

**ALASKA LEGISLATURE**

**2734**

**HOUSE and SENATE FINANCE COMMITTEE FILES, 2003-2004**

- Section 17** 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 18** 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 a hearing panel.
- Section 19** 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 references to the board and reassigns the power to order payments from the fund from the board to the director.
- Section 20** 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 21** 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 22** 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 provisions and setting standards for rehabilitation specialists.
- Section 23** amends AS 23.30.041(d) to remove references to the board and reassign from the board to a hearing panel the power to review the decisions of the reemployment benefits administrator.
- Section 24** 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 25** amends AS 23.30.041(j) to modernize statute language, remove references to the board, and replace board with a hearing panel as the reviewer of reemployment benefits administrator decisions on rehabilitation plans.
- Section 26** amends AS 23.30.041(o) to remove reference to the board and replace the board with a hearing panel as the reviewer of decisions made by the reemployment benefits administrator on non-cooperation by an employee.
- Section 27** 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 28** 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 29** 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 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 11 above.
- Section 30** 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 11 above.
- Section 31** amends AS 23.30.065 to remove references to board and to replace the board with the division as the agency with the power to require and inspect employer records of injury.
- Section 32** 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 33** 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 34** 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 35** amends AS 23.30.070(f) to remove references to the board, to replace the board with a hearing panel, who after a hearing, may require an employer to pay the penalties for failure or refusal to report as provided by this section.
- Section 36** 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 37** amends AS 23.30.080(d) regarding proceedings to obtain stop work orders against uninsured employers. The amendment provides that the director may petition a hearing examiner for a stop work order, replacing the general grant of authority of the board to issue a stop work order. A new provision permits 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. Finally, the amendment removes references to the board and transfers the power to assess a civil penalty from the board to a hearing examiner.

**Section 38** creates two new statutory provisions relating to penalties against uninsured employers. AS 23.30.080(e) authorizes the director to petition a hearing examiner 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. Also as in AS 23.30.080(d), the 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. 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 39** 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 40** 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 hearing examiner before revocation of self-insurance certificates, and for the director to amend, adopt or reject the hearing examiner's proposed decision.

- Section 41** 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 42** amends AS 23.30.095(a) to conform language to modern usage. It also removes references to the board and replaces the board with a hearing panel as the agency that reviews employee claims for medical benefits beyond two years from the date of injury, and authorizes continued care or treatment.
- Section 43** 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 for receipt of filed physician reports; replaces the board with the director for approval of the form for reports; and, replaces board with a hearing panel for decisions 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 44** amends AS 23.30.095(d) to remove references to the board and transfer authority from the board to a hearing panel to order suspension of payment of compensation during a period of unreasonable refusal to obtain medical treatment.
- Section 45** amends AS 23.30.095(e) relating to independent medical examinations. It removes references to the board and transfers from the board to a hearing panel the authority to make orders for medical examinations and suspend or forfeit compensation during a period of refusal to attend an examination. In view of the shortened time required, a hearing examiner sitting alone may order an autopsy in cases of death. This provision also modernizes the language of the statute and conforms it to current usage.
- Section 46** 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 47** 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 48** 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 49** 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 50** 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 51** 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 52** amends AS 23.30.100(d) to remove references to the board and to transfer authority to a hearing panel to determine that an employer has not been prejudiced by an employee's failure to give notice or to excuse the failure to give notice. The amendment also modernizes the language of the statute.

**Section 53** amends AS 23.30.105(a) to remove references to the board and transfers to a hearing panel 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 54** 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 and commission as agencies that may release records as provided by the statute and replaces the board with the commission, a hearing examiner, or hearing panel, as authorized to discuss records in a decision and order.

**Section 55** 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 for a protective order 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 commission clerk for the board as the agency scheduling prehearing conferences, and replacing the board's designee with a hearing examiner 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 a hearing examiner, 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 a hearing examiner's discovery rulings by the commission and sets deadlines for response to a petition for review by the commission.

**Section 56** amends AS 23.30.110 to remove references to the board throughout the statute and to transfer certain powers and duties to hearing examiners and hearing panels 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 certified mail for registered mail and assigns the obligation for service to the commission clerk. It provides that the office of the commission is the place to file an affidavit of readiness for hearing. A hearing examiner, 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. A hearing examiner, instead of the board, shall schedule unopposed hearing requests within 60 days, and the commission clerk shall 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 grant continuances from the board to the hearing examiner. The hearing panel makes decisions on cases. Explicit provision is included for a majority decision, circulation of the draft by the hearing examiner, and for written dissents. 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 57** 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 a hearing panel 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 hearing panel 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 disputed, without forcing parties to proceed together to a full hearing on the merits.

**Section 58** creates a new statutory provision, AS 23.30.112, relating to the qualification, employment, authority and duties of hearing examiners. This section provides that claims and petitions will be conducted by hearing examiners employed by the commission. The section provides that hearing examiners must be licensed to practice law in Alaska and have three years of experience in workers' compensation or a similar field of practice. This section places hearing examiners in the classified service, provides for their salary at Range 24, and exempts them from AS 23.40. Some authority previously granted to the board is transferred to hearing examiners: 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.

This section also creates new a statutory provision, AS 23.30.113, for the conduct of hearings and the duties and responsibilities of hearing examiners. This amendment transfers to hearings by hearing panels and hearing examiners certain provisions regarding standards for hearings previously conducted by the board. Hearing examiners are assigned the duty to preside over hearings before a hearing panel, make rulings on procedure and evidence, and instruct panel members on the law. 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. Another new provision prohibits *ex parte* communications with the hearing examiner and members of a hearing panel. Finally, this amendment transfers from the board to the hearing examiner and panel the requirement that the hearing be recorded and be public.

**Section 59** 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 a hearing examiner, hearing panel 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, except depositions, where provision for fees is unchanged. 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 60** amends AS 23.30.120(b) to remove a reference to the board and transfer to a hearing panel the authority to excuse failure to give notice. This amendment conforms to section 53 above. There is no change to the substance of AS 23.30.120(a), which contains the presumption that "a claim comes within the provisions" of the workers' compensation act.

**Section 61** 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 hearing panel the sole power to determine the credibility of a witness. A new provision is added to require specific findings when credibility is disputed in a proceeding before the hearing panel. Section 64 below, at AS 23.30.128(a) coordinates with this section, and provides that findings of the hearing panel, unless set aside by the commission following de novo review on the record, are conclusive.

**Section 62** creates a new statutory provision, AS 23.30.124, which clarifies the process and time for reconsideration of a compensation order (hearing panel's decision) and limits the delay of finality of a compensation order by limiting the time for reconsideration. Reconsideration may be ordered upon the hearing panel's own motion or on petition of a party filed within 15 days of mailing of the compensation order. The hearing panel's power to order reconsideration expires 30 days after the compensation order. If the hearing panel 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 a hearing panel issues an order of reconsideration, then the compensation order which is being reconsidered is stayed until the decision on reconsideration is filed. The decision on reconsideration must be filed 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 hearing examiner.

**Section 63** 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 (hearing 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 hearing examiner and hearing panel 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 on appeal, requiring that a party desiring a stay of an order pending appeal to produce evidence of irreparable damage and allowing a hearing on the stay by the commission on three days notice to the parties and director. It is specifically intended that *Olsen Logging Co. v. Lawson*, 832 P.2d 174 (Alaska 1992), is not repealed respecting the standards for grants of stays on appeal.

**Section 64** 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. It is specifically intended that *Olsen Logging Co. v. Lawson*, 832 P.2d 174 (Alaska 1992), is not repealed respecting the standards for grants of stays on appeal.

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, and, if a party does not have legal representation and the order appealed concerns an unsettled question of law, the director may file an appeal on behalf of the unrepresented party. 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 64, AS 23.30.128, establishes the commission's broad authority to review and act on appeals. The commission may review de novo all exercises of discretion, factual findings, and legal conclusions below, except that a hearing panel's findings regarding the credibility of a witness is binding on the commission. If not set aside, the hearing panel's findings are conclusive. This statute provides that the commission review will be on the record, no new evidence will be taken, but that briefs and argument may be allowed. An exception provides that the commission may receive evidence in applications for a stay of a decision below (see sections 63 and 64 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. It 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 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, *Wiengardner 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 65** amends AS 23.30.130 to remove references to the board, transfer the authority of the board to modify decisions to a hearing panel, 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 66** 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 investigation and requires the superior court to enforce the director's subpoenas.

**Section 67** 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 68** amends AS 23.30.145(a) to remove references to the board, transfer the authority of the board to award attorney fees to a hearing panel, and conform the language of the statute to modern usage.
- Sections 69** amends AS 23.30.145(b) to remove references to the board, transfer from the board to a hearing panel the authority to award costs and attorney fees and conform the language of the statute to modern usage.
- Section 70** 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 71** amends AS 23.30.155(b) to remove a reference to the board and transfer from the board to a hearing panel the authority to vary periodic payments from the biweekly standard.
- Section 72** 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 73** 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 74** 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 a hearing panel.
- Section 75** 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 64 above.
- Section 76** 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 a hearing panel. The provision also conforms the language of the statute to modern usage.
- Section 77** 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 78** 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 a hearing panel.
- Section 79** 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 80** 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 as the agency receiving annual reports.

**Section 81** 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 a hearing panel.

**Section 82** 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 a hearing examiner.

**Section 83** amends AS 23.30.170(b) to remove references to the board, transfer the authority to declare awards in default from the board to a hearing examiner, 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 84** 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 a hearing panel.

**Section 85** 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 86** 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 87** amends AS 23.30.180(a) 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 a hearing panel. This amendment also conforms the language of the statute to modern usage.

**Section 88** amends AS 23.30.190(b) to remove a reference to the board and transfer the authority to adopt schedules for injuries that cannot be rated by use of the American Medical Association Guides from the board to the department.

**Section 89** 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 90** 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 a hearing panel.

**Section 91** 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 92** 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 93** amends AS 23.30.215(d) to remove references to the board, transfer the authority of the board to a hearing examiner 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 94** 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 a hearing panel and conforms the language of the statute to modern usage.

**Section 95** amends AS 23.30.240 to transfer the authority to approve executive officer waivers of coverage from the commissioner to the director.

**Section 96** amends AS 23.30.250(b) to remove references to the board, transfer to a hearing panel the authority to determine and order reimbursement in cases in which a person obtained compensation and benefits by knowingly making false and misleading statements. This amendment also transfers the authority to make attorney fee awards against that person, and to declare an order in default, from the board to the hearing panel.

**Section 97** amends AS 23.30.260 to remove a reference to the board, transfer the power to approve fees for representation to a hearing panel 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 98** amends AS 23.30.260 to add a new subsection allowing an attorney licensed in this state, who does not enter an appearance, to charge a fee not exceeding \$300, without approval, for legal services to an employee. The intent is to permit attorneys to charge for review and consultation on workers' compensation matters without entering a formal appearance and instituting litigation to seek a fee.
- Section 99** amends AS 23.30.395(3) to redefine "board" as the Workers' Compensation Hearings Board.
- Section 100** 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 101** amends AS 23.30.395 to add new subsections defining the commission, director, division, hearing examiner, and hearing panel.
- Section 102** 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 103** amends AS 39.25.120(c) to add a new subsection including the reemployment benefits administrator of the division in the list of partially exempt employees.
- Section 104** amends AS 39.50.200(b)(31) to remove a reference to the workers' compensation board and substitute the commission and hearings board.
- Section 105** 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 106** repeals AS 21.39.155(c), relating to the assigned risk pool.
- Section 107** provides that the cap on non-resident compensation rates applies only to compensation for injuries on or after the effective date of section 85.
- Section 108** 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 board to continue to serve until a successor is appointed.
- Section 109** 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, allowing members of the workers' compensation board to complete decisions, and providing for continuation of pending cases.

**Section 110** creates a new provision of uncodified law providing for initial staggering of terms on the commission and the hearings board. Special provision is made for the transfer of current workers' compensation board members to the hearings board and for coordination of appointments to the hearings board so that one-third of members serve terms of one year, one-third terms of two years and one-third terms of three years from the effective date of the section.

**Section 111** creates a new provision of uncodified law permitting the commission to borrow and the department to lend staff and for the commission to reimburse the department to allow a smooth transition. Workers' compensation hearing officers are also exempted for a period of 18 months from the requirement to be licensed in this state if otherwise qualified for employment.

**Section 112** creates a new provision of uncodified law allowing all litigation, investigation, pending proceedings to continue 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 113** 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. It also permits the Commission to proceed on an emergency basis to adopt necessary regulations to implement this bill.

**Section 114** gives section 113(a) an immediate effective date.

**Section 115** gives all sections except section 114 an effective date of July 1, 2004.

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PROPOSED CHANGES DISCUSSED AT MARCH 31, 2004 TELECONFERENCE

Proposed Change 1

Sec. 11, page 9, line 17

After "governor" ADD from a list of nominees submitted by the Judicial Council before " and confirmed."

Proposed Change 2

Sec. 58, page 35, line 31, ADD

The hearing panel may order interim compensation and medical benefits paid pending a final compensation order.

Proposed Change 3

Sec. 55, page 37, line 11 ADD (b) after "450" and before "(c)".

Proposed Change 4

Sec. 59, page 37, line 21, DELETE "instruct" and ADD "advise".

Proposed Change 5<sup>1</sup>

Sec. 62, page 38, line 24

AS 23.30.122 is repealed and reenacted to read:

Sec. 23.30.122 Credibility of witness. The hearing panel has the sole power to determine the credibility of a witness. A finding by the hearing panel concerning the weight to be accorded a witness's testimony, including medical testimony and reports, is conclusive even if the evidence is conflicting or susceptible to contrary conclusions. The findings of the hearing panel are subject to the same standard of review as a jury's finding in a civil action.

Proposed Change 6

Sec. 64, page 39, line 29 ADD

Requiring payment of an award of continuing compensation or medical benefits is not per se irreparable damage. The

This inserts the current statutory language with only the word "board" changed to "hearing panel".

Distributed by Scott Nordstrom  
4/23/04 pm

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7/13/2013 08:45 FAX

ALASKA AG CNTRL

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commission shall balance the hardship of staying an award of continuing benefits to the employee against any damage to the employer from denying a stay.

**Proposed Change 7**

Sec. 65, page 40, line 19

Insert same language in proposed change 6 between "result." and "The order of the...".

**Proposed Change 8**

Sec. 65, page 41, line 16 and 17,

Delete "and the preparation of the record on appeal."

**Proposed Change 9**

Sec. 65, page 41, line 29

Delete "hearing panel" and on

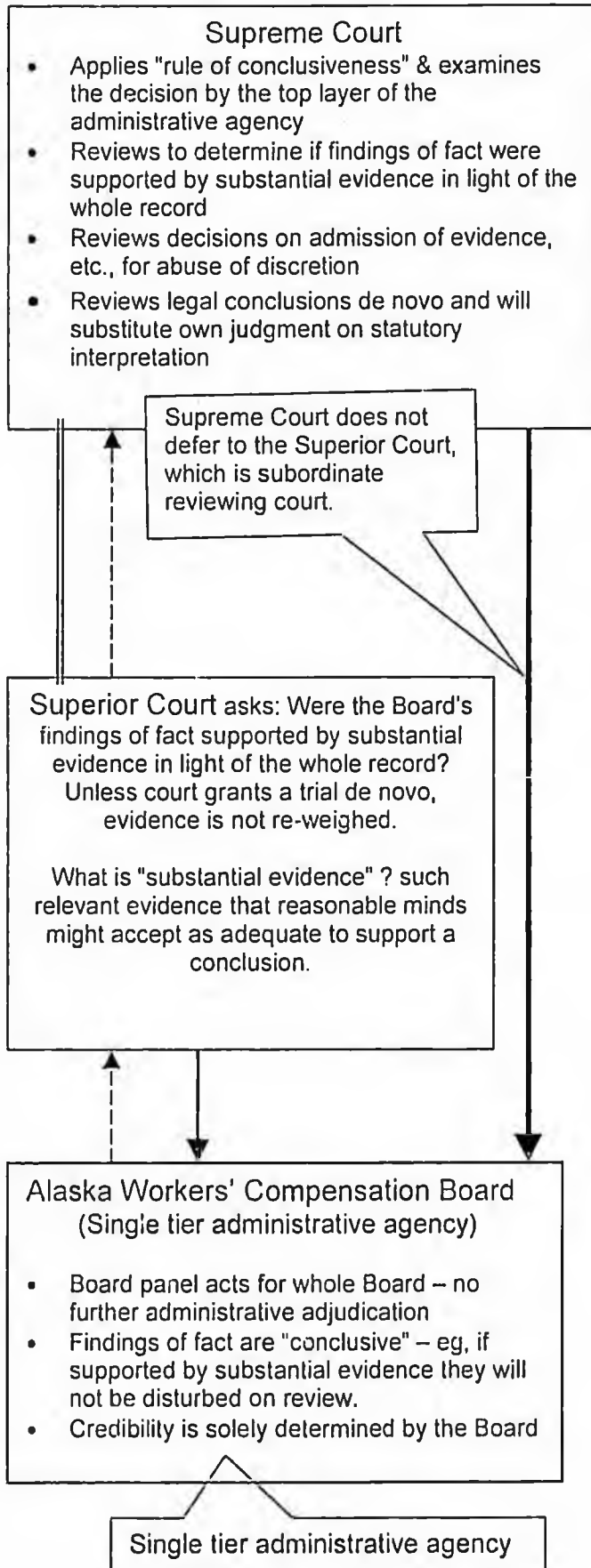
Page 41, line 30 DELETE the sentence beginning "Unless not..." and on Page 42, lines 1 through the first 3 words of line 3, DELETE all language. ADD after "are conclusive." on line 4

The commission shall use the same standard of review as that established by the Supreme Court of Alaska in workers compensation cases.

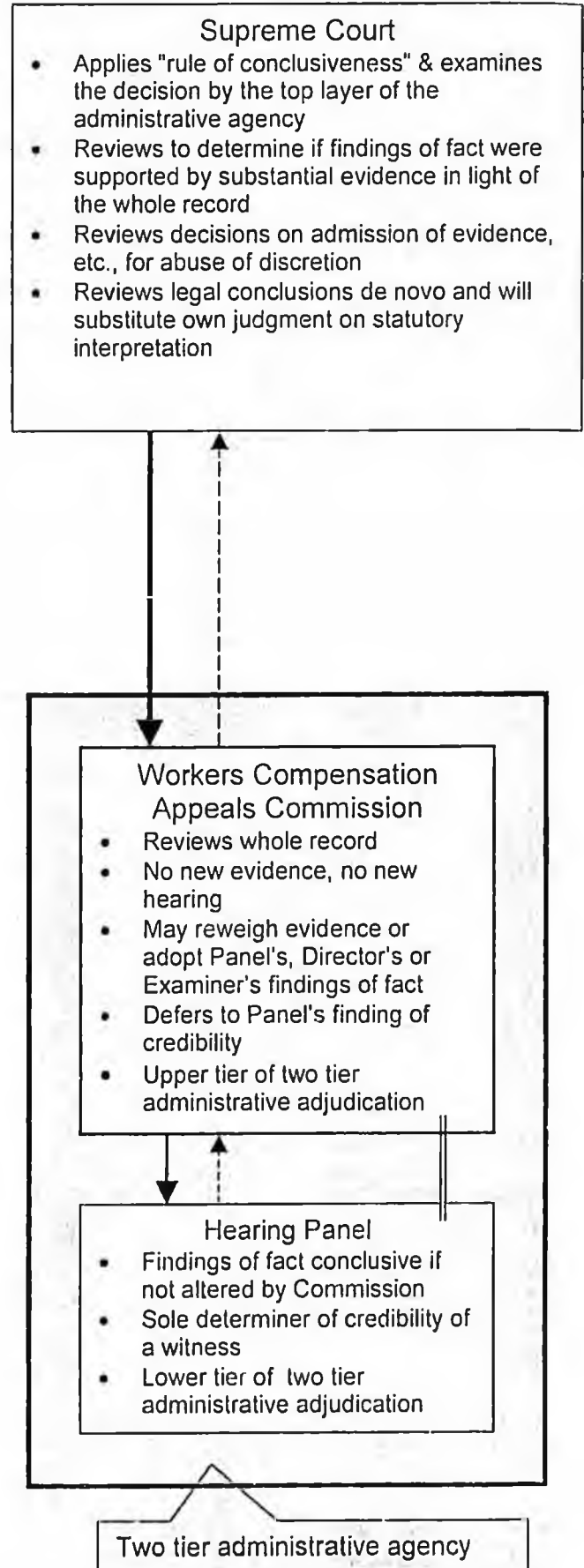
**Proposed Change 10**

Sec. 98, page 58, line 1 ADD after "gratuity" in excess of \$500".

## Current System



## Proposed System



Appeal   
 Review   
 Administrative connection

Prepared by Dept of Law provided 4/23/04

## **Ocean Beauty Seafoods, Inc.**

### **Statement of Support for CSSB 311 (JUD)**

#### **Workers' Compensation Reforms**

Ocean Beauty Seafood, Inc. is one of the state's largest on shore fish processors with nine processing facilities in Southeast, South central, and Western Alaska.

Workers' compensation insurance is one of our major operating expenses. The cost of workers' compensation insurance has been increasing and is forecasted to rise even faster for the next several years. Given the challenges in the salmon market created by competition from farmed fish and global economic problems, we are very sensitive to increased costs in our business.

Ocean Beauty has been meeting with other state legislatures, including Oregon and California, on similar workers' compensation issues. Oregon has already implemented a system similar to that included in CSSB 311 (JUD), and it is working well. California, where workers' compensation costs are escalating at an alarming rate, is also considering major changes in its system.

We support the proposed legislation as it would make the workers' compensation system more predictable and efficient.

We do not view the legislation as a diminishment of benefits to our employees, nor does the Alaska Department of Labor & Workforce Development.

We do believe CSSB 311 (JUD) will have a beneficial impact on our future ability to secure workers' compensation insurance in the Alaska market and hopefully at rates which will allow us to continue to do business in an important, but low margin industry.

Ocean Beauty Seafoods, Inc. would like to thank the Murkowski Administration for drafting and proposing this legislation. We urge the Legislature to pass CSSB 311 (JUD) this session in its current form.

Thank you for your consideration of our views.

**Subject:** SB 311

**Date:** Tue, 20 Apr 2004 18:15:53 -0800

**From:** "Laura M. Jackson, AIS" <laura.jackson@alaska.edu>

**Organization:** University of Alaska

**To:** Senator\_Lyda\_Green@legis.state.ak.us,  
"Senator\_Con\_Bunde@legis.state.ak.us" <Senator\_Con\_Bunde@legis.state.ak.us>,  
"Senator\_Fred\_Dyson@legis.state.ak.us" <Senator\_Fred\_Dyson@legis.state.ak.us>,  
"Senator\_Gary\_Wilken@legis.state.ak.us" <Senator\_Gary\_Wilken@legis.state.ak.us>,  
"Senator\_Ben\_Stevens@legis.state.ak.us" <Senator\_Ben\_Stevens@legis.state.ak.us>,  
"Senator\_Lyman\_Hoffman@legis.state.ak.us" <Senator\_Lyman\_Hoffman@legis.state.ak.us>,  
"Senator\_Donny\_Olson@legis.state.ak.us" <Senator\_Donny\_Olson@legis.state.ak.us>

Senator Green,

As one who has been involved in the Alaska Workers' Compensation field for over 17 years, I wish to encourage your committee to pass SB 311. The State of Alaska's workers' compensation system is in serious trouble. We are in worse trouble than we were when the sweeping reforms to correct the system were made in 1988. Those reforms have been eroded by the dispute resolution methods in place now. Unless steps are taken to return the system to the original legislative intent (quick, efficient, fair and predictable delivery of benefits to employees, at a reasonable cost to employers), employers will find they are unable to purchase insurance at a reasonable rate. Many insurers have already left the state and more will follow. More and more employers are being forced into the Risk Pool. The Alaska Insurance Guaranty Association Fund (that pays claims against employers in the Pool) is under emergency action by the state to try to save it from insolvency right now. Forcing more into the Pool cannot be the answer. Some will try to sneak by without insurance, leaving their injured workers without coverage. Other employers will choose to close their business due to the cost of insurance. This will mean a loss of jobs.

This bill is not the whole answer to the situation in which we find ourselves, but it is a good first step to restore fairness and predictability. I support the passage of this bill.

Laura M. Jackson, AIS  
Claims Manager  
University of Alaska

## Workers Compensation SB 311/HB450

Position Paper of  
The Associated General Contractors of Alaska

**Issue:** Workers compensation represents an implied contract between an employer and an employee regarding payments for workplace injuries and illnesses. The workers compensation system is designed to deal with both uncontested and the contested claims. A three-person panel comprised of a state employee, a representative of labor and a representative of management hear disputed claims. Appeals of decisions of the panel go to the Superior Court and ultimately to the Supreme Court. The current process is time consuming, inefficient, and renders inconsistent decisions. Due to these problems, some have suggested that employers forego the cost of appeal unless they have at least an 85% chance of being successful. Therefore it is conceivable that many illegitimate claims are paid because they fall below this high threshold, thereby driving up workers compensation costs for all Alaskan businesses.

### *AGC Position*

AGC believes that SB 311/HB 450 properly addresses an existing problem in the workers' compensation system of Alaska. We believe however, the Commissioners should be appointed in a manner similar to that currently followed for the judiciary. Employers, employees, and insurance companies should not have to worry about changes to the system that might result from the election of a new Governor. AGC supports this bill so long as the selection of new commissioners is removed from the political arena.

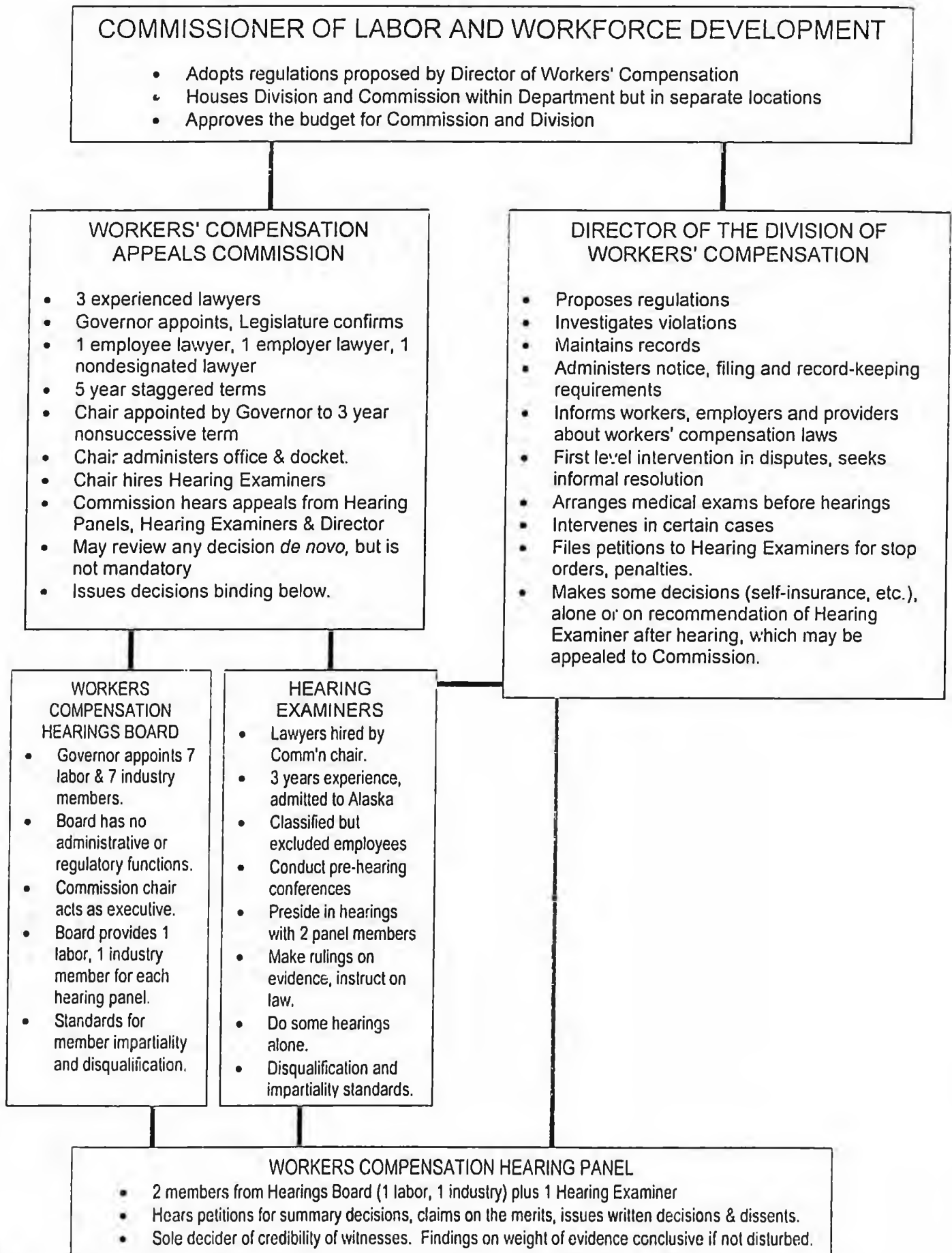
### *Advantages*

The proposed bill would change the current system by providing more highly trained hearing officers, replace the inconsistency of the Superior Court with a new Workers' Compensation Appeals Commission, and provide for a process that is quicker and yields more consistent and predictable results. The bill makes few, if any, changes to the benefits paid to injured workers.

### *Disadvantages*

The bill proposes that the new Workers' Compensation Appeals Commission would be comprised of three attorneys with workers compensation experience appointed by the Governor and confirmed by the Legislature. This process offers the opportunity to politicize the process and undermine the promise of consistent, predictable results. A change in administration could potentially lead to a change of the Commissioners and make the commission positions "political spoils". Employers and employee deserve a more evenhanded selection process.

# Workers Compensation Organization under CSSB 311 (JUD)



Provided by Governor Murkowski's Administration

## What's the Difference? Comparison in Question & Answer Format

What's the difference?	Current System	SB 311/HB450	CSSB 311 (JUD)
Who runs the "system" – all the record-keeping and enforcement?	The <u>Workers Compensation Board</u> administers the workers' compensation system with staff provided by Dept of Labor and Workforce Development – same Board does adjudications.	<u>Division of Workers' Compensation</u> created in Dept of Labor and Workforce Development to administer system. Separate from adjudications.	<u>Division of Workers' Compensation</u> created in Dept of Labor and Workforce Development to administer system. Separate from adjudications.
Who makes regulations?	The <u>Workers' Compensation Board</u> (chaired by Commissioner of Labor & Workforce Development) makes regulations by a majority vote.	<u>Director of Division of Workers' Compensation</u> proposes regulations for Commissioner to adopt.	<u>Director of Division of Workers' Compensation</u> proposes regulations for Commissioner to adopt.
Who investigates and accuses uninsured employers?  Who decides the case against uninsured?	The <u>Workers' Compensation Board</u> , thru Dept staff, investigates, <u>Board Panel</u> files charges against uninsured, lapsed self-insured employers, then <u>Board Panel</u> hears the case. Appeal to the Superior Court.	<u>Director</u> investigates and files charges against uninsured, lapsed self insured employers, <u>commission hearing officer</u> hears the case. Appeal to full Commission.	<u>Director</u> investigates and files charges against uninsured, lapsed self insured employers, <u>commission hearing examiner</u> hears the case. Appeal to full Commission.
Where does an injured worker or confused employer go for general information?	Department of Labor and Workforce Development staff in <u>Division of Workers' Compensation</u> .	<u>Division of Workers Compensation</u> in Department of Labor and Workforce Development.	<u>Division of Workers Compensation</u> in Department of Labor and Workforce Development.
Where does a notice of injury get filed?	<u>The Workers Compensation Board</u>	<u>Division of Workers' Compensation</u>	<u>Division of Workers' Compensation</u>
Who does informal dispute resolution?	<u>Division of Workers Compensation</u> staff (Workers' Comp. Officers)	<u>Division of Workers Compensation</u> staff (Workers' Comp. Officers)	<u>Division of Workers Compensation</u> staff (Workers' Comp. Officers)
Who decides if a medical examination is needed before a hearing?	<u>The Workers' Compensation Board's</u> designee, (usually a Workers' Comp. Officer), Appeal to the Board.	<u>Division of Workers Compensation</u> Director's decision may be appealed to commission	<u>Division of Workers' Compensation</u> Director's decision may be appealed to commission
Who schedules a hearing?	After an affidavit of readiness is filed, <u>the Workers' Compensation Board</u> notifies the parties of a pre-hearing conference and a Board designee sets the hearing date.	After an affidavit of readiness is filed, the case is transferred to the Commission. A <u>Hearing Officer</u> holds a conference, arranges discovery, and sets a hearing date.	After an affidavit of readiness is filed, the case is transferred to the Commission. A <u>Hearing Examiner</u> holds a conference, arranges discovery, and sets a hearing date.
What happens if a worker wants a protective order?	Petition to the <u>Workers' Compensation Board</u> , decided by Board designee with appeal to the Board then Court.	Petition filed, <u>Hearing Officer</u> decides. Expedited appeal to Commission.	Petition filed, <u>Hearing Examiner</u> decides. Expedited appeal to Commission.

## What's the Difference? Comparison in Question & Answer Format

What's the difference?	Current System	SB 311/HB450	CSSB 311 (JUD)
Who decides a worker's claim or employer's petition?	<u>The Workers' Compensation Board</u> panel, one member or two, plus a hearing officer	A <u>Hearing Officer</u>	A <u>Hearing Panel</u> : two Hearings Board members plus a Hearing Examiner
Who are the Board members?	<u>Workers Comp Board</u> members are appointed by the Governor, confirmed by Legislature, 7 representative of labor, 7 representative of industry. Comm'r of Labor sits as 15 <sup>th</sup> member.	No Board	<u>WC Hearings Board</u> members appointed by the Governor, 7 from labor, 7 from industry. Chair of commission is not a member, serves as administrator.
Must hearing officers be attorneys?	No.	Yes, admitted to practice in Alaska, subject to ethics rules, with 3 years experience	Yes, admitted to practice in Alaska, subject to ethics rules, with 3 years experience
How are hearing officers paid?	Range 21, classified service in PERA (GGU).	Range 24, partially exempt and excluded from PERA.	Range 24 Hearing Examiners, classified but excluded from PERA.
Are there provisions in the Workers' Compensation Act about impartiality and disqualification?	No.	Yes.	Yes.
Can the Director of the Division of Workers' Compensation be a party in a case?	No.	Yes. Also, <u>Director</u> can file petitions and appeals.	Yes. Also, <u>Director</u> can file petitions and appeals.
At a hearing, who decides how the law is interpreted?	1 or 2 members of the <u>Board</u> and a hearing officer decide together, with equal votes, how to interpret the law.	The <u>Hearing Officer</u>	The <u>Hearing Examiner</u> makes rulings on the law and instructs the 2 Hearings Board members present.
At a hearing, who decides the facts?	1 or 2 members of the <u>Board</u> and a hearing officer decide together, with equal votes	The <u>Hearing Officer</u>	The 2 Hearings Board members present and the Hearing Examiner decide together as a <u>Hearing Panel</u>
If an employee wants something that the workers' compensation law doesn't cover, must we still have a hearing on the merits?	Yes, if the employee wants a hearing.	No. If the only issue is whether the employee is asking for something covered by the law and there are no material disputes of fact, you can ask for a summary decision by a <u>Hearing Officer</u> .	No. If the only issue is whether the employee is asking for something covered by the law and there are no material disputes of fact, you can ask for a summary decision by a <u>Hearing Panel</u> .

## What's the Difference? Comparison in Question & Answer Format

What's the difference?	Current System	SB311 / HB450	CSSB 311 (JUD)
What if a person wants reconsideration?	The workers' compensation act has no provision for reconsideration. The <u>Board</u> has used other statutes to do this, but the application is not always clear.	New provisions outline when reconsideration can be asked for and how to ask for it.	New provisions outline when reconsideration can be asked for and how to ask for it.
Where does an appeal go?	To the <u>Superior Court</u> . The court may review de novo. The Board's findings, including the weight to be given evidence, are conclusive and may be set aside only if not supported by substantial evidence.	To the <u>WC Appeals Commission</u> , which may review de novo. The Hrg Officer's findings of credibility are binding, but other findings as to weight of evidence may be set aside by the Commission.	To the <u>WC Appeals Commission</u> , which may review de novo. The Hrg Panel's findings of credibility are binding, but other findings as to weight of evidence may be set aside by the Commission.
Is the appeal decision binding on the Board?	No.	Yes.	Yes.
An employee can't get a lawyer to appeal, but the case is novel. Can the Division help?	No. The employee must file pro se.	The <u>Director</u> , when the law is not settled on an issue, may file an appeal to the <u>Commission</u> – or the employee can file pro se.	The <u>Director</u> , when the law is not settled on an issue, may file an appeal to the <u>Commission</u> or the employee can file pro se.
What is the next level of appeal?	<u>Supreme Court</u> , which gives no deference at all to the Court, and may set aside findings of the Board if not supported by substantial evidence.	<u>Supreme Court</u> , which would give no deference to the Commission on matters of law, and could set aside fact findings if not supported by substantial evidence.	<u>Supreme Court</u> , which would give no deference to the Commission on matters of law, and could set aside fact findings if not supported by substantial evidence.
If an insurer wants second injury fund reimbursement, who decides who pays?	The <u>Workers' Comp. Board panel</u>	The <u>Director</u>	A <u>Hearing Panel</u>
Who is the Reemployment Benefits Administrator?	A PX employee of the <u>Board</u> who is in charge of vocational rehabilitation in the workers' comp system	A PX employee of the <u>Director</u> in charge of vocational rehabilitation in the workers' comp system	A PX employee of the <u>Director</u> in charge of vocational rehabilitation in the workers comp system
An employee wants to settle her case. Does she need approval?	Yes. The settlement must be in writing, meet stringent regulations and the <u>Workers' Compensation Board</u> must decide it is in her best interest to settle your claim.	If she is represented by an Alaskan attorney, she does not need approval, if the settlement is in writing, meets regulations, and is filed with the <u>Division</u> . If a minor or pro se her agreement must be reviewed by a hearing officer and be in her best interest.	If she is represented by an Alaskan attorney, she doesn't need approval, but the settlement must be in writing, meet regulatory standards, and be filed with the <u>Division</u> . If a minor or pro se, her agreement must be reviewed by a hearing panel and be in her best interest.

**WCCA** WORKERS' COMPENSATION COMMITTEE OF ALASKA  
P. O. Box 200631 • Anchorage, Alaska • 99520

April 15, 2004

The Honorable Lyda Green  
The Honorable Gary Wilken  
Co-Chairs, Senate Finance Committee  
Alaska State Senate  
State Capitol  
Juneau, AK 99801-1182

Dear Chairpersons Green and Wilken, Members of the Committee:

As you may know, the Workers' Compensation Committee of Alaska (WCCA) is comprised of representatives of large and small Alaska employers, both self-insured and those who purchase workers' compensation insurance, as well as insurers, insurance adjusters, brokers, and attorneys who represent employers before the Alaska Workers' Compensation Board. WCCA seeks to promote the quick, efficient, fair and predictable delivery of benefits to injured workers at a reasonable cost to the employers who are subject to the Alaska Workers' Compensation Act.

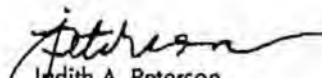
WCCA has had an opportunity to review the Committee Substitute for SB 311 (companion bill to HB 450) currently before the Senate Judiciary Committee and the House Labor and Commerce Committee. We have carefully compared the CS to the text of the bills as originally introduced. While WCCA continues to support the bills as originally introduced, we also support the Committee Substitute. The revision to Section 10 of the bill (AS 23.30.007(b)) that requires the Governor to appoint members to the Workers' Compensation Appeals Commission that have prior experience representing both employers and employee is a positive change.

WCCA suggests the Committee consider a further amendment to Section 10 of the Bill, to AS 23.30.009(a), to require that the full Appeals Commission employ and supervise commission staff and hearing examiners. This change would ensure that all members of the Appeals Commission rather than simply the Commission chair participate in hiring staff and hearing examiners and in assigning duties, which we feel would serve to further de-politicize the process.

WCCA does not support the additional proposed amendment that we understand has been submitted by Chancy Croft.

WCCA continues to believe that this proposed legislation will increase the level of experience and professionalism of the hearing examiners and commissioners who hear and decide workers' compensation matters. We also believe the bill will result in a process that is more fair and that will allow for faster and more predictable resolution of disputed workers' compensation matters, at lower cost to all parties. We urge passage of the CS for SB 311.

Sincerely,

  
Judith A. Peterson  
President, WCCA

cc: Members of Committee  
The Hon. Gene Theriault

## House Bill 450/Senate Bill 311

Close to one-hundred years ago, various states enacted statutes that provided a means for injured employees to be compensated for both the cost of medical care and lost wages without proving negligence on the part of the employer. These statutes, having evolved over the years, are what we now know as the Workers' Compensation Acts of the fifty states. It was hoped that these acts would provide a defined benefit and eliminate the need for unnecessary litigation.

The Alaska Workers' Compensation Act governs the manner in which claims are filed, recorded, adjusted and ultimately settled. Within this process are various mechanisms that are continually being challenged often resulting in opinions that are thought to be outside the intent of the act. This has resulted in claims being frequently litigated, increasing the cost of such claims well beyond the actual cost of medical care, lost wages and other benefits of the act. Such litigation and unprecedented awards has had a dramatic impact on the cost of meeting the statute; on the cost of Workers' Compensation insurance policies. Such litigation and unprecedented awards defeats the intent for which the statutes were enacted a decade ago.

Any statute, regulation or ordinance that is left open to frequent interpretation, will have varying opinions on the intent of the original legislation. Within the Workers' Compensation Act, these varying opinions, often thought to be outside the actual intent of the act, have resulted in additional costs or increased costs to the employer and, consequently, their insurer. To cope with these costs, the loss costs, or rates, have been increased over the year. Some insurers, even with the increased loss costs, elected to not provide Workers' Compensation insurance policies in Alaska. Others, while trying to compete, became insolvent forcing the claims for which they are contractually obligated into the Alaska Insurance Guaranty Association.

The Workers' Compensation Act has the ability to meet the intent of the act in a means that is cost effective and equitable for both the employee and employer. But, in order to accomplish that objective changes, that do not impact the actual benefit to the employees, need to be made to the act. Such changes are the intent of House Bill 450/Senate Bill 311.

The Alaska Independent Insurance Agents and Brokers, Inc. has reviewed the context of House Bill 450 and its companion Senate Bill 311. We concur with the language of the bill and support its limited reform of the Workers' Compensation Act. Enacting this legislation will allow the employers to meet the terms of the act, indemnify their employees in a manner that is fair and equitable yet allow for claims to be challenged in a prudent fashion. It will also attract new insurers into the state providing for a competitive market.

The Alaska Independent Insurance Agents and Brokers, Inc. supports House Bill 450/Senate Bill 311. We encourage the honored members of the Twenty-Third Legislature to quickly approve the bill(s) and allow them to be enacted. By enacting this very important legislation, it is our hope that the faults in the Workers' Compensation Act will be eliminated while allowing the employers to meet the conditions of the act and the employees to receive the benefits.

This Is Respectfully Submitted,

*The Alaska Independent Insurance Agents and Brokers, Inc.*

3/1/2004 8:08 AM

House Bill No. 450 // Senate Bill 311  
Workers' Compensation System Improvement

**Amendments do not change type, amount or computation of benefits paid to Alaskans; outside residents capped at Alaska rate.**

- a. No change to compensation rates or benefits, including rehabilitation and medical benefits.
- b. Compensation rates for total disability capped at the rate recipient would receive if residing in Alaska.
- c. No reduction or cap in attorney fees.

**Active, accountable and effective Division Director given new enforcement tools to enforce requirement to obtain insurance.**

- a. Takes power and responsibilities formerly vested in the "Board" and places it with a Workers' Compensation Division Director:
  - Investigation powers, including subpoena, inspection of records, take testimony
  - Power to intervene in hearings directly, and
  - Power to make decisions affecting enforcement.
- b. The Director has discretion to bring matters before a hearing officer for decision and to appeal decisions to the Appeals Commission.
- c. The Director may seek new penalty (up to \$100/day/uninsured employee) against uninsured employers.
- d. Stop work orders and penalty hearings may be heard on shortened notice when Director shows employment conditions are hazardous.
- e. Director may seek default judgment in faster, streamlined process to stop defaulting employers leaving the state – and their liabilities behind.

**Reorganization streamlines adjudicative and appeal process.**

- a. A single hearing officer replaces 3-member Board panel (hearing officer, Employer Representative, and Employee Representative) that now hears cases and reviews settlements. As Hearing Officer is available at all times, logistical delay and expense is reduced.
- b. Three (3) member Appeals Commission replaces Superior Court appeals. Appeals Commission has 90 days to decide appeal; half the time for Superior Court (180 days). Transfer of record costs and delay decreased as hearings and appeals in same office.
- c. Appeals Commission of experienced attorneys will have expertise and capacity to quickly review and decide appeal.
- d. Reconsideration, Modification, Appeal process clarified.
- e. Provides mechanism for summary disposition of whole or part of claim or issue prior to a hearing on the merits.

House Bill No. 450 // Senate Bill 311  
Workers' Compensation System Improvement

**Consistency, and predictability increased in process.**

- a. Hearing officers subject to appeal to single Commission addresses inconsistent decisions rendered by seven (7) different Board panels with appeals to multiplicity of Superior Court judges.
- b. All appeals will be decided by a single three (3) member Appeals Commission with expertise in workers' compensation law. Appeals decided by a single entity will insure predictability and consistency in the interpretation and application of the law. Review made directly to Supreme Court.
- c. Commission members have staggered terms that will allow different administrations to appoint new members without losing institutional knowledge of earlier members. Commission provides opportunity for to build consensus from divergent viewpoints and a coherent body of law.
- d. A single hearing officer may be designated to decide all discovery issues; current practice is to allow various non-attorney prehearing officers to decide discovery matters with appeal to the Board for enforcement.
- e. Explicit direction and standards put in place to avoid perception of bias and protect impartiality of hearing officers.
- f. Amendments bring Alaska's adjudicative and appeal mechanisms in conformity with such model states as Minnesota and Oregon; Workers' Compensation and Rehabilitation Law (Revised) Model Act by The Council of State Governments (found in Prof. Larson's Treatise).

**Insurance code amendments strengthen Insurance Guaranty Fund, assigned risk pool for protection of employers and insurers.**

- a. Workers' compensation insurers required to special cash or securities deposit to provide protection beyond the Insurance Guaranty Fund.
- b. Employers with greater than 25 million in net worth excluded from Fund liability to protect Fund assets.
- c. Insurance Guaranty Fund Board reconstituted to include representatives of management, labor, insurance licensees.

**In companion bills HB 403 // SB 276**

- a. Assessment on insurance premiums increased, and self-insured employers assessed a percentage of claims paid to rebuild the Fund.
- b. Assigned Risk Pool made self-funding by lifting the surcharge cap.
- c. Assessment base broadened across other insurance lines.

**ALASKA**  
**LABOR-MANAGEMENT**  
**AD HOC COMMITTEE**  
**ON WORKERS' COMPENSATION**

March 5, 2004

The Honorable Pete Kott  
 Speaker of the House  
 Alaska House of Representatives  
 State Capitol  
 Juneau, AK 99801

The Honorable Gene Theriault  
 President of the Senate  
 Alaska Senate  
 Juneau, AK 99801

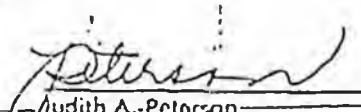
Gentlemen:

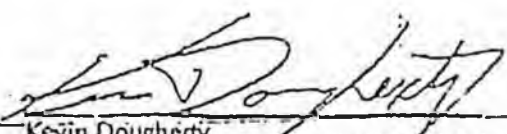
The Ad Hoc Committee, which consists of representatives from industry and labor, historically has met periodically to address issues that affect substantive changes (issues that affect benefits) in the Workers' Compensation Act. In January management and labor decided the time had come to address such issues again. In the mean time, the administration proposed SB311 and HB450, which deal with procedural issues (issues regarding the make up and management of the Board). Although the Ad Hoc Committee had never dealt with such issues previously, labor recommended the Ad Hoc Committee consider the bill.

The Committee reached agreement on sections of the bill that refer to the Guaranty Fund, capping out-of-state workers' compensation at what the employee would have earned in-state, placing some administrative responsibilities formerly vested in the Board with a Workers' Compensation Division Director, uninsured penalties and replacing the Superior Court with an appeals commission.

The Committee has scheduled no further meetings on the issue. We do, however, anticipate meeting in the future on substantive issues of concern to both management and labor.

Sincerely,

  
 Judith A. Peterson  
 President, WCCA  
 Northwest Technical Services

  
 Kevin Dougherty  
 Alaska Laborers

Page 2

Richard Cattanach  
Associated General Contractors of Alaska

David Ford  
Ironworkers Local 751

Laura Jackson  
University of Alaska

John Guichii  
IBEW

John Garrett  
Alyeska Pipeline Service Company

Barbara Huff-Tuckness  
Teamsters

April Reilly  
Rainproof Roofing, LLC

Jim Robison  
Senior Alaskan

Cc: Con Bunde  
Chairman, Senate Labor & Commerce Committee

Tom Anderson  
Chairman, House of Representatives Labor & Commerce Committee

## Questions and Answers on Administrative *de novo* Review

- What does the law provide now?

1. On the "reviewability" of the board's decisions on credibility of a witness, the law says: "The board has the sole power to determine the credibility of a witness." AS 23.30.122.
2. On the "reviewability" of the board's findings of fact, the law says: "A finding by the board concerning the weight to be accorded a witness's testimony, including medical testimony and reports, is conclusive even if the evidence is conflicting or susceptible to contrary conclusions. The findings of the board are subject to the same standard of review as a jury's finding in a civil action." AS 23.30.122. This means that the reviewing court will uphold the board's findings if there is substantial evidence in light of the whole record to support them, that is, " *'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'*" Conclusions of law and rulings on evidence, etc., are not covered by this statute.
3. AS 23.30.122 does not bar the superior court from *de novo* review. Appellate Rule 609(b) provides: "In an appeal from an administrative agency, the superior court may in its discretion grant a trial *de novo* in whole or in part. . . . The hearing or trial of the action shall be upon the record thus filed and upon such evidence as may be produced in the superior court."

- How would review differ under the new system?

1. The hearing panel would have the **same sole power to determine credibility** of a witness, but the hearing panel would have to explain its determination when credibility was disputed. This is a codification of existing law. Referring to AS 23.30.122, the supreme court stated that it would not assume that lack of credibility was relevant to the board's decision "in the absence of specific findings." *Hotth v. Valley Constr.*, 671 P.2d 871, 874, n.3 (Alaska 1983).
2. The commission could review findings of fact, conclusions of law and exercises of discretion by hearing panels, hearing examiners and the director, but it usually could not disturb the determination of credibility by a hearing panel.
3. The commission would have the discretion to review *de novo* ON THE RECORD. There would be **no new evidence, no new hearing, but the Commission would review all the evidence in the record.** This is found in the new AS 23.30.128(b). If the evidence in the record was incomplete, the commission could send the case back to the hearing panel to take more evidence, but it would not take more itself.
4. There would be no intermediate appellate court reviewing an agency decision. There would be two levels of agency adjudication. In supreme court review, the "conclusiveness rule" would apply to the commission's findings and, if not disturbed by the commission, to the hearing panel's findings also.

- Was this a change added into the proposed CS?

No. The original SB311, which did not have hearing panels, had the same provisions regarding Commission review. The standards of commission review are substantively unchanged between the bill introduced as SB311 and the proposed CS for SB311. The only change was to include the hearing panel in place of the single hearing officer who made decisions on cases.

Prepared by the Division of Insurance

- Why does the new system make this change from the current system?
  1. The commission is not a court. It is the highest level of an administrative agency with a subordinate layer of decision-making. **Basic, long-established principles of administrative law require that the findings by the highest body of the agency, not the hearing referee or panel, are due deference on judicial review.** See, Davis & Pierce, Administrative Law Treatise vol. II, § 11.2 at 178 (3<sup>rd</sup> Ed.1994); Pierce, Administrative Law Treatise, vol. II, § 11.2 at 783 (4<sup>th</sup> Ed. 2002) ["The nature of the substantial evidence test routinely creates situations in which either of two inconsistent findings are supported by substantial evidence. In such circumstance, it is the agency's finding, rather than the ALJ's finding, that must be upheld."]
  2. **It is the rule in the majority of states that the "rule of conclusiveness of administrative findings of fact applies to the final action of the agency (i.e., director, commission, full board, etc.).** Larson's Workers Compensation Law treatise reports that in its most orthodox form, no exception is made for credibility determinations. Larson, Workers Compensation Law, § 130.03[3] p. 130-12 (2000); (e.g., *Stiger v. State Line Tire Serv.*, 35 S.W. 3d 355 (Ark. App. 2000); *Erck v. Brown Oldsmobile*, 815 P.2d 1251 (Or. 1991); *Norton v. Waste Mgt.*, 552 S.E.2d 702 (N.C. Ct. App. 2001); *Dillon v. Industrial Comm'n*, 552 N.E.2d 1082 (Ill. 1990); *Lewis v. Cambridge Filter Corp.*, 517 N.Y.S 2d 342 (N.Y. App. Div. 1987). Alaska would join the "modified majority rule", where the reviewing agency defers to the trier of fact's decision on credibility, to a degree that varies among the states. Larson, Workers Compensation Law § 130.03[5] pp. 130-12– 130-26 (2000). (e.g., *Adams v. Industrial Comm'n*, 710 P.2d 1073 (Ariz. App. 1985)).
  3. **It promotes consistency and mirrors the recommendations of the National Commission on State Workmen's Compensation Laws Report (1972) that the appeals board be able to overrule the hearing examiner on questions of fact and law.** The National Commission said "There is some merit to a review of the facts in workmen's compensation cases to insure that basically similar situations are evaluated consistently. This review should, however, be performed by the appeals board within the workmen's compensation system. . . . where there is an appellate level within the workmen's compensation agency, the decisions of the workmen's compensation agency [should] be reviewed by the courts only on questions of law."
  4. **It provides a check on error by experts in the law regarding the due process provided in the hearing, the opportunity allowed for the parties to be heard and for their arguments and evidence to be fairly considered; and the hearing panel's careful and rational examination of the evidence, while preserving the right of a witness to face the determiner of his credibility.**

- Won't this kind of review take more time?

No, it should not. Currently the whole record is given to the appellate court. The whole record will go to the commission without the need to make copies. If a court must look for "substantial evidence in light of the whole record", the whole record is produced to and reviewed by the reviewing court already.

- What about stays pending appeal?

SB 311 assigns conclusiveness to review by the highest level of the adjudicatory agency, but does not alter the standards for grant of a stay pending review by the Commission. There is no intent to repeal *Olsen Logging Co. v. Lawson*, 832 P.2d 174 (Alaska 1992).



ALASKA

## **National Federation of Independent Business**

### **Statement of Support for CSSB 311 (JUD)**

#### **Workers Compensation**

**April 17, 2004**

The Alaska Chapter of the National Federation of Independent Business has 2,500 members, making it the largest small-business advocacy group in the state.

NFIB supports SB 311 that makes important changes to the workers compensation system. These changes will result in a more efficient system with better consistency in decisions. This will be a plus for employers, injured workers as well as the insurance companies that write workers compensation insurance in Alaska.

In the current system, hearing panel appeals go to the Superior Court who are not experts in Workers Compensation law. Their decisions are inconsistent and are not precedent setting. Appeals to the Supreme Court are precedent setting. This system has been costly for employers and insurers and has delayed resolution of claims for employees.

The new system creates a more experienced hearing panel consisting of one labor, one industry and one hearing examiner. Appeals would go to the Workers Compensation Commission made up of 3 members with experience in practicing workers compensation law in Alaska. Commission decisions would set legal precedent unless overturned on appeal by the Alaska Supreme Court. The Workers Compensation Commission replaces the inconsistency of the Superior Court. This will result in a more fair and efficient process with improved consistency.

It is important for business to know what the rules are and have them applied consistently. This bill helps accomplish that for the workers compensation system.

**Vote YES on SB 311**

Submitted by Thyes Shaub on behalf of NFIB/Alaska.

# ALASKA AFL-CIO

2501 Commercial Drive · Anchorage, Alaska 99501 · 907-258-6284 · Fax 274-0570

**MANO FREY**  
Executive President



**BRUCE LUDWIG**  
Secretary / Treasurer

April 23, 2004

Senator Wilken  
Chair Senate Finance Committee

Dear Senator Wilken and Committee Members,

In listening to Mr. Nordstrand's opening remarks it sounds as if labor is backtracking on a deal that was made. To clarify the record the Ad-hoc Committee did reach agreement on the issue of the Commission but the Ad-hoc Committee deal ended when Judith A. Peterson President of the WCCA wrote a letter March 4, 2004 to the Senate Labor and Commerce Committee supporting SB 311 disregarding the Ad-hoc Committee's work. Also in this agreement there was no De novo language agreed to.

After this we sat down with the administration and worked on the legislation and agreed to keep the Commission and Put the Board back, and we still do if that is what you decide, but we have never agreed to anything that had the de novo language in it and we still object to it. In fact that was the topic of discussion when talks with the administration broke off.

Mr. Chairman when we reach agreement with someone we stick to it until the other party breaks the deal, as did Ms. Patterson did with the Ad-hoc Committee. We will live with the deal offered the Administration if the De novo language is removed but as we told the State side of the table as long as the De novo language remains we will and do oppose the bill.

Don Etheridge

AFLCIO  
Lobbyist

SB 311



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

P.O. Box 110001  
JUNEAU, ALASKA 99811-0001  
(907) 465-3500  
FAX (907) 465-3532  
WWW.GOV.STATE.AK.US

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

February 6, 2004

The Honorable Gene Therriault  
President of the Senate  
Alaska State Legislature  
State Capitol, Room 107  
Juneau, AK 99801-1182

Dear President Therriault:

Under the authority of article III, section 18, of the Alaska Constitution, I am transmitting a bill relating to the workers' compensation system. This bill relieves employers and employees of the "administrative burden" present in our workers' compensation system. The current accumulation of rules, procedures, and appeal processes increases costs for employers and insurers, delays resolution of claims for employees, and makes the Alaska workers' compensation insurance market difficult for existing insurers and unattractive to new insurers. A recent Alaska Supreme Court case illustrates the problem. It took 1,400 days from filing of the claim to a decision by the Alaska Supreme Court in Bradbury v. Chugach Electric Assn., No. S-10532 (Alaska 6/20/2003). This is far too long to wait for resolution of a claim.

This bill reduces the administrative burden of the system by eliminating the present system of hearings and appeals. For years, there have been concerns that hearings before the Alaska Workers' Compensation Board (Board) are not accomplished quickly or consistently. The Legislature has been forced to take a number of steps, including: increasing the number of members of the Board; increasing the number of panels actually hearing cases (composed of one appointee representing labor, one appointee representing management, and a hearing officer); and increasing the number of hearing officers.

The current size of the Board with 14 members and the commissioner of the Department of Labor and Workforce Development far outstrips the single three-member Board originally created by the Legislature and makes assembly as a body (for purposes of meetings and approving regulations) difficult. While I recognize and appreciate the dedication, public service, and hard work the

The Honorable Gene Therriault  
February 6, 2004  
Page 2

Board members provide, many members lack even a general legal training and background, much less specialized knowledge of workers' compensation law.

Similarly, over the years the number of Board hearing panels have steadily increased in order to partially address concerns about their availability for frequent hearings. The unwanted side effect is a lack of consistency and predictability of decisions. Currently, there are more than 300 combinations of panel members and hearing officers deciding claims. On appeal, any one of the numbers of superior court judges assigned to hear workers' compensation appeals would rule on the relevant panel's decision. The losing party may then appeal to the Alaska Supreme Court as a matter of right and no deference is given to the Superior Court's decision. These sources of variation in the interpretation of the Alaska Workers' Compensation Act have multiplied in the last years, and have led to inconsistent, unpredictable rulings. There is no doubt. Alaska needs a consistent and predictable system for resolving disputed workers' compensation claims.

This bill replaces the old system with three new components, all of which will bring more predictability and consistency to the system: (1) a Workers' Compensation Appeals Commission (Commission); (2) experienced hearing officers; and (3) additional administrative authority and duties vested in the director of the division. In fact, the only change to benefits made in the entire bill is "capping" out-of-state claimants' benefits to the amount received by in-state claimants. Under current statutes, if a claimant resides out of state, the claimant's compensation rate would be adjusted upward or downward based on the cost of living where the claimant resides. The bill "caps" the cost-of-living adjustment for those claimants residing in a locality that has a higher cost of living than does Alaska. Under the bill, if a claimant resides in a higher cost-of-living locality, the claimant would receive the same benefits that the claimant would have received if the claimant resided in Alaska. Otherwise, no attempt is made to alter benefits available to injured workers or to disrupt the delivery of benefits.

The Commission replaces the Superior Court at the appellate level. The Commission would be composed of three attorneys who are members in good standing of the Alaska Bar Association. These individuals would have significant experience in Alaska workers' compensation law and their sole job would be to decide workers' compensation claims. The Commission will produce decisions that will be legal precedent until and unless overturned on appeal by the Alaska Supreme Court.

SB 311

The Honorable Gene Therriault  
February 6, 2004  
Page 3

Initial hearings on disputed claims would be conducted by hearing officers. Hearing officers would be attorneys licensed to practice in Alaska with significant experience in workers' compensation law. These hearing officers would have the benefit of some minor procedural improvements designed to aid the parties in reaching a prompt adjudication of the claims. Costs currently associated with continuing to a hearing in cases that ought to be dismissed or summarily decided will be reduced. Consistency and predictability in the system will be improved. Costs and delays in resolving employees' claims are reduced without changing benefits available to injured workers.

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

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

The bill would also revise AS 21, the insurance code, regarding how the state regulates the insurance industry in the provision of workers' compensation insurance. Under the bill, insurers that transact workers' compensation insurance in this state would be required to maintain in the state a special deposit of cash or securities for the protection of persons in this state covered under workers' compensation insurance. This revision would provide additional financial protection for Alaskan workers in the event that workers' compensation insurer becomes insolvent and unable to pay claims.

SB 311

The Honorable Gene Therriault  
February 6, 2004  
Page 4

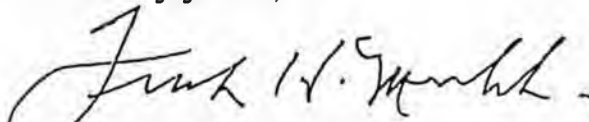
The composition of the Board of Governors of the Alaska Insurance Guaranty Association would be modified under the bill to include representatives from management, labor, and insurance licensees. This change would expand the expertise of the Board of Governors to better address workers' compensation issues. The bill provides transition provisions to allow for the initial appointment of members to meet the new statutory standards.

Finally, the bill would repeal AS 21.39.155(c), to ensure that the assigned risk pool for workers' compensation operates as a self-funded mechanism. Under existing law, the pool is not fully self-funded. This additional burden on insurance companies is a factor making the Alaska workers' compensation insurance market unattractive to insurers. Eliminating the cap on the assigned risk pool surcharge may improve the deposit of cash or securities for the protection of persons in this Alaska market for companies and ensure consumers have access to insurance coverage.

This bill represents a major step forward to addressing the significant workers' compensation crisis in Alaska. The bill would rationalize the process for making workers' compensation decisions in this state. This should make Alaska more attractive for businesses to remain here or to relocate their operations to this state.

I urge your prompt and favorable action on this measure.

Sincerely yours,



Frank H. Murkowski  
Governor

Enclosure



Official Business

# Alaska State Legislature

## Senate

### Office of the Secretary

State Capitol, Room 213  
Juneau, Alaska 99801-1182  
Phone: (907) 465-3701  
Fax: (907) 465-2832  
Email:senate\_secretary@legis.state.ak.us

#### **FOR YOUR IMMEDIATE ATTENTION**

DATE: March 12, 2004  
TO: Finance Committee  
(Senator Green, Cochair, Room 532  
Senator Wilken, Cochair, Room 532)  
FROM: Office of the Senate Secretary  
SUBJ: Referral Change

The Senate President has added/changed the referral(s) on the following bills(s):

#### **RETRIEVE**

##### SENATE BILL NO. 311

"An Act providing for a special deposit for workers' compensation insurers; relating to the board of governors of the Alaska Insurance Guaranty Association; relating to covered workers' compensation claims paid by the Alaska Insurance Guaranty Association; stating the intent of the legislature, and setting out limitations, concerning the interpretation, construction, and implementation of workers' compensation laws; relating to restructuring the Alaska workers' compensation system; eliminating the Alaska Workers' Compensation Board; establishing a division of workers' compensation within the Department of Labor and Workforce Development and assigning certain Alaska Workers' Compensation Board functions to the division and the Department of Labor and Workforce Development; establishing a Workers' Compensation Appeals Commission; assigning certain functions of the Alaska Workers' Compensation Board to the Workers' Compensation Appeals Commission; relating to agreements that discharge workers' compensation liability; providing for hearing officers in workers' compensation proceedings; relating to workers' compensation awards; relating to an employer's failure to insure and keep insured or provide security; providing for appeals from compensation orders; relating to workers' compensation proceedings; providing for supreme court jurisdiction of appeals from the Workers' Compensation Appeals Commission; providing for a maximum amount for the cost-of-living adjustment for workers' compensation benefits; providing for administrative penalties for employers uninsured or without adequate security for workers' compensation; relating to assigned risk pools and insurers; and providing for an effective date."

Please give the bill file(s) to the page delivering this message. The bill file(s) may be returned to your Committee, if appropriate, after the designated changes have been made.

Thank you.

# SENATE COMMITTEE REPORT

DATE: 3/12/04

FURTHER: Finance

DATE TURNED IN TO OFFICE: 4/15/04

Judiciary Committee considered SENATE BILL NO. 311

## SB 311 INSURANCE & WORKERS' COMPENSATION SYSTEM

"An Act providing for a special deposit for workers' compensation insurers; relating to the board of governors of the Alaska Insurance Guaranty Association; relating to covered workers' compensation claims paid by the Alaska Insurance Guaranty Association; stating the intent of the legislature, and setting out limitations, concerning the interpretation, construction, and implementation of workers' compensation laws; relating to restructuring the Alaska workers' compensation system; eliminating the Alaska Workers' Compensation Board; establishing a division of workers' compensation within the Department of Labor and Workforce Development and assigning certain Alaska Workers' Compensation Board functions to the division and the Department of Labor and Workforce Development; establishing a Workers' Compensation Appeals Commission; assigning certain functions of the Alaska Workers' Compensation Board to the Workers' Compensation Appeals Commission; relating to agreements that discharge workers' compensation liability; providing for hearing officers in workers' compensation proceedings; relating to workers' compensation awards; relating to an employer's failure to insure and keep insured or provide security; providing for appeals from compensation orders; relating to workers' compensation proceedings; providing for supreme court jurisdiction of appeals from the Workers' Compensation Appeals Commission; providing for a maximum amount for the cost-of-living adjustment for workers' compensation benefits; providing for administrative penalties for employers uninsured or without adequate security for workers' compensation; relating to assigned risk pools and insurers; and providing for an effective date."

and recommends:

- be replaced with \_\_\_\_\_ CS SB 311 ( JUD )
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ ( \_\_\_\_\_ )
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

**Senate Bill:**

- Same Title
- New Title

**House Bill:**

- Same Title
- Technical Title Change
- New Title w/ SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	Indet.	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	Indet.	FN#
DCEO	2/5		✓		1
LAW	1/29		✓		2
LWF	2/6	✓			3
ADM	2/9			✓	4
CRT	2/9	✓			5

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:		DO PASS	DO NOT PASS	NO REC	AMEND
Ellis			<del> </del>		
French					X
Therriault				✓	
Ogawa					
CHAIR:		✓			

Ellis  
French  
Therriault  
Ogawa  
  
Seelkins

## SENATE COMMITTEE REPORT First Committee of Referral

DATE: 2/9/04

FURTHER: Finance

Date of 5-Day Notice: 2/5/04  
(in accordance with Uniform Rule 23)

DATE TURNED  
IN TO OFFICE: 3/4/04

Labor and Commerce Committee considered SENATE BILL NO. 311

### SB 311 INSURANCE & WORKERS' COMPENSATION SYSTEM

"An Act providing for a special deposit for workers' compensation insurers; relating to the board of governors of the Alaska Insurance Guaranty Association; relating to covered workers' compensation claims paid by the Alaska Insurance Guaranty Association; stating the intent of the legislature, and setting out limitations, concerning the interpretation, construction, and implementation of workers' compensation laws; relating to restructuring the Alaska workers' compensation system; eliminating the Alaska Workers' Compensation Board; establishing a division of workers' compensation within the Department of Labor and Workforce Development and assigning certain Alaska Workers' Compensation Board functions to the division and the Department of Labor and Workforce Development; establishing a Workers' Compensation Appeals Commission; assigning certain functions of the Alaska Workers' Compensation Board to the Workers' Compensation Appeals Commission; relating to agreements that discharge workers' compensation liability; providing for hearing officers in workers' compensation proceedings; relating to workers' compensation awards; relating to an employer's failure to insure and keep insured or provide security; providing for appeals from compensation orders; relating to workers' compensation proceedings; providing for supreme court jurisdiction of appeals from the Workers' Compensation Appeals Commission; providing for a maximum amount for the cost-of-living adjustment for workers' compensation benefits; providing for administrative penalties for employers uninsured or without adequate security for workers' compensation; relating to assigned risk pools and insurers; and providing for an effective date."

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

<b>Senate Bill:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
<b>House Bill:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
Adm.	2/11/04		✓		4
A.C.S.	2/9/04	✓			5

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
DCED	2/5/04			✓	1
LAW	1/29/04			✓	2
L.W.D.	2/6/04	✓			3

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
Francis		X		
Seckins			✓	
G. Skens			X	
CHAIR:	✓			



**SITE: Offnets**

**COMMITTEE: SFIN**

**DATE: 4/23/04 PM**

**SUBJECT OF MEETING:**

**BILL # SB311**

**UPDATE #: 2**

P R I N T YOUR NAME	COMMUNITY	REPRESENTING/AFFILIATION	DO YOU WANT TESTIFY Y or N
✓ Linda Hall		Division of Insurance	Y
Kristen Knudsen		Dept. of Labor	Y
✓ David Floerchinger		Self	Y
✓ Chancy Croft		Self	Y
✓ Constance Livsey		Attorney	Y
✓ Trina Heikes		Attorney	Y
✓ Robert Lohr		Self	Y







SENATE FINANCE COMMITTEE

SIGN-IN

SB 311-INSURANCE & WORKERS' COMPENSATION SYSTEM

NAME: Rod Betit Subject/Bill No: SB 311  
Co./Dept./Title: President Nursing Home Phone: 586-3881  
Alaska State Hospital Association  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_

Do you wish to testify?  Yes  No  Respond To Questions

NAME: Doug Wooliver Subject/Bill No: SB 311  
Co./Dept./Title: Administrative Attorney Phone: 963-4750  
Alaska Cart System  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_

Do you wish to testify?  Yes  No  Respond To Questions

NAME: Scott Nadsstrand Subject/Bill No: 311  
Co./Dept./Title: Deputy AG, Dept of Law Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_

Do you wish to testify?  Yes  No  Respond To Questions

NAME: PAUL LISANKIE Subject/Bill No: 311  
Co./Dept./Title: DIRECTOR, DIVISION OF WORKERS' COMPENSATION Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_

Do you wish to testify?  Yes  No  Respond To Questions









**SB**

**313**

SFIN

FILE

**SENATE FINANCE COMMITTEE REPORT**  
**First Committee of Referral**

REPORTED OUT  
 APR 29 2004  
 SENATE FINANCE  
 COMMITTEE

DATE: 2/11/04

FURTHER:

Date of 5-Day Notice: \_\_\_\_\_  
 (in accordance with Uniform Rule 23)

DATE TURNED  
 IN TO OFFICE: 29 April 2004

Finance Committee considered SENATE BILL NO. 313

**SB 313 FIRST SUPPLEMENTAL APPROPRIATION**

"An Act making supplemental and other appropriations; amending appropriations; making an appropriation to capitalize a fund; and providing for an effective date."

and recommends:

- be replaced with \_\_\_\_\_ CS SB 313 (FIN)
- adopt previous \_\_\_\_\_ CS CS forthcoming (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

<b>Senate Bill:</b>	
<input checked="" type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
<b>House Bill:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	Indet.	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	Indet.	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	NO REC	AMEND
<i>[Signature]</i>	✓			✗
<i>[Signature]</i>			✓	
<i>[Signature]</i>			✓	
<i>[Signature]</i>			✓	
COCHAIR: <i>[Signature]</i>	✓			
COCHAIR: <i>[Signature]</i>	✓			

## Summary of Supplemental--corrected 4/29/04

	General Funds	Other Funds	Federal Funds	Total
<b>Operating Expenses</b>				
Senior Care Expenses for FY 04		3,650.8	316.8	3,967.6
Medicaid	4,830.4		40,681.0	45,511.4
Telecommunication Increases			1,400.4	1,400.4
Increased Costs of OPA & PDA	1,450.0	300.0		1,750.0
Increased Counter Drug Support			50.0	50.0
DOATravel Office Set up		46.2		46.2
Legal, Outside Counsel & Expert Witness Costs	15.0	315.0	275.0	605.0
RCA regulation		114.6		114.6
Inmate Health & Out of state Contracts	1,720.7			1,720.7
Alyeska Operations	653.7			653.7
Improve Election accessibility	180.0	100.0	100.0	380.0
Judgments & Claims	3,862.3			3,862.3
Juvenile Justice Court Costs	295.9			295.9
Increased usage of recorders office		300.0		300.0
Increased workload Office of Habitat Mgmt & Permitting	150.0			150.0
Organic Marketing Increase		90.0		90.0
Increased bond bank use		150.0		150.0
<b>Subtotal Operating Increases</b>	<b>13,158.0</b>	<b>5,066.6</b>	<b>42,823.2</b>	<b>61,047.8</b>
<b>Fund Transfers</b>				
PF Inflation Proofing		177,000.0		177,000.0
Transfer of funds rec'd from ACS	3,447.6			3,447.6
Appropriation of Swept Alaska Technical & Vocational Educatin Funds		1,002.1		1,002.1
<b>Subtotal Fund Transfers</b>	<b>3,447.6</b>	<b>178,002.1</b>	<b>0.0</b>	<b>181,449.7</b>
<b>Capital Projects &amp; Studies</b>				
Gas Line Work	3,980.0	1,000.0		4,980.0
Studies of whether oil remains in the enviorment due to Exxon Spill		1,500.0		1,500.0
Pioneer/Vet Home Conversion	459.2	765.8	2,275.0	3,500.0
DCED Electronic Document Storage		100.0		100.0
Federal Earmarks		1,927.8	82,100.0	84,027.8
Remote Cabin Surveys		119.0		119.0
Jnu Indoor Rifle Range		75.0		75.0
Contaminated Site Cleanup		118.6		118.6
Increase Rate of Federal Land transfers			1,268.0	1,268.0
Denali Park Destination Access			600.0	600.0
Perenosa Bay land purchase		650.0	2,000.0	2,650.0
Border Crossing Mitigation			500.0	500.0
CDVSA Capital Funding			4,750.0	4,750.0
Increased patorls of Bering See			169.7	169.7
Concourse C at the Anch Airport		1,700.0		1,700.0
ADAK contract			10,000.0	10,000.0
Marine Highway Mtnce Cordova		359.3		359.3
increased snow removal	200.0			200.0
Ekwok Airport change			2,000.0	2,000.0
<b>Subtotal Capital Projects</b>	<b>4,639.2</b>	<b>8,315.5</b>	<b>105,662.7</b>	<b>118,617.4</b>
Savings to offset expenses	-7,412.8	-3,399.9	0.0	-10,812.7
<b>TOTAL</b>	<b>13,832.0</b>	<b>187,984.3</b>	<b>148,485.9</b>	<b>350,302.2</b>
FY 03 Supplemental	70,887.1	40,730.7	-9,165.9	102,451.9

## Summary of Supplemental

	General Funds	Other Funds	Federal Funds	Total
<b>Operating Expenses</b>				
Senior Care Expenses for FY 04		3,650.8	316.8	3,967.6
Medical	4,830.4		40,681.0	45,511.4
Telecommunication Increases			1,400.4	1,400.4
Increased Costs of OPA & PDA	1,450.0	300.0		1,750.0
Increased Counter Drug Support			50.0	50.0
DOA Travel Office Set up		46.2		46.2
Legal, Outside Counsel & Expert Witness Costs	15.0	315.0	275.0	605.0
RCA regulation		114.6		114.6
Inmate Health & Out of state Contracts	1,720.7			1,720.7
Alyeska Operations	653.7			653.7
Improve Election accessibility	180.0	100.0	100.0	380.0
Judgments & Claims	3,862.3			3,862.3
Juvenile Justice Court Costs	295.9			295.9
Increased usage of recorders office		300.0		300.0
Increased workload Office of Habitat Mgmt & Permitting	150.0			150.0
Organic Marketing Increase		90.0		90.0
Increased bond bank use		150.0		150.0
<b>Subtotal Operating Increases</b>	<b>13,158.0</b>	<b>5,066.6</b>	<b>42,823.2</b>	<b>61,047.8</b>
<b>Fund Transfers</b>				
PF Inflation Proofing		177,000.0		177,000.0
Transfer of funds rec'd from ACS	3,447.6			3,447.6
Appropriation of Swept Alaska Technical & Vocational Education Funds		1,002.1		1,002.1
<b>Subtotal Fund Transfers</b>	<b>3,447.6</b>	<b>178,002.1</b>	<b>0.0</b>	<b>181,449.7</b>
<b>Capital Projects</b>				
Gas Line Work	3,980.0	1,000.0		4,980.0
Pioneer/Vet Home Conversion	459.2	765.8	2,275.0	3,500.0
DCED Electronic Document Storage		100.0		100.0
Federal Earmarks		1,927.8	82,100.0	84,027.8
Remote Cabin Surveys		119.0		119.0
Jnu Indoor Rifle Range		75.0		75.0
Contaminated Site Cleanup		118.6		118.6
Increase Rate of Federal Land transfers			1,268.0	1,268.0
Denali Park Destination Access			600.0	600.0
Perenosa Bay land purchase		650.0	2,000.0	2,650.0
Border Crossing Mitigation			500.0	500.0
CDVSA Capital Funding			4,750.0	4,750.0
Increased patrols of Bering Sea			169.7	169.7
Concourse C at the Anch Airport		1,700.0		1,700.0
ADAK contract			10,000.0	10,000.0
Marine Highway Mtnce Cordova		359.3		359.3
Increased snow removal	200.0			200.0
Ekwok Airport change			2,000.0	2,000.0
<b>Subtotal Capital Projects</b>	<b>4,639.2</b>	<b>6,815.5</b>	<b>105,662.7</b>	<b>117,117.4</b>
Savings to offset expenses	-7,412.8	-3,399.9	0.0	-10,812.7
<b>TOTAL</b>	<b>13,832.0</b>	<b>186,484.3</b>	<b>148,485.9</b>	<b>348,752.2</b>
FY 03 Supplemental	70,887.1	40,730.7	-9,165.9	102,451.9

Amendment #1  
Adopted

Amendment to CS SB 313(Fin) version 23-GS2153I

Offered by Green

Amend sec. 11, Judgments and Claims to read:

Sec. 11. JUDGMENTS AND CLAIMS. The sum of **\$3,862,300** [\$3,861,000] is appropriated to the Department of Law from the general fund to pay judgments and claims against the state for the fiscal year ending June 30, 2004.

Description

Two new judgments and claims have been received.

*adopted uc*

SENATE FINANCE COMMITTEE  
4/28/2004 COMMITTEE ACTION

Bill Number	SB 313		
Amendment	#1		
Motion	adopt		
<u>Motion by</u>			
<u>Objection by</u>			
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Bunde			
Senator Dyson			
Senator Hoffman			
Senator Olson			
Senator Stevens			
Co-Chair Green			
Co-Chair Wilken			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>			
PASS			

Judgements & claims

Amendment #2  
adopted

Amendment to CS SB 313(Fin) version 23-GS21531

Offered by Walker

Amend sec. 3, Department of Community and Economic Development, by adding a new subsection to read:

( ) Section 1, ch. 1, SSSLA 2002, page 3, lines 25 - 27, is amended to read:

	Appropriation Items	General Funds	Other Funds
Electronic Document Imaging, Storage and Retrieval System (ED 99)	<b><u>1,225,000</u></b> [1,125,000]		<b><u>1,225,000</u></b> [1,125,000]

Description

This adds \$100,000 of receipt supported services from the Division of Banking and Securities to the project.

SENATE FINANCE COMMITTEE  
CFB 2004 COMMITTEE ACTION

Bill Number	SB 313		
Amendment	#2		
Motion	adpt		
<u>Motion by</u>	Lena Wilken		
<u>Objection by</u>	none		
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Stevens			
Senator Bunde			
Senator Dyson			
Senator Hoffman			
Senator Olson			
Co-Chair Green			
Co-Chair Wilken			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	Pass		

Amendment #3  
adopted

AMENDMENT

OFFERED IN THE SENATE  
TO: CS SB 313(), Work Draft 23-GS2153\

BY SENATOR GREEN

Page 12, Lines 1-4:

Allocations	Appropriation Items	General Funds	Other Funds
-------------	------------------------	------------------	----------------

Delete all material and insert:

<b>“Senior and Disabilities Services</b>	<u>237,290,200</u> [203,278,200]	79,520,400	<u>157,769.800</u> [123,757,800]
--	-------------------------------------	------------	-------------------------------------

Senior/Disabilities Medicaid Services	<u>217,556,500</u> [183,544,500]
--	-------------------------------------

It is the intent of the legislature that the Department of Health and Social Services address escalating growth in the Personal Care Attendant program. Changes to reduce costs should consider eligibility, reduction in rates and hours of service. It is also the intent of the legislature that the department implements a process for recovery of costs where an audit or quality assurance review determines abuse of the personal care attendant program.”

Page 16, Lines 5-10:

Delete all material and insert:

“(w) The sum of \$11,760,800 is appropriated to the Department of Health and Social Services, senior and disabilities Medicaid services, for the fiscal year ending June 30, 2004, from the following sources:

General fund/mental health	11,202,400
Alcohol and other drug abuse treatment And prevention fund (AS 43.60.050)”	558,400

Explanation:

The Department of Health and Social Services has updated their Medicaid projections based on activity through March, and is projecting an additional deficit of \$14.7 million for the Senior and Disabilities Medicaid program. Letter from Janet Clarke is attached.

# STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER  
FINANCE AND MANAGEMENT SERVICES

FRANK H. MURKOWSKI, GOVERNOR

P.O. Box 110650  
Juneau, AK 99811-0650  
Phone: (907) 465-3082  
Fax: (907) 465-2499

## MEMORANDUM

**DATE:** April 28, 2004

**TO:** Cheryl Frasca  
Director  
Office of Management and Budget

**FROM:** Janet Clarke *J. Clarke*  
Assistant Commissioner  
Finance and Management Services

**SUBJECT:** Amendment to DHSS FY04 Supplemental Requests

The Department of Health and Social Services requests your consideration of a supplemental request for an additional \$14,743.8, (\$9,913.4 federal / \$4,830,440 state match) for the Senior and Disabilities Services Medicaid program. This brings the total SDS Medicaid supplemental request to \$45,772.8, as shown in the breakout below:

### Senior & Disabilities Services Medicaid FY04 Supplemental

	GF	Federal	Total
Original	6,930.4	24,098.6	31,029.0
Amendment	4,830.4	9,913.4	14,743.8
New Total	11,760.8	34,012.0	45,772.8

*Note: Original GF request is net zero through reallocation in supplemental bill.*

In February, the department projected an overall funding shortfall in the SDS Medicaid Program of \$38,017.5. An amount of \$6,988.5 was not included in the supplemental bill, but was covered through realignment of resources within the SDS RDU.

With recent projections based on activity through March, the department is projecting the additional deficit of \$14.7 million. As we stated in our original FY2004 supplemental, the primary cause of the original projected shortfall was the continued rapid rate of expenditure growth for Personal Care Attendant (PCA) services, which accounts for \$32.9 million of the total originally estimated shortfall. The cost of PCA for Medicaid eligible recipients has grown from \$8.3 million in FY 2001 to a projected total of \$65 million in FY2004. This program jumped

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES

from \$8 million in FY01 to \$39 million in FY03 and is now showing almost a 66% growth in FY2004 based on projections reviewed this week. The chart below provides the historical and updated FY04 projection information for the SDS Medicaid Personal Care program.

**Senior and Disabilities Medicaid: Personal Care - FY2004**

Month	IHS		Title XXI		Title XIX		Federal Funds	General Funds	Total
	Recipients	Expenditures	Recipients	Expenditures	Recipients	Expenditures			
Jul-03	71	\$24,738	3	\$5,271	2,014	\$4,662,203	\$2,802,670	\$1,809,542	\$4,692,212
Aug-03	34	\$12,579	2	\$5,712	2,071	\$4,474,877	\$2,756,142	\$1,737,026	\$4,493,168
Sep-03	96	\$54,369	1	\$4,704	2,145	\$5,347,949	\$3,331,713	\$2,075,309	\$5,407,022
Oct-03	74	\$26,628	0	\$0	2,203	\$4,682,834	\$2,899,078	\$1,810,384	\$4,709,462
Nov-03	49	\$6,006	0	\$0	2,221	\$4,538,079	\$2,789,664	\$1,754,421	\$4,544,085
Dec-03	76	\$22,470	1	\$1,050	2,300	\$5,811,885	\$3,588,225	\$2,247,181	\$5,835,405
Jan-04	18	\$3,402	0	\$0	2,042	\$4,398,186	\$2,701,249	\$1,700,339	\$4,401,588
Feb-04	67	\$23,772	0	\$0	2,363	\$6,285,261	\$3,879,151	\$2,429,882	\$6,309,033
Mar-04	83	\$68,350	0	\$0	2,414	\$5,904,471	\$3,690,153	\$2,282,668	\$5,972,821
Apr-04	37	\$49,942	2	\$3,733	2,053	\$6,170,545	\$3,837,600	\$2,386,620	\$6,224,220
May-04	34	\$49,942	2	\$3,809	2,085	\$6,170,545	\$3,837,654	\$2,386,642	\$6,224,296
Jun-04	31	\$49,942	2	\$3,885	2,118	\$6,170,545	\$3,837,707	\$2,386,664	\$6,224,372
<b>Projected Totals</b>		<b>\$392,139</b>		<b>\$28,164</b>		<b>\$64,617,380</b>	<b>\$40,031,006</b>	<b>\$25,006,678</b>	<b>\$65,037,684</b>

The current projections show that other Medicaid programs within this Division appear to be maintaining the anticipated level of expenditures and caseload that was projected earlier in the year. Some projected shortfall in the Mental Retardation and Developmental Disabilities Waivers and Older Alaskan Waivers.

Below is a historical view of how the Personal Care program costs of increased over the past seven years.

		Rate of Growth
FY97	\$4,498,554	
FY98	\$5,303,799	17.90%
FY99	\$6,311,201	18.99%
FY00	\$7,644,568	21.13%
FY01	\$8,300,667	8.58%
FY02	\$13,664,754	64.62%
FY03	\$39,188,640	186.79%
FY04	\$65,037,684	65.96%

As mentioned earlier, the department will continue to discuss options for controlling this program, however, in the immediate future for FY2004, without this revised supplemental funding request drastic measures would need to be taken without time for consideration of the impact to clients due to different levels of care required by individuals.

We realize the timing of this request is inconvenient with the Legislature getting ready to start working on the FY04 supplemental bills again. However, we did not realize until April 27 how drastically the Personal Care program continues to grow. Some data difficulties also delayed the preparation of the expenditure information by category.

Your consideration of this request is appreciated. Please contact me if you have any questions, at 465-1630.

cc: Joel Gilbertson, Commissioner  
Karleen Jackson, Deputy Commissioner  
Sherry Hill, Special Assistant  
Steve Ashman, Director, SDS  
Laura Baker, Budget Chief, FMS  
Nancy Burns, Research Analyst, HCS  
Michelle Grose, Finance Officer, FMS

SENATE FINANCE COMMITTEE  
4/28/2004 COMMITTEE ACTION

Bill Number	SB 313		
Amendment	#3		
Motion	adpt		
<u>Motion by</u>	Green		
<u>Objection by</u>	Hoffman		
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vot<sup>s</sup></u>	N
Senator Bunde			
Senator Dyson			
Senator Hoffman			
Senator Olson			
Senator Stevens			
Co-Chair Green			
Co-Chair Wilken			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	Pass		

Amendment #4  
adopted

AMENDMENT

BY:

Wilken

REFERRED IN SENATE FINANCE

TO CS SB 313 version 23-GF2153M

Add new sections to read:

DEPARTMENT OF LAW: The sum of 1,500,000 is appropriated from receipts from the Exxon Valdez Oil Spill Trustee Council, to the Department of Law, environmental law, for studies and analyses related to oil remaining in the environment from the Exxon Valdez oil spill and to injury resulting from that spill for the fiscal years ending June 30, 2004 and June 30, 2005.

SENATE FINANCE COMMITTEE  
4/28/2003 COMMITTEE ACTION

Bill Number	SB 313		
Amendment	#4		
Motion	subpt		
<u>Motion by</u>	Wilken		
<u>Objection by</u>	none		
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	<u>Y</u>	<u>Vote</u>	<u>N</u>
Senator Dyson			
Senator Hoffman			
Senator Olson			
Senator Stevens			
Senator Bunde			
Co-Chair Green			
Co-Chair Wilken			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	Pass		

adopted

SENATE FINANCE  
COMMITTEE

Amendment Number: #5  
Bill Number: SB 313  
Sponsor: Green Date: 4/29/04  
Logged in By: Robin

AMENDMENT

OFFERED IN THE SENATE  
TO: CS SB 313( ), Work Draft 23-GS2153I

BY SENATOR GREEN

Page 20, line 11:

Add new subsections to Sec. 14. DEPARTMENT OF NATURAL RESOURCES:

"( ) The sum of \$1,580,000 is appropriated from the general fund to the Department of Natural Resources for risk analysis related to the state gas pipeline and to bringing North Slope natural gas to market.

( ) The sum of \$3,900,000 is appropriated from the general fund to the Department of Natural Resources for permitting and application processing related to the state gas pipeline right-of-way work related to bringing North Slope natural gas to market."

Page 21, line 11:

Add new subsections to Sec. 16. DEPARTMENT OF REVENUE:

"( ) The sum of \$3,400,000 is appropriated to the Department of Revenue for work related to bringing North Slope natural gas to market from the following sources:

General fund	\$2,400,000
Statutory designated program receipts	1,000,000

( ) The sum of \$1,700,000 is appropriated to the Department of Revenue for work related to bringing North Slope natural gas to market from the following sources:

General fund	\$1,200,000
Statutory designated program receipts	500,000"

All the subsections added by this amendment are for capital projects and lapse under AS 37.25.020.

The second subsection for the Department of Natural Resources, totaling \$3,900,000, is effective July 1, 2004.

The second subsection for the Department of Revenue, totaling \$1,700,000 is effective July 1, 2004.

Renumber the following bill sections accordingly.

SENATE FINANCE COMMITTEE  
4 FEB 2004 COMMITTEE ACTION

Bill Number	SB 313		
Amendment	#5		
Motion	adpt		
<u>Motion by</u>	Green		
<u>Objection by</u>	Wilken		
<u>Removed</u>	✓		
<u>Second Objection by</u>			
<u>Committee Member</u>	<u>Y</u>	<u>Vote</u>	<u>N</u>
Senator Bunde			
Senator Dyson			
Senator Hoffman			
Senator Olson			
Senator Stevens			
Co-Chair Green			
Co-Chair Wilken			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	Pass		



Official Business

# Alaska State Senate

## Senate Finance Committee

Mail Stop 3100  
State Capitol  
Juneau, Alaska 99801-1182

### FAX COVER SHEET

DATE: 29 April 2004 TIME: 9:25 am

TO: Legal Services

NUMBER OF PAGES, INCLUDING COVER SHEET: 6

FROM: MINDY ROWLAND  
SENATE FINANCE COMMITTEE SECRETARY  
PHONE: 465-4935  
FAX: 465-2187

NOTES: Final Please

CS SB 313 (FIN) 23-GS2153\I

Utarmohle  
4/24/04

Plus 5 amendments - attached

Call if any questions!

Mindy

Amendment #1  
Adopted

Amendment to CS SB 313(Fin) version 23-GS2153\I

Offered by \_\_\_\_\_

*Green*

Amend sec. 11, Judgments and Claims to read:

Sec. 11. JUDGMENTS AND CLAIMS. The sum of **\$3,862,300** [\$3,861,000] is appropriated to the Department of Law from the general fund to pay judgments and claims against the state for the fiscal year ending June 30, 2004.

Description

Two new judgments and claims have been received.

*adopted uc*

Amendment #2

Amendment to CS SB 313(Fin) version 23-GS2153\I

Offered by Walker

Amend sec. 3, Department of Community and Economic Development, by adding a new subsection to read:

( ) Section 1, ch. 1, SSSLA 2002, page 3, lines 25 - 27, is amended to read:

	Appropriation Items	General Fund .	Other Funds
Electronic Document	<u>1,225,000</u>		<u>1,225,000</u>
Imaging, Storage and Retrieval System (ED 99)	[1,125,000]		[1,125,000]

Description

This adds \$100,000 of receipt supported services from the Division of Banking and Securities to the project.

Amendment #5

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR GREEN

TO: CS SB 313( ), Work Draft 23-GS2153M

Page 12, Lines 1-4:

	Allocations	Appropriation Items	General Funds	Other Funds
Delete all material and insert:				
<b>“Senior and Disabilities Services</b>		<u>237,290,200</u> [203,278,200]	79,520,400	<u>157,769,800</u> [123,757,800]
Senior/Disabilities	<u>217,556,500</u>			
Medicaid Services	[183,544,500]			

It is the intent of the legislature that the Department of Health and Social Services address escalating growth in the Personal Care Attendant program. Changes to reduce costs should consider eligibility, reduction in rates and hours of service. It is also the intent of the legislature that the department implements a process for recovery of costs where an audit or quality assurance review determines abuse of the personal care attendant program.”

Page 16, Lines 5-10:

Delete all material and insert:

“(w) The sum of \$11,760,800 is appropriated to the Department of Health and Social Services, senior and disabilities Medicaid services, for the fiscal year ending June 30, 2004, from the following sources:

General fund/mental health	11,202,400
Alcohol and other drug abuse treatment	558,400
And prevention fund (AS 43.60.050)”	

Explanation:

The Department of Health and Social Services has updated their Medicaid projections based on activity through March, and is projecting an additional deficit of \$14.7 million for the Senior and Disabilities Medicaid program. Letter from Janet Clarke is attached.

# STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER  
FINANCE AND MANAGEMENT SERVICES

FRANK H. MURKOWSKI, GOVERNOR

P.O. Box 110650  
Juneau, AK 99811-0650  
Phone: (907) 465-3082  
Fax: (907) 465-2499

## MEMORANDUM

DATE: April 28, 2004

TO: Cheryl Frasca  
Director  
Office of Management and Budget

FROM: Janet Clarke *J. Clarke*  
Assistant Commissioner  
Finance and Management Services

SUBJECT: Amendment to DHSS FY04 Supplemental Requests

The Department of Health and Social Services requests your consideration of a supplemental request for an additional \$14,743.8, (\$9,913.4 federal / \$4,830,440 state match) for the Senior and Disabilities Services Medicaid program. This brings the total SDS Medicaid supplemental request to \$45,772.8, as shown in the breakout below:

### Senior & Disabilities Services Medicaid FY04 Supplemental

	GF	Federal	Total
Original	6,930.4	24,098.6	31,029.0
Amendment	4,830.4	9,913.4	14,743.8
New Total	11,760.8	34,012.0	45,772.8

Note: Original GF request is net zero through reallocation in supplemental bill.

In February, the department projected an overall funding shortfall in the SDS Medicaid Program of \$38,017.5. An amount of \$6,988.5 was not included in the supplemental bill, but was covered through realignment of resources within the SDS RDU.

With recent projections based on activity through March, the department is projecting the additional deficit of \$14.7 million. As we stated in our original FY2004 supplemental, the primary cause of the original projected shortfall was the continued rapid rate of expenditure growth for Personal Care Attendant (PCA) services, which accounts for \$32.9 million of the total originally estimated shortfall. The cost of PCA for Medicaid eligible recipients has grown from \$8.3 million in FY 2001 to a projected total of \$65 million in FY2004. This program jumped

from \$8 million in FY01 to \$39 million in FY03 and is now showing almost a 66% growth in FY2004 based on projections reviewed this week. The chart below provides the historical and updated FY04 projection information for the SDS Medicaid Personal Care program.

Senior and Disabilities Medicaid: Personal Care - FY2004

Month	IHS		Title XXI		Title XIX		Federal Funds	General Funds	Total
	Recipients	Expenditures	Recipients	Expenditures	Recipients	Expenditures			
Jul-03	71	\$24,738	3	\$5,271	2,014	\$4,662,203	\$2,882,670	\$1,809,542	\$4,692,212
Aug-03	34	\$12,579	2	\$5,712	2,071	\$4,474,877	\$2,756,142	\$1,737,026	\$4,493,168
Sep-03	96	\$54,369	1	\$4,704	2,145	\$5,347,949	\$3,331,713	\$2,075,309	\$5,407,022
Oct-03	74	\$26,620	0	\$0	2,203	\$4,682,834	\$2,899,078	\$1,810,384	\$4,709,462
Nov-03	49	\$6,006	0	\$0	2,221	\$4,538,079	\$2,789,664	\$1,754,421	\$4,544,085
Dec-03	76	\$22,470	1	\$1,050	2,300	\$5,811,885	\$3,588,225	\$2,247,181	\$5,835,405
Jan-04	18	\$3,402	0	\$0	2,042	\$4,398,186	\$2,701,249	\$1,700,339	\$4,401,588
Feb-04	67	\$23,772	0	\$0	2,363	\$6,285,261	\$3,879,151	\$2,429,882	\$6,309,033
Mar-04	83	\$68,350	0	\$0	2,414	\$5,904,471	\$3,690,153	\$2,282,668	\$5,972,821
Apr-04	37	\$49,942	2	\$3,733	2,053	\$6,170,545	\$3,837,600	\$2,386,620	\$6,224,220
May-04	34	\$49,942	2	\$3,803	2,085	\$6,170,545	\$3,837,654	\$2,386,642	\$6,224,296
Jun-04	31	\$49,942	2	\$3,885	2,118	\$6,170,545	\$3,837,707	\$2,386,664	\$6,224,372
<b>Projected Totals</b>		<b>\$392,139</b>		<b>\$28,164</b>		<b>\$64,617,380</b>	<b>\$40,031,006</b>	<b>\$25,006,678</b>	<b>\$65,037,684</b>

The current projections show that other Medicaid programs within this Division appear to be maintaining the anticipated level of expenditures and caseload that was projected earlier in the year. Some projected shortfall in the Mental Retardation and Developmental Disabilities Waivers and Older Alaskan Waivers.

Below is a historical view of how the Personal Care program costs of increased over the past seven years.

		Rate of Growth
FY97	\$4,498,554	
FY98	\$5,303,799	17.90%
FY99	\$6,311,201	18.99%
FY00	\$7,644,568	21.13%
FY01	\$8,300,667	8.58%
FY02	\$13,664,754	64.62%
FY03	\$39,188,640	186.79%
FY04	\$65,037,684	65.96%

As mentioned earlier, the department will continue to discuss options for controlling this program, however, in the immediate future for FY2004, without this revised supplemental funding request drastic measures would need to be taken without time for consideration of the impact to clients due to different levels of care required by individuals.

We realize the timing of this request is inconvenient with the Legislature getting ready to start working on the FY04 supplemental bills again. However, we did not realize until April 27 how drastically the Personal Care program continues to grow. Some data difficulties also delayed the preparation of the expenditure information by category.

Your consideration of this request is appreciated. Please contact me if you have any questions, at 465-1630.

cc: Joel Gilbertson, Commissioner  
Karleen Jackson, Deputy Commissioner  
Sherry Hill, Special Assistant  
Steve Ashman, Director, SDS  
Laura Baker, Budget Chief, FMS  
Nancy Burns, Research Analyst, HCS  
Michelle Grose, Finance Officer, FMS

Motion: to convene an executive session under Uniform Rule 22 (b)(1) for discussion of matters, the immediate knowledge of which would adversely affect the finances of a government unit.

Once motion is accepted, the chair MUST announce those who would be allowed to attend the executive session (except for legislators - all legislators are allowed to attend.)

Announcement: The following individuals will be allowed to attend the executive session:

Ernesta Ballard  
Greg Renkes  
Kurt Fredriksson  
Kathryn Daughhete  
Kevin Duffy

Amendment #4

AMENDMENT

BY: \_\_\_\_\_

*Wilken*

OFFERED IN SENATE FINANCE

TO CS SB 313 version 23-GF2153\I

Add new sections to read:

DEPARTMENT OF LAW: The sum of 1,500,000 is appropriated from receipts from the Exxon Valdez Oil Spill Trustee Council, to the Department of Law, environmental law, for studies and analyses related to oil remaining in the environment from the Exxon Valdez oil spill and to injury resulting from that spill for the fiscal years ending June 30, 2004 and June 30, 2005.