

HB

69

<TARGET><BILL>HB 69</BILL><SUBJECT>HB
69</SUBJECT><COMM>HJUD30</COMM></TARGET>



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

**Department of Labor and
Workforce Development**

Office of the Commissioner

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TO: Representative Matt Claman, Judiciary Chair

FROM: Commissioner Heidi Drygas *HEA:*

DATE: February 15, 2017

RE: Scheduling of HB 69, "Repeal Workers' Compensation Appeals Commission"

At your earliest convenience, I respectfully request the scheduling of House Bill 69, "Repeal Workers' Compensation Appeals Commission."

Please do not hesitate to contact my staff, Debbie Banaszak, at 465-2702, with any questions or concerns about this legislation. I look forward to hearing from you and discussing the bill in further detail.

Thank you for your consideration.

30-GH1773\O
Wallace
2/18/17

CS FOR HOUSE BILL NO. 69()
IN THE LEGISLATURE OF THE STATE OF ALASKA
THIRTIETH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL
FOR AN ACT ENTITLED

1 **"An Act repealing the Workers' Compensation Appeals Commission; relating to**
2 **decisions and orders of the Workers' Compensation Appeals Commission; relating to**
3 **superior court jurisdiction over appeals from Alaska Workers' Compensation Board**
4 **decisions; repealing Rules 201.1, 401.1, and 501.1, Alaska Rules of Appellate Procedure,**
5 **and amending Rules 202(a), 204(a) - (c), 210(e), 601(b), 602(c) and (h), and 603(a),**
6 **Alaska Rules of Appellate Procedure; and providing for an effective date."**

7 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

8 *** Section 1.** AS 23.30.005 is amended by adding a new subsection to read:
9 (n) The board, in its administrative capacity, shall make available, upon
10 request, the decisions and orders of the former Workers' Compensation Appeals
11 Commission. Unless reversed or modified by a court, decisions of the former Workers'
12 Compensation Appeals Commission have the force of legal precedent and shall stand
13 instead of the order of the board from which review was taken.

1 * **Sec. 2.** AS 23.30.107(b) is amended to read:

2 (b) Medical or rehabilitation records, and the employee's name, address, social
3 security number, electronic mail address, and telephone number contained on any
4 record, in an employee's file maintained by the division or held by the board [OR THE
5 COMMISSION] are not public records subject to public inspection and copying under
6 AS 40.25.100 - 40.25.295. This subsection does not prohibit

7 (1) the reemployment benefits administrator, the division, the board,
8 [THE COMMISSION,] or the department from releasing medical or rehabilitation
9 records in an employee's file, without the employee's consent, to a physician providing
10 medical services under AS 23.30.095(k) or 23.30.110(g), a party to a claim filed by
11 the employee, or a governmental agency; or

12 (2) the quoting or discussing of medical or rehabilitation records
13 contained in an employee's file during a hearing on a claim for compensation or in a
14 decision or order of the board [OR COMMISSION].

15 * **Sec. 3.** AS 23.30.108(d) is amended to read:

16 (d) If the employee files a petition seeking a protective order to recover
17 medical and rehabilitation information that has been provided but is not related to the
18 employee's injury, and the board or the board's designee grants the protective order,
19 the board or the board's designee granting the protective order shall direct the division,
20 the board, [THE COMMISSION,] and the parties to return to the employee, as soon as
21 practicable following the issuance of the protective order, all medical and
22 rehabilitation information, including copies, in their possession that is unrelated to the
23 employee's injury under the protective order.

24 * **Sec. 4.** AS 23.30.108(e) is amended to read:

25 (e) If the board or the board's designee limits the medical or rehabilitation
26 information that may be used by the parties to a claim, either by an order on the record
27 or by issuing a written order, the division, the board, [THE COMMISSION,] and a
28 party to the claim may request and an employee shall provide or authorize the
29 production of medical or rehabilitation information only to the extent of the limitations
30 of the order. If information has been produced that is outside of the limits designated
31 in the order, the board or the board's designee shall direct the party in possession of

1 the information to return the information to the employee as soon as practicable
2 following the issuance of the order.

3 * **Sec. 5.** AS 23.30 is amended by adding a new section to read:

4 **Sec. 23.30.126. Review of a board decision and order.** (a) A decision and
5 order of the board becomes effective when filed in the office of the board under
6 AS 23.30.110. A decision and order of the board may be modified under AS 23.30.130
7 or reconsidered under AS 44.62.540. A party may seek review of a decision and order
8 of the board by filing with the superior court a notice of appeal under AS 44.62.560 or
9 a petition for review under the Alaska Rules of Appellate Procedure.

10 (b) A decision and order is not automatically stayed pending judicial review.
11 A court may order a stay, in whole or in part, if a party

12 (1) applies for a stay;

13 (2) files a supersedeas bond, if required, in conformance with the
14 Alaska Rules of Appellate Procedure;

15 (3) for a stay involving continuing future periodic compensation
16 payments, shows irreparable harm and the probability that the appeal will be decided
17 adversely to the recipient on the merits; and

18 (4) for a stay involving a lump sum compensation payment, shows
19 irreparable harm and serious and substantial questions regarding the merits of the case.

20 (c) A finding of fact made by the board as part of a decision and order shall be
21 conclusive for a reviewing court if supported by substantial evidence in light of the
22 whole record. To the extent that it does not conflict with the provisions of this chapter,
23 AS 44.62.570 applies to judicial review.

24 (d) The director may intervene in an appeal or petition for review. If a party is
25 not represented by an attorney and a compensation order concerns an unsettled
26 question of law, the director may file an appeal or petition for review to obtain a
27 ruling.

28 * **Sec. 6.** AS 23.30.155(f) is amended to read:

29 (f) If compensation payable under the terms of an award is not paid within 14
30 days after it becomes due, there shall be added to that unpaid compensation an amount
31 equal to 25 percent of the unpaid installment. The additional amount shall be paid at

1 the same time as, but in addition to, the compensation, unless **there is a** review of the
2 compensation order making the award as provided under **AS 23.30.126 and a court**
3 **orders a stay of payments** [AS 23.30.008 AND AN INTERLOCUTORY
4 INJUNCTION STAYING PAYMENTS IS ALLOWED BY THE COURT]. The
5 additional amount shall be paid directly to the recipient to whom the unpaid
6 compensation was to be paid.

7 * **Sec. 7.** AS 39.50.200(b)(31) is amended to read:

8 (31) Workers' Compensation Board (AS 23.30.005) [AND
9 WORKERS' COMPENSATION APPEALS COMMISSION (AS 23.30.007)];

10 * **Sec. 8.** Rules 201.1, 401.1, and 501.1, Alaska Rules of Appellate Procedure, are repealed.

11 * **Sec. 9.** AS 23.30.007, 23.30.008, 23.30.009, 23.30.125, 23.30.127, 23.30.128, 23.30.129,
12 23.30.395(10); AS 39.25.110(40); AS 44.64.020(a)(12), and 44.64.020(a)(13) are repealed.

13 * **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to
14 read:

15 INDIRECT COURT RULE AMENDMENTS. (a) The provisions of AS 23.30.126,
16 added by sec. 5 of this Act, and the repeal of AS 23.30.007, 23.30.008, 23.30.009, 23.30.125,
17 23.30.127, 23.30.128, and 23.30.129 in sec. 9 of this Act, have the effect of changing Rules
18 202(a), 204(a) - (c), 210(e), and 601(b), Alaska Rules of Appellate Procedure, by repealing
19 the Alaska Workers' Compensation Appeals Commission and providing that appeals and
20 petitions for review from decisions of the Alaska Workers' Compensation Board be brought in
21 superior court.

22 (b) AS 23.30.126, added by sec. 5 of this Act, has the effect of amending Rules
23 602(c) and (h), Alaska Rules of Appellate Procedure, by permitting the director of the
24 division of workers' compensation to file an appeal or petition for review in the superior court
25 under specified circumstances or intervene in an appeal or petition for review in the superior
26 court.

27 (c) AS 23.30.126, added by sec. 5 of this Act, has the effect of amending Rule 603(a),
28 Alaska Rules of Appellate Procedure, by establishing a standard for seeking a stay of
29 compensation payments in an appeal filed in the superior court from a final decision of the
30 Alaska Workers' Compensation Board.

31 * **Sec. 11.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 APPLICABILITY. (a) AS 23.30.005, 23.30.007, 23.30.008, 23.30.009, 23.30.107(b),
3 23.30.108(d), 23.30.108(e), 23.30.125, 23.30.127, 23.30.128, 23.30.129, 23.30.155(f),
4 23.30.395(10), AS 39.25.110(40), AS 39.50.200(b)(31), and AS 44.64.020(a)(12) and (13), as
5 those statutes read on the day before the effective date of this Act, continue to apply to
6 appeals, petitions for review, and other proceedings pending before the Workers'
7 Compensation Appeals Commission on or before December 1, 2017. Appeals, petitions for
8 review, and other proceedings under this subsection shall be continued in the Workers'
9 Compensation Appeals Commission on or before December 1, 2017.

10 (b) AS 23.30.126, added by sec. 5 of this Act, and AS 23.30.155(f), as amended by
11 sec. 6 of this Act, do not apply to appeals, petitions for review, or other proceedings under (a)
12 of this section.

13 (c) AS 23.30.129, as it read on the day before the effective date of this Act, applies to
14 appeals to the Alaska supreme court from final decisions of the Workers' Compensation
15 Appeals Commission issued on or before December 1, 2017, and to petitions for review from
16 interlocutory decisions of the Workers' Compensation Appeals Commission issued on or
17 before December 1, 2017.

18 * **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to
19 read:

20 TRANSITIONAL PROVISIONS. (a) Appeals, petitions for review, and other
21 proceedings that seek review of decisions and orders of the Alaska Workers' Compensation
22 Board and that have not been filed before the Workers' Compensation Appeals Commission
23 before the effective date of this Act, shall be filed in the superior court on or after June 1,
24 2017, in accordance with AS 23.30.126, added by sec. 5 of this Act, and the filing deadlines
25 in AS 44.62.560 and Rule 602(a)(2), Alaska Rules of Appellate Procedure.

26 (b) A party seeking review of a final Workers' Compensation Appeals Commission
27 decision issued on or before December 1, 2017, shall file an appeal to the Alaska supreme
28 court under AS 23.30.129, and the Alaska Rules of Appellate Procedure, as that statute and
29 those rules read on the day before the effective date of this Act. A party who seeks review of
30 an interlocutory decision of the Workers' Compensation Appeals Commission issued on or
31 before December 1, 2017, shall file a petition for review with the Alaska supreme court under

1 AS 23.30.129, and the Alaska Rules of Appellate Procedure, as that statute and those rules
 2 read on the day before the effective date of this Act. Cases in which a party seeks review of a
 3 final Alaska Workers' Compensation Board decision and order issued after a remand from the
 4 Workers' Compensation Appeals Commission must be filed in the superior court on or after
 5 June 1, 2017, in accordance with AS 23.30.126, added by sec. 5 of this Act.

6 (c) The Workers' Compensation Appeals Commission's power to order
 7 reconsideration under AS 23.30.128(f), as that section read on the date before the effective
 8 date of this Act, expires on December 2, 2017. Requests for reconsideration pending before
 9 the Workers' Compensation Appeals Commission shall be automatically denied on
 10 December 2, 2017, and, notwithstanding AS 23.30.128(g), as that section read on the day
 11 before the effective date of this Act, the decision of the Workers' Compensation Appeals
 12 Commission becomes final on December 2, 2017. If the Workers' Compensation Appeals
 13 Commission ordered reconsideration but did not issue a decision on reconsideration on or
 14 before December 1, 2017, reconsideration shall be automatically denied on December 2,
 15 2017, and, notwithstanding AS 23.30.128(g), as that section read on the day before the
 16 effective date of this Act, the original decision of the Workers' Compensation Appeals
 17 Commission becomes final on December 2, 2017. A party whose request for reconsideration
 18 was denied under this subsection and who seeks further review shall file an appeal in the
 19 Alaska supreme court under AS 23.30.129, as that section read on the day before the effective
 20 date of this Act, and in accordance with the Alaska Rules of Appellate Procedure.

21 (d) On December 2, 2017, the Workers' Compensation Appeals Commission shall
 22 transfer the files of all appeals, petitions for review, and other proceedings that were pending
 23 before June 1, 2017, and were not completed on or before December 1, 2017, to the superior
 24 court, which shall assume jurisdiction under AS 22.10.020, and Rules 604(b) and 609, Alaska
 25 Rules of Appellate Procedure. The Workers' Compensation Appeals Commission shall
 26 provide notice to all parties of record 30 days before it transfers a pending case, advising
 27 parties of the transfer of jurisdiction and the effective date of the transfer. The Workers'
 28 Compensation Appeals Commission shall prepare each record in accordance with Rule
 29 604(b), Alaska Rules of Appellate Procedure, and mail or hand deliver the record in the
 30 pending case to the superior court in the judicial district where the Alaska Workers'
 31 Compensation Board issued the contested decision and order. If the superior court determines

1 that the record does not comply with Rule 604(b), Alaska Rules of Appellate Procedure, the
2 court may return the record to the Alaska Workers' Compensation Board and direct the Alaska
3 Workers' Compensation Board to conform the record as may be necessary.

4 * **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to
5 read:

6 TRANSITION: TERMS OF COMMISSIONERS. Notwithstanding AS 23.30.007(e),
7 as repealed by sec. 9 of this Act, the terms of the members appointed to the Workers'
8 Compensation Appeals Commission expire December 31, 2017.

9 * **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to
10 read:

11 CONDITIONAL EFFECT. This Act takes effect only if secs. 8 and 10 of this Act,
12 receive the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of
13 the State of Alaska.

14 * **Sec. 15.** This Act takes effect June 1, 2017.

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January 19, 2017

The Honorable Bryce Edgmon
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, AK 99801-1182

Dear Speaker Edgmon:

Under the authority of Article III, Section 18, of the Alaska Constitution, I am transmitting a bill that would repeal the Workers' Compensation Appeals Commission (Commission). Established in 2005, the Commission has jurisdiction over appeals from decisions and orders of the Alaska Workers' Compensation Board (Board). The Commission was created to streamline the appeals process for injured employees and their employers; however, it has instead created unnecessary costs and delays, and has not streamlined the appeals process.

The bill would reinstate superior court jurisdiction as the first level for review of decisions and orders of the Board. No changes are made to Board procedure, only to the forum for review of a Board decision. Moreover, no changes are made to the longstanding standards governing stays of payments and attorney fee awards under AS 23.30.145(c) in a workers' compensation benefits appeal. The superior court would apply the same standards of review used by the Commission and by the superior court when it had jurisdiction. Also consistent with longstanding practice, a cost bond on appeal would be waived for an employee appealing a denial of workers' compensation benefits. However, in terms of attorney fee awards in appeals of civil penalty orders against employers for a failure to insure for workers' compensation liability, the bill's repeal of the Commission's fee provision, AS 23.30.008(d), would result in overruling *State of Alaska, Division of Workers' Compensation v. Titan Enterprises, LLC*, 338 P.3d 316 (Alaska 2014). Instead, Rule 508(e)(4), Alaska Rules of Appellate Procedure, would govern attorney fee awards in civil penalty appeals. This change means that a prevailing party in an appeal of a civil penalty order – the employer or the Division of Workers' Compensation – could receive 20 percent of its actual attorney fees, instead of fully compensatory and reasonable fees that a prevailing injured employee would receive in a benefits appeal.

The bill would amend the Alaska Rules of Appellate Procedure to remove references to the repealed Commission that would no longer have subject matter jurisdiction over these appeals, to reinstate the standard for stays that the superior court applied when it previously reviewed these appeals, and

The Honorable Bryce Edmon
Transmittal Repeal Workers' Compensation Appeals Commission
January 19, 2017
Page 2

to change the name of the agency issuing the final administrative decision from the Commission to the Board. Legislative amendment of the court rules will ensure a smooth transition for workers' compensation appeals after the repeal of the Commission.

Also, to facilitate a smooth transition, the bill would require that new appeals and petitions for review of a board decision be filed with the superior court beginning on June 1, 2017, but would retain the Commission's jurisdiction over pending matters through December 1, 2017. If the Commission does not conclude pending matters on or before December 1, 2017, the bill provides that the matters would be transferred to the superior court for further proceedings.

In the spirit of streamlining government processes and protecting citizen rights, the bill would protect the right to challenge a decision of the Alaska Workers' Compensation Board, but without the unnecessary and inefficient step of appearing before the Workers' Compensation Appeals Commission.

I urge your prompt and favorable action on this measure.

Sincerely,

A handwritten signature in blue ink that reads "Bill Walker". The signature is written in a cursive, flowing style.

Bill Walker
Governor

Enclosure



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

**Department of Labor and
Workforce Development**

Office of the Commissioner

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Sectional Analysis for HB 69 and SB 29

Section 1 amends AS 23.30.005, by adding a new subsection, clarifying that unless reversed or modified by a court, decisions of the former commission have the force of legal precedent.

Section 2 amends AS 23.30.107(b), by removing reference to the commission.

Section 3 amends AS 23.30.108(d), by removing reference to the commission.

Section 4 amends AS 23.30.108(e), by removing reference to the commission.

Section 5 amends AS 23.30, by adding a new section, clarifying when a board order becomes effective and is final, when it may be stayed, and clarifying when the board's findings are conclusive and binding on a reviewing court, and when the director may intervene in an appeal or petition for review.

Section 6 amends AS 23.30.155, by adding a new subsection changing a statutory reference from the commission to the superior court.

Section 7 amends AS 39.50.200(b)(31), by removing reference to the commission.

Section 8 amends the uncodified law of the State of Alaska, by amending Rule 204(c)(2) Alaska Rules of Appellate Procedure, to address bonds for appeal purposes.

Section 9 repeals Rules 201.1, 401.1, and 501.1, Alaska Rules of Appellate Procedure.

Section 10 repeals AS 23.20.007, 23.30.008, 23.30.009, 23.30.009, 23.30.125, 23.30.127, 23.30.128, 23.30.129, 23.30.155(f), 23.30.395(10); AS 39.25.110(40); AS 44.64.020(a)(12), and 44.64.020(a)(13).

Section 11 amends the uncodified law of the State of Alaska, by adding a new section relating to indirect court rule amendments.

Section 12 amends the uncodified law of the State of Alaska, by adding conditional effect language that the Act takes effect only if secs. 8, 9 and 11 receive the two-thirds majority vote of each house required by art. IV, sec. 15 of the Alaska Constitution.

Section 13 amends the uncodified law of the State of Alaska, by adding a new section relating to applicability of amendments to proceedings pending before the Commission.

Section 14 amends the uncodified law of the State of Alaska, by adding transitional language clarifying proceedings seeking review of a board decision and order that have not yet been filed before the

Commission, must be filed in the superior court on or after June 1, 2017. Any appeals not completed by the Commission on or before December 1, 2017 will be transferred to the superior court on December 2, 2017, and clarifying procedures for requests for reconsideration during the transition period.

Section 15 amends the uncodified law of the State of Alaska, by adding transitional language.

Section 16 clarifies when the Act takes effect.



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Summary of changes between HB 69, Version A and CSHB 69, Version 0

Page 1, line 5 inserts two inadvertently omitted court rule references, Appellate Procedure Rules 602(c) and (h), into the bill title.

Page 3, lines 4 - 9 simplifies the paragraph structure and wording of the language clarifying when a board order becomes effective and is final.

Page 3, lines 10 - 19 clarifies the wording of when a board order may be stayed.

Page 3, line 20 removes the first sentence from AS 23.30.126(c). The sentence is unnecessary because it restates a provision already found in the Alaska Workers' Compensation Act.

Page 3, lines 28 - Page 4, line 6 amends AS 23.30.155(f) directly, instead of repealing subsection (f) and creating a new subsection (r) as version A was written.

Page 4, lines 14 - 23 that was Section 8 in the original bill was completely deleted. In Version A, Section 8 addressed "direct" court rule amendments relating to cost bonds and the court system suggested that it would be more efficient and more consistent to instead address these through "indirect" court amendments in new Section 10. Because Section 8 of the original bill was deleted in the CS, the Section numbers from that point on are renumbered in the CS (Ex: the previous Section 9 is now Section 8, etc.)

Page 4, line 12 removes AS 23.30.155(f) from the list of statutes being repealed because changes are now being made directly to AS 23.30.155(f), instead of the original bill which repealed subsection (f) and made those changes in a new subsection (r) as discussed above.

Page 4, line 15 - line 30 simplifies the description of how the court rules are amended and adds a description of how Appellate Procedure Rules 602(c) and (h) are amended. The Indirect Court Rule Amendments in the original bill were too wordy and potentially confusing, and the court system suggested it be rewritten.

Page 4, line 31 - Page 5, line 17 simplifies the paragraph structure and wording of the applicability language.

Potential Integration Between the Office of Administrative Hearings and the Workers' Compensation Appeals Commission

Meeting/Activity Scheduled: --

Date & Time: --

Attendees: --

Issue: Whether to seek cost savings by co-locating the Workers' Compensation Appeals Commission (WCAC) with the Office of Administrative Hearings (OAH), consolidating administration, support, and physical facilities. The decisionmaking functions of the WCAC would remain independent of the OAH.

Summary: The WCAC is an independent board currently housed within the Department of Labor and Workforce Development (DOL). It performs adjudicatory functions that are unique, but that require support and administrative services similar to those used by the OAH. The OAH is already designated by statute to play a role in selecting the WCAC chair and commissioners, as well as to provide pro tem (substitute) WCAC chairs from the ranks of the OAH administrative law judges (ALJs).

The current WCAC chair will retire in March 2015. By means of an executive order similar to EO 116 (the 2012 order that consolidated OAH with DHSS's Office of Hearings and Appeals), the transition in leadership could be made to coincide with elimination of the freestanding WCAC office and a merger of the support staffs of the two organizations. Upon integration with the OAH, there is potential for the WCAC to become less expensive to operate, and service to the public could be maintained or improved.

Both the current WCAC chair and the Chief Administrative Law Judge believe that, intuitively, an integration of staff functions and space consolidation ought to produce savings in the medium to long term. With regard to immediate savings in FY 16, there no question that "paper" savings can be achieved, in that the budget authorization associated with the WCAC could be reduced after a consolidation. Consolidation would also maximize the productive use of existing staff. However, it is possible that the achievement of real reductions in spending would not occur before FY 18.

Recommendations: Authorize drafting of an executive order for possible delivery to the Legislature at the opening of the 2015 session. Authorize further feasibility discussions between the leadership of the Departments of Administration and Labor. At this stage, these discussions should expand to encompass discussions with the Alaska Labor Relations Agency about a shared space issue, addressed below.

Factual Basis for Recommendation:

1. The WCAC was created in 2005. It operates as a specialized intermediate appellate panel, reviewing cases from the Workers' Compensation Board. The WCAC consists of four lay members and a professional attorney-chair, all appointed by the governor. Two of the lay members come from the labor side and two from management, and that balance has to be preserved in creating three-member panels that hear individual appeals. The chair sits on all the panels.
2. The WCAC opens about 25 cases per year. It produces about 100 substantive orders and 17 full-dress decisions per year.¹
3. The OAH is Alaska's central panel of administrative law judges (ALJs). The OAH opens about 2350 cases per year in a wide variety of formats, from simple public benefit appeals to oil and gas taxation cases involving hundreds of millions of dollars. OAH issues about a thousand case decisions per year, and an uncounted but larger number of substantive orders. The OAH also conducts a large number of mediations and performs a variety of statewide training and monitoring functions relating to administrative adjudication.
4. By statute, the OAH already has a significant role in the WCAC, consisting of: (1) recruiting and evaluating candidates for WCAC chair; (2) recruiting and evaluating candidates for WCAC commissioner slots; and (3) providing ALJs to serve as pro tem chairs to fill in when the regular chair is on leave. The third role has given the OAH some insight into the way the WCAC operates and its resource needs. It has also given two OAH ALJs some WCAC chair experience.
5. The staff functions and space needs of the two organizations are similar. Both staffs must be highly skilled at working with self-represented litigants. Both staffs must maintain meticulous case records and must prepare records for court appeal. Both staffs must comply with exacting notice and service requirements, and must be able to work well with legal professionals. As to space, both organizations require hearing space, waiting areas, conference areas for collective deliberations, and extra offices that can be scheduled for use by visiting ALJs or commissioners.
6. As presently housed, the WCAC has a relatively large budget authorization in light of the size of its caseload. Its FY 15 budget authorization was \$584,600. For its larger caseload, the OAH has an FY 15 budget authorization of \$2,773,800, a little more than four times that of WCAC.
7. The current chair of the WCAC has managed its budget very conservatively, and actual expenditures are far below the commission's authorization. For example, two full time staff members are authorized, but the chair has left one of the positions vacant, with

¹ WCAC, *Annual Report for Calendar Year 2013* (March 3, 2014), at 5, 7. The figures for the two preceding years, found in the annual reports for those years, are similar. The last three annual reports are collected at: <http://labor.state.ak.us/wccomm/>.

resulting savings of about \$66,000. The commission is also permitted to employ a part-time staff attorney on contract, but the chair permitted that contract to lapse earlier this year, and he has no plans to use a staff attorney in the future. Actual expenditures in FY 14 were \$401,982.

8. This white paper explores a limited integration between the OAH and WCAC, with the objective of reducing the WCAC's annual cost without affecting the substance of the WCAC's work. The overall concept would be to fold all the support functions for WCAC into OAH, while leaving the commission itself essentially untouched, complete with its political balance and independent chair. The chair would retain independence but would reside in the OAH office.

9. Efficiency would be achieved by allowing the OAH to handle all the case file administration along with its thousands of other cases. The OAH would also furnish a hearing room for the rare live proceedings the WCAC conducts, and offices for the occasional visits of WCAC board members to Anchorage. Because of dual use of offices and hearing space, the combined space footprint of the two organizations would shrink.

10. *Staffing:* The unfilled staff position at the WCAC would be deleted. The single filled staff position presently in use at the WCAC would transfer to the OAH as part of the consolidation. As part of efficient management, the OAH anticipates that some WCAC work would be handled by existing, dedicated OAH docketing and file management staff, and that, conversely, the transferred staff person would no longer work exclusively on WCAC matters. This would be similar to the 2012 OAH-OHA merger, which resulted in improved service to the public and improved productivity overall by allowing certain functions to be performed "in bulk" by staff who were best suited to those functions, and by providing more complete staff coverage during all working hours than can be provided by a single employee working alone. The WCAC would also be able to take advantage of the OAH's new, custom-designed computerized case management system.

11. *Space:* The WCAC occupies 1,839 total square feet at the 6th & K building. This includes 1,039 square feet in Suite 405 (Office), 353 square feet in Suite 404 (Files) and 50% of 994 square feet (*i.e.*, 447 square feet) for their share in Suite 402 (Hearing Room). The Hearing Room is shared equally with ALRA. The current lease rate for this space is approximately \$2.26 per square foot. The WCAC will incur lease costs of \$49,816 for FY15.

The current WCAC space is very lightly used. WCAC uses the 994-square-foot hearing room for relatively short proceedings approximately twice a month. Its co-tenant, ALRA, has reportedly used that space only twice in five years. The 353-square-foot file room is about one-third full, even though WCAC has never archived or destroyed any files since its inception. The 1,039 square feet of main office space is occupied by two people, with two of the three large offices and one large staff area left unoccupied.

Taking into account opportunities for dual use, the OAH anticipates that it would need approximately 700 square feet of space in its Atwood location to accommodate the WCAC functions without any reduction in the ability to host proceedings and part-time work by the commissioners. The cost of this space would be approximately \$13,000 per year. State Leasing and Facilities Manager Tanci Mintz indicates that this space need could likely be accommodated in the Atwood Building.

A complication is that the existing WCAC space is leased until July 31, 2017. Achievement of space reduction savings would likely depend, therefore, on whether a substitute state tenant could be found for that space.² Tanci Mintz has inspected the space and thinks this may be possible.

A second complication is that the ALRA might be left with sole responsibility to pay for a hearing facility is currently shares with the WCAC. We have not been authorized to talk with the ALRA about its needs and how they might best be accommodated if the WCAC were to move. The potential adverse budget impact on the ALRA, if no mitigation measures are found, is \$12,123. However, the information we have from other sources familiar with the space is that even ALRA's existing half-interest in the space would be extremely hard to justify under the state's current space-usage philosophy. ALRA apparently uses the space less than once a year and its usage has been for activities (such as vote-counting) that could be better and more inexpensively accommodated in other space, such as the new Atwood Conference Center.

12. Mechanism for integration: Art. III, Sec. 23 of the Alaska Constitution allows the governor to reassign functions within the executive branch, making direct statutory changes as necessary, as was done with EO 116. The legislature has 60 days to veto any such change. The changes needed appear to be well within the traditional EO authority as exercised by this and past governors. The provisions of the EO would be extremely simple and could be drafted in a matter of hours. They consist of the following:

- a. Alter AS 23.30.009(a) so that "general supervision over the office" and most administrative functions (1, 2, 4, and 5 in the statute) go to the Chief Administrative Law Judge, not the WCAC chair.
- b. Alter AS 23.30.127(c) and/or associated definitions so that appeals would be filed with OAH.
- c. Consider altering AS 23.30.007(a) so that the commission is "in" DOA rather than DOL. This is an optional change; the commission could also be left "in" DOL.³

² There is a release clause in the lease relating to changes in law that terminate a section or division, which might allow the state to relinquish the space before the lease term expires, but we assess this possibility as unlikely.

³ If the commission is left "in" DOL, funds could be RSA'd to the OAH to cover the WCAC's allocated share of space and to cover the cost of one staff position.

Other Comments:

Interim Integration by Using the Pro Tem Function: If the chair position, which becomes vacant next March, is allowed to go unfilled for a period, the WCAC can continue to function under the existing pro tem option. An OAH ALJ with workers' compensation experience is permitted by current law to fill the chair's role indefinitely. Up to 1000 hours of billable OAH time could be charged per annum to this function before the personnel cost of the WCAC chair would be exceeded. OAH believes that 1000 of its billable hours would accomplish all of the adjudicative work of the chair in a year (of course, the chair does a great deal of other work, but the other work is administrative). The pro tem expedient could be used to bridge the gap between departure of the old chair and the likely effective date of any EO for long-term integration, which would be July 1.

Further potential change by means of legislation: The WCAC chair and the Chief Administrative Law Judge believe that additional efficiencies might be available through legislation in a future year. For example, the WCAC chair notes that the commission's decisionmaking function could be assigned to three-judge panels that would include OAH ALJs with appropriate workers' compensation experience, rather than to a commission that must assemble periodically. Reforms of this kind should not be attempted until there has been an opportunity to implement the staff-level integration proposed in this paper.

Attached Supporting Materials:

None.

Prepared by: Christopher Kennedy, Deputy Chief Administrative Law Judge

Phone: 269-8170

Department: Administration/Office of Administrative Hearings

Date: December 10, 2014

ALASKA WORKERS' COMPENSATION APPEALS COMMISSION (12/30/16)

Calendar Year	Cases Filed	Published Decisionsⁱ	Appeals to Alaska Supreme Courtⁱⁱ	Outcomes of Appeals to Alaska Supreme Courtⁱⁱⁱ
2005 (Comm'n est. 11/05/05)	9	0	0	N/A
2006	42	22	5	4 dismissed/remanded/vacated/petition denied 1 reversed
2007	49	42	9	4 dismissed/remanded/vacated/petition denied 4 reversed 1 affirmed in part/reversed in part
2008	38	30	8	6 dismissed/remanded/vacated/petition denied 1 affirmed 1 affirmed in part/reversed in part
2009	33	31	6	3 dismissed/remanded/vacated/petition denied 3 affirmed
2010	34	18	9	6 dismissed/remanded/vacated/petition denied 1 affirmed 2 reversed
2011	21	13	13	7 dismissed/remanded/vacated/petition denied 4 affirmed 1 reversed 1 affirmed in part/reversed in part
2012	29	16	15	7 dismissed/remanded/vacated/petition denied 5 affirmed 2 reversed 1 affirmed in part/reversed in part
2013	26	17	11	6 dismissed/remanded/vacated/petition denied 3 affirmed 2 reversed
2014	30	15	12	9 dismissed/remanded/vacated/petition denied 1 affirmed 2 reversed
2015	31	15	9	4 dismissed/remanded/vacated/petition denied 2 affirmed 1 reversed 2 pending
2016	20	10	3	3 pending
TOTALS	362	229	100	56 dismissed/remanded/vacated/denied (56%) 20 affirmed (20%) 15 reversed (15%) 4 affirmed in part/reversed in part (4%) 5 pending (5%)
ANNUAL AVERAGES (Does not include 2005)	32	21	9	

ⁱ Includes published final decisions on appeal, decisions on petition for review, and decisions on non-final orders (e.g., attorney's fees, motion for stay).

ⁱⁱ Includes appeals and petitions for review from both published and unpublished decisions and orders issued in the calendar year listed.

ⁱⁱⁱ Supreme Court orders dismissing an appeal, remanding or vacating the Commission decision, or denying a petition for review do not affirm or reverse the Commission's decision. This column reflects the outcome of appeals from Commission decisions issued in the calendar year listed.

**ATTACHMENTS FOR TESTIMONY OF
ERIC CROFT**

REGARDING HB 69

**THE HOUSE JUDICIARY COMMITTEE
ON
MARCH 10, 2017**

I. THE COMMISSION RULES OVERWHELMINGLY FOR INSURANCE COMPANIES

ALASKA SUPREME COURT DECISIONS REVIEWING AWCAC DECISIONS ON BENEFITS FOR INJURED WORKERS

		BOARD	AWCAC	SUPREME
1.	VANDENBURG (2016)	IC	IC	EE
2.	HUIT (2016)	EE	IC	EE
3.	EDER (2016)	IC	IC	EE
4.	BOCKUS (2016)	EE	IC	EE
5.	MCCULLOUGH (MOJ 2016)	IC	IC	IC
	JONES (MOJ 2016)	IC	IC	IC
	STENSETH (2015)	EE	EE	EE
	COPPE (2014)	IC	IC	IC
	HARRIS (2014)	EE	IC	EE
10.	LOUIE (2014)	IC	IC	IC
	ADAMSON (2014)	EE	IC	EE
	HUMPHREY (2014)	EE	EE/IC	EE
	ARCTEC (2013)	EE	EE	EE
	DEROSARIO (2013)	EE	IC	EE
15.	PRUITT (2013)	IC	IC	IC
	ADAMSON (2013)	--	EE	EE
	OLSEN (2013)	--	IC	EE
	ROSALES (2013)	IC	IC	IC
	MILTON (MOJ 2013)	IC	IC	IC
20.	RUNSTROM (2012)	IC	IC	IC
	ROCKSTAD (MOJ 2012)	IC	IC	IC
	RIVERA (2011)	IC	IC	IC
	LEWIS-WALUNGA (2011)	IC	IC	EE
	MCGAHUEY (2011)	IC	IC	IC
25.	SHEHATA (2010)	IC	IC	EE
	DENINO (MOJ 2010)	IC	IC	IC
	SMITH (2009)	IC	IC	EE
	BOHLMANN (2009)	IC	IC	EE
	THURSTON (2009)	EE	EE/IC	EE/IC
30.	KELLY (2009)	IC	IC	EE
31.	KIM (2008)	IC	IC	EE

OVERALL, THE COMMISSION RULES IN FAVOR OF INSURANCE COMPANIES 27 OUT OF 31 OR 87.1% OF THE TIME.

BUT THIS IS NOT FAIR, BECAUSE SOMETIMES THE INSURANCE COMPANY SHOULD WIN ON APPEAL.

DECISIONS WHERE THE INSURANCE COMPANY PREVAILED BEFORE THE SUPREME COURT

	MCCULLOUGH (MOJ 2016)	IC	IC	IC
	JONES (MOJ 2016)	IC	IC	IC
	COPPE (2014)	IC	IC	IC
	LOUIE (2014)	IC	IC	IC
	PRUITT (2013)	IC	IC	IC
	ROSALES (2013)	IC	IC	IC
	MILTON (MOJ 2013)	IC	IC	IC
	RUNSTROM (2012)	IC	IC	IC
	ROCKSTAD (MOJ 2012)	IC	IC	IC
	RIVERA (2011)	IC	IC	IC
	MCGAHUEY (2011)	IC	IC	IC
12	DENINO (MOJ 2010)	IC	IC	IC
1	THURSTON (2009)	EE	EE/IC	EE/IC

13 TOTAL CASES

WHEN THE INSURANCE COMPANY IS CORRECT ON APPEAL, THE COMMISSION RULES IN FAVOR OF THE INSURANCE COMPANY 100% OF THE TIME.

THE PROCESS WORKS WHEN THE RIGHT RESULT IS THE INSURANCE COMPANY WINNING THE CASE ON APPEAL.

DECISIONS WHERE THE EMPLOYEE PREVAILED BEFORE THE SUPREME COURT

	HUIT (2016)	EE	IC	EE
	BOCKUS (2016)	EE	IC	EE
	HARRIS (2014)	EE	IC	EE
	ADAMSON (2014)	EE	IC	EE
5	DEROSARIO (2013)	EE	IC	EE
1	HUMPHREY (2014)	EE	EE/IC	EE
	ARCTEC (2013)	EE	EE	EE
2	STENSETH (2015)	EE	EE	EE
	VANDEBURG (2016)	IC	IC	EE
	EDER (2016)	IC	IC	EE
	LEWIS-WALUNGA (2011)	IC	IC	EE
	SHEHATA (2010)	IC	IC	EE
	SMITH (2009)	IC	IC	EE
	BOHLMANN (2009)	IC	IC	EE
	KELLY (2009)	IC	IC	EE
8	KIM (2008)	IC	IC	EE
	ADAMSON (2013)	--	EE	EE
2	OLSEN (2013)	--	IC	EE

18 TOTAL CASES

BUT WHEN THE EMPLOYEE SHOULD PREVAIL, THAT IS THE ALASKA SUPREME COURT RULES IN FAVOR OF THE INJURED WORKER, THE SYSTEM DOES NOT WORK AT ALL.

THE BOARD GETS IT RIGHT ABOUT 50% OF THE TIME, 8 OUT OF 16 CASES.

THE COMMISSION RULES IN FAVOR OF INSURANCE COMPANIES 14.5 TIMES OUT OF 18.

80.55% OF THE TIME, WHEN THE EMPLOYEE IS CORRECT,
THE COMMISSION RULES AGAINST HIM OR HER.

IN NONE OF THESE DECISIONS DID THE BOARD RULE AGAINST AN INJURED WORKER AND THE COMMISSION RULE IN FAVOR.

FULL INDEX OF CASES USED:

Vandenburg v. State, Department of Health and Social Services
371 P.3d 602 (Alaska 2016)

Huit v. Ashwater Burns, Inc.
372 P.3d 904 (Alaska 2016)

Eder v. M-K Rivers
382 P.3d 1137 (Alaska 2016)

Bockus v. First Student
384 P.3d 801 (Alaska 2016)

Municipality of Anchorage v. Stenseth
361 P.3d 898 (Alaska 2015)

Coppe v. Bleicher
318 P.3d 369 (Alaska 2014)

Harris v. Millennium Hotel
330 P.3d 330 (Alaska 2014)

Louie v. BP Exploration
327 P.3d 204 (Alaska 2014)

Adamson v. Municipality of Anchorage
333 P.3d 5 (Alaska 2014)

Humphrey v. Lowe's Home Improvement Warehouse
337 P.3d 1174 (Alaska 2014)

Arctec Services v. Cummings
295 P.3d 916 (Alaska 2013)

de Rosario v. Chenega Lodging
297 P.3d 139 (Alaska 2013)

Pruitt v. Providence Extended Care
297 P.3d 891 (Alaska 2013)

Municipality of Anchorage v. Adamson / Olsen
301 P.3d 569 (Alaska 2013)

Rosales v. Icicle Seafoods, Inc.
316 P.3d 580 (Alaska 2013)

Runstrom v. Alaska Native Medical Center
280 P.3d 559 (Alaska 2012)

Rivera v. Wal-Mart Stores, Inc.
247 P.3d 957 (Alaska 2011)

Lewis-Walunga v. Municipality of Anchorage
249 P.3d 1063 (Alaska 2011)

McGahuey v. Whitestone Logging, Inc.
263 P.3d 613 (Alaska 2011)

Shehata v. Salvation Army
225 P.3d 1106 (Alaska 2010)

Smith v. CSK Auto, Inc.
204 P.3d 1001 (Alaska 2009)

Bohlmann v. Alaska Construction Engineering, Inc.
205 P.3d 316 (Alaska 2009)

Thurston v. Guy's With Tools
217 P.3d 824 (Alaska 2009)

Kelly v. State Department of Corrections
218 P.3d 291 (Alaska 2009)

Kim v. Alyeska Seafoods, Inc.
197 P.3d 192 (Alaska 2008)

AWCAC/AKSC CASES NOT ON EMPLOYEE RIGHTS:

HARRIS (2014)

Harris v. Millennium Hotel, 330 P.3d 330 (Alaska 2014)

Equal protection challenge to refusing death benefits to gay partner of woman killed at work.

TITAN (2014)

State v. Titan Enterprises, LLC, 338 P.3d 316 (Alaska 2014)

Penalty against uninsured employer. AKSC reversed in part.

TONGASS

State v. Tongass Business Center, 276 P.3d 453 (Alaska 2012)

Issue of SIF reimbursement. AWCAC dismissed State's appeal and AKSC reversed.

MONZULA

Monzula v. Voorhees Concrete Cutting, 254 P.3d 341 (Alaska 2011)

Venue dispute.

BARRINGTON

Barrington v. Alaska Communication Systems, 198 P.3d 1122 (Alaska 2008)

Chiropractor's right to recover after employee settles case.

III. THE COMMISSION DOES NOT DO MUCH WORK

**CASES DECIDED IN THE LAST 8 MONTHS
BY THE ALASKA WORKERS' COMPENSATION APPEALS COMMISSION (AWCAC)
AND THE ALASKA CRIMINAL COURT OF APPEALS (CT APP)**

	AWCAC			COURT OF APPEALS		
	OPINION	MEMO	TOTAL	OPINION	MEMO	TOTAL
FEB 2017	1	1	2	8	9	17
JAN 2017	0	0	0	6	6	12
DEC 2016	0	0	0	3	17	20
NOV 2016	0	1	1	1	8	9
OCT 2016	1	0	1	1	7	8
SEP 2016	1	0	1	13	18	31
AUG 2016	1	0	1	2	6	8
JUL 2016	1	0	1	4	5	9
TOTAL	5	2	7	38	76	114

Source: <http://labor.alaska.gov/wccomm/orders.htm>

	APPEALS COMMISSION DECISIONS		
	OPINIONS	MEMO	TOTAL
2017 (TO DATE)	1	1	2
2016	9	1	10
2015	11	3	14
2014	12	3	15
2013	14	2	16
2012	16	0	16
2011	12	0	12
2010	16	2	18
2009	21	10	31
2008	28	2	30
2007	23	19	42
2006 & 2005	10	13	23
TOTAL	173	56	229
AVERAGE 2005-2016	15.6	5.0	20.6
AVERAGE 2005-2010	19.6	9.2	28.8
AVERAGE 2011-2016	12.3	1.5	13.8

Source: <http://labor.alaska.gov/wccomm/orders.htm>

APPENDIX: LIST OF CASES

DECIDED BY THE ALASKA WORKERS' COMPENSATION APPEALS COMMISSION DECISIONS

FINAL DECISIONS

McAlpine v. Denali Center and Sentry Insurance, AWCAC Dec. #232 (Feb. 9, 2017)
http://labor.alaska.gov/wccomm/memos-finals/D_232.pdf

Kang v. Alexander Mullins, AWCAC Dec. #230 (Oct. 27, 2016)
http://labor.alaska.gov/wccomm/memos-finals/D_230.pdf

Atkins v. Inlet Transportation & Taxi Service, Inc., AWCAC Dec. #229 (Sept. 26, 2016)
http://labor.alaska.gov/wccomm/memos-finals/D_229.pdf

Cornelison v. Rappe Excavating, Inc., AWCAC Dec. #228 (Aug. 3, 2016)
http://labor.alaska.gov/wccomm/memos-finals/D_228.pdf

Titan Enterprises v. State of Alaska, AWCAC Dec. #227 (July 11, 2016)
http://labor.alaska.gov/wccomm/memos-finals/D_227.pdf

MEMORANDUM DECISIONS

Interior Towing & Salvage, Inc. v. Gracik, AWCAC Dec. #233 (Feb. 3, 2017)
http://labor.alaska.gov/wccomm/memos-finals/D_233.pdf

Straight v. Johnston Construction & Roofing, LLC, AWCAC Dec. #231 (Nov. 22, 2016)
http://labor.alaska.gov/wccomm/memos-finals/D_231.pdf

**DECIDED BY THE
ALASKA COURT OF APPEALS DECISIONS**

FEBRUARY 2017

Court of Appeals Opinions

No. 2542 A-11484 Kim v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/ap-2542.pdf>

No. 2543 A-11866 Pieniazek v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/ap-2543.pdf>

No. 2544 A-11494 Johnson v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/ap-2544.pdf>

No. 2538 A-10791 Wyatt v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/ap-2538.pdf>

No. 2539 A-11872 Olson v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/ap-2539.pdf>

No. 2540 A-10549 Adams v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/ap-2540.pdf>

No. 2541 A-11892 Jeter v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/ap-2541.pdf>

No. 2537 A-10982 McCord v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/ap-2537.pdf>

Court of Appeals MOJs

No. 6433 A-11638/47 Gossett v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6433.pdf>

No. 6431 A-11546 Tubin v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6431.pdf>

No. 6432 A-11905 Carney v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6432.pdf>

No. 6427 A-12164 Harmon v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6427.pdf>

No. 6428 A-11646 Burrell v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6428.pdf>

No. 6429 A-11198 Stiffarm v. State [criminal]
<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6429.pdf>

No. 6430 A-11788 Andrew v. State [criminal]
<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6430.pdf>

No. 6425 A-11568/11577 Samskar v. State [criminal]
<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6425.pdf>

No. 6426 A-11459 Erickson v. State [criminal]
<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6426.pdf>

JANUARY 2017

Court of Appeals Opinions

No. 2532 A-12392 Maguire v. State [criminal]
<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/ap-2532.pdf>

No. 2533 A-11682 Wagner v. State [criminal]
<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/ap-2533.pdf>

No. 2534 A-12166 State v. Johnson [criminal]
<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/ap-2534.pdf>

No. 2535 A-11871 Forsythe v. State [criminal]
<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/ap-2535.pdf>

No. 2536 A-11722 Stiner v. State [criminal]
<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/ap-2536.pdf>

No. 2531 A-11534 Dirks v. State [criminal]
<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/ap-2531.pdf>

Court of Appeals MOJs

No. 6424 A-118723 Joe v. State [criminal]
<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6424.pdf>

No. 6419 A-11855 Coday v. State [criminal]
<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6419.pdf>

No. 6420 A-11713 Bell v. State [criminal]
<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6420.pdf>

No. 6421 A-12064 Stewart v. State [criminal]
<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6421.pdf>

No. 6422 A-12161 Gardner v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6422.pdf>

No. 6423 A-12326 Deng v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6423.pdf>

DECEMBER 2016

Court of Appeals Opinions

No. 2529 A-12009 Akers v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/ap-2529.pdf>

No. 2530 A-12677 Tinker v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/ap-2530.pdf>

No. 2528 A-11401 Barber v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/ap-2528.pdf>

Court of Appeals MOJs

No. 6418 A-11671 Wyre v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6418.pdf>

No. 6408 A-12081 Rocero v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6408.pdf>

No. 6409 A-12413 Ball v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6409.pdf>

No. 6410 A-11259 Nelson v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6410.pdf>

No. 6411 A-12340 Leedom v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6411.pdf>

No. 6412 A-11924 Welsh v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6412.pdf>

No. 6413 A-12447 Lane v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6413.pdf>

No. 6414 A-11919 Andrews v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6414.pdf>

No. 6415 A-11202 Baker v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6415.pdf>

No. 6416 A-11349/70 Haeg v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6416.pdf>

No. 6417 A-11414 Nelson v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6417.pdf>

No. 6404 A-12042 Curtis v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6404.pdf>

No. 6405 A-11705 Marshall v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6405.pdf>

No. 6406 A-11331 Suiter v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6406.pdf>

No. 6407 A-12008 Lukawesky v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6407.pdf>

No. 6402 A-11789 Bearden v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6402.pdf>

No. 6403 A-11762 Goodwin v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6403.pdf>

NOVEMBER 2016

Court of Appeals Opinions

No. 2527 A-11536 Bass v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/ap-2527.pdf>

Court of Appeals MOJs

No. 6401 A-11965 Alexie v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6401.pdf>

No. 6400 A-12492 Francisco v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6400.pdf>

No. 6394 A-11541 Cook v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6394.pdf>

No. 6395 A-11562 Gaskins v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6395.pdf>

No. 6396 A-11935 Bavilla v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6396.pdf>

No. 6397 A-12274/12298 Lee v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6397.pdf>

No. 6398 A-12015 Lambert v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6398.pdf>

No. 6399 A-12000 Fulling v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6399.pdf>

OCTOBER 2016

Court of Appeals Opinions

No. 2526 A-11514 Starkey v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/ap-2526.pdf>

Court of Appeals MOJs

No. 6392 A-11712 Davis v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6392.pdf>

No. 6393 A-11959 Fox v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6393.pdf>

No. 6391 A-11641 Seaman v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6391.pdf>

No. 6387 A-11996 Adams v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6387.pdf>

No. 6388 A-12003 Welty v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6388.pdf>

No. 6389 A-12043 Butler v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6389.pdf>

No. 6390 A-12486 Rasmussen v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6390.pdf>

SEPTEMBER 2016

Court of Appeals Opinions

No. 2521 A-12141 Olson v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/ap-2521.pdf>

No. 2522 A-11408 Thomas v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/ap-2522.pdf>

No. 2523 A-11755 Sapp v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/ap-2523.pdf>

No. 2524 A-12032 Hillman v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/ap-2524.pdf>

No. 2525 A-12332 M.H. v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/ap-2525.pdf>

No. 2519 A-11019 Lane v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/ap-2519.pdf>

No. 2520 A-11320 Miller v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/ap-2520.pdf>

No. 2513 A-11425 Hess v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/ap-2513.pdf>

No. 2514 A-11822 Trumbly v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/ap-2514.pdf>

No. 2515 A-11865 State v. Evans [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/ap-2515.pdf>

No. 2516 A-11755 Sapp v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/ap-2516.pdf>

No. 2517 A-11299 Moran v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/ap-2517.pdf>

No. 2518 A-12014 AB&M Enterprises, Inc. v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/ap-2518.pdf>

Court of Appeals MOJs

No. 6385 A-11526 State v. Nicolai [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6385.pdf>

No. 6386 A-11470 Pierren v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6386.pdf>

No. 6381 A-11797 Tanner v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6381.pdf>

No. 6382 A-11606 Windsor v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6382.pdf>

No. 6383 A-11928 Doores v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6383.pdf>

No. 6384 A-11944 Custer v. State [criminal]
<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6384.pdf>

No. 6377 A-12641 Michael v. State [criminal]
<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6377.pdf>

No. 6378 A-11560 Ripplinger v. State [criminal]
<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6378.pdf>

No. 6379 A-11522 Murphy v. State [criminal]
<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6379.pdf>

No. 6380 A-11770 Bankhead v. State [criminal]
<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6380.pdf>

No. 6376 A-11782 Holden v. State [criminal]
<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6376.pdf>

No. 6369 A-11661 Lovett v. State [criminal]
<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6369.pdf>

No. 6370 A-11601 Corbett v. State [criminal]
<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6370.pdf>

No. 6371 A-11280 Richardson v. State [criminal]
<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6371.pdf>

No. 6372 A-11338 Timmer v. State [criminal]
<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6372.pdf>

No. 6373 A-11611 Lewis v. State [criminal]
<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6373.pdf>

No. 6374 A-11709 Wilde v. State [criminal]
<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6374.pdf>

No. 6375 A-11706 Smith v. State [criminal]
<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6375.pdf>

AUGUST 2016

Court of Appeals Opinions

No. 2512 A-12619 Grant v. State [criminal]
<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/ap-2512.pdf>

No. 2511 A-11742 Savo v. State [criminal]
<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/ap-2511.pdf>

Court of Appeals MOJs

No. 6368 A-11683 Debeaulieu v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6368.pdf>

No. 6367 A-11555 Frank v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6367.pdf>

No. 6363 A-11535 Lundy v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6363.pdf>

No. 6364 A-11593 Tolotta v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6364.pdf>

No. 6365 A-11553 Barber v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6365.pdf>

No. 6366 A-12021 Merriner v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6366.pdf>

JULY 2016

No. 2507 A-10972 Palmer v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/ap-2507.pdf>

No. 2508 A-11839 Hinson v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/ap-2508.pdf>

No. 2509 A-12549 Buckley v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/ap-2509.pdf>

No. 2510 A-11688 State v. Borowski [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/ap-2510.pdf>

Court of Appeals MOJs

No. 6359 A-10916 Zaukar v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6359.pdf>

No. 6360 A-11164 Herring v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6360.pdf>

No. 6361 A-11531 Halla v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6361.pdf>

No. 6362 A-11893 Conway v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6362.pdf>

No. 6355 A-11654 Wassilie v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6355.pdf>

No. 6356 A-11610 Elia v. State [criminal]

<http://www.courtrecords.alaska.gov/webdocs/opinions/ops/am-6356.pdf>

March 10, 2017

House Judiciary Committee
Chair Rep. Claman
Vice-Chair Rep. Fansler
Rep. Kreiss-Tomkins
Rep. Eastman
Rep. Kopp
Rep. Reinbold
Rep. Millett
Rep. Stutes

Mr. Chairman and Members of the House Judiciary Committee,

Thank you for the opportunity to testify on HB 69, the bill to repeal the Alaska Workers' Compensation Appeals Commission (AWCAC or the Commission).

I know your time is limited and valuable so I will be succinct.

I want to make three points about the Commission. First, the Commission decisions over the last 11 years show a distinct and clear bias against injured workers and in favor of insurance companies. It is not a fair or balanced tribunal. Second, the Commission does not do very much work compared to other appeals courts. You get very little bang for your ½ million bucks. Third, the Commission has not brought the uniformity and clarity to workers' compensation law that was promised. Often the Commission decisions create more confusion.

I have given the Committee staff an 18-page packet of information backing up and supporting these points, with tables, data, and a complete list of cases.

COMMISSION DECISIONS ARE OVERWHELMINGLY IN FAVOR OF INSURANCE COMPANIES

This is a contentious point so I want to be clear on the numbers and cases I am using to prove it.

I reviewed the breakdown provided to this committee by former Commissioner Andy Hemenway and talked to him by phone about his research. I generally agree with his numbers and conclusions. We agree that the Commission has decided 229 cases and 100 have been appealed to the Alaska Supreme Court. He states that 39 of these cases result in decisions as opposed to dismissals or other action short of decisions and 5 cases are pending.

I have been able to find 36 of these decisions and take his word that there are 3 more out there, likely old unpublished MOJ opinions that are, being old and unpublished, harder to find. So basically, Mr. Hemenway and I agree on the cases and the data.

He concludes that the Commission has a reversal rate around 50% and I believe has testified before this Committee that this is comparable to the superior court reversal rate. I have no reason to doubt him on these points.

I asked a different question, namely how often does the Commission rule for injured workers and how often for insurance companies? Specifically, how often does the Commission get it right?

I have reviewed each of the 36 decisions preparing for today's testimony. Five of the published opinions are not on the merits of employee benefits but concern other issues, for instance Harris was about whether a gay couple had rights under the Act, a question the Commission cannot decide, and Titan was about an employer who was fined for failing to get workers' compensation insurance. Removing these 5 left me with 31 decisions on employee benefits.

In the attachment to this letter, I noted whether the Board, the Commission, and eventually the Supreme Court substantially ruled in favor of the employee or the insurance company in each of the 31 cases. (In two cases the result was mixed and I noted that, counting it as a split.)

In these cases, the Commission ruled in favor of insurance companies over 85% of the time.

In the 13 cases where the insurance company position was wholly or mainly affirmed by the Supreme Court, the Appeals Commission ruled for the insurance company in all 13. The Commission is very good at spotting when the insurance company should win.

In the 18 cases where the employee's legal position was correct, the Commission ruled in favor of the employee in only 3.5 cases or less than 20%. The Board in these decisions was correct exactly 50% of the time. The conclusion from this data is that even where the employee is entitled to benefits, the Commission will rule for the insurance company over 80% of the time.

So how can Mr. Hemenway be right that the Commission has generally a 50% reversal rate? Simple. The Commission almost always rules for the insurance company and they are right half the time. The Board and the Supreme Court take a much more balanced approach. But the Commission reaches largely the same conclusion regardless of the merits. When the insurance company has the better argument, the Commission rules in their favor 100% of the time. When the injured worker has the better argument, the Commission still rules for the insurance company over 80% of the time. It does not let the facts get in the way.

This conclusion supports what I have seen as a practicing attorney representing injured workers. I counsel my clients that they have almost no chance of winning at the Commission regardless of the merits of their case. The deck is simply too stacked against them. Even when their legal position is correct, they lose 4 out of 5 times before the Commission.

THE COMMISSION DOES NOT DO MUCH WORK

Mr. Hemenway noted that the Commission has issued 229 decisions in its 11-year history.

In the attachment, I list the number of decisions issued per year. This is an average of just under 21 decisions per year. But the number of decisions issued has been falling for some years. Over the first 5 years, the average was just under 29 per year. (Because the Commission was formed in November 2005, these are included in 2006.) Over the last five years, from 2011 thru 2016, the average number of decisions issued per year has been under 14 per year. That is about one per month.

As a point of comparison, I counted the number of decisions issued in the last 8 months by both the WC Commission and the criminal Court of Appeals, another 3-member appeals panel in Alaska. In that period, the Criminal Court of Appeals issued 114 decisions or about 14-15 per month. There are 3 attorneys on this court, so each was writing about 4-5 opinions per month. In that same period, the WC Commission issued 7 decisions, or less than one per month. Put simply, each member of the Court of Appeals did about 5 times as much work as the AWCAC Commissioner.

THE COMMISSION HAS NOT PROVIDED THE LEGAL CLARITY PROMISED

Part of the original justification for the Commission was that it could provide consistent and reliable legal precedents for the Board to follow. This has not come to pass. The Commission decisions often lack clarity and sometimes create confusion themselves. In Hudak v. Pirate Airworks, Inc., the Commission denied a petition for review without adequate explanation and the Supreme Court was forced to order the Commission to explain itself. In Thurston v. Guys with Tools, 217 P.3d 824 (Alaska 2009), the Commission decision was so difficult to understand that the Supreme Court granted an appeal to clarify the law. This is the job the Commission was supposed to perform.

Sometimes the Commission doesn't seem to read its own decisions. An important issue in workers' compensation is who pays medical bills for injured workers when they win at the board and the insurance company appeals. On January 25, 2012, the Commission issued a unanimous decision that the injured worker, in this case a firefighter with cancer, should receive medical benefits pending appeal unless the insurance company can show a "likelihood of success on the merits". Six days later, on January 31, 2012, in another case, the Commission ruled unanimously that the insurance company only needed to show "serious and substantial legal questions" and denied medical benefits pending appeal. Within one week, the Commission had used two very different legal standards to address the same question. The Alaska Supreme Court was forced to grant petitions for review in both cases, consolidate them, and issue a ruling clarifying the correct rule of law. Adamson v. MOA, 301 P.3d 569 (Alaska 2013).

Not only does the Commission not clear up the law, it sometimes confuses it further, even contradicting itself.

In conclusion, the Commission has a very clear bias in favor of insurance companies, does not do much work compared to other appeals courts, and has brought confusion rather than clarity to the law. The repeal of the Commission is long overdue. Please vote to repeal it and allow injured workers a fair chance in appeals of Board decisions.

Thank you for your time.

Sincerely

Eric Croft

RUSSELL WAGG MESHKE & BUDZINSKI

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February 28, 2017

Senate Labor & Commerce Committee

Senator.Mia.Costello@akleg.gov
Senator.Shelley.Hughes@akleg.gov
Senator.Kevin.Meyer@akleg.gov
Senator.Gary.Stevens@akleg.gov
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House Judiciary Committee

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Representative.Jonathan.Kreiss-Tomkins@akleg.gov
Representative.Gabrielle.LeDoux@akleg.gov
Representative.David.Eastman@akleg.gov
Representative.Chuck.Kopp@akleg.gov
Representative.Lora.Reinbold@akleg.gov

Re: Senate Bill 29 and House Bill 69

Dear Legislators,

While all who work in the field of Workers' Compensation have differing opinions of the Appeals Commission, one thing is certain: going back to the Superior Court and a system that was changed in 2005 because it did not work will not fix anything and will not cost less.

In 2005, the legislature actually codified its specific intent for the Workers' Compensation Act. "It is the intent of the legislature that this chapter be interpreted so as to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of this chapter." AS 23.30.001(1).

Returning to the Superior Court will not make the process quick or efficient. Ms. Mede, on behalf of the court system, has testified that superior court judges are not familiar with this

Senate Labor & Commerce Committee
House Judiciary Committee
Re: Senate Bill 29 and House Bill 69
February 28, 2017

area of law, that workers' compensation appeals are very complex, and that workers' compensation cases are considered less urgent than criminal cases or CINA cases and consequently often go to the bottom of the stack. Before the Commission was created in 2005, appeals would be lengthy and waiting for a decision would take 12 to 18 months.

Returning to the Superior Court will make the system less predictable. But for the Supreme Court, decisions of the Appeals Commission, "have the force of legal precedent." AS 23.30.008(a). That makes the law predictable and results in less litigation, less cost, and less delay. Superior Court Judges issue a single decision applicable to a single case only. Many times attorneys practicing in this area do not know about a Superior Court decision or do not care because it has no impact on their specific case. The same old legal argument can be made in a different case in hopes one can receive a different decision from a different Superior Court Judge.

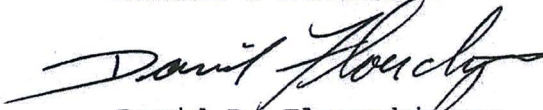
If the legislative intent remains the same and the legislature wants to reduce costs, they should consider setting up a designated administrative law judge in the Office of Administrative Hearings already established in the Department of Administration. This has the potential to provide a person trained in the law of workers' compensation whose decisions have the force of legal precedent and can do so quickly at less cost.

Finally, this law firm limits its practice almost exclusively to workers' compensation cases. Combined, we have over 130 years of experience practicing workers' compensation law. While it might be in our financial best interests to return to the lengthy, inefficient, less predictable and more costly system of appealing to the Superior Court, it certainly would not favor employers or injured workers.

Thank you for your consideration.

Very truly yours,

RUSSELL WAGG
MESHKE & BUDZINSKI



David D. Floerchinger
Firm President



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March 7, 2017

The Honorable Matt Claman
Chair, House Judiciary Committee
State Capitol, Room 118
Juneau, AK 99801

RE: House Bill 69

Dear Representative Claman:

The Workers' Compensation Committee of Alaska (WCCA) is an employer advocacy group dedicated to helping educate and advocate for Alaska employers on issues regarding workers' compensation. We thank the governor for taking an interest in the workers' compensation system and introducing legislation meant to streamline the appeals process for injured workers and employers.

The WCCA has reviewed House Bill 69 and it is our concern that even though the legislation is well-intended to streamline the appeals process, returning to the Superior Court system for appeals will have the effect of making the workers' compensation system less efficient and less predictable. It is an area of the law with which Superior Court judges are totally unfamiliar. Workers' compensation cases are viewed as being less of a priority than other matters heard in Superior Court and will therefore receive a lower priority. Consequently, the length of time required to get through the appeals process are likely to be upwards of 18 months, significantly longer than is currently the case.

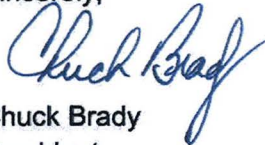
Therefore, it is the position of the WCCA that we cannot support House Bill 69. Instead, what should be considered is a move away from relying on a system of hearing officers and a move towards the use of administrative law judges to move disputed workers' compensation claims through the system.

**CHUCK BRADY, PRESIDENT; MISTY STEED, VICE PRESIDENT; JOAQUITA MARTIN, TREASURER;
LIZ GLOOSCHENKO, SECRETARY**

WCCA
March 7, 2017
Page 2

As always, the WCCA is available to provide input and guidance on workers' compensation issues. The WCCA believes that comprehensive workers' compensation reform is what Alaska employers need...desperately! Please let us know how we can help.

Sincerely,

A handwritten signature in blue ink that reads "Chuck Brady". The signature is written in a cursive, flowing style.

Chuck Brady
President



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Labor and
Workforce Development

Office of the Commissioner

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March 17, 2017

The Honorable Matt Claman
House Judiciary Chair
State Capitol, Room 118
Juneau, AK 99801

Dear Chair Claman:

Thank you for the opportunity to provide testimony in support of HB 69 on March 10, 2017. In response to some of the questions raised by the committee, I would like to provide the following information to demonstrate why Alaska Workers' Compensation Board appeals should be sent to the Superior Court and not the Office of Administrative Hearings (OAH).

- **The Department would forgo almost half a million dollars each year in savings proposed by HB 69.**

The Legislature has asked the Department of Labor and Workforce Development to examine our statutes and regulations to find cost savings. The Alaska Workers' Compensation Appeals Commission costs the Department almost half a million dollars each a year with outcomes that have not significantly improved the system. Returning Alaska Workers' Compensation Board appeals to the Superior Court, as occurred prior to 2005, would save the Department \$443,300 per year and would cost the court system \$0 per year, per the fiscal notes attached to HB 69. This is a smart way to cut state spending without negatively impacting employers or injured workers.

Sending Alaska Workers' Compensation Board appeals to OAH would preclude this cost savings. OAH has to cover its costs by charging billable hours for its administrative judges' work. The Department would have to pay OAH for administrative judges' time spent on Alaska Workers' Compensation Board appeals, because these costs cannot be charged to other state agencies and OAH does not have general funds to cover the cost as the Superior Court does. It cost the Department over \$13,000 just to have OAH work on the *recruitment* of the current Workers' Compensation Appeals Commission Chair.

- **Alaska Workers' Compensation Board decisions should be appealed to the superior court.**

OAH conducts mandatory administrative hearings on behalf of certain administrative agencies. These case types can be found in AS 44.64.030(a). In addition to OAH, many other agencies conduct mandatory formal hearings and make final agency decisions. For example, formal hearings and final agency determinations are made by the Alaska Labor Relations Agency, Regulatory Commission of Alaska, Commercial Fisheries Entry Commission, and Division of Motor Vehicles. These final agency decisions may be appealed to the Superior Court and then to the Alaska Supreme

The Honorable Matt Claman
March 17, 2017
Page 2

Court. OAH does not hear any matters today in which there is a direct appeal to the Alaska Supreme Court from OAH, and yet this is the unusual route Workers' Compensation Board appeals would take.

Like OAH and similar adjudicatory agency branches, the Alaska Workers' Compensation Board conducts mandatory administrative hearings and makes the final agency decision in workers' compensation proceedings. However, unlike other adjudicatory agency branches, Alaska Workers' Compensation Board decisions are currently appealed to the Alaska Workers' Compensation Appeals Commission instead of the Superior Court. The Appeals Commission's decision may then be appealed directly to the Alaska Supreme Court.

The Alaska Workers' Compensation Board should be treated the same as OAH and other similar adjudicatory agencies that conduct mandatory formal administrative hearings and make final agency determinations. Final agency decisions, whether from OAH or from another adjudicatory agency, may be appealed to the Superior Court by any party, and then may be appealed to the Alaska Supreme Court. Similarly, Alaska Workers' Compensation Board decisions should be appealed to the Superior Court.

Please don't hesitate to contact me if you have additional questions.

Sincerely,

A handwritten signature in blue ink that reads "Heidi Drygas". The signature is fluid and cursive, with the first name being more prominent.

Heidi Drygas
Commissioner

MEMORANDUM

TO: House Judiciary Committee

FROM: Kathleen A. Frederick, Chief Administrative Law Judge

RE: HB 69 (Abolition of Workers' Compensation Appeals Commission)

DATE: March 18, 2017

On March 10, 2017, I was contacted by Representative Claman's office while public testimony was being taken about HB 69 and was asked to testify. Since I was not prepared to testify on such short notice, this memo will supplement my testimony and respond to questions asked by the committee. The questions I was asked centered around whether workers' compensation appeals could be handled by the Office of Administrative Hearings (OAH) and what costs might be involved.

Questions Asked By the Committee

1. *Would OAH be able to handle appeals that are currently heard by the WCAC?*

Answer: Yes. OAH is an independent office for adjudicating administrative disputes. We are required to hear 66 different administrative case types involving disputes ranging from \$40 to \$800,000,000. In addition, OAH hears cases that are voluntarily referred to it from State agencies, municipalities, and other public entities.

2. *Would OAH's Current Judges Have the Expertise to Handle WCAC cases?*

Answer: If OAH is assigned this caseload, we would need to develop the expertise required. We assign judges to cases based on expertise. Although OAH has had judges with workers' compensation experience in the past, none of our current judges have that expertise.¹ If we used current judges for this caseload, therefore, OAH would need to obtain training for them from a source such as the National Judicial College. Alternatively, OAH would fill its current vacancy with an attorney who has extensive workers' compensation experience, and assign the WCAC cases to that person.

3. *Would OAH need additional staff to handle WCAC cases?*

Answer: Based on the current workload of the WCAC, OAH believes that the workload could be absorbed by its existing staff, which consists of three Law Office Assistants, a Paralegal, and an Administrative Assistant III who serves as the office manager.

¹ See Exhibit 1, which lists OAH's current roster of judges and their respective backgrounds. Retired WCAC Chair Andrew Hemenway was formerly an Administrative Law Judge (ALJ) at OAH.

4. *Would OAH need additional ALJs to handle WCAC cases?*

Answer: OAH currently has ten ALJs, and one vacant ALJ position.² Given the current downturn in the economy, OAH believes it has enough PCNs to cover this work.

5. *Would there be a fiscal note from OAH if it was the body that heard the appeals from the Workers' Compensation Board?*

Answer: Yes. OAH funds itself through inter-agency receipts. If the Department of Labor used OAH to handle workers' compensation appeals, this work would need to be funded through an RSA with the Department of Labor. The adjudication and mediation services would be billed to the Department of Labor at OAH's hourly rate.³ The cost would depend on the number of cases. Note that because OAH would be able to provide both adjudication *and* effective mediation services at the appellate level for WCAC cases, the costs could be less than our estimate if cases are settled by mediation rather than adjudication.⁴

The I/A fiscal note relating to the cost of hearing these cases would be based on the estimated time needed to handle the caseload. The WCAC's annual reports to the legislature covering 2010 through 2016 show that during this seven-year period, 191 new cases were filed with the WCAC. During this same seven-year period, the WCAC issued 98 decisions.⁵ In addition, the WCAC issued 767 orders during this seven-year period.

Depending on the staffing model selected, there could also be a GF fiscal note related to ensuring that OAH ALJs were familiar with this specialized area of law.

6. *Are there any matters handled by OAH where there is a direct appeal to the Alaska Supreme Court, rather than an appeal from the Superior Court decision?*

Answer: No.

7. *Does OAH have any matters where they hear appeals from an administrative agency rather than a due process hearing?*

Answer: Yes, on occasion OAH hears appeals from an administrative agency. The most recent occasion involved an appeal from the Fairbanks North Star Borough Planning Commission; the decision was issued last week.

If you have other questions about OAH, we can provide additional information upon request.

² The vacant ALJ position is currently located in Juneau.

³ OAH's hourly rate is calculated annually using a required federal methodology. This hourly rate must be charged to all agencies using OAH's services. Because the federal methodology is applied to certain prescribed factors that can vary each year, the rate has ranged from \$145 an hour to \$192 an hour.

⁴ OAH's innovative mediation program for DHSS cases won the Denali Award for cost-savings initiatives in 2016.

⁵ Not all cases that are filed proceed to a final decision. Some will be settled or abandoned during the appeal phase.

Exhibit 1

Kathleen A. Frederick, Chief Administrative Law Judge. Prior to joining OAH in 2014, ALJ Frederick litigated cases statewide for Alaska's Office of Elder Fraud and Assistance, after spending 27 years in private practice. While in private practice, Chief ALJ Frederick focused on administrative law, real estate, business law, litigation, and employment law and was AV-rated by Martindale Hubbell. Chief ALJ Frederick is a Phi Beta Kappa graduate of Gettysburg College, has an M.S. *cum laude* from Drexel University, and a J.D. *cum laude* from Villanova University School of Law, where she served as Research/Projects Editor of the *Villanova Law Review*.

Christopher Kennedy, Deputy Chief Administrative Law Judge. ALJ Kennedy joined OAH in 2005. He manages the Anchorage office and is a tax-qualified ALJ. Prior to joining OAH, Deputy Chief Kennedy was a Senior Assistant Attorney General at the Department of Law. In his 11 years at the Department of Law, ALJ Kennedy worked in the Environmental, Torts, and Oil, Gas & Mining Sections. He previously served as a law clerk for U.S. District Judge James A. von der Heydt, and spent five years in private practice where he handled energy, procurement, and utilities litigation, corporate restructuring, and commercial transactions. Deputy Chief Kennedy is a *magna cum laude* graduate of Harvard University and a graduate of Berkeley Law, where he served on the *California Law Review*.

Neil Slotnick, Tax-Qualified Administrative Law Judge and Juneau Lead ALJ. ALJ Slotnick came to OAH in 2013, after serving for ten years as a Senior Assistant Attorney General at the Department of Law, where he represented the Alaska Department of Education and Early Development. Previously, ALJ Slotnick was Deputy Commissioner of Revenue, supervising the Tax and Treasury Divisions. He law clerked for Alaska Supreme Court Chief Justice Rabinowitz. He is a graduate of Reed College and Stanford University Law School. ALJ Slotnick is in OAH's Juneau office.

David J. Mayberry, Tax-Qualified Administrative Law Judge. ALJ Mayberry joins OAH in February of 2017. He has been a leading in Anchorage in the oil and gas and environmental fields, practicing with Crowell & Moring LLP and Patton Boggs LLP. He has also served on the Alaska Oil and Gas Conservation Commission and as a law clerk for U.S. District Judge James K. Singleton. He is a UAA graduate and received his J.D. from Lewis & Clark College, Northwestern School of Law. He holds a certificate in Natural Resources and Environmental Law. ALJ Mayberry will be based in OAH's Anchorage office.

Cheryl Mandala, Administrative Law Judge. ALJ Mandala joined OAH in 2015 and is based in the Anchorage office. Prior to joining OAH, she was an Assistant Attorney General in the Torts Section of the Alaska Department of Law. She also spent seven years in private practice, where she handled a variety of employment, tort, and administrative matters at the trial and appellate level for clients throughout Alaska. ALJ Mandala graduated *magna cum laude* from Macalester College, holds a master's degree in Public Policy, and graduated Order of the Coif from Stanford Law School. She served as a law clerk for Alaska Supreme Court Justice Alexander Bryner.

Kathryn A. Swiderski, Administrative Law Judge. ALJ Swiderski joined OAH in 2015 in a temporary position, and she became a permanent ALJ in the Anchorage office in 2016. Prior to OAH, she served as an Assistant Attorney General at the Department of Law for seven years, where she represented the Alaska Departments of Fish & Game and Natural Resources. She also worked in private practice, for two years in a large Colorado law firm and for three years as a solo contract attorney. ALJ Swiderski is a *summa cum laude* graduate of the University of Notre Dame and a member of Phi Beta Kappa. She received her J.D. *cum laude* from the University of Michigan. She law clerked two years for Alaska Supreme Court Justice Daniel A. Moore.

Kathryn L. Kurtz, Administrative Law Judge. ALJ Kurtz joined OAH in 2015. Prior to joining OAH, she worked for over 16 years as an attorney for the Legislative Affairs Agency, including two years as Revisor of Statutes. She spent two years in private practice, and one year as a Superior Court law clerk for Judge Walter Carpeneti. ALJ Kurtz received her undergraduate degree from Harvard University, and a J.D. from the University of Chicago. She is based in the Juneau office.

Andrew M. Lebo, Administrative Law Judge. ALJ Lebo joined OAH in 2014 with extensive prior experience as a private hearing officer for special education cases. His background includes 17 years as a solo practitioner, four years as an Assistant Ombudsman for the State of Alaska, four years as an associate focusing on business and employment litigation, and one year as a Superior Court law clerk. ALJ Lebo is a graduate of the University of California Santa Cruz, has an M.A. from University of California Davis, and a J.D. from King Hall, University of California Davis. He works in the Anchorage office.

Lawrence A. Pederson, Administrative Law Judge. Based in Anchorage, ALJ Pederson joined OAH in 2012 as part of a merger with the Office of Hearings and Appeals of Alaska's Department of Health and Social Services. He had been the senior hearing officer in that office, serving for seven years. Prior to that time, he was in private practice for 22 years, handling a wide range of civil and administrative law matters and appearing in state and federal trial and appellate courts. ALJ Pederson attended the University of Alaska Fairbanks and received his J.D. from Williamette University College of Law.

Bride A. Seifert, Administrative Law Judge. ALJ Seifert came to OAH in 2013 from the Department of Law, where she was an Assistant Attorney General representing the Department of Health and Social Services. She law clerked for Superior Court Judge Louis Menendez. Before attending law school, ALJ Seifert managed energy policy for the Minnesota Chamber of Commerce, was a clinic coordinator for the Minnesota Women Lawyers, and managed her own business. ALJ Seifert is a graduate of The Ohio State University and received her J.D. *magna cum laude* from the William Mitchell College of Law. She is in OAH's Juneau office.



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Labor and
Workforce Development

Office of the Commissioner

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February 9, 2017

The Honorable Sam Kito
House Labor and Commerce Chair
State Capitol, Room 403
Juneau, AK 99801

Dear Chair Kito:

Thank you for the opportunity to provide testimony in support of HB 69 on February 6, 2017. In response to the outstanding questions from the committee, I have provided the following responses.

1. Which Party Usually Wins in Cases Appealed from the Alaska Workers' Compensation Appeals Commission to the Alaska Supreme Court?

Since creation of the Commission in 2005, 100 Alaska Workers' Compensation Appeals Commission Cases were appealed to the Alaska Supreme Court as of December 31, 2016. Of these, the Alaska Supreme Court affirmed or reversed 39 (the remainder of the cases were not decided by the Alaska Supreme Court for various reasons, including settlement, failure to prosecute, declining to hear a petition for review, or sending it back for additional information). The claimant prevailed in approximately 51% of these cases, while the employer prevailed in approximately 49%.

2. How Many Claims are Filed with the Division Each Year?

Director Marx wishes to clarify her testimony. There are approximately 20,000 reports of injury and occupational illness and 1,200 claims filed with the Division each year. The Alaska Workers' Compensation Board holds approximately 250-300 hearings each year.

Please don't hesitate to contact me if you have additional questions.

Sincerely,

A handwritten signature in blue ink that reads "Heidi Drygas".

Heidi Drygas
Commissioner

Fiscal Note

State of Alaska
2017 Legislative Session

Bill Version:	HB 69
Fiscal Note Number:	1
(H) Publish Date:	1/20/2017

Identifier: DOLWD-WCAC-10-31-16
 Title: REPEAL WORKERS' COMP APPEALS
 COMMISSION
 Sponsor: RLS BY REQUEST OF THE GOVERNOR
 Requester: Governor

Department: Department of Labor and Workforce Development
 Appropriation: Workers' Compensation
 Allocation: Workers' Compensation Appeals Commission
 OMB Component Number: 2816

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2018 Appropriation Requested	Included in Governor's FY2018 Request	Out-Year Cost Estimates					
			FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
OPERATING EXPENDITURES								
Personal Services	(147.4)	294.7	(294.7)	(294.7)	(294.7)	(294.7)	(294.7)	(294.7)
Travel	(9.1)	18.2	(18.2)	(18.2)	(18.2)	(18.2)	(18.2)	(18.2)
Services	(61.4)	122.9	(122.9)	(122.9)	(122.9)	(122.9)	(122.9)	(122.9)
Commodities	(2.5)	5.0	(5.0)	(5.0)	(5.0)	(5.0)	(5.0)	(5.0)
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	(220.4)	440.8	(440.8)	(440.8)	(440.8)	(440.8)	(440.8)	(440.8)

Fund Source (Operating Only)

1157 Wrkrs Safe (DGF)	(220.4)	440.8	(440.8)	(440.8)	(440.8)	(440.8)	(440.8)
Total	(220.4)	440.8	(440.8)	(440.8)	(440.8)	(440.8)	(440.8)

Positions

Full-time		2.0	(2.0)	(2.0)	(2.0)	(2.0)	(2.0)
Part-time							
Temporary							

Change in Revenues

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimated SUPPLEMENTAL (FY2017) cost: 0.0 (separate supplemental appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2018) cost: 0.0 (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
 If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable; initial version.

Prepared By:	Marie Marx, Director	Phone:	(907)465-6060
Division:	Workers' Compensation	Date:	11/01/2016 09:00 AM
Approved By:	Heidi Drygas, Commissioner	Date:	11/01/16
Agency:	Department of Labor and Workforce Development		

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2017 LEGISLATIVE SESSION

Analysis

This legislation would require new appeals cases currently heard by the Workers' Compensation Appeals Commission (WCAC) to be filed with the Alaska Superior Court beginning on June 1, 2017, but would retain the WCAC's jurisdiction over pending matters until December 1, 2017. The WCAC would be dissolved, effective December 31, 2017.

This legislation would eliminate the department's staffing and other operating costs currently required to support the WCAC. Assuming that the WCAC would cease incurring operating expenses after December 31, 2017, the FY2018 cost savings was calculated by budgeting for six months instead of 12. The WCAC positions would terminate after the necessary six months of support during FY2018 and be deleted in FY2019.

Fiscal Note

State of Alaska
2017 Legislative Session

Bill Version: HB 69
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB069-JUD-ACS-02-06-17
Title: REPEAL WORKERS' COMP APPEALS
COMMISSION
Sponsor: RLS BY REQUEST OF THE GOVERNOR
Requester: House Labor & Commerce

Department: Judiciary
Appropriation: Alaska Court System
Allocation: Trial Courts
OMB Component Number: 768

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2018	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2018 Request	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
OPERATING EXPENDITURES	FY 2018	FY 2018					
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimated SUPPLEMENTAL (FY2017) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2018) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Initial version.

Prepared By:	Nancy Meade, General Counsel	Phone:	(907)463-4736
Division:	Alaska Court System	Date:	02/06/2017 10:00 AM
Approved By:	Nancy Meade for Christine Johnson, Administrative Director	Date:	02/06/17
Agency:	Alaska Court System		

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2017 LEGISLATIVE SESSION

BILL NO. HB 69

Analysis

House Bill 69 would eliminate the Alaska Workers' Compensation Appeals Commission currently housed within the Department of Labor, and transfer jurisdiction over appeals pending in that Commission and all future appeals from the decisions of the Workers' Compensation Board to the superior court.

According to case data provided by the Commission, an average of 33 appeals per year were handled by the Commission over the last eleven years. The court system therefore anticipates that, under this bill, the superior court would be handling an additional 33 administrative appeals from the Board each year, on average. These additional cases would be presided over by a superior court judge; we anticipate that the impact of these new cases would be spread across jurisdictions and could be handled by our superior court judges without additional resources.

The court system does not anticipate that this bill would change the caseload of the Supreme Court, which already currently handles appeals from the Commission. Its jurisdiction would not be altered under this bill; the appeals would simply come from the superior court instead of from the Commission.

The court system anticipates that it will be able to absorb the increased caseload into its operations without a fiscal impact, and therefore submits this zero fiscal note.