

SB

140

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. SB 140

Revision Date: _____
Title: "An Act relating to workers' compensation insurance rate filings; to second independent medical evaluations..."
Sponsor: Senate Labor and Commerce Committee
Requestor: _____

Department Affected: Administration
BRU: Risk Management
Component: Risk Management
COMPONENT SERIAL NO. 0071

EXPENDITURES/REVENUES:

(Thousands of Dollars)

| OPERATING EXPENDITURES | FY 96 | FY 97 | FY 98 | FY 99 | FY 00 | FY 01 |
|------------------------|-----------|-----------|-----------|-----------|-----------|-----------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 00 | 00 | 00 | 00 | 00 | 00 |

| | | | | | | |
|----------------------|----|----|----|----|----|----|
| CAPITAL EXPENDITURES | 00 | 00 | 00 | 00 | 00 | 00 |
|----------------------|----|----|----|----|----|----|

| | | | | | | |
|------------------------|----|----|----|----|----|----|
| CHANGE IN REVENUES () | 00 | 00 | 00 | 00 | 00 | 00 |
|------------------------|----|----|----|----|----|----|

FUND SOURCE:

(Thousands of Dollars)

| | | | | | | |
|--------------------------|-----------|-----------|-----------|-----------|-----------|-----------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| OTHER | | | | | | |
| TOTAL | 00 | 00 | 00 | 00 | 00 | 00 |

Estimate of any current year (FY 95) cost: \$-0-

POSITIONS:

| | | | | | | |
|-----------|---|---|---|---|---|---|
| FULL-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| PART-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| TEMPORARY | 0 | 0 | 0 | 0 | 0 | 0 |

ANALYSIS: (Attach a separate page if necessary.)

There is no fiscal impact to the Division of Risk Management.

Prepared by: J. Brad Thompson, Director
Division: Risk Management

Phone: 465-5723
Date: _____

Approved by Commissioner: Mark Boyer
Agency: Department of Administration

Date: 4/3/95

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. SB 140

Revision Date: _____
Title: Workers' Compensation Amendments

Department: Commerce and Economic Development
BRU: Insurance
Component: Operations

Sponsor: Senate Labor & Commerce Committee
Requestor: _____

COMPONENT SERIAL NO. #354

| Expenditures/Revenues | (Thousands of Dollars) | | | | | |
|------------------------|------------------------|-------|-------|-------|-------|-------|
| OPERATING EXPENDITURES | FY 96 | FY 97 | FY 98 | FY 99 | FY 00 | FY 01 |
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 00 | 00 | 00 | 00 | 00 | 00 |

| | | | | | | |
|----------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|----------------------|--|--|--|--|--|--|

| | | | | | | |
|--------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES | | | | | | |
|--------------------|--|--|--|--|--|--|

| FUND SOURCE | (Thousands of Dollars) | | | | | |
|--------------------------|------------------------|----|----|----|----|----|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 General Fund | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| Other | | | | | | |
| TOTAL | 00 | 00 | 00 | 00 | 00 | 00 |

Estimate of any current year (FY 95) cost: \$ 00

| POSITIONS | 0 | 0 | 0 | 0 | 0 | 0 |
|-----------|---|---|---|---|---|---|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary)
No fiscal impact.

| | | |
|--------------------------|--|----------------|
| Prepared by | Joan Brown, Administrative Officer <i>Joan Brown</i> | Phone 465-2597 |
| Division | Insurance | Date 3/29/95 |
| Approved by Commissioner | William L. Hensley, <i>William L. Hensley</i> | Date 3/29/95 |
| Agency | Commerce and Economic Development | |

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716 W. 4TH, SUITE 400
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MEMORANDUM

DATE: March 23, 1995

TO: Senator Robin Taylor, Chair
Senate Judiciary Committee

FROM: Senator Tim Kelly, Chair
Senate Labor & Commerce Committee *TJK*

RE: Scheduling of SB 140 - Workers' Compensation Amendments

I respectfully request the Judiciary Committee hear SB 140, amendments to the workers' compensation statutes devised and agreed upon by the Alaska Labor-Management Ad Hoc Committee on Workers' Compensation, at the Committee's earliest convenience.

Attached you'll find a letter from this Committee summarizing the provisions of this legislation, as well as the original proposed bill draft submitted to the Labor and Commerce Committee.

If you have any questions, please have your staff contact Josh Fink in my office at x4920.

Your timely consideration is appreciated.

ALASKA

LABOR-MANAGEMENT AD HOC COMMITTEE ON WORKERS' COMPENSATION

February 23, 1995

The Honorable Tim Kelly
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Senator Kelly:

The Alaska Labor-Management Ad Hoc Committee on Workers' Compensation is in its thirteenth year of service as a private citizen initiative group formed to fairly address concerns in regard to the Alaska Workers' Compensation system. It was through the efforts of the Ad Hoc Committee that major legislative reform was passed in 1989. Those measures resulted in four years of premium reductions, with 1994 being the first year of a rate increase since 1987.

The Ad Hoc Committee has been meeting regularly since October, 1993 in an attempt to work through some major issues related to workers' compensation. We have recently reached a resolution on several key items that form the basis of our proposed 1995 legislation. Our proposed legislation has had a preliminary review by the Division of Workers' Compensation. The proposed bill contains the following elements:

- **Death Benefit Revision** - The current death benefit has a 10-year cap and also calls for the reduction of benefits at the 5- and 8-year time frame. Although the 10-year cap is still retained to control the cost of claims, it was suggested that the reduction intervals could create hardships for a surviving spouse with small children. It has been estimated that the elimination of the 5- and 8-year reductions will result in an average premium increase of 0.6%.
- **Van Biene** - This portion of the bill provides immunity for insurance carriers, trade associations and other persons providing worksite safety inspections. These inspections are often voluntary and are conducted in the interest of promoting safety in the workplace. Without this immunity, many of the workplace safety inspections will be curtailed to the disadvantage of both employees and employers.

- **Design Professional Construction Site Liability Limit** - Design professionals (i.e. architects, engineers and land surveyors) have limited involvement at the construction site with their main function being periodic observation for conformance to design requirements. While the role of design professionals is clearly defined in contract language, there have been a number of instances in which design professionals have been drawn into lawsuits based simply on their presence at the site.

The proposed statute still allows the injured employee of the contractor to bring suit against the design professional based on negligent plans and specifications. However, the statute prevents the more general charge of professional negligence through failing to detect potentially dangerous conditions during observation of construction. The recognition and correction of such conditions is the sole responsibility of the construction contractor who has control of the work.

Fourteen other states provide a similar immunity, with eight states utilizing nearly identical language.

- **Contractor Premium Adjustment Rate** - The construction industry has long sought a more equitable method of distributing the cost of workers' compensation premiums. With the large variance in pay scale, higher paying employers pay a larger cost for workers' compensation although some costs related to injuries are fixed regardless of wage (e.g. medical, vocational rehabilitation). To bring about a more equitable system, twelve states have adopted regulations establishing a premium adjustment program for the contracting classifications. The process is handled administratively by the rate setting authority.
- **Determination of Spendable Weekly Wages** - A recent Supreme Court decision in the Gilmore case has resulted in confusion regarding the calculation of compensation benefits. The proposed legislation provides a fair, efficient and predictable method of calculating compensation benefits. The methods developed are patterned after model language suggested by the court in the Gilmore ruling. The legislation recognizes the importance of establishing a fair approximation that does not rely on various open-ended determinations that cause uncertainty and increases litigation for both the injured worker and their employers.
- **Fraud** - The revised section broadens the definition of misrepresentation and gives the Board the authority to order reimbursement of monies fraudulently obtained.

Senator Kelly
February 23, 1995
Page 3

The Ad Hoc Committee supports the proposed bill as a single package agreed to by both sides. If you have any questions pertaining to any portion of the bill, please feel free to contact us at any time.

We would also like to point out that there are more issues involving workers' compensation that we will be addressing in the future. These include group self-insurance, medical cost containment (the medical cost portion of worker's compensation payouts in Alaska have more than doubled between 1988 and 1992, from approximately \$20 million to in excess of \$50 million), review of presumption of compensability, and review of benefits including health insurance. These issues will take further research and a great deal of discussion with various groups but they must be dealt with to insure that Alaska's Workers' Compensation system adequately protects injured workers while maintaining an equitable program for employers.

We thank you for your patience in allowing the Ad Hoc Committee to prepare our agreement and we look forward to your continued support in the future.

Sincerely yours,



Willem Van Hemert
CRW Engineering Group

Elaine Taylor
Taylored Restoration Services

Mary Shields
Northwest Technical Services

Eric Tollefsen
CARRS Quality Centers
Treasurer, WCCA



Kevin Dougherty
District Council of Laborers

Jeffrey Wertz
Machinist Union Local 601

Royce Rock
Carpenters Union Local 1281

David Ford
Alaska Ironworkers

cc: Representative Brian Porter
Representative Eldon Mulder
Representative Pete Kott

1 A BILL

2 FOR AN ACT ENTITLED

3 "An Act related to workers' compensation; and providing for a effective date."

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA.

5 *Sec. 1. PURPOSE. SEE ATTACHED LEGISLATIVE INTENT FOR GILMORE. OTHER WILL
6 BE PROVIDED IF DEEMED NECESSARY.

7
8
9
10 *Sec. 2 AS 23.30 is amended by adding a new section to read:

11 AS 23.30.016 ACTION AGAINST THIRD PERSON - IMMUNITY FOR DESIGN
12 PROFESSIONALS AND EMPLOYEES. (a) If on account of disability or death for which
13 compensation is payable under this chapter, the person entitled to the compensation may not
14 seek damages against a design professional who is a third person and who has been retained to
15 perform professional services on a construction project, or any employee of a design
16 professional who is assisting or representing the design professional in the performance of
17 professional services on the site of the construction project, unless responsibility for safety
18 practices is specifically assumed by contract, the provisions of which were mutually negotiated,
19 or the design professional actually exercised control over the portion of the premises where the
20 worker was injured.

21 (b) The immunity provided by this section does not apply to the negligent preparation of
22 design plans and specifications.

23 (c) For the purposes of this section, "design professional" means an architect,
24 professional engineer, or land surveyor, who is licensed or authorized by law to practice such
25 profession, or any corporation licensed or authorized by law to practice such profession in the
26 State of Alaska.

27

1 •Sec. 3 AS 23.30 is amended by adding a new section to read:

2 AS 23.30.036 PREMIUM RATES FOR CONSTRUCTION INDUSTRY. (a) With respect to
3 each classification of risk in the construction industry, the rating organization described in State
4 Statutes shall file with the Director of Insurance a method of computing premiums that does not
5 impose a higher insurance premium solely because of an employer's higher rate of wages paid.

6 (b) The Director shall accept a filing under subsection (1) that includes a reasonable
7 method of recognizing differences in rates of pay. This method must use a credit scale with the
8 starting point set at the Alaska average weekly wage as reported by the department.

9 (c) The rating organization shall file a revenue neutral plan for a new and renewed
10 policies by January 1, 1996 for prompt and orderly transition to a method of computing that is in
11 compliance with the requirements of this section

12
13 •Sec. 4 AS 23.30.215 is amended to read:

14 AS 23.30.215 COMPENSATION FOR DEATH (a) If the injury causes death, the
15 compensation is known as a death benefit and is payable in the following amounts to or for the
16 benefit of the following persons:

17 (1) reasonable and necessary funeral expenses not exceeding \$2,500;

18 (2) if there is a widow or widower or a child or children of the deceased, the
19 following percentages of the spendable weekly wages of the deceased:

20 (A) 80 percent for the widow or widower with no children;

21 (B) 40 percent for the widow or widower with one child and 40 percent for the
22 child;

23 (C) 25 percent for the widow or widower with two or more children and 55 percent
24 divided equally among the children;

25 (D) 80 percent for an only child when there is no widow or widower;

26 (E) 80 percent, divided equally, if there are two or more children and no widow or
27 widower;

1 (3) if the widow or widower remarried, the widow or widower is entitled to be paid
2 in one sum a. amount equal to the compensation to which the widow or widower would
3 otherwise be entitled in the two years commencing on the date of remarriage as full and
4 final settlement of all sums due the widow or widower;

5 (4) if there is no widow or widower or child or children, then for the support of
6 father, mother, grandchildren, brothers and sisters, if dependent upon the deceased at
7 the time of injury, 42 percent of the spendable weekly wage of the deceased to such
8 beneficiaries share and share alike, not to exceed \$20,000 in the aggregate.

9 (b) In computing death benefits, the spendable weekly wage of the deceased shall be
10 computed under AS 23.30.220 and shall be paid in accordance with AS 23.30.155 and subject
11 to the weekly maximum limitation in the aggregate as provided in AS 23.20.175, but the total
12 weekly compensation may not be less than \$75 for a widow or widower no less than \$25 weekly
13 to a child or \$50 for children.

14 (c) All questions of dependency shall be determined as of the time of the injury, or
15 death.

16 (d) Compensation under this chapter to aliens not residents, or about to become
17 nonresidents, of the United States or Canada is the same in amount as provided for residents,
18 except that dependents in a foreign country are limited to widow or widower and child or
19 children, or if there is no widow or widower and child or children, to surviving father or mother
20 whom the employee has supported, either wholly or in part, for a period of one year before the
21 date of injury. The board, at its option, or upon the application of the insurance carrier, may
22 commute all future installments of compensation to be paid to an alien dependent who is not a
23 resident of the United States or Canada by paying or causing to be paid to the alien dependent
24 one-half of the commuted amount of the future installments of compensation as determined by
25 the board.

26 (e) Death benefits payable to a widow or widower in accordance with (a) of this section
27 shall abate as that person ceases to be entitled and does not inure to persons subject to

1 continued entitlement. In the event a child ceases to be entitled, that child's share shall inure to
2 the benefit of the surviving spouse. [subject to adjustment as provided in (f) of this section.]

3 (f) Except as provided in (g) of this section, the death benefit payable to a widow or
4 widower shall

5 [(1) FIVE YEARS FOLLOWING DATE OF DEATH OF THE DECEASED
6 EMPLOYEE BE REDUCED TO 66 2/3 PERCENT OF THE BENEFIT BEING THEN PAID;

7 (2) EIGHT YEARS FOLLOWING DATE OF DEATH OF THE DECEASED
8 EMPLOYEE BE REDUCED TO 50 PERCENT OF THE BENEFIT BEING THEN PAID;

9 (3)] Terminate 10 years following death of the deceased employee.

10 (g) the provisions of (f) of this section do not apply to a widow or widower who at the time
11 of death of the deceased worker is permanently and totally disabled. The death benefits
12 payable to a widow or widower are not subject to reduction under (f) of this section after the
13 widow or widower has attained the age of 52 years.

14 (h) In the event a deceased worker is survived by children of a former marriage not living
15 with the surviving widow or widower, then those children shall receive the amount being paid
16 under a decree of child support; the difference between this amount and the maximum benefit
17 payable under this section shall be distributed pro rata to the remainder of those entitled.

18 (i) In the event the total amount of all benefits computed under (a)(2) of this section
19 exceeds the maximum benefit provided in AS 23.30.175, the maximum benefit under AS
20 23.20.175 shall be prorated among entitled survivors.

21
22 *Sec. 5 AS 23.30.220(a) is replaced and reenacted to read:

23 AS 23.30(220) DETERMINATION OF SPENDABLE WEEKLY WAGES (a) The spendable
24 weekly wage of an injured employee at the time of an injury is the basis for computing
25 compensation. It is the employee's gross weekly earnings minus payroll tax deductions. The
26 gross weekly earnings shall be calculated as follows:

1 (1) If at the time of injury the wages are fixed by the week, the amount so fixed
2 shall be gross weekly earnings.

3 (2) If at the time of injury the wages are fixed by the month, the gross weekly
4 earnings shall be monthly wage so fixed multiplied by twelve and divided by fifty-two.

5 (3) If at the time of injury the wages are fixed by the year, the gross weekly
6 earnings shall be the yearly wage so fixed divided by fifty-two.

7 (4)(a) If at the time of injury the wages are fixed by the day, hour, or by the output of
8 the employee, the gross weekly earnings shall be the wage most favorable to the
9 employee computed by dividing by thirteen the wages (not including overtime or
10 premium pay) of said employee earned in the employ of the employer in the first, second,
11 third, or fourth period of thirteen consecutive calendar weeks in the fifty-two weeks
12 immediately preceding the injury.

13 (b) If at the time of injury the employee has been in the employ of the employer
14 less than thirteen calendar weeks immediately preceding the injury, his average weekly
15 wage shall be computed under the foregoing paragraph, taking the wages (not including
16 overtime or premium pay) for such purpose to be the amount he would have earned had
17 he been so employed by the employer the full thirteen calendar weeks immediately
18 preceding the injury and has worked, when work was available to other employees in a
19 similar occupation.

20 (5) If at the time of injury the wage has not been fixed or can not be ascertained,
21 the wage for the purpose of calculating compensation shall be taken to be the usual wage
22 for similar services where such services are rendered by paid employees.

23 (6) In employment which is exclusively seasonal or temporary, the gross weekly
24 earnings shall be taken to be one-fiftieth of the total wages which the employee has
25 earned from all employment during the calendar year immediately preceding the injury.

1 (7) When the employee is working under concurrent contracts with two or more
2 employers and the defendant employer has knowledge of such employment prior to the
3 injury, his wages from all such employers shall be considered as if earned from the
4 employer liable for compensation.

5 (8) current AS 23.30.220(a)(3)

6 (9) current AS 23.20.220(a)(4)

7 (10) if any claim for benefits under section .180 of this chapter were wages
8 calculated under subsection (a)(1)-(7) above do not fairly reflect the employee's earnings
9 during the period of disability, the board shall determine gross weekly earnings by
10 considering the nature of employee's work, work history, and resulting disability, but
11 gross weekly earnings so calculated may not exceed the employee's gross weekly
12 earnings at the time of injury.

13
14 *Sec. 6 AS 23.30.250 is repealed and reenacted to read:

15 AS 23.30.250 REMEDIES FOR FRAUDULENT OR MISLEADING ACTS (a) Any person,
16 insurer or employer who (1) knowingly makes a false or misleading statement, representation or
17 submission, (2) knowingly assists, abets, solicits, or conspires in the making of any false or
18 misleading statement, representation, or submission affecting the payment, coverage, or other
19 benefit under this chapter; (3) knowingly misclassifies employees or engages in deceptive
20 leasing practices for the purpose of evading full payment of insurance premiums; or (4) employs
21 or contracts persons or firms to coerce or encourage individuals to file fraudulent compensation
22 claims shall be civilly liable to any party adversely affected by such conduct, shall be guilty of
23 theft by deception as defined in AS 11.46.180 and is punishable as provided by AS 11.46.120-
24 150.

25 (b) After hearing and upon a finding that a person has obtained any payment of
26 compensation, medical treatment, or other benefit under this Chapter by willingly making a false
27 or misleading statement or representation for the purpose of obtaining that benefit, the Board

1 shall order that person to make full reimbursement of the cost of all such benefits obtained.
2 Upon entry of an order authorized under this subsection, the Board shall also order that person
3 to pay all reasonable costs and attorneys' fees incurred by the employer and its insurer in
4 obtaining an order under this section and in defending any claim made for such benefits under
5 this chapter. Orders requiring reimbursement of compensation and payment of costs and
6 attorney's fees under this section may be enforced as under Sec. 170(b) of this chapter.
7

8 *Sec. 7 AS 23.30 is amended by adding a new section to read:

9 AS 23.30.263 IMMUNITY FROM CIVIL LIABILITY FOR WORKPLACE SAFETY
10 INSPECTIONS. An employer's safety inspector is not liable for civil damages for injury to an
11 employee of that employer resulting from an act or omission in performing or failing to perform a
12 loss control service, a workplace safety inspection, or a safety advisory service provided in
13 connection with an employer's workers' compensation insurance coverage, unless the act or
14 failure to act constitutes intentional misconduct. In this section "safety inspector" means a
15 carrier and an employee or agent of the carrier, a trade association of which the employer is a
16 member, or a person providing adjusting or inspection services to an employer who is a member
17 of an association established under AS 21.76.010 or an employer who is self-insured under AS
18 23.30.090.
19

20 *Sec. 8 AS 23.30.265 is amended by adding:

21 (35) "Seasonal" employment is work which does not continue through an entire
22 calendar year.

23 (36) "Temporary" employment is work which is not permanent, will end upon
24 completion of the task, job or contract and will end within six months from the date of
25 injury.

Legislative intent.

It is the purpose of this amendment to redefine the calculation of compensation benefits to comply with the decision of the Alaska Supreme Court in *Gilmore v. Alaska Timber Exchange*, S. Ct. No. S-4765 (October 14, 1994). The legislature recognizes, as the Alaska Supreme Court stated in *Gilmore*, that efficiency in the method of calculating compensation benefits does not require unfairness and that "[a] quick, efficient, and predictable scheme for determining a worker's gross weekly earnings could be formulated without denying workers ... benefits commensurate with their actual losses. Many jurisdictions avoid the need for an alternative open-ended determination of actual future earning capacity by focusing narrowly on wages at the time of injury and converting, by formula or formulas, the worker's rate of pay into a weekly wage." *Gilmore* at 15. It is therefore the intent of this legislation to fix a fair approximation of the employee's probable future earning capacity throughout the period of disability without the need for alternative, open-ended determinations of actual future earning capacity under AS 23.30.185 and .200 in an effort to avoid uncertainty and litigation for injured workers and their employers. The legislature also recognizes that many Alaskan workers are only seasonally employed in the construction, tourism, fishing and education industries and that many Alaskans choose a subsistence lifestyle and are only occasional, sporadic and part-time, temporary members of the labor market. The statute is designed to achieve fairness to those full-time permanent members of the work force and fairness to those employers who hire the temporary or seasonal workers who are soon injured and probably would not have continued full time permanent employment given the nature of their work and work history.

The legislature further declares, however, that because benefits under AS 23.30.180 can last for a substantially longer period of time into the future and therefore serves a different purpose than temporary benefits under AS 23.30.185 and .200, an alternative open-ended determination of actual future earnings should be available for those cases where wages cannot be fairly calculated under AS 23.30.220(a)(1)-(7).