

ALASKA LEGISLATURE

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HOUSE and SENATE FINANCE COMMITTEE FILES, 2003-2004

2 (c) An administrative law judge shall voluntarily seek disqualification and
 3 withdraw from a case in which the administrative law judge cannot accord a fair and
 4 impartial hearing or consideration, or other reason established under AS 44.64.070. A
 5 party may request disqualification of an administrative law judge under AS 44.64.070.
 6 Except as otherwise permitted by law, an administrative law judge may not engage in
 7 interviews with or hear evidence or argument from, a party directly or indirectly,
 8 except upon opportunity for all parties to be present. Copies of all communications to
 9 an administrative law judge shall be served on all other parties.

10 (d) All testimony given during a hearing before an administrative law judge
 11 shall be recorded but need not be transcribed unless further review is initiated.
 12 Hearings before an administrative law judge shall be open to the public.

13 * Sec. 61. AS 23.30.115 is amended to read:

14 Sec. 23.30.115. Attendance and fees of witnesses. (a) A person is not
 15 required to attend as a witness in a hearing [PROCEEDING] before the commission
 16 or an administrative law judge [BOARD] at a place more than 100 miles from the
 17 person's place of residence, unless the person's lawful mileage and fee for one day's
 18 attendance is first paid or tendered to the person; but the testimony of a witness may
 19 be taken by deposition or interrogatories according to the Rules of Civil Procedure.

20 (b) A witness summoned to testify in a hearing [PROCEEDING] before the
 21 commission or an administrative law judge [BOARD] or whose deposition is taken
 22 shall receive the same fees and mileage as a witness in the superior court. The
 23 commission clerk may issue subpoenas and subpoenas duces tecum to summon a
 24 witness to testify in a hearing or deposition and to produce records. The superior
 25 court shall enforce the subpoenas on application by the commission in the
 26 manner provided in AS 44.62.590.

27 * Sec. 62. AS 23.30.120(b) is amended to read:

28 (b) If delay in giving notice is excused by the administrative law judge
 29 [BOARD] under AS 23.30.100(d)(2), the burden of proof of the validity of the claim
 30 shifts to the employee, notwithstanding the provisions of (a) of this section.

31 * Sec. 63. AS 23.30.122 is repealed and reenacted to read:

Sec. 23.30.122. Credibility of witnesses. The administrative law judge has

1 the sole power to determine the credibility of testimony presented by a witness. When
2 credibility is disputed in a proceeding before the administrative law judge, the
3 administrative law judge's determination of credibility must be supported by specific
4 findings.

5 * Sec. 64. AS 23.30 is amended by adding a new section to read:

6 **Sec. 23.30.124. Reconsideration of compensation order.** (a) An
7 administrative law judge may order a reconsideration of all or part of a compensation
8 order on the administrative law judge's own motion or on petition of a party. A
9 petition for reconsideration must be filed with the office of the commission within 15
10 days after mailing of the compensation order. The power to order reconsideration
11 expires 30 days after the mailing of a compensation order. If an order of
12 reconsideration is not filed with the office of the commission within the time allowed
13 for ordering reconsideration, the petition is considered denied.

14 (b) If reconsideration is ordered under (a) of this section, the compensation
15 order under reconsideration is stayed until the decision on reconsideration is file
16 The case may be reconsidered by the administrative law judge on of all the pertinent
17 parts of the record and the additional arguments that are permitted by the
18 administrative law judge. A written decision on reconsideration shall be filed with the
19 commission within 30 days after the date the order of reconsideration was filed.

20 * Sec. 65. AS 23.30.125 is repealed and reenacted to read:

21 **Sec. 23.30.125. Administrative review of compensation order.** (a) A
22 compensa~~tion~~ order becomes effective when filed with the office of the commission as
23 provided ~~in~~ AS 23.30.110, and, unless proceedings to reconsider, suspend, or set aside
24 the ord~~er~~ are instituted as provided in this chapter, the order becomes final on the 31st
25 day after it is filed.

26 (b) Notwithstanding other provisions of law, a decision or order of an
27 administrative law judge is subject to review by the commission as provided in this
28 chapter.

29 (c) If a compensation order is not in accordance with law or fact, the order
30 may be suspended or set aside, in whole or in part, through proceedings in the
31 commission brought by a party in interest against all other parties to the proceedings

2 before the administrative law judge. The payment of the amounts required by an
 3 award may not be stayed pending a final decision in the proceeding unless, upon
 4 application for a stay, the commission, on hearing, after not less than three days' notice
 5 to the parties in interest and the director, allows the stay of payment, in whole or in
 6 part, where the party filing the application would otherwise suffer irreparable damage.
 7 Continuing future periodic compensation payments may not be stayed without a
 8 showing by the appellant of irreparable damage and the existence of the probability of
 9 the merits of the appeal being decided adversely to the recipient of compensation. The
 10 order of the commission allowing a stay must contain a specific finding, based upon
 11 evidence submitted to the commission and identified by reference to the evidence, that
 12 irreparable damage would result to the party applying for a stay and specifying the
 13 nature of the damage.

14 (d) Proceedings for reconsidering, suspending, setting aside, or enforcing a
 15 compensation order, whether rejecting a claim or making an award, may not be
 16 instituted, except as provided in this chapter.

* Sec. 66. AS 23.30 is amended by adding new sections to read:

17 Sec. 23.30.126. Review of director's decision. (a) A decision by the director
 18 that affects a right, privilege, benefit, or duty that is imposed or conferred under this
 19 chapter is subject to review by the commission. A decision by the director becomes
 20 effective when filed with the division, and, unless proceedings to suspend or set aside
 21 the decision are instituted as provided in this section, the decision becomes final on the
 22 31st day after it is filed.

23 (b) If a decision of the director is not in accordance with law or fact, the
 24 decision may be suspended or set aside, in whole or in part, through proceedings in the
 25 commission brought by a party in interest against the director and all other parties to
 26 the proceedings. The decision may not be stayed pending final decision in the
 27 proceeding unless, upon application for a stay, the commission, on hearing, after not
 28 less than three days' notice to the parties in interest and the director, allows the stay, in
 29 whole or in part, where irreparable damage would otherwise result. The order of the
 30 commission allowing the stay shall contain a specific finding, based upon evidence
 31 submitted to the commission and identified by reference to it, that irreparable damage

1 would result to the party applying for a stay, and specifying the nature of the damage.

2 (c) Proceedings for suspending, setting aside, or enforcing a director's decision
3 or determination may not be instituted except as provided in this chapter.

4 **Sec. 23.30.127. Appeals to commission.** (a) A party in interest may appeal a
5 compensation order issued by an administrative law judge to the commission within
6 30 days after the compensation order is filed with the office of the commission under
7 AS 23.30.110. The director may intervene in an appeal. If a party in interest is not
8 represented by counsel and the compensation order concerns an unsettled question of
9 law, the director may file an appeal to obtain a ruling on the question by the
10 commission.

11 (b) A party in interest may appeal a decision of the director to the commission
12 within 30 days after the decision is filed with the division.

13 (c) An appeal shall be initiated by filing with the office of the commission

14 (1) a signed notice of appeal specifying the compensation order or
15 director's decision appealed from;

16 (2) a statement of the grounds upon which the appeal is taken; and

17 (3) other materials the commission may by regulation require.

18 (d) A cross-appeal may be initiated by filing with the office of the commission
19 a signed notice of cross-appeal within 30 days after the decision is filed or within 15
20 days after service of notice of an appeal, whichever is later. The notice of cross-
21 appeal shall specify the compensation order appealed from and the grounds upon
22 which the cross-appeal is taken.

23 (e) The office of the commission may charge a fee, not to exceed \$100, for
24 filing appeals and cross-appeals, except that the office of the commission may not
25 charge a fee if the appellant is the state or a political subdivision of the state. The
26 commission may require an appellant to pay the costs of the transcript of hearing and
27 the preparation of the record on appeal. The commission may require cross-appellants
28 or intervenors to share in the costs.

29 (f) If a request for reconsideration of an administrative law judge's decision is
30 timely filed with the office of the commission, the notice of appeal must be filed
31 within 30 days after the reconsideration decision is mailed to the parties, or the date

2 the request for reconsideration is considered denied, in the absence of any action on
3 the request, whichever is earlier.

4 (g) The commission may require written briefs and make other rules and
5 orders to facilitate the business of the commission and advance the prompt, fair, and
6 just disposition of appeals.

7 **Sec. 23.30.128. Commission proceedings.** (a) An appeal from a decision of
8 the director or an administrative law judge under this chapter, and other proceedings
9 under this section, shall be heard and decided by a three-member panel of the
10 commission. An appeal panel of the commission must include the chair of the
11 commission. The chair of the commission shall assign two members to each appeal,
12 including one commission member classified as representing employees and one
13 commission member classified as representing employers. Acts, decisions, and orders
14 of the commission panel in the appeal or related proceeding shall be considered the
15 acts, decisions, and orders of the full commission. The matter on appeal shall be
16 decided by the commission panel on the record made before the director or
17 administrative law judge, a transcript or recording of the proceedings before the
18 director or administrative law judge, and oral argument and written briefs allowed by
19 the commission. Except as provided in (c) of this section, new or additional evidence
20 may not be received with respect to the appeal.

21 (b) The commission may review de novo all discretionary actions, findings of
22 fact, and conclusions of law by the administrative law judge, or the director in hearing,
23 determining, or otherwise acting on any compensation claim or petition. An
24 administrative law judge's findings regarding the credibility of testimony of a witness
25 are binding on the commission. The findings of the administrative law judge, if not
26 set aside by the commission, are conclusive.

27 (c) The commission may hold hearings and receive evidence on applications
28 for (1) stays under AS 23.30.125; (2) attorney fees and costs of appeal; (3) waiver of
29 fees by indigent appellants; or (4) dismissal of appeals for failure to prosecute or upon
30 settlement. The commission may rely on new or additional evidence presented during
31 the hearing in making its decision on the application.

(d) The commission may affirm, reverse, or modify a decision or order upon

1 review and issue other orders as appropriate. The commission may remand matters it
2 determines were improperly, incompletely, or otherwise insufficiently developed. The
3 commission may remand for further proceedings and appropriate action with or
4 without relinquishing the commission's jurisdiction of the appeal. The administrative
5 adjudication procedures of AS 44.62 (Administrative Procedure Act) do not apply to
6 the proceedings of the commission.

7 (e) Within 90 days after written briefing on the appeal is completed or oral
8 argument is held, whichever is later, the commission shall issue a decision in writing.
9 The decision must contain a concise statement of reasons for the decision, including
10 findings of fact, if required, and conclusions of law. The commission shall serve each
11 party and the director with a copy of the decision. Appeals may be expedited for good
12 cause by the commission. Unless reconsideration is ordered under (f) of this section, a
13 decision under this subsection is the final commission decision.

14 (f) A party or the director may request reconsideration of a decision issued
15 under (e) of this section within 30 days after the date of service shown in the
16 certificate of service of the decision. The request must state specific grounds for
17 reconsideration. Reconsideration may be granted if, in reaching the decision, the
18 commission (1) overlooked, misapplied, or failed to consider a statute, regulation,
19 court or administrative decision, or legal principle directly controlling; (2) overlooked
20 or misconceived a material fact; (3) misconceived a material question in the case; or
21 (4) applied law in the ruling that has subsequently changed. The panel of the
22 commission hearing the request for reconsideration shall consist of the same members
23 of the panel that issued the decision. The commission may issue an order for
24 reconsideration of all or part of the decision upon request of a party or the director.
25 Reconsideration is based on the record, unless the commission allows additional
26 argument. The power to order reconsideration expires 60 days after the date of
27 service, as shown on the certificate of service, of a decision issued under (e) of this
28 section. If the commission does not issue an order for reconsideration within the time
29 allowed for ordering reconsideration, a request for reconsideration is considered
30 denied. If reconsideration is ordered, the commission shall issue a decision within 30
31 days after the close of the record on reconsideration. The commission shall serve each

2 party in the case with a copy of the decision upon reconsideration. The decision upon
 3 reconsideration is the final commission decision.

4 (g) A decision of the commission becomes final on the

5 (1) 31st day after the date of service of a decision if reconsideration is
 6 not requested;

7 (2) 61st day after the date of service of a decision if reconsideration is
 8 requested but an order for reconsideration is not issued; or

9 (3) date of service of the commission decision upon reconsideration
 10 under (f) of this section if reconsideration is requested and an order for reconsideration
 11 is issued.

12 **Sec. 23.30.129. Judicial review of commission orders.** (a) Notwithstanding
 13 the provisions of AS 44.62.560, orders of the commission may not be appealed to the
 14 superior court. Consistent with AS 22.05.010(b), final decisions of the commission
 15 may be appealed to the supreme court, and other orders may be reviewed by the
 16 supreme court as provided by the Alaska Rules of Appellate Procedure.

17 (b) A finding by the commission concerning the weight to be accorded a
 18 witness's testimony, including medical testimony and reports, is conclusive even if the
 19 evidence is conflicting or susceptible to contrary conclusions. The commission's
 20 findings of fact may be reversed on appeal if not supported by substantial evidence in
 21 light of the whole record.

22 * Sec. 67. AS 23.30.130 is amended to read:

23 **Sec. 23.30.130. Modification of awards.** (a) A party in interest or the
 24 director may petition to modify a compensation order [UPON ITS OWN
 25 INITIATIVE, OR UPON THE APPLICATION OF ANY PARTY IN INTEREST] on
 26 the ground of a change in conditions, including, for the purposes of AS 23.30.175, a
 27 change in residence, or because of a mistake in a [ITS] determination of a material
 28 fact. An administrative law judge [, THE BOARD] may, before one year after the
 29 date of the last payment of compensation benefits under AS 23.30.180, 23.30.185,
 30 23.30.190, 23.30.200, or 23.30.215, whether or not a compensation order has been
 31 issued, or before one year after the rejection of a claim, act on the petition and
 review a compensation case under the procedure prescribed with [IN] respect to [OF]

1 claims in AS 23.30.110. Under AS 23.30.110, an administrative law judge [THE
2 BOARD] may issue a new compensation order that [WHICH] terminates, continues,
3 reinstates, increases, or decreases the compensation, or award compensation.

4 (b) A new order does not affect compensation previously paid, except that an
5 award increasing the compensation rate may be made effective from the date of the
6 injury, and, if part of the compensation due or to become due is unpaid, an award
7 decreasing the compensation rate may be made effective from the date of the injury,
8 and payment made earlier in excess of the decreased rate shall be deducted from the
9 unpaid compensation, in the manner the administrative law judge [BOARD]
10 determines.

11 * Sec. 68. AS 23.30.135 is amended to read:

12 **Sec. 23.30.135. Procedure before the division [BOARD].** (a) **The director**
13 **in** [IN] **making a decision on** an investigation or inquiry or conducting a hearing,
14 [THE BOARD] is not bound by common law or statutory rules of evidence or by
15 technical or formal rules of procedure, except as provided by this chapter. The
16 **director** [BOARD] may make **an** [ITS] investigation or inquiry or conduct a [ITS]
17 hearing in the manner **that** [BY WHICH IT] may best ascertain the rights of the
18 parties. **For purposes of investigation under AS 23.30.011, 23.30.040, 23.30.075,**
19 **23.30.080, 23.30.085, 23.30.090, 23.30.140, 23.30.155(i), 23.30.155(k),**
20 **23.30.155(m), 23.30.170, 23.30.240, and 23.30.249(d), the director may subpoena**
21 **witnesses, administer or cause to be administered oaths, and may examine or**
22 **cause to be examined books, papers and records relating to the questions under**
23 **investigation. The superior court shall enforce the subpoenas on application by**
24 **the director in the manner provided in AS 44.62.590.** Declarations of a deceased
25 employee concerning the injury **with** [IN] respect to which the investigation or inquiry
26 is being made or the hearing conducted shall be received in evidence and are, if
27 corroborated by other evidence, sufficient to establish the injury.

28 (b) All testimony given during a hearing before the **director** [BOARD] shall
29 be recorded, but need not be transcribed unless further review is initiated. Hearings
30 before the **director** [BOARD] shall be open to the public.

31 * Sec. 69. AS 23.30.140 is amended to read:

2 Sec. 23.30.140. Appointment of guardian by court. The director
 3 [BOARD] may require the appointment of a guardian or other representative by a
 4 competent court for any person who is mentally incompetent or a minor to receive
 5 compensation payable to the person under this chapter and to exercise the powers
 6 granted to or to perform the duties required of the person under this chapter. If the
 7 director [BOARD] does not require the appointment of a guardian to receive the
 8 compensation of a minor, appointment for this purpose is not necessary.

9 * Sec. 70. AS 23.30.145(a) is amended to read:

10 (a) Fees for legal services rendered with [IN] respect to a claim are not valid
 11 unless approved by the administrative law judge [BOARD, AND THE FEES MAY
 12 NOT BE LESS THAN 25 PER CENT ON THE FIRST \$1,000 OF
 13 COMPENSATION OR PART OF THE FIRST \$1,000 OF COMPENSATION, AND
 14 10 PER CENT OF ALL SUMS IN EXCESS OF \$1,000 OF COMPENSATION].
 15 When [THE BOARD ADVISES THAT] a claim has been controverted, in whole or in
 16 part, [THE BOARD MAY DIRECT THAT THE] fees for legal services may be paid
 17 by the employer or carrier in addition to compensation awarded; the fees may be
 18 allowed only on the amount of compensation controverted and awarded. When [THE
 19 BOARD ADVISES THAT] a claim has not been controverted, but [FURTHER
 20 ADVISES THAT] bona fide legal services have been rendered with [IN] respect to
 21 the claim, then the administrative law judge [BOARD] shall direct the payment of
 22 the fees out of the compensation awarded. In determining the amount of fees the
 23 administrative law judge [BOARD] shall take into consideration the nature, length,
 24 and complexity of the services performed, transportation charges, and the benefits
 25 resulting from the services to the compensation beneficiaries.

26 * Sec. 71. AS 23.30.145(b) is amended to read:

27 (b) If an employer fails to file timely notice of controversy or fails to pay
 28 compensation or medical and related benefits within 15 days after it becomes due or
 29 otherwise resists the payment of compensation or medical and related benefits and if
 30 the claimant has employed an attorney in the successful prosecution of the claim, an
 31 administrative law judge [THE BOARD] shall make an award to reimburse the
 claimant for the costs in the proceedings, including [A] reasonable attorney fees

1 [FEE]. The award is in addition to the compensation or medical and related benefits
2 ordered.

3 * Sec. 72. AS 23.30.155(a) is amended to read:

4 (a) Compensation under this chapter shall be paid periodically, promptly, and
5 directly to the person entitled to it, without an award, except where liability to pay
6 compensation is controverted by the employer. To controvert a claim, the employer
7 must file a notice, on a form prescribed by the director [BOARD], stating

8 (1) that the right of the employee to compensation is controverted;

9 (2) the name of the employee;

10 (3) the name of the employer;

11 (4) the date of the alleged injury or death; and

12 (5) the type of compensation and all grounds upon which the right to
13 compensation is controverted.

14 * Sec. 73. AS 23.30.155(b) is amended to read:

15 (b) The first installment of compensation becomes due on the 14th day after
16 the employer has knowledge of the injury or death. On this date all compensation then
17 due shall be paid. Subsequent compensation shall be paid in installments, every 14
18 days, except where an administrative law judge [THE BOARD] determines that
19 payment in installments should be made monthly or at some other period.

20 * Sec. 74. AS 23.30.155(c) is amended to read:

21 (c) The insurer or adjuster shall notify the division [BOARD] and the
22 employee on a form prescribed by the director [BOARD] that the payment of
23 compensation has begun or has been increased, decreased, suspended, terminated,
24 resumed, or changed in type. An initial report shall be filed with the division
25 [BOARD] and sent to the employee within 28 days after the date of issuing the first
26 payment of compensation. If at any time 21 days or more pass and no compensation
27 payment is issued, a report notifying the division [BOARD] and the employee of the
28 termination or suspension of compensation shall be filed with the division [BOARD]
29 and sent to the employee within 28 days after the date the last compensation payment
30 was issued. A report shall also be filed with the division [BOARD] and sent to the
31 employee within 28 days after the date of issuing a payment increasing, decreasing,

2 resuming, or changing the type of compensation paid. If the division [BOARD] and
 3 the employee are not notified within the 28 days prescribed by this subsection for
 4 reporting, the insurer or adjuster shall pay a civil penalty of \$100 for the first day plus
 5 \$10 for each day after the first day [THEREAFTER] that the notice was not given.
 6 Total penalties under this subsection may not exceed \$1,000 for a failure to file a
 7 required report. Penalties assessed under this subsection are eligible for reduction
 8 under (m) of this section. A penalty assessed under this subsection after penalties
 9 have been reduced under (m) of this section shall be increased by 25 percent and shall
 10 bear interest at the rate established under AS 45.45.010.

11 * Sec. 75. AS 23.30.155(d) is amended to read:

12 (d) If the employer controverts the right to compensation, the employer shall
 13 file with the division [BOARD] and send to the employee a notice of controversion on
 14 or before the 21st day after the employer has knowledge of the alleged injury or death.
 15 If the employer controverts the right to compensation after payments have begun, the
 16 employer shall file with the division [BOARD] and send to the employee a notice of
 17 controversion within seven days after an installment of compensation payable without
 18 an award is due. When payment of temporary disability benefits is controverted solely
 19 on the grounds that another employer or another insurer of the same employer may be
 20 responsible for all or a portion of the benefits, the most recent employer or insurer
 21 who is party to the claim and who may be liable shall make the payments during the
 22 pendency of the dispute. When a final determination of liability is made, any
 23 reimbursement required, including interest at the statutory rate, and all costs and
 24 attorney [ATTORNEYS'] fees incurred by the prevailing employer, shall be made
 25 within 14 days after [OF] the determination.

26 * Sec. 76. AS 23.30.155(e) is amended to read:

27 (e) If any installment of compensation payable without an award is not paid
 28 within seven days after it becomes due, as provided in (b) of this section, there shall be
 29 added to the unpaid installment an amount equal to 25 percent of it. This additional
 30 amount shall be paid at the same time as, and in addition to, the installment, unless
 31 notice is filed under (d) of this section or unless the nonpayment is excused by an
administrative law judge [THE BOARD] after a showing by the employer that,

1 owing to conditions over which the employer had no control, the installment could not
2 be paid within the period prescribed for the payment.

3 * Sec. 77. AS 23.30.155(f) is amended to read:

4 (f) If compensation payable under the terms of an award is not paid within 14
5 days after it becomes due, there shall be added to that unpaid compensation an amount
6 equal to 25 percent of it, which shall be paid at the same time as, but in addition to, the
7 compensation, unless review of the compensation order making the award is had as
8 provided in AS 23.30.125 and payment is stayed by an order of the commission
9 [INTERLOCUTORY INJUNCTION STAYING PAYMENTS IS ALLOWED BY
10 THE COURT].

11 * Sec. 78. AS 23.30.155(h) is amended to read:

12 (h) The director may initiate an investigation, have a medical examination
13 performed at the division's expense, or file a petition on a disputed matter for
14 hearing [BOARD MAY UPON ITS OWN INITIATIVE] at any time in a case in
15 which payments are being made with or without an award, where right to
16 compensation is controverted, or where payments of compensation have been
17 increased, reduced, terminated, changed, or suspended, upon receipt of notice from a
18 person entitled to compensation, or from the employer, that the right to compensation
19 is controverted, or that payments of compensation have been increased, reduced,
20 terminated, changed, or suspended. The director may then [, MAKE THE
21 INVESTIGATIONS, CAUSE THE MEDICAL EXAMINATIONS TO BE MADE,
22 OR HOLD THE HEARINGS, AND] take the further action considered necessary to
23 [WHICH IT CONSIDERS WILL] properly protect the rights of all parties.

24 * Sec. 79. AS 23.30.155(i) is amended to read:

25 (i) When the director [BOARD] considers it advisable, the director [IT] may
26 require an employer to make a deposit with the Department of Revenue to secure the
27 prompt and convenient payment of the compensation, and payments from the deposit
28 upon an award shall be made upon order of the director [BOARD].

29 * Sec. 80. AS 23.30.155(j) is amended to read:

30 (j) If an employer has made advance payments or overpayments of
31 compensation, the employer is entitled to be reimbursed by withholding up to 20

percent out of each unpaid installment or installments of compensation due. More than 20 percent of unpaid installments of compensation due may be withheld from an employee only on approval of an administrative law judge [THE BOARD].

* Sec. 81. AS 23.30.155(k) is amended to read:

(k) An injured employee [,] or, in the case of death, the employee's dependents or personal representative [,] shall give receipts for payment of compensation to the employer paying the compensation, [IT] and the employer shall produce the receipts [THEM] for inspection by the director [BOARD], whenever required.

* Sec. 82. AS 23.30.155(m) is amended to read:

(m) On or before March 1 of each year, the insurer or adjuster shall file a verified annual report on a form prescribed by the director [BOARD] stating the total amount of all compensation by type, the number of claims received and the percentage controverted, medical, and related benefits, vocational rehabilitation expenses, legal fees, including a separate total of fees paid to attorneys and fees paid for the other costs of litigation, and penalties paid on all claims during the preceding calendar year. If the annual report is timely and complete when received by the division [BOARD] and provides accurate information about each category of payments, the director [COMMISSIONER] shall review the timeliness of the insurer's or adjuster's reports filed during the preceding year under (c) of this section. If, during the preceding year, the insurer or adjuster filed at least 99 percent of the reports on time, the penalties assessed under (c) of this section shall be waived. If, during the preceding year, the insurer or adjuster filed at least 97 percent of the reports on time, 75 percent of the penalties assessed under (c) of this section shall be waived. If, during the preceding year, the insurer or adjuster filed 95 percent of the reports on time, 50 percent of the penalties assessed under (c) of this section shall be waived. If, during the preceding year, the insurer's or adjuster's reports have not been filed on time at least 95 percent of the time, none of the penalties assessed under (c) of this section shall be waived. The penalties that are not waived are due and payable when the insurer or adjuster receives notification from the director [COMMISSIONER] regarding the timeliness of the reports. If the annual report is not filed by March 1 of each year, the insurer or

1 adjuster shall pay a civil penalty of \$100 for the first day the annual report is late [,]
 2 and \$10 for each additional day the report is late. If the annual report is incomplete
 3 when filed, the insurer or adjuster shall pay a civil penalty of \$1,000.

4 * Sec. 83. AS 23.30.155(o) is amended to read:

5 (o) The director [BOARD] shall promptly notify the division of insurance if
 6 an administrative law judge [THE BOARD] determines that the employer's insurer
 7 has frivolously or unfairly controverted compensation due under this chapter. After
 8 receiving notice from the director [BOARD], the division of insurance shall
 9 determine if the insurer has committed an unfair claim settlement practice under
 10 AS 21.36.125.

11 * Sec. 84. AS 23.30.170(a) is amended to read:

12 (a) In case of default by the employer in the payment of compensation due
 13 under an award of compensation for a period of 30 days after the compensation is due,
 14 the person to whom the compensation is payable may, within one year after the
 15 default, file a petition with the division [APPLY TO THE BOARD MAKING THE
 16 COMPENSATION ORDER] for a supplementary order declaring the amount of the
 17 default. After the completion of any investigation the director considers necessary,
 18 and upon [,] notice [,] and hearing, as provided in AS 23.30.110, an administrative
 19 law judge may [THE BOARD SHALL] make a supplementary order declaring the
 20 amount of the default. The order shall be filed in the same manner as the
 21 compensation order.

22 * Sec. 85. AS 23.30.170(b) is amended to read:

23 (b) If the payment in default is an installment of the award, an administrative
 24 law judge has [THE BOARD MAY, IN ITS] discretion to [,] declare the whole of the
 25 award as the amount in default. The petitioner [APPLICANT] may file a certified
 26 copy of the supplementary order with the clerk of the superior court. The
 27 supplementary order is final. The court shall, upon the filing of the copy, enter
 28 judgment for the amount declared in default by the supplementary order if it is in
 29 accordance with law. Any time after a supplementary order is filed [BY THE
 30 BOARD], the attorney general, when requested to do so by the director
 31 [COMMISSIONER], shall take appropriate action to ensure [ASSURE] collection of

the defaulted payments.

2 * Sec. 86. AS 23.30.175(a) is amended to read:

3 (a) The weekly rate of compensation for disability or death may not exceed
 4 the maximum compensation rate, may not be less than 22 percent of the maximum
 5 compensation rate, and initially may not be less than \$110. However, if an
 6 administrative law judge [THE BOARD] determines that the employee's spendable
 7 weekly wages are less than \$110 a week as computed under AS 23.30.220, or less than
 8 22 percent of the maximum compensation rate a week in the case of an employee who
 9 has furnished documentary proof of the employee's wages, the administrative law
 10 judge [IT] shall issue an order adjusting the weekly rate of compensation to a rate
 11 equal to the employee's spendable weekly wages. If the employer can verify that the
 12 employee's spendable weekly wages are less than 22 percent of the maximum
 13 compensation rate, the employer may adjust the weekly rate of compensation to a rate
 14 equal to the employee's spendable weekly wages without an order of an
 15 administrative law judge [THE BOARD]. If the employee's spendable weekly
 16 wages are greater than 22 percent of the maximum compensation rate, but 80 percent
 17 of the employee's spendable weekly wages is less than 22 percent of the maximum
 18 compensation rate, the employee's weekly rate of compensation shall be 22 percent of
 19 the maximum compensation rate. Prior payments made in excess of the adjusted rate
 20 shall be deducted from the unpaid compensation in the manner an administrative law
 21 judge [THE BOARD] determines. In any case, the employer shall pay timely
 22 compensation. In this subsection, "maximum compensation rate" means 120 percent
 23 of the average weekly wage, calculated under (d) of this section, applicable on the date
 24 of injury of the employee.

25 * Sec. 87. AS 23.30.175(b) is amended to read:

26 (b) The following rules apply to benefits payable to recipients not residing in
 27 the state at the time compensation benefits are payable:

28 (1) the weekly rate of compensation shall be calculated by multiplying
 29 the recipient's weekly compensation rate calculated under AS 23.30.180, 23.30.185,
 30 23.30.190, 23.30.200, or 23.30.215 [,] by the ratio of the cost of living of the area in
 31 which the recipient resides to the cost of living in this state;

1 (2) the calculation required by (1) of this subsection does not apply if
 2 the recipient is absent from the state for medical or rehabilitation services not
 3 reasonably available in the state;

4 (3) if the gross weekly earnings of the recipient and the resulting
 5 compensation rate are determined under AS 23.30.220(a)(6), (7), or (10) the
 6 calculation required by this subsection applies only to the portion of the recipi- "s
 7 weekly compensation rate attributable to wages earned in the state;

8 (4) application of this subsection may not reduce the weekly
 9 compensation rate to less than \$154 a week, except as provided in (a) of this section;

10 (5) application of (1) - (4) of this subsection may not result in
 11 raising a recipient's weekly compensation rate to an amount that exceeds the
 12 weekly compensation rate that the recipient would have received if the recipient
 13 had been residing in the state.

14 * Sec. 88. AS 23.30.175(c) is amended to read:

15 (c) The department [BOARD] shall provide by regulation for the
 16 determination and comparison of living costs for this state and the other areas in which
 17 recipients reside and for the annual redetermination and comparison of these costs.

18 * Sec. 89. AS 23.30.180(a) is amended to read:

19 (a) In the case of total disability adjudged to be permanent, 80 percent of the
 20 injured employee's spendable weekly wages shall be paid to the employee during the
 21 continuance of the total disability. If a permanent partial disability award has been
 22 made before a permanent total disability determination, permanent total disability
 23 benefits must be reduced by the amount of the permanent partial disability award,
 24 adjusted for inflation, in a manner determined by an administrative law judge [THE
 25 BOARD]. Loss of both hands, [OR] both arms, [OR] both feet, [OR] both legs, or
 26 both eyes, or of any two of them, in the absence of conclusive proof to the contrary,
 27 constitutes permanent total disability. In all other cases, permanent total disability is
 28 determined in accordance with the facts. In making this determination the market for
 29 the employee's services shall be the

30 (1) area of residence;

31 (2) area of last employment;

(3) [THE] state of residence; and

(4) [THE] State of Alaska.

2
3 * Sec. 90. AS 23.30.190(b) is amended to read:

4 (b) All determinations of the existence and degree of permanent impairment
5 shall be made strictly and solely under the whole person determination as set out in the
6 American Medical Association Guides to the Evaluation of Permanent Impairment,
7 except that an impairment rating may not be rounded to the next five percent. The
8 department [BOARD] shall adopt a supplementary recognized schedule for injuries
9 that cannot be rated by use of the American Medical Association Guides.

10 * Sec. 91. AS 23.30.190(d) is amended to read:

11 (d) When a new edition of the American Medical Association Guides
12 described in (b) of this section is published, the director [BOARD] shall, not later
13 than 90 days after the last day of the month in which the new edition is published, hold
14 an open meeting under AS 44.62.310 to select the date on which the new edition will
15 be used to make all determinations required under (b) of this section. The date
16 selected by the director [BOARD] for using the new edition may not be later than 90
17 days after the last day of the month in which the new edition is published. After the
18 meeting, the director [BOARD] shall issue a public notice announcing the date
19 selected. The requirements of AS 44.62.010 - 44.62.300 do not apply to the selection
20 or announcement of the date under this subsection.

21 * Sec. 92. AS 23.30.200(b) is amended to read:

22 (b) The wage-earning capacity of an injured employee is determined by the
23 actual spendable weekly wage of the employee if the actual spendable weekly wage
24 fairly and reasonably represents the wage-earning capacity of the employee. An
25 administrative law judge [THE BOARD] may, in the interest of justice, fix the
26 wage-earning capacity that is reasonable, having due regard for [TO] the nature of the
27 injury, the degree of physical impairment, the usual employment, and other factors or
28 circumstances in the case that may affect the capacity of the employee to earn wages
29 in a disabled condition, including the effect of disability as it may naturally extend into
30 the future.

31 * Sec. 93. AS 23.30.205(e) is amended to read:

1 (e) The second injury fund may not be bound as to any question of law or fact
2 by reason of an award or an adjudication to which it was not a party or in relation to
3 which the director [COMMISSIONER] was not notified at least three weeks before
4 the award or adjudication, that the fund might be subject to liability for the injury or
5 death.

6 * Sec. 94. AS 23.30.205(f) is amended to read:

7 (f) An employer or the employer's carrier shall notify the director
8 [COMMISSIONER OF LABOR AND WORKFORCE DEVELOPMENT] of any
9 possible claim against the second injury fund as soon as practicable, but in no event
10 later than 100 weeks after the employer or the employer's carrier have knowledge of
11 the injury or death.

12 * Sec. 95. AS 23.30.215(d) is amended to read:

13 (d) Compensation under this chapter to aliens not residents, or about to
14 become nonresidents, of the United States or Canada is the same in amount as
15 provided for residents, except that dependents in a foreign country are limited to
16 widow or widower and child or children, or, if there is no widow or widower and child
17 or children, to surviving father or mother whom the employee has supported, either
18 wholly or in part, for a period of one year before the date of injury. An
19 administrative law judge, upon petition of the director, the employer, or [THE
20 BOARD, AT ITS OPTION, OR UPON THE APPLICATION OF] the insurance
21 carrier, may commute all future installments of compensation to be paid to an alien
22 dependent who is not a resident of the United States or Canada by paying or causing to
23 be paid to the alien dependent one-half of the commuted amount of the future
24 installments of compensation as determined by the administrative law judge
25 [BOARD].

26 * Sec. 96. AS 23.30.220(a) is amended to read:

27 (a) Computation of compensation under this chapter shall be on the basis of an
28 employee's spendable weekly wage at the time of injury. An employee's spendable
29 weekly wage is the employee's gross weekly earnings minus payroll tax deductions.
30 An employee's gross weekly earnings shall be calculated as follows:

31 (1) if, at the time of injury, the employee's earnings are calculated by

the week, the weekly amount is the employee's gross weekly earnings;

2 (2) if, at the time of injury, the employee's earnings are calculated by
3 the month, the employee's gross weekly earnings are the monthly earnings multiplied
4 by 12 and divided by 52;

5 (3) if, at the time of injury, the employee's earnings are calculated by
6 the year, the employee's gross weekly earnings are the yearly earnings divided by 52;

7 (4) if, at the time of injury, the

8 (A) employee's earnings are calculated by the day, by the hour,
9 or by the output of the employee, the employee's gross weekly earnings are the
10 employee's earnings most favorable to the employee computed by dividing by
11 13 the employee's earnings, including overtime or premium pay, earned during
12 any period of 13 consecutive calendar weeks within the 52 weeks immediately
13 preceding the injury;

14 (B) employee has been employed for less than 13 calendar
15 weeks immediately preceding the injury, then, notwithstanding (1) - (3) of this
16 subsection and (A) of this paragraph, the employee's gross weekly earnings are
17 computed by determining the amount that the employee would have earned,
18 including overtime or premium pay, had the employee been employed by the
19 employer for 13 calendar weeks immediately preceding the injury and dividing
20 this sum by 13;

21 (5) if, at the time of injury, the employee's earnings have not been
22 fixed or cannot be ascertained, the employee's earnings for the purpose of calculating
23 compensation are the usual wage for similar services when the services are rendered
24 by paid employees;

25 (6) if, at the time of injury, the employment is exclusively seasonal or
26 temporary, then, notwithstanding (1) - (5) of this subsection, the gross weekly earnings
27 are 1/50 of the total wages that the employee has earned from all occupations during
28 the 12 calendar months immediately preceding the injury;

29 (7) when the employee is working under concurrent contracts with two
30 or more employers, the employee's earnings from all employers are [IS] considered as
31 if earned from the employer liable for compensation;

1 (8) if an employee when injured is a minor, an apprentice, or a trainee
 2 in a formal training program, as determined by an administrative law judge [THE
 3 BOARD], whose wages, under normal conditions, would increase during the period of
 4 disability, the projected increase may be considered by the administrative law judge
 5 [BOARD] in computing the gross weekly earnings of the employee;

6 (9) if the employee is injured while performing duties as a volunteer
 7 ambulance attendant, volunteer police officer, or volunteer fire fighter, then,
 8 notwithstanding (1) - (6) of this subsection, the gross weekly earnings for calculating
 9 compensation shall be the minimum gross weekly earnings paid a full-time ambulance
 10 attendant, police officer, or fire fighter employed in the political subdivision where the
 11 injury occurred, or, if the political subdivision has no full-time ambulance attendants,
 12 police officers, or fire fighters, at a reasonable figure previously set by the political
 13 subdivision to make this determination, but, in no case, may the gross weekly earnings
 14 for calculating compensation be less than the minimum wage computed on the basis of
 15 40 hours work a [PER] week;

16 (10) if an employee is entitled to compensation under AS 23.30.180
 17 and an administrative law judge [THE BOARD] determines that calculation of the
 18 employee's gross weekly earnings under (1) - (7) of this subsection does not fairly
 19 reflect the employee's earnings during the period of disability, the administrative law
 20 judge [BOARD] shall determine gross weekly earnings by considering the nature of
 21 the employee's work, work history, and resulting disability, but compensation
 22 calculated under this paragraph may not exceed the employee's gross weekly earnings
 23 at the time of injury.

24 * Sec. 97. AS 23.30.240 is amended to read:

25 **Sec. 23.30.240. Officers of corporations, municipal corporations, and**
 26 **nonprofit corporations as employees.** An executive officer elected or appointed and
 27 empowered in accordance with the charter and bylaws of a corporation, other than an
 28 official of a municipal corporation or a charitable, religious, educational, or other
 29 nonprofit corporation, is an employee of the corporation under this chapter. However,
 30 an executive officer of a corporation may waive coverage under this chapter, subject
 31 to the approval of the director [COMMISSIONER OF LABOR AND WORKFORCE

DEVELOPMENT], notwithstanding AS 23.30.245(b). Notwithstanding any other provision of this chapter, an executive officer of a municipal corporation or of a charitable, religious, educational, or other nonprofit corporation may be brought within the coverage of its insurance contract by the corporation by specifically including the officer in the contract of insurance. The election to bring an executive officer within the coverage continues in force for the period the contract of insurance is in effect. During that period, an executive officer brought within the coverage of the insurance contract is an employee of the corporation under this chapter.

* Sec. 98. AS 23.30 is amended by adding a new section to read:

Sec. 23.30.249. Fraudulent acts and false or misleading statements. (a) An employer or insurer may petition for an order to reimburse a payment and the cost of compensation, medical treatment, or other benefit provided under this chapter obtained by a fraudulent act or false or misleading statement or representation. If an administrative law judge, after a hearing as provided by AS 23.30.110, finds by a preponderance of the evidence that a person has obtained a payment, compensation, medical treatment, or another benefit provided under this chapter by a fraudulent act or by knowingly making a false or misleading statement or representation for the purpose of obtaining that benefit or payment, the administrative law judge shall order that person to make full reimbursement of the payment or cost of all benefits obtained. Upon entry of an order authorized under this subsection, the administrative law judge shall also order that person to pay all reasonable costs and attorney fees incurred by the employer and the employer's carrier in obtaining an order under this section and in defending any claim made for benefits under this chapter. If a person fails to comply with an order requiring reimbursement of payment or cost of benefits, and payment of costs and attorney fees, the employer may declare the person in default and proceed to collect any sum due as provided under AS 23.30.170(b) and (c).

(b) Except as provided in (c) of this section, a person is not liable for civil damages for filing a report with or furnishing other information, whether written or oral, concerning a suspected, anticipated, or completed fraudulent act or false or misleading statements or representation to

(1) law enforcement officials or their agents and employees;

1 (2) the division of workers' compensation, the division of insurance in
2 the Department of Commerce, Community, and Economic Development, or an agency
3 in another state that regulates insurance or workers' compensation;

4 (3) an insurer or adjuster or its agents, employees, or designees, or the
5 risk manager of a self-insured employer under this chapter.

6 (c) The provisions of (b) of this section do not preclude liability for civil
7 damages as described in (b) of this section if the liability arose as a result of reckless,
8 wilful, or intentional misconduct.

9 (d) An insurer, an adjuster, or a risk manager of a self-insured employer that
10 has reason to believe that a fraudulent workers' compensation demand or claim has
11 been made against it shall send the director a report disclosing information that the
12 director may require. An insurer or an adjuster or its employee or agent, or a risk
13 manager of a self-employed employer, or another person acting in good faith is not
14 civilly liable for damages resulting from the filing of the report or the furnishing of
15 information required by this section or by the director.

16 (e) The director may investigate facts reported under this section and may
17 refer facts indicating a possible violation of law to the appropriate prosecutor or
18 agency. If the director determines that there is credible evidence that a person
19 obtained a payment, compensation, medical treatment, or other benefit provided under
20 this chapter by a fraudulent act or false or misleading statement or representation as
21 provided in (a) of this section, the director shall notify the affected employer, insurer,
22 and adjuster upon conclusion of the investigation. If the fraudulent act or false or
23 misleading statement or representation was perpetrated against the division, the
24 director may file a petition as provided in AS 23.30.110 for an order of forfeiture
25 against the person, precluding, in whole or in part, the person from future payment,
26 compensation, medical treatment, or other benefit provided under this chapter.

27 (f) The papers, reports, documents, and evidence received under this section or
28 in an investigation arising from information received under this section are not subject
29 to public inspection for so long as the director considers confidentiality to be in the
30 public interest or reasonably necessary to complete an investigation or protect the
31 person investigated from unwarranted injury. Papers, reports, documents, and

2 evidence relative to an investigation under this section are confidential and not subject
3 to subpoena unless, after notice to the director and a hearing, a court determines that
4 the director would not be unduly hindered by public inspection.

5 (g) If the material that the director seeks to obtain is located outside the state,
6 the material may be made available to the director to examine at the place where the
7 material is located. The director may designate representatives, including officials of
8 the state in which the material is located, to inspect the material on behalf of the
9 director. The director may respond to a request from an official of another state for
10 similar material.

11 (h) In this section, "fraudulent act" includes

12 (1) to knowingly pretend injury or disability, with intent to defraud or
13 obtain a benefit under this chapter;

14 (2) to knowingly conceal, suppress, destroy, remove, or alter records,
15 with intent to defraud or obtain a benefit under this chapter;

16 (3) to knowingly assist or prepare another person to submit a false or
17 misleading statement in support of a claim for benefits under this chapter with reckless
18 disregard that the person is not entitled to benefits under this chapter;

19 (4) to use force against a person, damage the property of a person, or
20 threaten a person with intent to improperly influence the opinion of a witness, a
21 physician, or other health care provider;

22 (5) except as otherwise authorized under this chapter, to knowingly
23 confer, offer to confer, solicit, agree to accept, or accept property, services, or a
24 benefit

25 (A) to refer an employee to a physician or other health care
26 provider; or

27 (B) for providing medical treatment, services, medicines, or
28 supplies to an employee if the property, services, or benefit is in addition to
29 payment by the employer, insurer, or adjuster allowed under this chapter.

30 * Sec. 99. AS 23.30.250 is repealed and reenacted to read:

31 Sec. 23.30.250. Penalty for fraudulent acts or false or misleading
statements or representations. (a) A person is guilty of theft by deception as defined

1 in AS 11.46.180, and may be punished as provided by AS 11.46.120 - 11.46.150, and
2 is civilly liable to a person adversely affected by the conduct, if the person

3 (1) knowingly makes a false or misleading statement, representation,
4 or submission related to an injury, compensation, or benefit under this chapter;

5 (2) knowingly assists, abets, solicits, or conspires in making a false or
6 misleading submission affecting the payment, coverage, or other benefit under this
7 chapter;

8 (3) knowingly misclassifies employees or engages in deceptive leasing
9 practices for the purpose of evading full payment of workers' compensation insurance
10 premiums; or

11 (4) employs or contracts with a natural person or business organization
12 to coerce or encourage an individual to file a fraudulent compensation claim.

13 (b) In this section,

14 (1) "benefit" means a payment, compensation, medical treatment,
15 service, product, entitlement, or right available under this chapter;

16 (2) "knowingly" has the meaning given in AS 11.81.900.

17 * Sec. 100. AS 23.30.260 is amended to read:

18 **Sec. 23.30.260. Penalty for receiving unapproved fees and soliciting.** A
19 person is guilty of a misdemeanor [,] and, upon conviction, is punishable for each
20 offense by a fine of not more than \$1,000 [,] or by imprisonment for not more than one
21 year, or by both, if the person

22 (1) receives a fee, other consideration, or a gratuity on account of any
23 services rendered for representation or advice with [IN] respect to a claim, unless
24 the consideration or gratuity is approved by the administrative law judge, the
25 commission, [BOARD] or the court; or

26 (2) makes it a business to solicit employment for a lawyer or for the
27 person with [ONESELF IN] respect to a claim or award for compensation.

28 * Sec. 101. AS 23.30.260 is amended by adding a new subsection to read:

29 (b) Notwithstanding AS 23.30.145 and (a) of this section, approval of a fee is
30 not required if the fee does not exceed \$300 and is a one-time-only charge to an
31 employee by an attorney licensed in this state who performed legal services with

respect to the employee's claim but did not enter an appearance.

2 * Sec. 102. AS 23.30.395(28) is amended to read:

3 (28) "self-insurer" means an employer who, instead of insuring
4 liability under this chapter as it provides, elects to pay directly the compensation
5 provided for, and who has furnished to the division [BOARD] satisfactory proof of
6 the employer's financial ability to make the direct payments;

7 * Sec. 103. AS 23.30.395 is amended by adding new paragraphs to read:

8 (35) "administrative law judge " means an administrative law judge
9 employed or retained by the office of administrative hearings (AS 44.64.010) who
10 meets the qualifications under AS 23.30.112 to conduct hearings of workers'
11 compensation claims and petitions and conduct other hearings and proceedings under
12 this chapter;

13 (36) "commission" means the Workers' Compensation Appeals
14 Commission;

15 (37) "director" means the director of the division of workers'
16 compensation;

17 (38) "division" means the division of workers' compensation.

18 * Sec. 104. AS 39.25.110 is amended by adding a new paragraph to read:

19 (40) the chair of the Workers' Compensation Appeals Commission
20 (AS 23.30.007).

21 * Sec. 105. AS 39.25.120(c)(14) is amended to read:

22 (14) the rehabilitation administrator of the division of workers'
23 compensation [WORKERS' COMPENSATION BOARD];

24 * Sec. 106. AS 39.50.200(b)(31) is amended to read:

25 (31) Workers' Compensation Appeals Commission (AS 23.30.007)
26 [BOARD (AS 23.30.005)];

27 * Sec. 107. AS 44.62.330(a)(15) is amended to read:

28 (15) division of workers' compensation and its director [ALASKA
29 WORKERS' COMPENSATION BOARD], where procedures are not otherwise
30 expressly provided by AS 23.30 ([THE] Alaska Workers' Compensation Act);

31 * Sec. 108. AS 44.64.020(a), as enacted by sec. 2, HCS CSSE 203(FIN), is amended to

1 read:

2 (a) The chief administrative law judge shall

3 (1) supervise the office;

4 (2) employ administrative staff, who shall be in the classified service;

5 (3) employ administrative law judges, who shall be in the partially
6 exempt service;

7 (4) preside over administrative hearings handled by the office or, based
8 upon the qualifications and expertise of the administrative law judges, assign
9 administrative law judges to preside over hearings, and protect, support, and enhance
10 the decisional independence of the administrative law judges;

11 (5) establish and implement performance standards, including
12 provision for timeliness, and peer review programs for administrative law judges
13 employed or retained by the office;

14 (6) make available and facilitate training and continuing education
15 programs and services in administrative procedure, administrative adjudication,
16 substantive law, alternate dispute resolution, and technical matters for administrative
17 law judges and other administrative adjudicators;

18 (7) survey administrative hearing participants and use other methods to
19 monitor the quality of administrative hearings held by the office and other state
20 agencies, and submit to the governor and the legislature on January 31 of each year the
21 results of the survey along with a report that includes a description of the activities of
22 the office and recommendations for statutory changes that may be needed in relation
23 to the administrative hearings held by the office or other state agencies;

24 (8) review and comment on regulations proposed by state agencies to
25 govern procedures in administrative hearings;

26 (9) enter into contracts as necessary to carry out the functions of the
27 office;

28 (10) annually prepare and submit to the commissioner of
29 administration a budget for the office for the next fiscal year that shall include and
30 separately identify funding for training and continuing education; a copy of the budget
31 submitted to the commissioner under this paragraph shall also be submitted to the

Finance Committee of each house of the legislature; and

2 (11) after consulting with affected agencies, adopt regulations under
 3 AS 44.62 (Administrative Procedure Act) to carry out the duties of the office and
 4 implement this chapter, except for regulations governing the conduct of workers'
 5 compensation hearings and proceedings under AS 23.30, which are under the
 6 exclusive jurisdiction of the Workers' Compensation Appeals Commission
 7 (AS 23.30.007).

8 * Sec. 109. AS 44.64.030(a), as amended by sec. 3, HCS CSSB 203(FIN), is amended by
 9 adding a new paragraph to read:

10 (36) AS 23.30.007 (Workers' compensation).

11 * Sec. 110. AS 44.64.040(a), as enacted by sec. 3, HCS CSSB 203(FIN), is amended to
 12 read:

13 (a) An administrative law judge must be admitted to practice law in this state
 14 and must have been admitted to practice in this state for at least two years before being
 15 employed or retained with the office. The chief administrative law judge shall
 16 establish additional qualifications for administrative law judges employed or retained
 17 by the office and for those administrative law judges that may be assigned to particular
 18 types of cases. An administrative law judge is in the partially exempt service.
 19 Notwithstanding AS 39.25.120(b), full-time administrative law judges employed by
 20 the office are subject to the personnel rules adopted under AS 39.25.150(7), (15), and
 21 (16). An administrative law judge assigned to workers' compensation hearings or
 22 other proceedings under AS 23.30 shall be compensated at Range 24 of the salary
 23 schedule set out in AS 39.27.011(a) for Anchorage, Alaska.

24 * Sec. 111. AS 21.39.155(c) is repealed.

25 * Sec. 112. AS 23.30.395(3) is repealed.

26 * Sec. 113. The uncodified law of the State of Alaska is amended by adding a new section
 27 to read:

28 APPLICABILITY. The amendment to AS 23.30.175(b) made by sec. 87 of this Act
 29 applies to an injury occurring on or after the effective date of sec. 87 of this Act.

30 * Sec. 114. The uncodified law of the State of Alaska is amended by adding a new section
 31 to read:

1 TRANSITION: TERMS OF BOARD OF GOVERNORS MEMBERS. (a)
2 Notwithstanding sec. 7 of this Act, the director of insurance in the Department of Commerce,
3 Community, and Economic Development shall designate members of the board of governors
4 for the Alaska Insurance Guaranty Association to serve staggered initial terms in the manner
5 provided in AS 39.05.055.

6 (b) Terms of members of the board of governors for the Alaska Insurance Guaranty
7 Association serving on September 1, 2004, expire on September 2, 2004, but a member of the
8 board of governors on September 1, 2004, may continue to serve until a successor is
9 appointed if the member meets the standards set out in sec. 7 of this Act for the position in
10 which the member was serving on September 1, 2004. Members of the board of governors
11 for the Alaska Insurance Guaranty Association serving on September 1, 2004, may apply for
12 reappointment to the board by submitting a request to the director of insurance.

13 * Sec. 115. The uncodified law of the State of Alaska is amended by adding a new section
14 to read:

15 TRANSITION: CONTINUANCE OF ALASKA WORKERS' COMPENSATION
16 BOARD; PENDING CASES. (a) Notwithstanding the repeal and reenactment of
17 AS 23.30.005 by sec. 11 of this Act, the Alaska Workers' Compensation Board, established
18 under AS 23.30.005 as it existed on the day before the effective date of sec. 11 of this Act,
19 continues in existence for 45 days after the effective date of sec. 11 of this Act for the limited
20 purpose described in (b) of this section. Members serving on the Alaska Workers'
21 Compensation Board on the day before the effective date of sec. 11 of this Act continue to
22 serve as members of that board for the 45 days after the effective date of sec. 11 of this Act.
23 Appointments may not be made to that board on or after the effective date of sec. 11 of this
24 Act.

25 (b) A case heard by the board before the effective date of sec. 11 of this Act and
26 awaiting a decision by the board on the day before the effective date of sec. 11 of this Act
27 shall be decided by the board, and a decision or order shall be issued, not later than the 45th
28 day after the effective date of sec. 11 of this Act, under the applicable statutes and regulations
29 in effect on the day before the effective date of sec. 11 of this Act.

30 (c) In this section, "board" means the Alaska Workers' Compensation Board
31 established under AS 23.30.005 as that section existed on the day before the effective date of

sec. 11 of this Act.

2 * Sec. 116. The uncodified law of the State of Alaska is amended by adding a new section
3 to read:

4 TRANSITION: INITIAL TERMS OF MEMBERS OF WORKERS'
5 COMPENSATION APPEALS COMMISSION. (a) Notwithstanding AS 23.30.007(e),
6 enacted by sec. 12 of this Act, the terms of the initially appointed representative members of
7 the Workers' Compensation Appeals Commission, established by AS 23.30.007 enacted by
8 sec. 12 of this Act, shall be set by the governor to achieve staggered terms in the manner
9 provided in AS 39.05.055.

10 * Sec. 117. The uncodified law of the State of Alaska is amended by adding a new section
11 to read:

12 TRANSITION: STAFF. (a) In order to ensure the smooth transfer of functions in the
13 shortest possible time, for a period of six months after the effective date of this section, the
14 director may, with the approval of the commissioner of labor and workforce development and
15 the chair of the commission, temporarily assign division employees to the commission and the
16 commission may reimburse the division for the temporarily assigned employees. Division
17 employees temporarily assigned to the commission shall continue in the same position and
18 rate of pay for the duration of the temporary assignment as the employees held at the division.

19 (c) In this section,

20 (1) "commission" means the Workers' Compensation Appeals Commission
21 established by AS 23.30.007, enacted by sec. 12 of this Act;

22 (2) "director" means the director of the division of workers' compensation in
23 the Department of Labor and Workforce Development;

24 (3) "division" means the division of workers' compensation in the Department
25 of Labor and Workforce Development.

26 * Sec. 118. The uncodified law of the State of Alaska is amended by adding a new section
27 to read:

28 TRANSITIONAL PROVISIONS. (a) Litigation, investigations, and other
29 proceedings pending under a law amended or repealed by this Act, or in connection with
30 functions transferred by this Act, continue in effect and may be continued and completed,
31 notwithstanding a transfer or amendment or repeal provided for in this Act.

1 (b) Certificates, decisions, and orders issued under authority of a law amended or
 2 repealed by this Act remain in effect for the term issued, or until revoked, vacated, or
 3 otherwise modified under the provisions of this Act. Contracts, rights, liabilities, and
 4 obligations created by or under a law amended or repealed by this Act, and in effect on the
 5 day before the effective date of this section, remain in effect notwithstanding this Act's taking
 6 effect. Records, equipment, appropriations, and other property of agencies of the state whose
 7 functions are transferred under this Act shall be transferred to implement the provisions of
 8 this Act.

9 (c) Regulations adopted under AS 23.30 and in effect on the day before the effective
 10 date of this section continue in effect, and may be applied by the Alaska Workers'
 11 Compensation Board, during the 45 days after the effective date of sec. 11 of this Act.

12 * **Sec. 119.** The uncodified law of the State of Alaska is amended by adding a new section
 13 to read:

14 **TRANSITION: REGULATIONS.** (a) The Department of Labor and Workforce
 15 Development and the director of insurance in the Department of Commerce, Community, and
 16 Economic Development each may proceed to adopt regulations necessary to implement their
 17 respective provisions of this Act. The regulations take effect under AS 44.62 (Administrative
 18 Procedure Act), but not before the effective date of the statutory changes.

19 (b) In order to provide for the procedures and other administrative matters necessary
 20 to ensure the on-going implementation of the state's workers' compensation laws to meet the
 21 urgent needs of injured workers, and thus ensure the preservation of the public peace, health,
 22 safety, or general welfare, the Workers' Compensation Appeals Commission established by
 23 AS 23.30.007, enacted by sec. 12 of this Act, may adopt under AS 23.30.008, enacted by
 24 sec. 12 of this Act, as emergency regulations, the regulations necessary to implement the
 25 changes made by this Act.

26 * **Sec. 120.** The uncodified law of the State of Alaska is amended by adding a new section
 27 to read:

28 **CONDITIONAL EFFECT.** Sections 2, 8 - 86, 88 - 110, 112, 115 - 118, and 119(b) of
 29 this Act take effect only if HCS CSSB 203(FIN), passed by the Twenty-Third Alaska State
 30 Legislature, is enacted into law.

31 * **Sec. 121.** Section 119(a) of this Act takes effect immediately under AS 01.10.070(c).

2 * Sec. 122. Sections 1, 3 - 7, 87, 111, 113, and 114 of this Act take effect September 1,
2004.

3 * Sec. 123. If they take effect under sec. 120 of this Act, secs. 2, 8 - 86, 88 - 110, 112, 115 -
4 118, and 119(b) of this Act take effect July 1, 2005.

FISCAL
NOTE

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: 04-0172-ACS-AC-6-18-04
() Publish Date: _____

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

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	186.1	186.1	186.1	186.1	186.1	186.1
Travel						
Contractual	2.4	2.4	2.4	2.4	2.4	2.4
Supplies						
Equipment	10.3					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	198.8	188.5	188.5	188.5	188.5	188.5

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	198.8	188.5	188.5	188.5	188.5	188.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type—Do not abbreviate)						
TOTAL	198.8	188.5	188.5	188.5	188.5	188.5

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Work draft 04-0172 makes several changes to the way the Department of Labor and Workforce Development (the agency) and the Alaska Court System resolve workers' compensation disputes and appeals. Most important for purposes of the court's fiscal note is that appeals from the newly-created Workers' Compensation Appeals Commission (commission) will bypass the superior court and go directly to the supreme court. The court system does not believe that the creation of the new commission will result in a decrease in the number of workers' compensation cases that are appealed to the court system each year. However, bypassing the superior court will lead to a significant increase in the number of these appeals that go to the supreme court. This is because the superior court resolves about 75% of the workers' compensation cases appealed to the court system.

Prepared by: Doug Wooliver Administrative Attorney Phone 907-264-8265
Division: Alaska Court System Date/Time 6/18/04 9:40 AM
Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 06/18/04
Agency: Alaska Court System

FISCAL NOTE

**STATE OF ALASKA
2004 LEGISLATIVE SESSION**

BILL NO. 04-0172

ANALYSIS CONTINUATION

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

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

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

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

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

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SS-DCED-INS-06-16-04
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
Title Workers Compensation/Insurance RDU Insurance (116)
Component Insurance Operations
Sponsor Rules
Requester By Request of the Governor Component No. 354

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type—Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation has no fiscal impact on the operations of the department.

Prepared by: Linda S. Hall, Director Phone 907.269.7900
Division Insurance Date/Time 6/15/04 2:19 PM
Approved by: Edgar Blatchford, Commissioner Date 6/15/2004
Agency Department of Community & Economic Development

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

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

 Risk Management's workers' compensation premium assessments to state agencies will reflect the reductions actually realized as premium charges are developed from actual claims expense incurred.

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

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

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

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2004) cost: 0.0

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

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

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

Personal Services:

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

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

FISCAL NOTE

**STATE OF ALASKA
2004 LEGISLATIVE SESSION**

BILL NO. _____

ANALYSIS CONTINUATION

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

Travel:

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

Contractual:

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

Supplies:

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

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

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

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (1157)	0.0	18.0	18.0	18.0	18.0	18.0
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FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

See attached.

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

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL VERSION: _____

ANALYSIS: (continued)

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

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

New Workers' Compensation Appeals Commission budget component:

Operating Expenditures:

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

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

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

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

Contractual: Under the bill the Commission will request Administrative Law Judges employed by the Office of Administrative Hearings to conduct the initial hearings previously done by Workers' Compensation Board hearing panels and Workers' Compensation Hearing Officers. The Commission is expected to incur \$826.5 in contractual costs for Administrative Law Judge services. Those costs are based upon ranges and advanced steps for Administrative Law Judges in order to cover the basic Administrative Law Judge qualifications as well as the level of workers' compensation experience mandated by the bill.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL VERSION: _____

ANALYSIS: (continued)

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

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

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

New Fees/Fines:

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

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

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

Existing Workers' Compensation budget component:

Operating Expenditures:

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

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

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL VERSION: _____

ANALYSIS: (continued)

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

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

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

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

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

Funding

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

SECTIONAL

Proposed Workers' Compensation Reform Bill
Section by Section Analysis

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

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

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

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

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

Section by Section Analysis
Proposed Workers' Compensation Reform Bill

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

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

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

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

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

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

Section 3 creates a new statutory provision, AS 21.09.090(e) which provides that insurers that transact workers' compensation insurance in this state must maintain in the state a special deposit of cash or securities for the protection of persons in Alaska covered under workers' compensation insurance. The insurer must maintain this special deposit as long as there is any outstanding liability for workers' compensation. If an insurer is unable to pay workers' compensation because it is an insolvent insurer, the deposit will be immediately available to the Alaska Insurance Guaranty Association for continuation of claims benefits to eligible workers. This revision provides additional financial protection for Alaskan workers in the event that workers' compensation insurer becomes insolvent and unable to pay claims.

Section 4 creates a new statutory provision, AS 21.09.095 which provides that insurers who transact workers' compensation insurance in this state must maintain in the state a special deposit equal to the insurer's assumed workers' compensation assigned risk pool loss reserves. This provision requires insurers to collateralize their quota share of loss reserves from the Assigned Risk Pool. The director of insurance shall make funds from the pool available to fund an insurer's obligations to the pool in the event that the insurer becomes insolvent or otherwise fails to satisfy its workers' compensation assigned risk pool obligations.

Section 5 amends AS 21.24.130(d) to make a technical change regarding the special deposit described in Section 3 above, indicating it is not subject to an order transferring it to a receiver.

Section 6 creates a new statutory provision, AS 21.39.155(d) requiring the Assigned Risk Pool to operate on a self-funding basis on a three-year moving average basis.

Section 7 repeals and reenacts AS 21.80.050 relating to the board of governors of the Alaska Insurance Guaranty Association. The composition of the board of governors of the Alaska Insurance Guaranty Association is modified by this provision to include representatives from management, labor and a licensed insurance provider, agent, broker or manager. This change will expand the expertise of the board of governors to address workers' compensation issues. Section 107 below provides for the transition of the terms of the members of the current board of governors.

Section 8 amends AS 23.30.05.067(a)(1)(B) to remove a reference to the board and to replace the board by the director of the division of workers compensation as the recipient of reports. This amendment conforms to the amendment to AS 23.30.155(m) at Section 82 below.

Section 9 amends AS 23.05.067(e) to include fees received by the commission in those fees deposited in the workers' safety and compensation account. It also adds new language to permit the legislature to appropriate funds to the commission

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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- Section 43** amends AS 23.30.090 to add a new statutory provision, AS 23.30.090(b), that testimony in a self-insurance revocation hearing shall be recorded but not transcribed unless further review is initiated.
- Section 44** amends AS 23.30.095(a) to conform language to modern usage. It also removes references to the board and replaces the board with an administrative law judge as reviewer of employee claims for medical benefits beyond two years from the date of injury, and authority for continued care or treatment.
- Section 45** amends AS 23.30.095(c) relating to reports and claims for medical treatment by removing references to the board and reassigning its functions. This section replaces the board with the division as the agency that receives filed physician reports; replaces the board with the director as the agency that approves the form for reports; and, replaces board with an administrative law judge as the agency that decides to excuse failure to give notice and makes awards of medical benefits. This section also transfers authority to make regulations from the board to the director, who proposes regulations, and the department, which adopts the proposed regulations.
- Section 46** amends AS 23.30.095(d) to remove references to the board and transfer authority from the board to an administrative law judge to order suspension of payment of compensation during a period of unreasonable refusal to obtain medical treatment.
- Section 47** amends AS 23.30.095(e) relating to independent medical examinations. It removes references to the board and transfers from the board to an administrative law judge the authority to make orders for medical examinations, suspend or forfeit compensation during a period of refusal to attend an examination. The director is given authority to order autopsies in cases of death, in view of the necessary speed associated with such orders. It also modernizes the language of the statute and conforms it to current usage.
- Section 48** amends AS 23.30.095(f) relating to regulation of fees charged for medical treatment. The amendment removes references to the board. It transfers authority to regulate charges for medical treatment to the department and adopt, by regulation, fee schedules. It transfers to the director authority to determine usual, customary and reasonable fees in the community and propose fee schedules to the department for adoption.
- Section 49** amends AS 23.30.095(h) to remove references to the board and replaces the board with the division as the place pleadings and physician reports are filed. The amendment also modernizes language in the statute to current usage.
- Section 50** amends AS 23.30.095(j) to remove references to the board and to reassign from board to the director authority to appoint a medical services review committee or contract with organizations to assist and advise the director,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section by Section Analysis
Proposed Workers' Compensation Reform Bill

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

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

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

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

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

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

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

Section by Section Analysis
Proposed Workers' Compensation Reform Bill

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

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

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

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

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

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

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

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

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

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

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

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

Section by Section Analysis
Proposed Workers' Compensation Reform Bill

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

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

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

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

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

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

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

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

BACKUP

BOND PACKAGE

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at this time**

FRANK H. MURKOWSKI
GOVERNOR
GOVERNOR@GOV.STATE.AK.US



P.O. Box 110001
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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

June 21, 2004

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

Dear President Therriault:

Under the authority of article III, section 18, of the Alaska Constitution, I am transmitting a bill authorizing the issuance of general obligation bonds to finance capital improvement projects for the University of Alaska. Great progress has been made with our university system. Student enrollment is at the highest level ever. (Increase of 14.5 percent system wide between 2000 and 2004). Research activities are also at an all-time high, and have increased by more than 75 percent since fiscal year 1999. These successes are based on the state's on-going commitment to the university. This bill builds upon, and reinforces this commitment, while realizing the harsh reality of the limits forced on the state by the present fiscal situation.

The projects in this bill address a number of the University of Alaska's critical infrastructure needs. The projects include improvements to the integrated science facility at the University of Alaska, Anchorage to provide crucial science classroom and instructional labs.

Also included are projects that address essential life safety, renovation, and equipment priorities. These include Americans with Disabilities Act and life safety issues, as well as crucial equipment and space renovation needs. Basic information technology upgrades and replacement of academic and instructional equipment is included. Designed and construction, such as for the Biological and Computational Science Facility on the Fairbanks campus, will support the continued successful expansion of the state and university's research and development agenda.

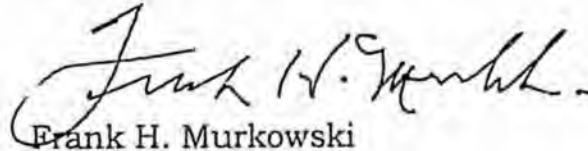
New construction, such as for the Biological and Computational Facility on the Fairbanks campus, will support the continued successful expansion of the state and university's research and development agenda.

The Honorable Gene Therriault
June 21, 2004
Page 2

The bill requires that sections one through seven of the bill only take effect once the Lieutenant Governor has certified a long-range fiscal plan has been adopted as specified in the bill and the bonds have been approved by the voters.

I urge your prompt and favorable action on this legislation.

Sincerely yours,

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

Frank H. Murkowski
Governor

Enclosure

FRANK H. MURKOWSKI
GOVERNOR
GOVERNOR@GOV.STATE.AK.US



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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

June 21, 2004

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

Dear Speaker Kott:

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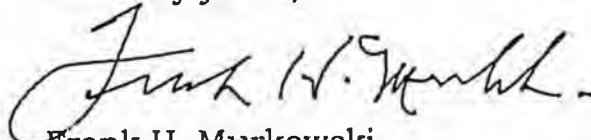
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The Honorable Pete Kott

The Honorable Pete Kott
June 21, 2004
Page 2

The bill requires that sections one through seven of the bill only take effect once the Lieutenant Governor has certified a long-range fiscal plan has been adopted as specified in the bill and the bonds have been approved by the voters.

I urge your prompt and favorable action on this legislation.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Frank H. Murkowski". The signature is written in a cursive style with a large initial "F".

Frank H. Murkowski
Governor

Enclosure

BILL

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SPECIAL SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act providing for and relating to the issuance of general obligation bonds for the
2 purpose of paying the cost of state surface transportation projects; and providing for an
3 effective date."

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

5 * Section 1. The uncodified law of the State of Alaska is amended by adding a new section
6 to read:

7 **GENERAL OBLIGATION BONDS.** For the purpose of paying the cost of state
8 surface transportation projects, general obligation bonds of the state in the principal amount of
9 not more than \$77,100,000 shall be issued and sold. The full faith, credit, and resources of
10 the state are pledged to the payment of the principal of and interest and redemption premium,
11 if any, on the bonds. The bonds shall be issued under the provisions of AS 37.15 as those
12 provisions read at the time of issuance.

13 * Sec. 2. The uncodified law of the State of Alaska is amended by adding a new section to
14 read:

1 SURFACE TRANSPORTATION PROJECT FUND. A special fund of the state to be
 2 known as the "surface transportation project fund" shall be established, to which shall be
 3 credited the proceeds of the sale of the bonds described in sec. 1 of this Act except for the
 4 accrued interest and premiums.

5 * Sec. 3. The uncodified law of the State of Alaska is amended by adding a new section to
 6 read:

7 SURFACE TRANSPORTATION PROJECTS. (a) The amount of \$76,700,000 is
 8 appropriated from the surface transportation project fund to the Department of Transportation
 9 and Public Facilities to be allocated among the following surface transportation projects in the
 10 amounts listed, subject to reallocation between projects in accordance with AS 37.07.080(e):

PROJECT	ALLOCATION
(1) Anchorage - Abbott Loop Road upgrade (Tudor Road to Abbott Road)	\$15,000,000
(2) Anchorage - Lake Otis and Tudor intersection improvements	8,500,000
(3) Anchorage - Dowling East Extension	14,600,000
(4) Fairbanks - Cowles Street and 21st Avenue upgrade	1,200,000
(5) Fairbanks - Van Horn Road - Cushman to Peger	6,100,000
(6) North Slope - Bullen Point Road EIS and Design	3,700,000
(7) Matanuska - Susitna - Bogard Road East Extension EIS, Design, and Right-of-Way	6,600,000
(8) Kenai Peninsula - Area Road Paving	4,000,000
(9) Aleknagik- Wood River Bridge Design	1,000,000
(10) Sitka - Sawmill Creek Road	1,000,000
(11) Southeast Alaska Road Construction	8,000,000
(12) Yukon-Kuskokwim Rivers transportation corridor EIS and Design	2,000,000
(13) Kodiak - Pasagshak Road paving	1,500,000
(14) Noatak Airport to Red Dog Mine Road EIS and Design	3,500,000

31 * Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 STATE BOND COMMITTEE. The amount of \$400,000 or as much of that amount
3 as is found necessary is appropriated from the general fund of the state to the state bond
4 committee to carry out the provisions of this Act and to pay expenses incident to the sale and
5 issuance of the bonds authorized in sec. 1 of this Act. The amounts expended from the
6 appropriation authorized by this section shall be reimbursed to the general fund from the
7 proceeds of the sale of the bonds authorized by sec. 1 of this Act.

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

10 ANNUAL EARNINGS APPROPRIATIONS. The annual earnings on the proceeds of
11 the sale of bonds authorized in sec. 1 of this Act managed by the Department of Revenue may
12 be appropriated for reimbursement to the Department of Revenue for the costs of establishing
13 and managing the funds.

14 * Sec. 6. The uncodified law of the State of Alaska is amended by adding a new section to
15 read:

16 ADVANCE PLANNING. The amount withdrawn from the public facility planning
17 fund (AS 35.10.135) for the purpose of advance planning for the capital improvements
18 financed under sec. 3 of this Act shall be reimbursed to the fund from the proceeds of the sale
19 of bonds authorized by sec. 1 of this Act.

20 * Sec. 7. The uncodified law of the State of Alaska is amended by adding a new section to
21 read:

22 LAPSE; REDEMPTION; REIMBURSEMENT. The unexpended and unobligated
23 balance of the appropriation made in sec. 3 of this Act lapses under AS 37.25.020 and is
24 appropriated to the state bond committee to redeem bonds sold under sec. 1 of this Act. The
25 amounts expended from the general fund to pay the principal, interest, and redemption
26 premium on bonds issued under sec. 1 of this Act shall be reimbursed to the general fund
27 from the appropriation made under this section to the extent that the money is not needed to
28 redeem the bonds.

29 * Sec. 8. The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 BALLOT PROPOSITION. The question whether the bonds authorized in this Act are

1 to be issued shall be submitted to the qualified voters of the state at the next general election
 2 and shall read substantially as follows:

3 PROPOSITION

4 State General Obligation State Surface Transportation Project
 5 Bonds \$77,100,000

6 Shall the State of Alaska issue general obligation bonds in the
 7 principal amount of not more than \$77,100,000 for the purpose
 8 of paying the cost of state surface transportation projects?

9 Bonds Yes []

10 Bonds No []

11 * Sec. 9. Section 8 of this Act takes effect immediately under AS 01.10.070(c).

12 * Sec. 10. Sections 1 - 7 of this Act take effect on the date that the lieutenant governor
 13 certifies to the revisor of statutes that

14 (1) a majority of the qualified voters of the state who vote on the question at
 15 the 2004 general election affirmatively voted in favor of the 2004 amendments to the
 16 Constitution of the State of Alaska relating to and limiting appropriations from the Alaska
 17 permanent fund based on an averaged percent of the fund market value; and

18 (2) the issuance of bonds authorized by this Act is ratified by a majority of the
 19 qualified voters of the state who vote on the question at the 2004 general election.

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SPECIAL SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced:
Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act providing for and relating to the issuance of general obligation bonds for the
2 purpose of paying the cost of design, construction, and major maintenance of facilities at
3 the University of Alaska; and providing for an effective date."

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

5 * Section 1. The uncodified law of the State of Alaska is amended by adding a new section
6 to read:

7 GENERAL OBLIGATION BONDS. For the purpose of paying the cost of design,
8 construction, and major maintenance of facilities at the University of Alaska, general
9 obligation bonds of the state in the principal amount of not more than \$39,304,000, shall be
10 issued and sold. The full faith, credit, and resources of the state are pledged to the payment of
11 the principal of and interest and redemption premium, if any, on the bonds. The bonus shall
12 be issued under the provisions of AS 37.15 as those provisions read at the time of issuance.

13 * Sec. 2. The uncodified law of the State of Alaska is amended by adding a new section to
14 read:

1 2004 UNIVERSITY OF ALASKA FACILITIES DESIGN, CONSTRUCTION, AND
 2 MAJOR MAINTENANCE FUND. A special fund of the state to be known as the "2004
 3 University of Alaska facilities design, construction, and major maintenance fund" shall be
 4 established, to which shall be credited the proceeds of the sale of the bonds described in sec. 1
 5 of this Act except for the accrued interest and premiums.

6 * Sec. 3. The uncodified law of the State of Alaska is amended by adding a new section to
 7 read:

8 UNIVERSITY OF ALASKA. The amount of \$38,904,000 is appropriated from the
 9 2004 University of Alaska facilities design, construction, and major maintenance fund to the
 10 University of Alaska to be allocated among the following projects in the amounts listed,
 11 subject to reallocation between projects in accordance with AS 37.07.080(e):

12	PROJECT	LOCATION	AMOUNT
13	(1) Integrated Science Facility	Anchorage	\$9,500,000
14	construction		
15	(2) School of Fisheries and	Juneau	7,000,000
16	Ocean Science research		
17	facility design and		
18	construction		
19	(3) Biological and	Fairbanks	12,000,000
20	Computational Science		
21	research facility design		
22	and construction		
23	(4) Safety code and Americans	Statewide	2,941,000
24	with Disabilities Act		
25	improvements		
26	(5) Lucy Cuddy Center upgrade	Anchorage	1,000,000
27	and renewal		
28	(6) Bristol Bay classroom	Dillingham	1,000,000
29	expansion construction		
30	(7) Paul/Ziegler classroom	Ketchikan	500,000
31	renovation		

1	(8) Sitka campus improvements	Sitka	250,000
2	(9) Tanana Valley campus	Fairbanks	1,000,000
3	classroom expansion		
4	and renovation		
5	(10) Hendrickson Building	Juneau	1,213,000
6	renovations		
7	(11) Homer campus new facility	Homer	500,000
8	classroom construction		
9	(12) Prince William Sound	Valdez	1,000,000
10	facilities classroom		
11	construction		
12	(13) Additional Rural Campus	Systemwide	1,000,000
13	needs		

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

16 STATE BOND COMMITTEE. The amount of \$400,000 or as much of that amount
17 as is found necessary is appropriated from the general fund of the state to the state bond
18 committee to carry out the provisions of this Act and to pay expenses incident to the sale and
19 issuance of the bonds authorized in this Act. The amounts expended from the appropriation
20 authorized by this section shall be reimbursed to the general fund from the proceeds of the
21 sale of the bonds authorized by this Act.

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

24 ANNUAL EARNINGS APPROPRIATIONS. The annual earnings on the proceeds of
25 the sale of bonds authorized in sec. 1 of this Act managed by the Department of Revenue may
26 be appropriated for reimbursement to the Department of Revenue for the costs of establishing
27 and managing the funds.

28 * Sec. 6. The uncodified law of the State of Alaska is amended by adding a new section to
29 read:

30 ADVANCE PLANNING. The amount withdrawn from the public facility planning
31 fund (AS 35.10.135) for the purpose of advance planning for the capital improvements

1 financed under this Act shall be reimbursed to the fund from the proceeds of the sale of bonds
2 authorized by this Act.

3 * Sec. 7. The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 LAPSE; REDEMPTION; REIMBURSEMENT. The unexpended and unobligated
6 balance of the appropriation made in sec. 3 of this Act lapses under AS 37.25.020 and is
7 appropriated to the state bond committee to redeem bonds sold under this Act. The amounts
8 expended from the general fund to pay the principal, interest, and redemption premium on
9 bonds issued under this Act shall be reimbursed to the general fund from the appropriation
10 made under this section to the extent that the money is not needed to redeem the bonds.

11 * Sec. 8. The uncodified law of the State of Alaska is amended by adding a new section to
12 read:

13 BALLOT QUESTION. The question whether the bonds authorized in this Act are to
14 be issued shall be submitted to the qualified voters of the state at the next general election and
15 shall read substantially as follows:

16 PROPOSITION

17 State General Obligation University of Alaska Facilities \$39,304,000

18 Design, Construction, and Major Maintenance Bonds

19 Shall the State of Alaska issue its general obligation bonds in the principal
20 amount of not more than \$39,304,000 for the purpose of paying the cost of
21 design, construction, and major maintenance of facilities at the University of
22 Alaska?

23 Bonds Yes []

24 Bonds No []

25 * Sec. 9. Section 8 of this Act takes effect immediately under AS 01.10.070(c).

26 * Sec. 10. Sections 1 - 7 of this Act take effect on the date that the lieutenant governor
27 certifies to the revisor of statutes that

28 (1) a majority of the qualified voters of the state who vote on the question at
29 the 2004 general election affirmatively voted in favor of the 2004 amendments to the
30 Constitution of the State of Alaska relating to and limiting appropriations from the Alaska
31 permanent fund based on an averaged percent of the fund market value; and

1 (2) the issuance of bonds authorized by this Act is ratified by a majority of the
2 qualified voters of the state who vote on the question at the 2004 general election.

FISCAL

NOTE

FISCAL NOTE

STATE OF ALASKA
2004 SPECIAL SESSION

Fiscal Note Number: _____
 Bill Version: LL# 04-0171
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
 Title General Obligation Bonds for RDU Revenue Programs & Services
State Transportation Projects Component Treasury Management
 Sponsor Rules Committee
 Requester Governor Murkowski Component No. 121

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual	381.9	49.9	34.0	24.0	9.0	6.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Debt Service		7,552.9	7,553.7	7,555.0	7,556.0	7,556.3
TOTAL OPERATING	381.9	7,602.8	7,587.7	7,579.0	7,565.0	7,562.3

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	381.9	7,602.8	7,587.7	7,579.0	7,565.0	7,562.3
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	381.9	7,602.8	7,587.7	7,579.0	7,565.0	7,562.3

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Authorizes the issuance of \$77.1 million in general obligation bonds to pay for state transportation capital improvement projects.

If the bill is passed by the legislature the proposal would be included on the ballot for voter authorization in the fall of 2004. Assuming voter approval the entire authorization of bonds would be issued in the spring of 2005. However, the State Bond Committee would determine the actual timing, amount, and term of the bond sales based on project demand and market conditions. In FY '05 up to \$381.9 will be appropriated from the general fund of the state to forward fund the costs of issuing the bonds including rating agency, printing, public notice, travel, financial advisor, and bond counsel fees. In FY '06 and following the contractual charges are for money management fees and paying agent fees. The general fund will be reimbursed from bond proceeds following the bond sale.

Prepared by: Deven Mitchell, State Debt Manager Phone 465-3750
 Division Treasury Division Date/Time 6/21/2004/3:13 PM
 Approved by: Tom Boutin, Deputy Commissioner Date 6/21/2004
 Agency Department of Revenue

FISCAL NOTE

STATE OF ALASKA
2004 SPECIAL SESSION

BILL NO. LL# 04-0171

ANALYSIS CONTINUATION

However if state general obligation bonds for other purposes (such as University projects) were approved at the same time, issuance of all bonds would likely take place at one time. In that instance, issuance costs would be largely combined. However, this fiscal note must contemplate issuance of only these bonds in order to provide for issuance costs in the event only this authorization is approved.

These bonds would be sold on a competitive basis with the bonds being awarded to the bidder offering the lowest true interest cost. The bidder would be given the option of purchasing bond insurance. This structure almost always results in a net bond premium. The bonds would be remarketed, with the premium used to pay the underwriter's sales force and expenses.

Assuming an interest rate of 5.25% (approximately 50 basis points higher than current rates) and a 15 year term, level annual debt service would be approximately \$7.5 million per year beginning in FY 2006. With current interest rates, annual debt service would be reduced to \$7.3 million.

The interest rates in this fiscal note require the maintenance of the State's credit ratings through this additional bonds issuance, a probable scenario since adoption of a fiscal plan would be concurrent with voter approval of this bond authorization. The State is currently on negative outlook from Moody's Investors Service. Standard and Poor's and Fitch Services have indicated mid-term concern related to the disparity between ongoing recurring revenues and expenditures and the continuing and projected depletion of the State's short term reserves. If no steps had been taken to balance recurring revenues with expenditures by the time these bonds were issued, it is likely that the cost of capital would increase for all issuers of Alaska public debt when the state credit ratings were downgraded by at least one of the agencies.

FISCAL NOTE

STATE OF ALASKA
2004 SPECIAL SESSION

Fiscal Note Number: _____
 Bill Version: LL# 04-0182
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
 Title General Obligation Bonds for RDU Revenue Programs Services
University Projects Component Treasury Management
 Sponsor Rules Committee
 Requester Governor Murkowski Component No. 121

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual	205.0	30.0	21.0	16.0	8.0	6.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Debt Service		3,850.9	3,850.9	3,850.9	3,850.9	3,850.9
TOTAL OPERATING	205.0	3,880.9	3,871.9	3,866.9	3,858.9	3,856.9

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	205.0	3,880.9	3,871.9	3,866.9	3,858.9	3,856.9
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	205.0	3,880.9	3,871.9	3,866.9	3,858.9	3,856.9

Estimate of any current year (FY2004) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Authorizes the issuance of \$39.3 million in general obligation bonds to pay for cost of design, construction, and major maintenance of University of Alaska facilities. If the bill is passed by the legislature the proposal would be included on the ballot for voter authorization in the fall of 2004. Assuming voter approval the entire authorization of bonds would be issued in the spring of 2005. However, the State Bond Committee would determine the actual timing, amount, and term of the bond sales based on project demand and market conditions. In FY '05 \$205.0 will be appropriated from the general fund of the state to forward fund the costs of issuing the bonds including rating agency, printing, public notice, travel, financial advisor, and bond counsel fees. In FY '06 and following the contractual charges are for money management fees and paying agent fees. The general fund will be reimbursed from fund bond proceeds following the bond sale.

Prepared by: Deven Mitchell, State Debt Manager Phone 465-3750
 Division Treasury Division Date/Time 6/21/2004/3:21 PM
 Approved by: Tom Boutin, Deputy Commissioner Date 6/21/2004
 Agency Department of Revenue