

**SB**

**10002**

**SFIN**

**FILE**

SB 1002

was referred to the  
Senate Finance  
Committee

No hearing was held  
on this bill

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: SB 1002  
(S) Publish Date: 6/22/04

Revision Date/Time (Note if correction): 06/21/04 Dept. Affected: \_\_\_\_\_  
Title: Workers' Compensation BRU: Alaska Court System  
Component: Appellate Courts  
Sponsor: Governor  
Requester: Governor Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services		186.1	186.1	186.1	186.1	186.1
Travel						
Contractual		2.4	2.4	2.4	2.4	2.4
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>188.5</b>	<b>188.5</b>	<b>188.5</b>	<b>188.5</b>	<b>188.5</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		188.5	188.5	188.5	188.5	188.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>188.5</b>	<b>188.5</b>	<b>188.5</b>	<b>188.5</b>	<b>188.5</b>

Estimate of any current year (FY2004) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

Work draft 04-0172 makes several changes to the way the Department of Labor and Workforce Development (the agency) and the Alaska Court System resolve workers' compensation disputes and appeals. Most important for purposes of the court's fiscal note is that appeals from the newly-created Workers' Compensation Appeals Commission (commission) will bypass the superior court and go directly to the supreme court.

The court system does not believe that the creation of the new commission will result in a decrease in the number of workers' compensation cases that are appealed to the court system each year. However, bypassing the superior court will lead to a significant increase in the number of these appeals that go to the supreme court. This is because the superior court resolves about 75% of the workers' compensation cases appealed to the court system.

Prepared by: Doug Wooliver Administrative Attorney Phone 907-264-8265  
Division: Alaska Court System Date/Time 6/21/04 10:44 AM  
Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 06/21/04  
Agency: Alaska Court System

FISCAL NOTE #1

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. SB 1002

**ANALYSIS CONTINUATION**

Of the yearly average of 36 appeals filed with the superior court, only 9 (25%) are further appealed to the supreme court. Because the bill bypasses the superior court the supreme court anticipates that it will see all 36 cases.

Although the removal of these cases from the superior court will ease the workload of that court, the reduction is only slightly more than an average of one case a year per judge. Although this will allow judges some additional time to focus on other cases, it is not a significant enough reduction to produce a cost savings. However, an additional 27 cases a year for the supreme court would represent a greater than 10% increase in its civil caseload.

In order to mitigate the impact of these additional cases the court will hire a central staff attorney with expertise in workers' compensation law to research the record and the legal issues associated with each of the workers' compensation cases. This assistance should reduce the time required to resolve these cases and lessen the impact they will have on other matters before the court.

Additionally, this note reflects the costs of an administrative assistant to assist the attorney and an additional clerical position to handle the increased paper work and to interact with the agency in the preparation of the records on appeal.

This note conservatively assumes that the number of cases appealed to the court system will not grow above the current average of 36 cases a year. Should that average increase the court system may be back before the legislature with a request for additional funding.

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2  
Bill Version: SB 1002  
(S) Publish Date: 6/22/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
Title An Act ... establishing a Workers' Compensation Appeals Commission BRU Centralized Administrative Services  
Sponsor Rules Committee Component Office of Administrative Hearings  
Requester Governor Component No. 2771

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	681.1	681.1	681.1	681.1	681.1
Travel	0.0	8.4	8.4	8.4	8.4	8.4
Contractual	0.0	98.6	78.6	78.6	78.6	78.6
Supplies	0.0	38.4	2.8	2.8	2.8	2.8
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>826.5</b>	<b>770.9</b>	<b>770.9</b>	<b>770.9</b>	<b>770.9</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1007 I/A Receipts	0.0	826.5	770.9	770.9	770.9	770.9
<b>TOTAL</b>	<b>0.0</b>	<b>826.5</b>	<b>770.9</b>	<b>770.9</b>	<b>770.9</b>	<b>770.9</b>

Estimate of any current year (FY2004) cost: 0.0  
Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time		8	8	8	8	8
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This legislation transfers a number of functions from the Division of Workers' Compensation and the former Workers' Compensation Board to the new Commission (all within the Department of Labor and Workforce Development) and the Office of Administrative Hearings (in the Department of Administration). The fiscal note displays the net change in costs within the Department of Administration. Changes include:

**Personal Services:**

The costs of six (6) partially exempt administrative law judge positions. Costs are based upon ranges and advanced steps for administrative law judges in order to cover the basic administrative law judge qualifications as well as the level of workers' compensation experience mandated by the bill.

Prepared by: Eric Swanson, Director Phone 465-5655  
Division: Administrative Services Date/Time 6/21/04 3:17 PM  
Approved by: Ray Matiasowski, Commissioner Date 6/21/2004  
Agency: Administration

FISCAL NOTE #2

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. SB 1002

ANALYSIS CONTINUATION

Additionally, two (2) Administrative Clerk III position are created to provide clerical support for the administrative law judges.

Travel:

Planned travel includes 6 trips to Juneau for administrative law judges.

Contractual:

Includes annual recurring leased space cost and the estimated first year build out costs for adequate space to conduct hearings and confidential work. Other costs include estimated annual phone and equipment charges and administrative overhead.

Supplies:

Includes the cost of computer purchases, office furniture, and other one time costs necessary to establish the office and annual consumable supply costs.

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 3  
Bill Version: SB 1002  
(S) Publish Date: 6/22/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Department: Labor and Workforce Development  
Title: An Act...establishing a Workers' Compensation Appeals Commission RDU: Work Comp Appeals Comm (new)  
Sponsor: Rules Committee Component: Workers' Compensation Appeals Commission (new)  
Requester: Governor Component Number: new#

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	(553.3)	(553.3)	(553.3)	(553.3)	(553.3)
Travel	0.0	28.0	28.0	28.0	28.0	28.0
Contractual	0.0	918.5	810.4	810.4	810.4	810.4
Supplies	0.0	10.4	10.4	10.4	10.4	10.4
Equipment	0.0	11.6	0.0	0.0	0.0	0.0
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>415.2</b>	<b>295.5</b>	<b>295.5</b>	<b>295.5</b>	<b>295.5</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( 1157 )</b>	<b>0.0</b>	<b>18.0</b>	<b>18.0</b>	<b>18.0</b>	<b>18.0</b>	<b>18.0</b>
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1157 Workers Safety Account		415.2	295.5	295.5	295.5	295.5
<b>TOTAL</b>	<b>0.0</b>	<b>415.2</b>	<b>295.5</b>	<b>295.5</b>	<b>295.5</b>	<b>295.5</b>

Estimate of any current year (FY2004) cost: None  
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time		-5	-5	-5	-5	-5
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

See attached.

Prepared by: Paul Lisankle, Director Phone 465-2790  
Division: Workers' Compensation Division Date/Time 6/21/04 3:39 PM  
Approved by: Greg O'Claray, Commissioner Date 6/21/2004  
Agency: Department of Labor and Workforce Development

FISCAL NOTE #3

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL VERSION: SB 1002

ANALYSIS (continued)

This legislation establishes a Workers' Compensation Appeals Commission and replaces the Alaska Workers' Compensation Board effective July 1, 2005. It also transfers a number of functions from the Division of Workers' Compensation and the former Workers' Compensation Board to the new Commission (all within the Department of Labor and Workforce Development) and the Office of Administrative Hearings (in the Department of Administration). The fiscal note displays the net change in costs within the Department of Labor and Workforce Development associated with these changes. Changes include:

	Existing WC Division	New WC Appeals	Net Change
Personal Services	(809.2)	255.9	(553.3)
Travel	(36.8)	64.8	28.0
Contractual	(70.7)	989.2	918.5
Supplies	(8.6)	19.0	10.4
Equipment		11.6	11.6
Total	(925.3)	1,340.5	415.2

New Workers' Compensation Appeals Commission budget component:

Operating Expenditures:

Personal Services: The Appeals Commission is comprised of 4 new positions and 4 volunteer members:

	<u>Range</u>
Commission, Chair	27 A
Commission, Member	-
Commission, Member	-
Commission, Member	-
Commission, Member	-
Admin. Services Mgr./ Commission Clerk	19 A
Admin. Clerk III	10 A/B
Admin. Clerk II	8 A/B

The personal services costs of \$255.9 are associated with the above positions. An administrative manager position is included to assist the chair in fulfilling the diverse "court clerk," budget/fiscal, and organizational administration functions assigned under the bill.

Travel: Appeals Commission travel costs of \$64.8 have been minimized by basing the Commission and holding all its appeals hearings in Anchorage. Commission administrative staff are also located in Anchorage. Planned travel includes 3 trips to Juneau for the Commission chair and Commission Clerk/Administrative Manager. Commission travel also includes both actual travel costs associated with the four citizen Commission members attending appeals proceedings and a \$200/day stipend payable for each day spent on Commission business.

Contractual: Under the bill the Commission will request Administrative Law Judges employed by the Office of Administrative Hearings to conduct the initial hearings previously done by Workers' Compensation Board hearing panels and Workers' Compensation Hearing Officers. The Commission is expected to incur \$828.5 in contractual costs for Administrative Law Judge services. Those costs are based upon ranges and advanced steps for Administrative Law Judges in order to cover the basic Administrative Law Judge qualifications as well as the level of workers' compensation experience mandated by the bill.

FISCAL NOTE #3

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL VERSION: SB 1002

**ANALYSIS: (continued)**

A reduction in the total numbers of hearing officers (currently eight authorized Workers' Compensation Hearing Officers versus expected six Administrative Law Judges) is based upon a reasonably expected increase in productivity. That increase would result from 1) the increased experience and qualifications justifying Range 24 and advanced step pay and 2) a lessening of turnover associated with upgrading the positions. Also, a reduction is supported by one substantive change in the bill that removes the need for review of Compromise & Release agreements involving injured workers represented by an attorney licensed to practice in the State of Alaska.

The bill also requires that Appeals Commission offices be "physically separate" from those of the Workers' Compensation Division. The Commission's contractual budget includes one-time costs of achieving the mandated physical separation of \$52.5 for its Anchorage offices. Those costs include demolition, construction, staff relocation, and voice and data line wiring.

Supplies and Equipment: A budget of \$10.4 for general office supplies and \$11.6 for equipment is necessary to operate the Appeals Commission.

**New Fees/Fines:**

The bill authorizes the Appeals Commission to charge a \$100.00 fee for the filing of an appeal. This is expected to amount to a yearly total of approximately \$6,000.00 payable to the Workers' Safety and Compensation Administration Account.

The bill also allows the Appeals Commission to order the parties to an appeal to pay for its costs of preparing the appeal file. At \$200.00 per appeal that could be expected to total \$12,000.00 per year payable to the Workers' Safety Account.

The bill also authorizes the Division of Workers' Compensation to seek the imposition of civil penalties against employers that violate the statutory requirement to insure or properly self-insure for their employees' workers' compensation benefits. Appeals Commission hearing examiners would be authorized to award penalties up to a maximum of \$100.00 per day per employee. Based upon FY 2003 statistics penalties totaling \$217,900.00 could have been assessed for each day the 189 identified, uninsured employers failed to insure the workers' compensation benefits of their 2,179 employees. It is unclear whether these penalties under AS 23.30.080 were intended to be considered as penalties under "this section" (AS 23.05.067). Due to the speculative nature of these penalties, and the uncertainty of their collectability and qualification for inclusion, no adjustment to the Workers' Safety and Compensation Administration Account is currently included.

**Existing Workers' Compensation budget component:**

**Operating Expenditures:**

Personal Services: The Workers' Compensation Division and the Workers' Compensation Board would delete the following positions:

	Range
Chief of Adjudication	23 B
Workers' Compensation Hearing Officer	21 M
Workers' Compensation Hearing Officer	21 K
Workers' Compensation Hearing Officer	21 F
Workers' Compensation Hearing Officer	21 B/C
Workers' Compensation Hearing Officer	21 B/C
Workers' Compensation Hearing Officer	21 B/C
Workers' Compensation Hearing Officer	21 A
Workers' Compensation Officer II	18 K
14 Workers' Compensation Board Members -----	

FISCAL NOTE #3

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL VERSION: SB 1002

**ANALYSIS: (continued)**

Many responsibilities previously lodged in the AWCB have been reassigned to the Division Director. While some will be absorbed by the remaining Workers' Compensation Officers, others require more advanced legal and administrative hearing skills. Reflecting the increased responsibilities the bill places upon the Division Director, and the loss of the Chief of Adjudication, the Division will retain one Workers' Compensation Hearing Officer or equivalent (Range 21) position.

This position will allow the Director to delegate some of the duties for making investigations and determinations to the incumbent.

The bill shifts to the Office of Administrative Hearings Administrative Law Judges the requirement to hold any prehearing conferences needed to plan hearings and to resolve discovery disputes. In Anchorage, where there are currently three WCO II's and two technicians, this reduction and shifting other work will require one less Workers' Compensation Officer II.

Travel: Travel costs are reduced by (\$36.8) to reflect transfer of travel and Board member stipends (currently \$50.00 per day) to the Appeals Commission.

Contractual and Supplies: Reflects reductions in fixed costs, space lease in Anchorage and Fairbanks, and other contractual costs totaling (\$70.7). And also reflects transferring (\$8.6) for supplies to the Appeals Commission.

**Funding**

Funding for the net cost increase resulting from this legislation will be from the Workers' Safety and Compensation Administration Account and reserves. This assumes passage of legislation to reverse the sweep of the reserve balance. Failure to reverse the sweep may force a reliance on General Funds for some of these costs as most recurring WSCA Account revenue is accounted for in the Governor's FY 2005 budget.

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: 4  
 Bill Version: SB 1002  
 (S) Publish Date: 6/22/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
 Title An act reforming Workers' Compensation adjudication RDU Risk Management  
 Component Risk Management  
 Sponsor Rules  
 Requester By request of the Governor Component No. 71

**Expenditures/Revenues (Thousands of Dollars)**

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>.</b>	<b>.</b>	<b>.</b>	<b>.</b>	<b>.</b>	<b>.</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>.</b>	<b>.</b>	<b>.</b>	<b>.</b>	<b>.</b>	<b>.</b>

Estimate of any current year (FY2004) cost: 00  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** *(Attach a separate page if necessary)*  
 Significant reform to the adjudication process for workers' compensation claims is proposed in this comprehensive legislation.  
 In time, these streamlining measures are projected to reduce expenses presently incurred in resolving disputes in determining claim and benefit obligations.  
 As an authorized self-insured employer, the state will experience these savings in its self-insurance program administered by Risk Management in future years.  
  
 Risk Management's workers' compensation premium assessments to state agencies will reflect the reductions actually realized as premium charges are developed from actual claims expense incurred.

Prepared by: J. Brad Thompson, Director Phone 465-5723  
 Division Director Date/Time 6/21/04 3:23 PM  
 Approved by: Ra. Maliashowski, Commissioner Date 6/21/2004  
 Agency Department of Administration

Proposed Workers' Compensation Reform Bill  
Section by Section Analysis

This legislation substantially reforms the workers' compensation system. This year, workers compensation premiums increased by an average of 21% for all types of employers. Premiums for 17 types of employers, including child care and hospital non-professionals went up over 50%. This legislation addresses claim costs by bringing consistency and speed to contested cases. This should benefit both employers and employees. The legislation does not change benefits paid to injured Alaskan workers.

This legislation also makes changes to the agency that protect workers compensation recipients from nonpayment by insolvent insurers, and protects employers who purchased insurance from liability in case of insurer nonpayment.

The present system of administering the workers' compensation act, AS 23.30, is replaced with a new system that divides adjudication of claims and petitions arising under the act from the executive functions of administration, investigation, and enforcement. The Alaska Workers' Compensation Board, (board) composed of seven panels of volunteer members and the Commissioner of Labor and Workforce Development, is removed. Its administration, investigation, and enforcement powers are transferred to a director of a division of worker's compensation. The board's claim hearing functions are transferred to independent administrative law judges (ALJs) in the office of administrative appeals in the Department of Administration. This conforms the workers' compensation system to that recently adopted by the Twenty-Third Alaska State Legislature in HCS CSSB 203(FIN).

This legislation also changes the process of adjudication to encourage more consistency in legal interpretation and increase the speed and accessibility of appellate review. Cases are heard first by ALJs, with expertise in workers' compensation. The Workers' Compensation Appeals Commission provides administrative review in place of the Superior Court. The Commission, composed of a chair with legal experience in workers' compensation, and four citizen members evenly divided between representatives of employers and employees, acts as an administrative appellate body with broad powers of review. The commission's decisions will be published and are binding. The commission's decisions may be appealed directly to the Supreme Court, without review by the Superior Court.

This legislation gives the director strong new enforcement tools and direct power to administer, investigate, and enforce obligations created by the workers' compensation laws. These include new civil penalties against uninsured employers, subpoena powers, the power to examine employer books, the power investigate fraud, the

Section by Section Analysis  
Proposed Workers' Compensation Reform Bill

power to intervene in disputed cases and the power to file an appeal. The director will be able to engage in informal dispute resolution outside the adjudication system, and, in aid of that function, has the power to order independent medical examinations to resolve differences between medical providers.

In addition to fundamental structural changes, this legislation contains other systemic improvements. Provisions are made for summary disposition of cases, such as where there is no jurisdiction or where there are no disputes of material fact. Compensation paid to non-residents is capped at the rate that would be paid if the recipient resided in Alaska. Provisions are included that would allow stop work orders to be issued and civil penalties to be assessed against uninsured employers on short notice where the employment contains hazards that could reasonably be expected to immediately cause an employee death or serious physical harm. Finally, adjusters and risk managers are required to report fraud and persons reporting fraud are granted immunity for good faith reports.

Because the workers' compensation act is lengthy, and the board is responsible for or involved in almost all aspects of the current workers' compensation system, this legislation contains a large number of what are essentially conforming amendments, replacing the board with the director, an ALJ, or the commission, as the function requires.

Provisions giving effect to the workers' compensation system reorganization may be found in Sections 11, 12, 59, 60, 63-66, 108-110 and 112. Provisions related to new enforcement tools may be found at Sections 39, 40, 42, 84, 85, 98 and 99. Other changes to current workers' compensation procedures (other than reassignment of function) may be found in Sections 14, 39-40, 42, and 59. Provisions important to insurance restructuring, the Assigned Risk Pool, and Alaska Insurance Guaranty Association are found in Sections 1-7 and 111. The cap on benefits paid to out of state residents is in Section 87.

**Section 1** is a declaration of legislative intent to reform the workers' compensation insurance system to ensure payment of benefits when an insurer becomes insolvent, expand representation of workers compensation on the Alaska Insurance Guaranty Association, and reduce the costs of workers' compensation premiums to employers. This declaration of intent applies only to the first seven sections of this act.

**Section 2** amends AS 08.18.101(1) to remove a reference to the board and transfers the authority to issue certificates of self-insurance from the board to the director of the division of workers' compensation.

Section by Section Analysis  
Proposed Workers' Compensation Reform Bill

- Section 3** creates a new statutory provision, AS 21.09.090(e) which provides that insurers that transact workers' compensation insurance in this state must maintain in the state a special deposit of cash or securities for the protection of persons in Alaska covered under workers' compensation insurance. The insurer must maintain this special deposit as long as there is any outstanding liability for workers' compensation. If an insurer is unable to pay workers' compensation because it is an insolvent insurer, the deposit will be immediately available to the Alaska Insurance Guaranty Association for continuation of claims benefits to eligible workers. This revision provides additional financial protection for Alaskan workers in the event that workers' compensation insurer becomes insolvent and unable to pay claims.
- Section 4** creates a new statutory provision, AS 21.09.095 which provides that insurers who transact workers' compensation insurance in this state must maintain in the state a special deposit equal to the insurer's assumed workers' compensation assigned risk pool loss reserves. This provision requires insurers to collateralize their quota share of loss reserves from the Assigned Risk Pool. The director of insurance shall make funds from the pool available to fund an insurer's obligations to the pool in the event that the insurer becomes insolvent or otherwise fails to satisfy its workers' compensation assigned risk pool obligations.
- Section 5** amends AS 21.24.130(d) to make a technical change regarding the special deposit described in Section 3 above, indicating it is not subject to an order transferring it to a receiver.
- Section 6** creates a new statutory provision, AS 21.39.155(d) requiring the Assigned Risk Pool to operate on a self-funding basis on a three-year moving average basis.
- Section 7** repeals and reenacts AS 21.80.050 relating to the board of governors of the Alaska Insurance Guaranty Association. The composition of the board of governors of the Alaska Insurance Guaranty Association is modified by this provision to include representatives from management, labor and a licensed insurance provider, agent, broker or manager. This change will expand the expertise of the board of governors to address workers' compensation issues. Section 107 below provides for the transition of the terms of the members of the current board of governors.
- Section 8** amends AS 23.30.05.067(a)(1)(B) to remove a reference to the board and to replace the board by the director of the division of workers compensation as the recipient of reports. This amendment conforms to the amendment to AS 23.30.155(m) at Section 82 below.
- Section 9** amends AS 23.05.067(e) to include fees received by the commission in those fees deposited in the workers' safety and compensation account. It also adds new language to permit the legislature to appropriate funds to the commission

and for administration and adjudication of claims and petition arising under AS 23.30.

**Section 10** codifies a statement of legislative intent relating to the workers' compensation system. This declaration draws upon previous uncodified statements of legislative intent and adds language regarding the fair, careful and rational examination of evidence.

**Section 11** repeals and reenacts AS 23.30.005. It creates, within the Department of Labor and Workforce Development, a Division of Workers' Compensation and a director of the Division, appointed by the commissioner. The director must have three years experience in the field of workers' compensation. The section gives the director general powers and duties regarding administration, regulation, investigation and enforcement of the workers' compensation laws and system. The department has the power to adopt regulations proposed by the director, instead of the board, regarding medical care and rehabilitation providers. This provision transfers certain administrative duties previously assigned to the board to the director, including the obligation to notify the state, or a political subdivision of the state, if it revokes a contractor's self-insurance certificate.

**Section 12** adds three new statutory provisions. The first, AS 23.30.007, establishes a new workers' compensation appeals commission within the Department of Labor and Workforce Development, with jurisdiction to hear all administrative appeals arising under the workers' compensation act. The commission consists of five members, appointed for staggered terms of five years, appointed by the governor and confirmed by a majority of the legislature. The governor may make appointments to fill vacancies in the same manner for the completion of the vacant term. A majority of the members is a quorum. Four members are citizen members, compensated for their service at \$200/day. The citizen members are equally drawn from those who represent the employees and those who represent the employers. All members must be residents of Alaska for five years preceding appointment, no convicted of a felony, and not convicted of a misdemeanor related to workers' compensation. In addition to these qualifications, the Chair must be licensed to practice law in Alaska and have five years experience of workers' compensation law. The chair is a full time exempt service employee paid at Range 27. All members shall take the oath of office. Reasons for removal by the Governor of a commission member are set out, as well as an opportunity to respond to the Governor's charges. Reasons for removal include: misconduct in office, ethical violations, conviction of a felony, conviction of a misdemeanor regarding workers' compensation, inability to serve or handle the caseload, incompetence, etc. A panel of two citizen members (one employee representative and one employer representative) and the chair will hear

Section by Section Analysis  
Proposed Workers' Compensation Reform Bill

appeals. To conduct other business, the chair and equal numbers of employee and employer representatives must be present. Reasons for disqualification for conflicts are set out in detail, as well as a general disqualification if the member is unable to fair, impartial, and unbiased toward an appeal participant. If the chair is disqualified, or unavailable for more than ten days, the commissioner of labor may appoint a chair *pro tem*. The commission must be housed separately from the division to mark the separation of the judicial process in the workers' compensation system from the administrative and enforcement process.

Section 12 also, in the new statutory provision AS 23.30.008, sets out the powers and duties of the new workers' compensation appeals commission and, in AS 23.30.009, the powers and duties of the chair of the commission. The commission replaces the superior court as the body hearing administrative appeals in the workers' compensation system, and its decisions will be binding and have the force of legal precedence. The commission's decisions are final and conclusive, except that the Supreme Court may review the commission's decisions. The commission indexes and publicizes its formal decisions. The commission has the power to adopt regulations drafted and proposed by the chair, as well as rules of procedure for hearings and appeals, to adopt an official seal, and generally to carry out the powers and duties expressly granted or necessarily implied by the Act. The commission shall award attorney fees to successful appellants, but, as currently is the rule, attorney fees may not be awarded against an employee unless the appeal was frivolous, unreasonable or taken in bad faith.

The chair of the commission exercises general supervision of the office of the commission. The chair has the power to employ and supervise staff, assign work, and members to hearing panels, establish a time management system, manage the calendar of hearings and prepare the annual budget of the commission. The chair must prepare and make public an annual report of the commission's performance. The chair is barred from other employment and may not hold any other public or tribal office, nor hold office or position in a political party.

**Section 13** amends AS 23.30.011(c), which relates to extraterritorial coverage of workers injured outside Alaska while working for Alaska employers or while under contract formed in Alaska. It removes references to the board and reassigns powers and duties to the division. Certificates of insurance issued by other states must be filed in the division instead of the board. The director replaces the board as the appointed out of state employer's agent for service of process. The director, instead of the board, shall serve notice of claims. Evidence of self-insurance must satisfy the director, instead of the board; and, the director

Section by Section Analysis  
Proposed Workers' Compensation Reform Bill

may require the out of state employer to file satisfactory security to cover the amount of a claim.

**Section 14** amends AS 23.30.012 relating to settlement of claims. It divides the current statute into two subsections. It removes references to the board and transfers from the board to the director the power to approve the form of settlements. It requires that settlements be filed in the division. A new provision requires that in cases where workers are not represented by an attorney licensed to practice in this state, or where a beneficiary is a minor, the settlement must be reviewed by an administrative law judge (ALJ) and may be approved when it is in the best interests of the worker or beneficiary. The ALJ may hold a hearing and require an impartial medical examination. This is a change from current law, which requires all workers, regardless of representation or circumstances, to obtain board permission and approval to settle their claims.

**Section 15** amends AS 23.30.015(b), which relates to assignments of rights to recover damages against third parties. It removes references to the board, changes the place to file compensation orders from the board to the commission, and conforms the statute language to modern use.

**Section 16** amends AS 23.30.015(e). It removes references to the board and transfers the power to determine the attorney fee offset in third party settlements from the board to an administrative law judge. It modernizes the statute language and assigns the director the duty to prepare a schedule of present values for determining third-party settlement offsets.

**Section 17** amends AS 23.30.015(j) to remove references to the board, to change the recipient of notice of a third party action for damages from the board to the division, and to require additional notice to the commission if a hearing has been requested in the workers' compensation case.

**Section 18** amends AS 23.30.025(a) to remove references to the board and to change the place where insurance company policy forms are filed from the board to the division.

**Section 19** amends AS 23.30.030(5) relating to effective dates of policy termination by cancellation. It removes references to the board and reassigns the receipt of notice of termination from the board to the division.

**Section 20** amends AS 23.30.030(6) relating to the power to make orders or awards against employers, insurers, or both. It removes references to the board and reassigns making the order or award from the board to an administrative law judge.

**Section 21** amends AS 23.30.040(a) relating to administration of the second injury fund, which is reassigned from the commissioner to the director. Also, it removes

Section by Section Analysis  
Proposed Workers' Compensation Reform Bill

references to the board and reassigns the power to order payments from the fund from the board to the administrative law judge.

**Section 22** amends AS 23.30.040(d) relating to refund of a payment made into the second injury fund. It removes references to the board and reassigns the power to direct a refund from the board to the director.

**Section 23** amends AS 23.30.041(a) to remove references to the board and reassign employment of the reemployment benefits administrator and authorization for his staff from the board to the director.

**Section 24** amends AS 23.30.041(b) to remove references to the board and reassign from the board to the department the adoption of regulations implementing the reemployment benefits section and setting standards for rehabilitation specialists.

**Section 25** amends AS 23.30.041(d) to remove references to the board and reassign from the board to an administrative law judge the power to review the decisions of the reemployment benefits administrator.

**Section 26** amends AS 23.30.041(h) to remove references to the board and to include a physician appointed by the director, instead of by the board, as a possible source of a prediction of medical stability for a reemployment plan.

**Section 27** amends AS 23.30.041(j) to modernize statute language, remove references to the board, and replace board with an administrative law judge as the reviewer of reemployment benefits administrator decisions on rehabilitation plans.

**Section 28** amends AS 23.30.041(o) to remove reference to the board and replace the board with an administrative law judge as the reviewer of decisions made by the reemployment benefits administrator on non-cooperation by an employee.

**Section 29** amends AS 23.30.041(p) to remove references to the board. It replaces the board with the director as the holder of a public meeting to select a proposed date on which a new edition of the US Department of Labor's Dictionary of Occupational Titles shall be implemented. The department replaces the board as the agency selecting the date proposed and the director replaces the board as the person giving notice of the selected date.

**Section 30** amends AS 23.30.041(q) to remove references to the board and replace the board with the division as the agency receiving filed waivers of rehabilitation benefits and serving notices of the waivers. The amendment also replaces the board with the director as the agency proscribing or approving the form of such waivers.

**Section 31** amends AS 23.30.045(d) relating to the requirement that awardees of contracts from the state or political subdivisions of the state have workers' compensation insurance. The amendment removes references to the board

Section by Section Analysis  
Proposed Workers' Compensation Reform Bill

and changes the agency that furnishes proof of insurance from the board to the division, and the agency that grants certificates of self-insurance from the board to the director, conforming to Section 13 above.

**Section 32** amends AS 23.30.045(e) relating to the obligations of contracting agencies of the state or political subdivision of the state if a contractor has lost coverage. The amendment removes references to the board and replaces the board with the director as the agency notifying the state or political subdivision of the revocation of self-insurance, conforming to Section 13 above.

**Section 33** amends AS 23.30.065 to remove references to the board and to replace the board with the division as the agency with the power to require and inspect employer records of injury.

**Section 34** amends AS 23.30.070(a) to remove references to the board and to replace the board with the division as the agency where employer reports of injury to or death of an employee are filed and which may require certain information in reports of injury or death.

**Section 35** amends AS 23.30.070(b) to modernize language, to remove references to the board, to replace the board with the division as the agency where supplemental reports of the employee's condition are filed, and to replace the board with the director as the agency with power to require such reports.

**Section 36** amends AS 23.30.070(d) to remove references to the board and to provide that compliance with the reporting requirements of the section are met by mailing to the division instead of the board.

**Section 37** amends AS 23.30.070(f) to remove references to the board, to replace the board with an administrative law judge, who after a hearing, may require an employer to pay the penalties for failure or refusal to report as provided by this section.

**Section 38** amends AS 23.30.075 to remove references to the board, to replace the board with the division as the agency which must be provided satisfactory proof of financial ability to pay compensation and as the source of the copy of the certificate of self-insurance. The director replaces the board as the agency that may exercise discretion to require acceptable security, indemnity or bond from an employer to secure payment of compensation liabilities.

**Section 39** amends AS 23.30.080(d) regarding proceedings to obtain stop work orders against uninsured employers. The amendment provides that the director may petition for a stop work order, replacing the general grant of authority of the board to issue a stop work order. The hearing must be held within 20 days after service of the director's petition. The hearing to be held on short notice if the director presents evidence that a hazard in the employment constitutes a danger that could reasonably be expected to cause an employee of the

Section by Section Analysis  
Proposed Workers' Compensation Reform Bill

uninsured employer death or serious physical harm. The administrative law judge must issue a decision within seven days of the hearing. Finally, the amendment removes references to the board and transfers the power to assess a civil penalty from the board to an administrative law judge.

**Section 40** creates two new statutory provisions relating to penalties against uninsured employers. AS 23.30.080(e) authorizes the director to petition an administrative law judge to order a civil penalty of \$100 for each uninsured employee for each day the employee is employed without coverage. The penalty is payable to the state. As in AS 23.30.080(d) relating to stop work orders, failure to file evidence of insurance with the division would create a rebuttable presumption of failure to insure. In addition, as in 23.30.080(d), time periods for proceedings are shortened. The hearing must be held within 20 days of service of the director's petition on the employer and a civil penalty hearing may be held on short notice if the director presents evidence that a hazard in the employment constitutes a danger that could reasonably be expected to cause an employee of the uninsured employer death or serious physical harm. A decision must be issued within seven days of the hearing. AS 23.30.080(f) authorizes the director to declare an employer in default if the employer fails to pay a civil penalty under subsection 080(d) (failing to comply with a stop work order, \$1000 per day) or subsection 080(f) (failure to insure employee \$100 per employee per day) within seven days of the date ordered. Upon filing a certified copy of the penalty order and a declaration of default with the clerk of the superior court, the court shall enter judgment for default. The attorney general, as requested by the director, shall take appropriate action to collect on the default judgment, and a writ of execution may be issued on the judgment. The person against whom the judgment is issued may seek court review of the judgment as allowed by the Civil Rules.

**Section 41** amends AS 23.30.085(a) relating to filing evidence of compliance with workers' compensation insurance requirements. The amendment removes references to the board, replaces the board with the division as the agency with which evidence is filed and which may provide copies of the certificate of self-insurance. The amendment also replaces the board with the director as the person who prescribes the form of evidence of insurance.

**Section 42** amends AS 23.30.090 to remove reference to the board and substitute the director for the board as the agency that issues certificates of self-insurance. This section adds a provision for a hearing conducted by an administrative law judge before revocation of self-insurance certificates, within 20 days of service of the petition for revocation on the employer. The administrative law judge must issue a proposed decision within 14 days. The director may amend, adopt or reject the administrative law judge's proposed decision. This shortens the existing period for decisions in these cases.

Section by Section Analysis  
Proposed Workers' Compensation Reform Bill

**Section 43** amends AS 23.30.090 to add a new statutory provision, AS 23.30.090(b), that testimony in a self-insurance revocation hearing shall be recorded but not transcribed unless further review is initiated.

**Section 44** amends AS 23.30.095(a) to conform language to modern usage. It also removes references to the board and replaces the board with an administrative law judge as reviewer of employee claims for medical benefits beyond two years from the date of injury, and authority for continued care or treatment.

**Section 45** amends AS 23.30.095(c) relating to reports and claims for medical treatment by removing references to the board and reassigning its functions. This section replaces the board with the division as the agency that receives filed physician reports; replaces the board with the director as the agency that approves the form for reports; and, replaces board with an administrative law judge as the agency that decides to excuse failure to give notice and makes awards of medical benefits. This section also transfers authority to make regulations from the board to the director, who proposes regulations, and the department, which adopts the proposed regulations.

**Section 46** amends AS 23.30.095(d) to remove references to the board and transfer authority from the board to an administrative law judge to order suspension of payment of compensation during a period of unreasonable refusal to obtain medical treatment.

**Section 47** amends AS 23.30.095(e) relating to independent medical examinations. It removes references to the board and transfers from the board to an administrative law judge the authority to make orders for medical examinations, suspend or forfeit compensation during a period of refusal to attend an examination. The director is given authority to order autopsies in cases of death, in view of the necessary speed associated with such orders. It also modernizes the language of the statute and conforms it to current usage.

**Section 48** amends AS 23.30.095(f) relating to regulation of fees charged for medical treatment. The amendment removes references to the board. It transfers authority to regulate charges for medical treatment to the department and adopt, by regulation, fee schedules. It transfers to the director authority to determine usual, customary and reasonable fees in the community and propose fee schedules to the department for adoption.

**Section 49** amends AS 23.30.095(h) to remove references to the board and replaces the board with the division as the place pleadings and physician reports are filed. The amendment also modernizes language in the statute to current usage.

**Section 50** amends AS 23.30.095(j) to remove references to the board and to reassign from board to the director authority to appoint a medical services review committee or contract with organizations to assist and advise the director,

Section by Section Analysis  
Proposed Workers' Compensation Reform Bill

instead of the board, in matters respecting medical care under the workers' compensation act.

**Section 51** amends AS 23.30.095(k) to remove references to the board and transfers authority to the director to require a second independent medical examination from a list maintained by the director. The report of the examination is sent to the division instead of the board.

**Section 52** amends AS 23.30.100(a) to remove a reference to the board and substitute the division as the recipient of notice of an injury or death. The amendment also modernizes the statute language.

**Section 53** amends AS 23.30.100(c) to remove reference to the board and substitute the division's office as the recipient of filed notices of injury or death.

**Section 54** amends AS 23.30.100(d) to remove references to the board and to transfer authority to an administrative law judge to determine that an employer has not been prejudiced by failure to give notice or to excuse the failure to give notice. The amendment also modernizes the language of the statute.

**Section 55** amends AS 23.30.105(a) to remove references to the board and transfers to an administrative law judge the authority to determine if an employee who fails to file a claim within the time allowed by the statute has full right to claim compensation, time limitations notwithstanding.

**Section 56** amends AS 23.30.107 to remove references to the board and to replace the board with the division as the agency where a petition for protective order must be filed and where workers' compensation files are maintained. The amendment also replaces the board with the division, the commission and the office of administrative hearings as agencies that may release records as provided by the statute and replaces the board with the commission, the director or an administrative law judge as authorized to discuss records in a decision and order.

**Section 57** amends AS 23.30.108(a) to remove a reference to the board and replace the board with the division as the agency where a petition is filed. The amendment also conforms language to correct usage. This section also amends AS 23.30.108(b) to remove references to the board and substitute the administrative law judge, assigned at the request of the office of the commission, for board as the agency scheduling prehearing conferences, and replacing the board's designee with an administrative law judge as the person conducting the prehearing conference. In addition, the division is required to notify the commission of petitions for protective orders. Finally, this section amends AS 23.30.108(c) to authorize an administrative law judge, instead of the board's designee, to direct parties to release or produce documents and make rulings on discovery matters. It creates a new provision for an expedited

Section by Section Analysis  
Proposed Workers' Compensation Reform Bill

review of an administrative law judge's discovery rulings by the commission and sets deadlines for response to a petition for review by the commission.

**Section 58** amends AS 23.30.110 to remove references to the board throughout the statute and to transfer certain powers and duties to administrative law judges in the office of administrative hearings and the office of the commission. The amendment also adds petitions to the statute to regularize procedure for claims and petitions into a single process, and adds the phrase "opposing party" to include persons other than the employer who require service of a claim or petition. This section substitutes service by certified mail for registered mail. It provides that the office of the commission is the place to file an affidavit of readiness for hearing. An administrative law judge, instead of the board or board designee, is authorized to conduct pre-hearing conferences, plan discovery and other preliminary matters, and set a reasonable hearing date if a party opposes a hearing request. An administrative law judge, instead of the board, shall schedule unopposed hearing requests within 60 days, and give notice to the parties. This section transfers authority to prescribe controversion forms from the board to the director. This section also transfers authority to make decisions and grant continuances from the board to the administrative law judge. The word "parties" replaces "claimant and employer" as persons who may present evidence at a hearing. In addition to the authority to award benefits, the amendment adds authority to dismiss a claim, after an employee's death. Finally, the language of the statute is conformed to current usage.

**Section 59** creates two new statutory provisions, AS 23.30.110(i) and (j), which authorize the dismissal of certain claims before a hearing on the merits and the grant of summary decisions in certain instances. Dismissal of claims, described in AS 23.30.110(i), may occur when the claim is for relief that cannot be granted under the workers' compensation act, there is a lack of jurisdiction over the subject of the claim or the person requesting dismissal, there is improper service of the claim, the claim has not been prosecuted or a hearing not requested within two years as required by the statute, or, the claim is barred by a statute of limitation. If defects in jurisdiction, service or the requested relief are cured within 60 days, the order of dismissal may be vacated. Grant of summary decision on petition, authorized in AS 23.30.110(j), is permitted at any time if an administrative law judge determines that all reasonable discovery has been made on the issues presented in the petition, and the record shows there is no genuine issue of material fact and the petitioner is entitled to a decision as a matter of law. The administrative law judge may file a compensation order in favor of the petitioner if the summary decision disposes of all issues in the claim regarding the petitioner. This provision establishes a means of obtaining final rulings on matters of law where the facts are not

Section by Section Analysis  
Proposed Workers' Compensation Reform Bill

disputed, without forcing parties to proceed together to a full hearing on the merits.

**Section 60** creates two new statutory provisions, AS 23.30.112, relating to the additional qualifications and authority of administrative law judges beyond those in AS 44.64, created by HCS CSSB 203(FIN), and AS 23.30.113, relating to hearings before administrative law judges. This amendment provides that administrative law judges employed by the office of administrative hearings will hear claims and petitions. The amendment provides that administrative law judges must be licensed to practice law in Alaska and have three years of experience in workers' compensation or a similar field of practice. This amendment sets standards for performance of their duties. Authority previously granted to the board is transferred to administrative law judges: to issue subpoenas and request enforcement of their subpoenas by the superior court, require reports of treatment, and arrange hearings to preserve testimony in other states. The new provision AS 23.30.113 transfers to hearings by administrative law judges certain provisions regarding standards for hearings previously conducted by the board. A new provision makes specific which portions of the Alaska Administrative Procedure Act apply to hearings. New provisions set standards for impartiality, performance of duties and disqualification from a hearing, incorporating by reference AS 44.64.070. Another new provision prohibits *ex parte* communications with the administrative law judge. Finally, this amendment transfers from the board to the administrative law judge the requirement that the hearing be recorded and be public.

**Section 61** amends AS 23.30.115 relating to witness fees and subpoenas to appear as a witness. This section removes references to proceedings before the board and substitutes hearings before an administrative law judge or the commission. This section substitutes the word "hearing" for "proceeding" because witnesses (as distinct from parties) are not required by subpoena to appear at other forms of proceedings before the commission or an administrative law judge. A new provision is added to allow the commission clerk to issue subpoenas for hearings, depositions, and production of records, and to direct the superior court to enforce the subpoenas at the request of the commission as provided in AS 44.62.590.

**Section 62** amends AS 23.30.120(b) to remove a reference to the board and transfer to an administrative law judge the authority to excuse failure to give notice. This amendment conforms to Section 54 above. There is no change to the substance of AS 23.30.120, which contains the presumption that "a claim comes within the provisions" of the workers' compensation act.

**Section 63** repeals and reenacts AS 23.30.122, relating to determinations of the credibility of witnesses. The former statute provided that the board had the

sole power to determine credibility of witnesses and that the board's findings concerning the weight of a witnesses testimony, including medical testimony and (unsworn) reports were conclusive. The amendment transfers to the administrative law judge only the sole power to determine the credibility of a witness who appears before the administrative law judge in hearing. Section 66 includes provisions transferring to the commission the authority to make conclusive findings concerning the weight of evidence. A new provision is added to require specific findings when credibility is disputed.

**Section 64** creates a new statutory provision, AS 23.30.124 which clarifies the process and time for reconsideration of a compensation order (administrative law judge's decision) and limits the delay of finality of a compensation order by limiting the time for reconsideration. Reconsideration may be ordered upon the administrative law judge's own motion or on petition of a party filed within 15 days of mailing of the compensation order. The administrative law judge's power to order reconsideration expires 30 days after the compensation order. If the administrative law judge does not file an order of reconsideration within 30 days of the date the compensation order was mailed, any pending petition for reconsideration is denied. However, if an administrative law judge issues an order of reconsideration, then the compensation order which is being reconsidered is stayed until the decision on reconsideration is filed by the administrative law judge. The administrative law judge must file his or her decision on reconsideration within 30 days of when the order for reconsideration was filed. This amendment also provides that reconsideration is made on the record and any additional argument allowed by the administrative law judge.

**Section 65** repeals and reenacts AS 23.30.125 relating to review of compensation orders. It replaces superior court review of board decisions with commission review of compensation orders (administrative law judge decisions). The amendment sets a date on which compensation orders are final unless review is undertaken. It makes explicit that the commission has the power to review administrative law judge decisions and orders, and that orders may not be suspended, reconsidered or set aside except through the commission process. This amendment also creates a provision for stays of orders pending appeal. It requires a party seeking a stay to produce evidence of irreparable damage. If a party seeks a stay of continuing periodic compensation payments, the party seeking the stay must demonstrate that the appeal is likely to be decided adversely to the compensation recipient. The commission may allow a hearing on the stay on three days notice to the parties and director.

**Section 66** creates four new statutory provisions relating to commission review of director decisions, commission procedure on appeal, commission authority to review and judicial review of commission proceedings. The first, AS

Section by Section Analysis  
Proposed Workers' Compensation Reform Bill

23.30.126, establishes commission review of director decisions that affect a right, privilege, benefit or duty under the act. It describes the method of undertaking review and allows 30 days for a director decision to be appealed to the commission. This provision also establishes the same standard for obtaining a stay of appeal of a director decision as of a compensation order; the party seeking a stay must demonstrate irreparable damage.

The second new statute, AS 23.30.127, establishes the basic procedure for appeal to the commission. This provision allows the director to intervene in an appeal. If a party does not have legal representation and the order appealed concerns an unsettled question of law, the director may file an appeal to obtain a ruling. This provision sets a 30-day period for appeal of a compensation order or a director decision. It describes the documents that must be filed with the commission to initiate an appeal and a cross-appeal. It authorizes the commission to charge a fee up to \$100 for filing appeals and cross appeals, but exempts the state and political subdivisions of the state from the filing fee. It authorizes the commission to require an appellant to pay costs of preparing a transcript and preparing the record on appeal. Cross appellants and intervenors may be required to share in the costs. This provision grants the commission general authority to make rules and orders for the prompt fair and just disposition of appeals and authorizes the commission to require written briefs.

The third new statutory provision in Section 66, AS 23.30.128, establishes the commission's authority to review and act on appeals. The commission hears appeals in panels of three members, the chair and one citizen member representing employees and one citizen member representing employers. The panel decision is the decision of the commission. The commission may review de novo all exercises of discretion, factual findings, and legal conclusions below, except that an administrative law judge's findings regarding the credibility of a witness who appeared in the hearing is binding on the commission. Any other finding, including the weight given expert evidence, may be set aside by the commission. If not set aside, the administrative law judge's findings are conclusive. This statute provides that the commission review will be on the record, except that briefs and argument shall be allowed. The exception is that the commission may receive evidence in applications for a stay of a decision below (see section 65 above), attorney fees and costs of appeal, waiver of fees for indigent appellants, and dismissal of appeals for failure to prosecute or settlement. This provision also gives the commission wide discretion to act on appeal. The commission may expedite appeals. It may affirm, reverse or modify a decision; remand matters it determines were improperly or insufficiently developed, or remand for further action without relinquishing jurisdiction. The commission members who

Section by Section Analysis  
Proposed Workers' Compensation Reform Bill

heard an appeal must decide whether to grant reconsideration. The commission may reconsider its decisions on specific grounds listed in subsection (f): misapplication or failure to apply directly controlling law; overlooking or misconceiving a material fact; misunderstanding a material question in the case presented on appeal; or, applying law that has subsequently changed. AS 44.62 does not apply to proceedings of the commission. This provision balances shorter time for appeal and reconsideration (30 days) with sufficient time for collegial consideration of the merits of the appeal before a commission decision (90 days). This provision sets out clearly when a decision of the commission is final, to avoid confusion as to dates of finality.

The fourth new statutory provision exempts the commission from the grant of superior court jurisdiction over judicial appeals of administrative agency decisions contained in AS 44.62.590 and states that commission orders may not be otherwise appealed to the superior court. The purpose of this provision is to eliminate appeal to the superior court, and to provide that decisions of the commission may be appealed directly to the Supreme Court. This provision withdraws workers' compensation appeals from the jurisdiction of the superior court, which the legislature may do by law. See, Art. IV, Sec. 1 of the Alaska Constitution, see also AS 22.10.020(d). It does not encroach on the judicial power reserved to the courts under Art. IV, Sec. 15, because incidental effects of substantive change do not trigger Art. IV, Sec. 15 requirements. See, *Wienegardner v. Greater Anchorage Borough Bd. Of Equalization*, 534 P.2d 541, 547 n. 18 (Alaska 1975). This provision does not affect the right to seek declaratory judgment in superior court on matters affecting workers' compensation law, as, for example, to declare a regulation invalid or to require coverage under an insurance contract. This provision also establishes the standard of review for commission findings of the weight to be accorded witness testimony and commission findings of fact, which must be supported by substantial evidence in light of the whole record.

Section 67 amends AS 23.30.130 to remove references to the board, transfer the authority of the board to modify decisions to an administrative law judge, conform the statute language to modern usage, and to add the director to those who may petition for modification of a compensation order. This provision also limits modification based on mistake of fact to mistake of material fact. This provision does not limit the type of fact that may be the subject of mistake, but does require that the mistake be one that is important to the outcome.

Section 68 amends AS 23.30.135 regarding investigation proceedings before the division to remove references to the board, transfer the authority of the board to make investigations under the act, take testimony and hold hearings to the director, give the director power to issue subpoenas and examine records relating to the

Section by Section Analysis  
Proposed Workers' Compensation Reform Bill

investigation and requires the superior court to enforce the director's subpoenas.

- Section 69** amends AS 23.30.140 to remove reference to the board and transfer the authority of the board to require appointment of a guardian to receive compensation to the director.
- Sections 70** amends AS 23.30.145(a) to remove references to the board, transfer the authority of the board to award attorney fees to an administrative law judge, and conform the language of the statute to modern usage.
- Sections 71** amends AS 23.30.145(b) to remove references to the board, transfer from the board to an administrative law judge the authority to award costs and attorney fees and conform the language of the statute to modern usage.
- Section 72** amends AS 23.30.155(a) to remove a reference to the board and transfer the authority to prescribe forms from the board to the director.
- Section 73** amends AS 23.30.155(b) to remove a reference to the board and transfer from the board to an administrative law judge the authority to vary periodic payments from the biweekly standard.
- Section 74** amends AS 23.30.155(c) to remove references to the board, transfer the authority of the board to prescribe forms to the director, and replace the board with the division as the agency receiving notices and filings of compensation reports. The language of the statute is also conformed to modern usage.
- Section 75** amends AS 23.30.155(d) to remove references to the board and replaces the board with the division as the agency where controversion notices are filed. The amendment also conforms language to modern usage.
- Section 76** amends AS 23.30.155(e) to remove a reference to the board and transfer the authority to excuse nonpayment of compensation from the board to an administrative law judge.
- Section 77** amends AS 23.30.155(f) removes a reference to stay of payment on appeal issued by a court and substitutes a reference to stay of payment by order of the commission. This conforms to the provisions of Section 65 above.
- Section 78** amends AS 23.30.155(h) to remove references to the board, transfer the authority to initiate investigations, order independent medical examinations, and take other action to protect the parties' rights from the board to the director. The provision also gives the director the authority to file petitions in disputed matters for a hearing before an administrative law judge. The provision also conforms the language of the statute to modern usage.
- Section 79** amends AS 23.30.155(i) to remove references to the board and transfer the authority to require the employer to make deposits with the Department of Revenue to secure payment of compensation from the board to the director.

Section by Section Analysis  
Proposed Workers' Compensation Reform Bill

- Section 80** amends AS 23.30.155(j) to remove a references to the board and transfer the authority to approve offset of overpayments exceeding 20% of periodic compensation payments from the board to an administrative law judge.
- Section 81** amends AS 23.30.155(k) to remove reference to the board and transfer the authority to inspect receipts from the board to the director.
- Section 82** amends AS 23.30.155(m) to remove references to the board. This provision transfers to the director the authority of the board to prescribe forms; the authority of the commissioner to review the timeliness of insurer and adjuster annual reports; and the authority of the commissioner to give notice of penalties. This provision also replaces the board with the division for the agency receiving annual reports.
- Section 83** amends AS 23.30.155(o) to remove references to the board. It transfers the obligation to notify the division of insurance of frivolous or unfair controversion determinations from the board to the director, and the authority to make such determinations from the board to an administrative law judge.
- Section 84** amends AS 23.30.170(a) to remove references to the board, modernize the language of the statute and conform it to other usage in the act, replace the board with the division as the recipient agency for petition filings, transfer the authority to make investigation from the board to the director, and transfer authority to make supplementary orders to an administrative law judge.
- Section 85** amends AS 23.30.170(b) to remove references to the board, transfer the authority to declare awards in default from the board to an administrative law judge, and transfer authority to request collection of defaulted payments by the attorney general from the commissioner to the director. The provision also makes a technical amendment, replacing applicant with petitioner to conform to current usage.
- Section 86** amends AS 23.30.175(a) to remove references to the board and transfer the authority to determine spendable weekly wages, order adjustment of compensation rates, and direct deduction of prior payments from unpaid compensation from the board to an administrative law judge.
- Section 87** creates a new statutory provision, AS 23.30.175(b)(5), which caps compensation paid to non-resident recipients at the compensation rate the recipient would receive if residing in Alaska. The effect of the amendment is to allow compensation rates paid to a non-resident to decrease by cost of living adjustments for the recipient's area of residence, but not to allow the compensation rate to rise higher than the Alaska rate if the cost of living is higher in the recipient's area of residence.

Section by Section Analysis  
Proposed Workers' Compensation Reform Bill

- Section 88** amends AS 23.30.175(c) to remove a reference to the board and transfer the authority to provide cost of living comparisons from the board to the department.
- Section 89** amends AS 23.30.180 to remove a reference to the board and transfer the authority to determine inflation adjustments and reductions of permanent total compensation for prior payment of permanent partial disability compensation from the board to an administrative law judge. This amendment also conforms the language of the statute to modern usage.
- Section 90** amends AS 23.30.190(b) to remove a reference to the board and transfer the authority to adopt a schedule for injuries that cannot be rated by use of the American Medical Association Guides from the board to the department.
- Section 91** amends AS 23.30.190(d) to remove references to the board, transfer from the board to the director the requirement to hold open hearings on the adoption date for new editions of the American Medical Association Guides and the authority to select and publish a date that new editions will be used for impairment ratings.
- Section 92** amends AS 23.30.200(b) to remove a reference to the board and transfer the authority to fix wage-earning capacity from the board to an administrative law judge.
- Section 93** amends AS 23.30.205(e) to replace the commissioner with the director for receipt of notice of award or adjudication respecting the second injury fund.
- Section 94** amends AS 23.30.205(f) to replace the commissioner with the director as the recipient of notice of possible claim against the second injury fund.
- Section 95** amends AS 23.30.215(d) to remove references to the board, transfer the authority of the board to an administrative law judge to commute payments of future compensation to persons residing outside the United States or Canada, and conform the language of the statute to modern usage. This amendment also adds the director and employer to the persons who may petition for commutation.
- Section 96** amends AS 23.30.220(a) to remove references to the board, transfer the authority to determine matters relating to gross weekly earnings from the board to an administrative law judge and conforms the language of the statute to modern usage.
- Section 97** amends AS 23.30.240 to transfer the authority to approve executive officer waivers of coverage from the commissioner to the director.
- Section 98** creates a new section relating to fraudulent acts or false or misleading statements in workers' compensation. Provisions for civil reimbursement for benefits obtained through fraudulent acts or false or misleading statements

Section by Section Analysis  
Proposed Workers' Compensation Reform Bill

formerly in AS 23.30.250(b), are moved to this section, and the standard of proof of fraudulent acts or false or misleading statements is clarified. The form of the statute conforms to modern usage. This section also provides civil immunity for a person who furnishes information regarding fraud in good faith to law enforcement officials, the division, the division of insurance in the Department of Commerce, Community and Economic Development, or an insurer or risk manager of a self-insured employer. The immunity is not extended to those whose liability is the result of reckless, willful or intentional misconduct. In addition, an insurer, adjuster or risk manager is required to report information about suspected fraud to the director, and is immune from civil liability for making such a report. The provision grants the director authority to investigate reports of fraud, and, if the director finds credible evidence of fraud, to refer the facts to a prosecutor and to the affected insurer. If the fraud was perpetrated against the division, the director may seek an order of forfeiture against the person, precluding the person from future benefits. The director's investigations are made confidential, unless a court directs public inspection. The director is given power to obtain information outside the state, through other state's officials, and to cooperate with officials outside the state. Definitions are provided of "fraudulent acts", which include actions by persons other than an employee.

**Section 99** amends AS 23.30.250, relating to criminal penalties for fraudulent acts or false or misleading statements. The section is reserved to the criminal statute, incorporating former AS 23.30.250(a), and civil restitution is moved to a new section. (See Section 98, above.) A new subsection (b) incorporates definitions to assist the prosecution of fraud under this section.

**Section 100** amends AS 23.30.260 to remove a reference to the board, transfer the power to approve fees for representation to an administrative law judge and commission, clarifies that the statute refers to representation or advice with respect to a claim, and conforms the language of the statute to modern usage.

**Section 101** amends AS 23.30.260 to add a new subsection (b) that provides that an attorney may charge up to \$300 for one-time only consultation with a claimant. This provision gives statutory authority for a regulation that presently exists allowing such fees.

**Section 102** amends AS 23.30.395(28) to remove a reference to the board and replaces the board with the division as the agency which is furnished proof of financial ability to make direct payments.

**Section 103** amends AS 23.30.395 to add new subsections defining the commission, director, division and administrative law judge. The administrative law judge is "employed or retained by the office of administrative hearings (AS 44.64.010)".

Section by Section Analysis  
Proposed Workers' Compensation Reform Bill

**Section 104** amends AS 39.25.110 to include the chair of the commission in the exempt service.

**Section 105** amends AS 39.25.120(c)(14) to remove a reference to the board and substitute the division as the employer of the rehabilitation administrator.

**Section 106** amends AS 39.50.200(b)(31) to remove a reference to the board and substitute the commission.

**Section 107** amends AS 44.62.330(a)(15) to remove a reference to the board and to substitute the division and director. This provision also modernizes the reference to the act by substituting the statute citation.

**Section 108** amends AS 44.64.020(a) to add a provision that exempts the commission from the authority of the chief administrative law judge to devise hearing procedures.

**Section 109** includes the workers' compensation act (AS 23.30) in the list of subject jurisdiction of the office of administrative hearings.

**Section 110** establishes the rate of pay of administrative law judges within the office of administrative hearings who do workers' compensation hearings and other proceedings under AS 23.30 at Range 24.

**Section 111** repeals AS 21.39.155(c), relating to the assigned risk pool.

**Section 112** repeals AS 23.30.395(3), defining the board.

**Section 113** creates a new provision of uncodified law that provides that the cap on rates paid to out of state claimants shall apply only to injuries occurring after the effective date of the provision establishing the cap.

**Section 114** creates a new provision of uncodified law that establishes a transition period during which the director of insurance will name members of the board of governors of the Alaska Insurance Guaranty Association to serve staggered initial terms, sets dates of expiration of the current board of governors and permits a member of the current board of governors to continue to serve until a successor is appointed.

**Section 115** creates a new provision of uncodified law that establishes a transition period during which matters pending before the board may be completed, setting an expiration date for the terms of members of the board, and providing for continuation of effect notwithstanding a transfer of function from the board to the commission or director. This provision also continues in force all regulations, orders, decisions, or certificates issued by the board until revoked, modified or vacated under the provisions of this bill; continues in effect all contracts, rights, liabilities or obligations; and transfers the property of the board or other state agencies to implement the provisions of this bill.

Section by Section Analysis  
Proposed Workers' Compensation Reform Bill

**Section 116** creates a new provision of uncodified law setting the initial terms of the commission to achieve staggered terms as provided in AS 39.05.055.

**Section 117** creates a new provision of uncodified law permitting the director to lend staff temporarily to the commission for a period of six months after the effective date of the provision creating the commission.

**Section 118** creates a new provision of uncodified law providing for general transition authority, the continuance of litigation, investigations, and other proceedings notwithstanding a transfer or amendment provided above. Certificates, decisions, and orders remain in effect and contract, rights and liabilities created by law remain in effect notwithstanding the passage of this act, and records, appropriations, and other property is transferred with the functions of the affected agency, so as to implement this act.

**Section 119** creates a new provision of uncodified law permitting the director of insurance in the Department of Community and Economic Development and Department of Labor and Workforce Development to proceed to adopt necessary regulations to implement this bill, but not before the effective date of the bill.

**Section 120** creates a new provision of uncodified law establishing that those sections transferring authority to or establishing authority, duties, qualifications, or otherwise affecting administrative law judges and the commission is conditioned upon enactment of HCS CSSB 203(FIN), passed by the Twenty-Third Alaska State Legislature.

**Section 121** provides an immediate effective date for Section 119(a), relating to the power of Department of Labor and Workforce development and the Department of Commerce, Community and Economic Development to develop regulations to implement this act.

**Section 122** provides an effective date of September 1, 2004 for all the provisions relating to the division of insurance reforms.

**Section 123** provides all Sections remaining, relating to reorganization and reform of the workers' compensation system an effective date of July 1, 2005.

## WORKERS' COMPENSATION

### Significant differences between CSSB 311(JUD) and Special Session bill

- Initial hearings on disputed claim hearings no longer before 3-member hearing panel. (Range 24 attorney "Hearing Examiner" employed by Appeals Commission with one labor and one industry member.) Hearings now before a single "administrative law judge." (Range 24 attorney ALJ employed by independent Office of Administrative Hearings created by HCS CSSB 203(FIN)). Effective date of new system moved forward (7/1/05) to match that of the Office of Administrative Appeals.
- Intermediate appeals still heard by Workers' Compensation Appeal Commission rather than individual Superior Court judges but make up of Commission changed. Rather than three full-time attorney Commissioners (Chair Range 30 and members Range 29) there are one full-time attorney Chair (Range 27) and four citizen members (two representing employees, two representing employers (each receiving \$200/day for time spent in hearing appeals). Each appeal will be heard by a panel consisting of the Chair, one employer member, and one employee member. Final appeal still to the Alaska Supreme Court.
- Conflicts of interest now limited by Chair restriction on outside employment and Chair/member restrictions on political activity and relationships to parties. Commissioner of Labor and Workforce Development may appoint a pro tem Chair when there is a conflict or a prolonged period (not to exceed six months) during which the Chair is unavailable for duty.
- Anti-fraud provisions now included allowing director to investigate fraud, immunizing "good faith" fraud reporters, broadly defining fraudulent acts, clarifying civil reimbursement statute, and providing improved definitions required for criminal fraud prosecutions.
- Stay of award provisions clarified to maintain protection for continuing payments of periodic benefits during an appeal.
- Assigned Risk Pool provisions include requirements for insurers to make deposits covering reserves for insolvencies, for pool to operate on self-funding basis calculated using three-year average.
- Uninsured employer provisions toughened by establishing new civil penalties (up to \$100/day/employee) and shortened time frames for hearings on defaults.

## WORKERS' COMPENSATION REFORM BILL

### **A MEASURED RESPONSE TO INCREASED CLAIM COSTS AND INSURANCE PREMIUMS IMPACTING ALASKAN BUSINESSES AND WORKERS**

**Premiums, benefits paid, and claim costs rising.**

- In 2002 Alaska workers' compensation benefits and claims costs exceeded \$ 210 million, including \$11 million in legal fees and costs.
- From 1997-2002 the insurance companies in the Alaska workers' compensation market paid out an average of \$1.24 in benefits and claim costs for each dollar in premiums collected.
- This year average workers compensation premiums increased 21% but premiums for 17 types of workers went up over 50%. (The increases exceeding 50% affect workers in positions such as hospital non-professional, household appliance installation & repair, day nurseries, child care & day camps, barber shops and hair salons, building & property management, and geophysical seismic exploration.)

**Bill does not change benefits paid to injured workers residing in Alaska, while capping payments to outside residents at the Alaska rate.**

- No change to compensation rates or benefits, including rehabilitation and medical benefits.
- Compensation rates for total disability paid to non-residents capped at the rate they would receive if residing in Alaska.

**Bill addresses claim costs and speeds final determination of workers' entitlement to benefits by making initial adjudication of disputed claims and subsequent appeals process more efficient.**

- Disputed claims heard and resolved by single administrative law judge (ALJ) rather than current 3-member Board panel. ALJs' availability increases flexibility for scheduling hearings.
- ALJs will be required to have special expertise and will be employed by the independent Office of Administrative Hearings created by SB 203.
- Initial appeals will be heard by a five member Appeals Commission, rather than individual Superior Court judges. To minimize administrative costs, and maintain citizen participation, the Commission is composed of four citizen members (2 from labor, 2 from industry) and one full-time, experienced attorney serving as Chair. A panel consisting of the Chair plus one industry and one labor member will hear appeals. The Chair will administer the Commission and advise the members on the law.
- The Commission has 90 days to decide an appeal; half the time allowed the Superior Court. Record preparation costs and delays (sometimes a year or more over the six months appeal time limitation in Superior Court) will be decreased. Commission can also schedule hearings more rapidly than the Superior Court.
- Specific provisions insure Commission impartiality, including prohibiting political activity by the Chair and prohibiting conflicts of interest of the members.

**Claim costs and benefit entitlement uncertainty reduced by increasing consistency and predictability of appeal decisions and making them legal precedent.**

- Single Commission with expertise plus citizen participation will decide all appeals. Appeals decided by a single entity, rather than dozens of different Board hearing panels and Superior Court judges, will increase predictability and consistency in the interpretation and application of the law.
- Commission decisions are binding legal precedent (unlike current Superior Court decisions) and may be appealed directly to the Alaska Supreme Court.

**Insurance code amendments strengthen Insurance Guaranty Fund and Assigned Risk Pool for protection of employers, insurers, and workers.**

- Workers' compensation insurers required to deposit special cash or securities to provide protection beyond the Insurance Guaranty Association.
- Assigned Risk Pool made self-funding by lifting the surcharge cap.
- Assigned Risk Pool loss reserves collateralized.

**Active, accountable and experienced Division Director given new enforcement tools to protect employers and workers by enforcing insurance requirements & investigating fraud.**

- Takes enforcement power and responsibilities of the Board and gives them to experienced Workers' Compensation Division Director with:
  - Investigation powers, including subpoena and record inspection;
  - Power to intervene in hearings directly;
  - Power to make decisions affecting enforcement; and
  - New powers to investigate fraud.
- Director may seek new penalty (up to \$100/day/uninsured employee) against uninsured employers and obtain default judgment in faster, streamlined process to stop defaulting employers from leaving the state and their liabilities behind.

**New workers' compensation fraud provisions.**

- Persons who report fraud are given immunity for good faith reports and reports from workers' compensation industry are required if fraud is known.
- Fraud claims cover health care providers, insurers and other industry participants, not just employee claimants.

### **COMPLAINTS REGARDING PRIOR LEGISLATION (SB 311) ADDRESSED**

**Appeals Commission too expensive.**

- Only one full-time Commissioner.
- Administrative costs are reduced.

**Appeals Commission *de novo* review power reduces influence of lay members.**

- Lay members added to Appeals Commission exercise *de novo* review of hearing officers.
- Lay members at appellate level give greater influence on outcomes than current system.

**Commission Members should be vetted by Alaska Judicial Council.**

- Unconstitutional intrusion on executive branch appointment powers in violation of separation of powers doctrine and Article 3, Section 26 of the Alaska Constitution.



**Alaska Chapter**

June 21, 2004

Senator Gene Therriault  
State Capitol - Room 111  
Juneau, AK 99801-1182

Dear Senator Therriault,

ABC of Alaska represents 155 member companies employing over 6,000 individuals throughout the state. Our members regularly deal with the Workers' Compensation system and they have found that, as structured, the system encourages long delays in returning to work or in settling claims, regularly fails to investigate fraudulent claims, and provides no consistent set of rulings that may be relied upon for evaluating liabilities. In short, this is a system that is inefficient, expensive, and one in which the business community has lost all confidence. With premiums regularly increasing (an average of 21% this year) the system slows economic growth and investment and impacts businesses' ability to provide jobs.

ABC of Alaska's Legislative Review Committee strongly recommends and requests your support for SB 1002, an act which will go a long way toward providing consistency and predictability in Workers' Compensation; a first step in system overhaul and something all Alaskans deserve. With rising insurance costs across the board, it is critical that the legislature pass this bill and affect meaningful change to the Workers' Compensation system in Alaska.

Specifically, this legislation will:

- Accelerate the appeals timeframe, reducing costs and administrative burden on individuals and business.
- Provide specific enforcement and fraud investigation authority in a single office, ensuring better protection under the law for both employers dealing with fraudulent claims and workers employed by uninsured employers.
- Increase predictability and consistency in the interpretation and application of the law through appeals review by a single entity rather than a series of hearing panels and judges.

Please support SB 1002 to ensure Alaskan workers and Alaskan businesses receive fair and timely hearings with a comprehensive review and appeals procedure in place.

Sincerely,

D. Eden Larson  
President & CEO

cc: Members of the House



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June 21, 2004

The Honorable Gene Therriault  
President of the Senate  
Alaska State Legislature  
State Capitol, Room 111  
Juneau, AK 99801-1182

Dear President Therriault:

Under the authority of article III, section 18, of the Alaska Constitution, I am transmitting a bill relating to the workers' compensation system. This bill is based on the many discussions and hearings conducted during the Second Session of the Twenty-Third Alaska State Legislature on Senate Bill 311. The bill preserves lay participation in the workers' compensation system, while increasing consistency in decision making and strengthening enforcement. It seeks to improve the market for existing workers' compensation insurers and attract new insurers, without immediate reductions in benefits to injured Alaskan workers.

Despite the Legislature's best efforts over the years, our current workers' compensation system has not proven responsive to the pressures caused by a growing, changing workforce and increasing costs. In order to respond to complaints about the delay in hearings, the Legislature has steadily increased the number of members of the current Alaska Workers' Compensation Board (board) to make up more hearing panels, and removed the requirement that a fully balanced panel be available for hearings. What was originally a three-member board has grown to include 14 volunteer members residing around the state. The original three-member board heard all claims; now panels, whose composition can vary in as many as 300 combinations, hear claims. As a result, the consistency of a single three-member board has been lost. The increased size of the board makes it difficult to assemble as a body for holding meetings and adopting regulations. While I appreciate the dedication, public service, and hard work that the board members and division of workers' compensation (division) staff provide, many members of the board lack legal training or background, and division hearing officers are not required to be lawyers. The division is also hampered by the design of the "unified board"

COMMITTEE COPY

The Honorable Gene Therriault  
June 21, 2004  
Page 2

system. The division has no authority to respond aggressively and quickly to non-compliance and fraud -- and the board itself is now too unwieldy to take such action in any but singular cases.

This bill would replace the current system with one more like the most common form of workers' compensation system in the rest of the United States. Three new components of the system will bring more consistency and predictability in decisions, and more agility and power of enforcement: (1) a Workers' Compensation Appeals Commission (commission); (2) qualified and experienced administrative law judges; and (3) an accountable division director with additional administrative authority and duties. The only change to benefits remains the cap on the cost-of-living adjustment paid to out-of-state claimants. While claimants who reside in areas with a lower cost of living than Alaska's would continue to receive an adjustment, those residing in a higher cost-of-living area would be capped at the amount paid to in-state claimants. Otherwise, the bill does not alter benefits available to injured workers or the method of delivering them.

Under the bill, an administrative law judge in the office of administrative hearings in the Department of Administration would conduct initial hearings on disputes. Last session the Legislature overwhelmingly approved of the use of independent administrative law judges centrally located in an office of administrative hearings and supervised by a chief administrative law judge to hear and adjudicate administrative hearings. Among other qualifications, all administrative law judges must be admitted to practice law in Alaska, and have been admitted in Alaska for at least two years. They are subject to a code of hearing officer conduct. The bill requires that the administrative law judges who are appointed to conduct workers' compensation hearings have specific expertise in the area of workers' compensation.

The commission would replace the Superior Court at the appeals level. The commission is composed of five members: one attorney experienced in the practice of workers' compensation law (who will be an employee of the Department of Labor and Workforce Development) and four lay, volunteer members. The lay, volunteer members would be appointed from both labor and industry and for any given matter, one from each side would sit on the appeal together with the attorney member of the commission. The commission's decisions would be binding legal precedent unless and until overturned on appeal to the Alaska Supreme Court.

The Honorable Gene Therriault

June 21, 2004

Page 3

This bill also adds new duties and accountability to the administration of the system. Currently, the director has little authority to act because all power rests in the board. This bill would establish a division of workers' compensation in the department. The director, appointed by the commissioner, would be personally accountable for the performance of the division. The director would have expanded authority to administer the second injury fund (AS 23.30.040), obtain stop work orders, investigate uninsured employers, seek civil penalties for an employer's failure to insure workers, investigate complaints of fraud in workers' compensation, propose regulations to the commissioner, intervene in cases and file appeals, supervise rehabilitation of injured workers, and administer the Alaska Workers' Compensation Act. The director's formal decisions may be appealed to the commission.

The bill also provides a powerful tool to further the department's current approach of "zero tolerance" for employers that fail to carry legally required workers' compensation liability insurance. Under this bill, the department gains authority to levy civil penalties against employers whose choice to operate without the required insurance coverage places their employee's financial and physical well being at risk. Such employers also gain an unfair competitive advantage over employers who act responsibly by complying with the law and purchasing insurance.

The bill also authorizes, for the first time, the director to investigate fraud in workers' compensation. Until now, Alaska has relied on insurers to investigate fraud in workers' compensation claims, with the result that investigations are not necessarily consistent with the public's interest in preventing workers' compensation fraud, as opposed to an insurer's monetary interest in a particular case. The cost of fraud is borne by the public in the increased cost of the system--it has an interest in preventing a range of fraudulent acts, such as obtaining payments beyond the benefit amount allowed, kickbacks, and threatening witnesses, that is not limited to obtaining reimbursement of benefits from a single dishonest claimant.

The bill would also revise AS 21, the insurance code, regarding how the state regulates the workers' compensation insurance industry. Under the bill, insurers that transact workers' compensation insurance would be required to maintain in this state special deposits of cash or securities for the protection of persons covered by workers' compensation insurance. In addition, insurers must provide collateral in this state for their assumed share of the assigned risk pool. This revision provides additional protection in the event of insurer insolvency.

The Honorable Gene Therriault

June 21, 2004

Page 4

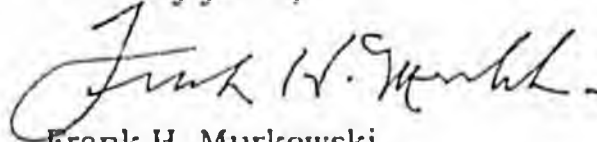
The Alaska Insurance Guaranty Association's Board of Governors would be modified to include representatives from employers, labor, and insurance licensees. This change will expand the expertise of the Board of Governors to better address workers' compensation market issues.

Finally, the assigned risk pool is altered to ensure that it is self-funding, instead of relying on periodic assessments against insurers and consumers. The current pool is unable to generate sufficient premium to pay the claims made against it. The additional burden on insurance companies is a factor making the Alaska workers' compensation insurance market unattractive to insurers. Eliminating the cap on the assigned risk pool surcharge, and mandating a self-funding pool, should increase deposits available to protect insureds, improve the market for Alaska insurance companies, and ensure that employers have access to workers' compensation insurance.

This bill represents a major step forward in modernization of the Alaska workers' compensation system and addressing the significant workers' compensation crisis in Alaska. This bill would professionalize the hearing process through the use of administrative law judges located in the office of administrative hearings. This will improve the process of making workers' compensation decisions, increase predictability in the hearings, and strengthen enforcement powers of the division. These features should make Alaska more attractive for businesses to remain here or to relocate their operations to this state.

I urge your prompt and favorable action on this measure.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Frank H. Murkowski".

Frank H. Murkowski  
Governor

Enclosure