Workers' Compensation Appeals Commission Has Not Closed Cases Faster than the Courts

- The Superior Court took "8 to 18 months" to decide Workers' Compensation Appeals.
- When it was created, it was estimated that the Commission could decide cases in 6 months.
- Instead, in 2018 it averaged 371 days (12.2 months) to decide cases.
- Even as their workload decreased, in 2021 they still averaged 282 days (9.3 months) to decide cases.
- More Commission decisions are appealed to the Supreme Court, adding months to years before final resolution.

Sources: Testimony of Paul Lisankie, Director, Division of Workers' Compensation, Senate Labor and Commerce Committee, March 10, 2005.  
Alaska Workers' Compensation Appeals Commission Annual Report for Calendar Year 2021.

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MR. DUNSMORE compared the number of Superior Court and commission decisions appealed to the Supreme Court on slide 8:

SB 60 Will Reduce Appeals to the Supreme Court

When the Superior Court handled appeals approximately 25% of their decisions were appealed to the Supreme Court.

Since the Commission was created in 2005, 36% of its decisions have been appealed to the Supreme Court.

Since 2011, 50% of Commission decisions have been appealed.

Sources: Testimony of Doug Wooliver, administrative attorney, Alaska Court System, Senate Labor and Commerce Committee, March 10, 2005.  
Legislative Research Services Report 19-175.

MR. DUNSMORE said that an increasing number of commission decisions are appealed to the Supreme Court.

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MR. DUNSMORE reviewed the bar graph on slide 9, which shows a growing budget deficit for the Alaska Workers' Compensation and Safety Program. The graph shows program costs remaining constant at \$9.1 million. However, the tax income that funds the program declined from \$8 million in FY2019 to \$5.5 million in FY2023. He said tax income is projected to continue to decline. So, it is anticipated that UGF will backfill about a \$4 million budget deficit this fiscal year. He said the legislature should address this long-term structural deficit to avoid the risk of higher taxes and higher workers' compensation costs for employers. Slide 9 reads:

Alaska's Workers' Compensation and Safety Program  
Faces a Growing Budget Deficit-SB 60 Will Help Fill It

- Workers' Compensation and Safety are funded by a tax on Workers' Compensation payments.
- These programs cost \$9.1 million annually and are projected to remain flat.
- Saving \$433,000 will help close the growing budget gap.

Sources: Legislative Finance Division  
Department of Revenue, Revenue Sources Book, Fall 2019

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MR. DUNSMORE summarized the bottom line on slide 10:

Bottom Line

SB 60 saves \$433,000 annually

Preserves parties' right to have their cases heard in timely manner

Will reduce appeals to the Supreme Court

Makes Alaska's Workers' Compensation system more solvent

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SENATOR DUNBAR expressed confidence that the two full-time employees whose jobs would be eliminated if SB 60 were to pass would be picked up by another state agency.

He drew attention to the bar graph on slide 9 and asked why the tax revenue is declining so precipitously.

MR. DUNSMORE replied he would do a little research and respond to the committee in writing. He expressed his understanding that there is a fixed percentage rate based on premiums. As the premiums decline, the percentage declines.

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SENATOR BISHOP chimed in that the slide shows the department's safety and health programs have been proactive since about 2006 [see slide 6]. Accident rates are trending downward. He explained that a safer workforce positively affects the state's experience ratings and lowers premiums. Lowered premiums generate less tax revenue. He said that he interprets the trend on slide 6 as a good thing.

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CHAIR BJORKMAN asked what percentage of AWCAC appeals are upheld by the [Alaska Supreme Court].

MR. DUNSMORE referenced a Legislative Research chart titled "Cases Before the Alaska Workers' Compensation Appeals Commission (AWCAC), 2005-2022," an excerpt from Report 23-057, dated January 2023. He cited the chart's outcomes of appeals to the Alaska Supreme Court:

48.4 percent	dismissed/remanded/vacated/denied
	these can also be out-of-court settlements
25.2 percent	affirmed
16.1 percent	reversed
6.5 percent	split decision - affirmed/reversed in part
3.9 percent	of cases are still pending

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At ease.

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CHAIR BJORKMAN reconvened the meeting and invited Mr. Collins to answer questions on SB 60.

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CHARLES COLLINS, Director, Division of Workers' Compensation, Department of Labor and Workforce Development, Juneau, Alaska, introduced himself.

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SENATOR DUNBAR said slide 9 shows a decline in tax revenue. He wondered what caused the drop to occur.

MR. COLLINS answered the question in two parts. He said that the first part has to do with the workers' compensation safety account. It is filled by a 2.9 percent fee on top of all self-insured [employers] workers' compensation insurance premiums. The money goes into the Workers' Safety and Compensation Administration Account (WSCAA) fund. The Workers' Compensation and Alaska Occupational Safety and Health (AKOSH) Programs use these funds.

MR. COLLINS gave a history lesson to explain why tax revenue drops sometimes. He explained that Alaska had the highest workers' compensation premiums in the nation in 2012. In conjunction with the Alaska Workers' Compensation Board, the Division of Workers' Compensation director made a radical move to adjust Alaska's fee schedule from usual and customary charges to Centers for Medicare and Medicaid Services (CMS)-based fees in 2012. They knew this would affect businesses that made money providing medical services to injured people and did not want to lose providers, especially in less urban locations. So, self-regulated doctors, insurance adjusters, and the Division of Workers' Compensation director carefully worked on setting up a Medical Services Review Committee. Every year they monitor and adjust the cost tied to the CMS model. This brought Alaska down from the highest workers' compensation premiums in the nation in 2012 to number 21 in 2022. These medical costs improved more than any other state in the country ever has by self-regulation. He noted that no providers were lost in the process, and the change made it somewhat less expensive for workers and employers. He said the Division of Insurance sets premiums based on recommendations from the National Council of Comprehensive Insurance, an actuary that works with 40 jurisdictions in the

country. The Division of Insurance and its group may accept the recommendation as is or adjust them. He emphasized the division lowered the workers' compensation insurance premiums for the tenth year.

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MR. COLLINS said that the second part of the answer concerns labor standards and industry. Labor standards and industry are more aware of the cost of on-the-job injuries and have taken drastic steps to ensure safer workplaces. Raising safety awareness has become ubiquitous, like signs that tout a company's safety record and safety meetings. He gave the example of Kensington Mine, which has a daily safety briefing and weekly safety meetings before every shift. Kensington Mine requires all supervisors to have an additional weekly supervisor safety meeting. He said increased awareness across Alaska and the nation has made workplaces safer.

SENATOR DUNBAR expressed appreciation for the thorough and informative answer.

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SENATOR GRAY-JACKSON said the Municipality of Anchorage swapped-out solid waste garbage trucks that required workers to get out of the truck to empty trash cans. She said the municipality now has new mechanized vehicles. She expressed curiosity to know if the municipality statistics for WC claims have declined since the city launched the new vehicles.

MR. COLLINS replied that he could not speak directly to the municipality's WC claim statistics. He spoke to two garbage-pickup providers last week about slip and fall events associated with three-yard dumpsters. The two garbage-pickup providers indicated they have better protocols and use personal protective equipment (PPE), such as ice cleats and better gloves. They increased the number of workers for commercial pickups in winter to cut down on slip-and-fall accidents. This is another case where employers conscientiously took preventative measures to avoid injuries. He said he would collect statistics if needed.

SENATOR GRAY-JACKSON said she would follow up with the Municipality of Anchorage for those numbers.

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CHAIR BJORKMAN opened public testimony on SB 60.

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DON ETHERIDGE, Lobbyist, Alaska - American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), Juneau, Alaska, testified in support of SB 60. He said the Workers' Compensation Appeals Commission was a failed experiment. The commission was supposed to increase the appeals processing speed but slowed it down. He added there have been more appeals in the long run. He indicated that his numbers match the numbers Senator Wielechowski cited.

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CHAIR BJORKMAN kept public testimony open and held SB 60 in committee.

[2:00:25 PM](#)

There being no further business to come before the committee, Chair Bjorkman adjourned the Senate Labor and Commerce Standing Committee meeting at 2:00 p.m.