

HB

69

<TARGET><BILL>HB 69</BILL><SUBJECT>HB
69</SUBJECT><COMM>HL&C30</COMM></TARGET>



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

**Department of Labor and
Workforce Development**

Office of the Commissioner

Post Office Box 11149
Juneau, Alaska 99811
Main: 907.465.2700
Fax: 907.465.2784

TO: Representative Sam Kito, III, Labor and Commerce Chair

FROM: Commissioner Heidi Drygas HD

DATE: January 27, 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.

STATE CAPITOL
P.O. Box 110001
Juneau, AK 99811-0001
907-465-3500
fax: 907-465-3532



Governor Bill Walker
STATE OF ALASKA

550 West Seventh Avenue, Suite 1700
Anchorage, AK 99501
907-269-7450
fax 907-269-7461
www.Gov.Alaska.Gov
Governor@Alaska.Gov

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
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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

Post Office Box 111149
Juneau, Alaska 99811
Main: 907.465.2700
Fax: 907.465.2784

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.

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	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	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Personal Services	(147.4)	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)
Services	(61.4)	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)
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	(220.4)	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
 Division: Workers' Compensation
 Approved By: Heidi Drygas, Commissioner
 Agency: Department of Labor and Workforce Development

Phone: (907)465-6060
 Date: 11/01/2016 09:00 AM
 Date: 11/01/16

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 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								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	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	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	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.

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.



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Department of Labor and
Workforce Development

Office of the Commissioner

P.O. Box 111149
Juneau, Alaska 99811
Main: 907.465.2700
Fax: 907.465.2784

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