

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10614 SENATE LABOR & COMMERCE

2159

Proposed Legal Protection^s of Mobile Home Communities

The recently proposed rezone of Alaskan Village Mobile Home Court has brought myriad issues to the fore, not the least of which is the inadequacy of current law in Alaska. The law provides only that the owner of a manufactured housing community who has chosen to redevelop the property for another use must give community residents a 180-day notice to vacate the property.¹

While the current law addresses only the issue of "notice", there are many related areas of financial and human impact which the landowner, developer, and MHC resident must resolve. Several problem areas could be addressed through state or municipal legislation.

The first issue is the human impact of any redevelopment of residential properties. At a recent Planning and Zoning Commission public hearing on Alaskan Village, several commissioners stated they could not address the displacement of manufactured housing community residents, causing immense frustration on the part of the residents. The Mobile Home Task Force recommends enactment of ordinance that requires a human impact statement whenever a MHC is considered for rezoning. For example:

The person or entity applying for a change of use of a MHC must submit a report to the Municipality on the impact of the conversion of use. Included in the report would be availability of adequate replacement housing, whether "real property" rental units or spaces in other MHC's parks, and the predicted actual relocation costs. The Municipal Assembly may require that, as a condition for the approval of the change of use, the person or entity applying for the change mitigate any adverse impact of the conversion.²

The Task Force suggests that a governmental organization/agency or some group other than the applicant for the land usage change should be the entity required to research, compile, and submit the impact statement.

A second and related issue is that many residents cannot afford to move their homes. The redevelopment of a MHC can force self-sufficient individuals and families into poverty and a position of requiring charity. The Task Force considered several legislative approaches to this problem including the following:

The owner of a manufactured housing community who has chosen to redevelop the land for another use must give community residents a 365-day notice to quit the property, with a quit date during the calendar year falling no earlier than April 1 and no later than September 30. An owner or developer can choose to give a 180-day notice contingent on:

- a) *the owner/developer finds suitable places for the residents to move their homes; and*

¹ AS 34.03.225

² See California Government Code 65863.7

- b) *the owner/developer pays the disconnection, relocation, and reestablishment costs (DRR)³ of the mobile home, or \$5,000, whichever is less.⁴*

Another approach to the financial difficulties that arise when a MHC is redeveloped and families are displaced is the development of a "relocation fund." The Task Force considered several possibilities for building and maintaining such a fund including the following:

The Municipality of Anchorage shall establish a "manufactured housing relocation fund" to be managed and invested by a director and a board. In case of a change of use, Mobile Home Community residents may apply to the fund for relocation expenses. The owner/developer will reimburse the fund a minimum of \$1000 per resident applying to the fund.⁵

The fund will be created through one or a combination of the following:

- a) *each manufactured home owner shall be assessed a personal property tax to be deposited into the "manufactured home relocation fund"; AND/OR*
- b) *the \$50 fee required at the time of the title transfer of a manufactured home will be deposited into the "manufactured home relocation fund"; AND/OR*
- c) *a portion of current personal property taxes of manufactured home owners shall be diverted to the "manufactured home relocation fund"; AND*
- d) *when the relocation fund reaches a specified dollar amount, the tax/fee will no longer be assessed.*

³ The disconnection, relocation, and reestablishment costs are defined as the cost of the actual physical move, including disconnecting and reconnecting utility hook-ups, obtaining the necessary permits, installing tie-downs, ground anchors and strapping, completing the blocking, leveling, insulating and skirting, and putting the exterior of the home in a MOA code compliant condition.

⁴ See Oregon Civil Code 90.630(6)(b)

⁵ See Arizona Code, Chapter 11, Section 33-1476 *et. seq.*

Conclusions

This task force was formed to focus attention on a specific segment of our community. While the Comprehensive Plan does address affordable housing, it did not include much specific mention of manufactured housing options. It is obvious to this group that while many Anchorage citizens may not regret the demise of this housing option, others see manufactured housing communities as a valid, viable, affordable housing choice and do not want Anchorage to lose this option.

Manufactured housing community resident's fear is that if their issues are not on the table for discussion, their housing option will eventually disappear through neglect. The task force is suggesting that more discussion be held on the benefits and challenges produced by and related to this housing option.

The task force also suggests that during relocations of manufactured housing communities, that all segments of the community should be mobilized, as in a "natural" disaster, to insure residents are not negatively impacted by the relocation.

Through the efforts of the members of the task force and organizations involved, the individual committee reports have outlined how appropriate responses can be made by all sectors of the larger community. Addressing code issues and legislation also seem to be in order.

The Task Force had not endorsed any specific legislative actions, but has outlined a selection of the many options available that could minimize or alleviate the negative impact currently experienced by displaced residents.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 2, 2001

SUBJECT: Pooling Funds for Mobile Home Relocation Costs
(Work Order No. 22-LS0216\L)

TO: Senator Johnny Ellis
Attn: Tyson Fick

FROM: Kathryn L. Kurtz *KK*
Legislative Counsel

You asked whether the language in this draft bill version would permit mobile home park owners or operators to create pools of funds to cover the disconnection, relocation, and reestablishment costs associated with evictions due to changes in the use of the land. Specifically, you asked about giving them the flexibility to cover actual costs in excess of \$5,000. In this "L" version, that flexibility exists. Mobile home park owners or operators are required to pay the actual costs of relocation not exceeding \$5,000. Nothing in the bill prevents them from paying additional actual costs. Furthermore, nothing in the bill prevents them from pooling funds to cover relocation costs for multiple tenants, as long as they pay each tenant's actual costs or the first \$5,000 worth of actual costs, whichever is less. Also, please note that I changed the dates in section 3 as well as in section 2. If that is not what you wanted, let me know.

K.L.K:lmb
01-067.lmb

Enclosure

22-LS0216L
Kurtz
3/2/01

CS FOR SENATE BILL NO. 6()

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS ELLIS, Davis

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to required notice of eviction to mobile home park dwellers and
2 tenants before redevelopment of the park."

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

4 * Section 1. AS 09.45.090(a) is amended to read:

5 (a) For property to which the provisions of AS 34.03 (Uniform Residential
6 Landlord and Tenant Act) apply, unlawful holding by force includes each of the
7 following:

8 (1) when, for failure or refusal to pay rent due on the lease or
9 agreement under which the tenant or person holds, and after service, under
10 AS 09.45.100(b), of the written notice required by AS 34.03.220(b) by the landlord for
11 recovery of possession of the premises if the rent is not paid, the tenant or person in
12 possession fails or refuses to vacate or pay the rent within seven days;

13 (2) when,

14 (A) after a violation of a condition or covenant set out in

1 AS 34.03.120(a), other than a breach of AS 34.03.120(a)(5) due to the
2 deliberate infliction of substantial damage to the premises, or after a breach or
3 violation of a condition or covenant in a lease or rental agreement and
4 following service of written notice to quit, the tenant fails or refuses to remedy
5 the breach or to deliver up the possession of the premises within the number of
6 days provided for termination under AS 34.03.220(a)(2);

7 (B) after a violation of AS 34.03.120(a)(5) by deliberate
8 infliction of substantial damage to the premises, following service of written
9 notice to quit, the tenant fails or refuses to deliver up the possession of the
10 premises by the date set out in the written notice to quit under
11 AS 34.03.220(a)(1);

12 (C) after a violation of AS 34.03.220(e) following
13 discontinuance of a public utility service, following service of written notice to
14 quit, the tenant fails or refuses to deliver up the possession of the premises by
15 the date set out in the written notice to quit under AS 34.03.220(e);

16 (D) the landlord requires the tenant to vacate the premises for a
17 reason set out in AS 34.03.310(c)(2) or (c)(4) - (7), following service of
18 written notice to quit, the tenant fails or refuses to deliver up the possession of
19 the premises within the longer of 30 days or the period of notice for the
20 landlord's recovery of possession of the premises set out in the rental
21 agreement;

22 (E) in a mobile home park, there is to be a change in the use of
23 land for which termination of tenancy is authorized by AS 34.03.225(a)(4),
24 following service of written notice to quit, the mobile home dweller or tenant
25 fails or refuses to vacate within the period [NUMBER OF DAYS] provided
26 for termination under AS 34.03.225(a)(4);

27 (F) after termination of a periodic tenancy as prescribed by
28 AS 34.03.290(a) or (b), following service of written notice to quit, the tenant
29 remains in possession without the landlord's consent after expiration of the
30 term of the rental agreement or after the date of its expiration;

31 (G) after the tenant has violated AS 34.03.120(b) or the tenant

1 has used the dwelling unit or allowed the dwelling unit to be used for an illegal
2 purpose in violation of AS 34.03.310(c)(3) other than a breach of
3 AS 34.03.120(b), following service of written notice to quit, the tenant fails or
4 refuses to deliver up the possession of the premises within five days; or

5 (H) following service of written notice to quit, a person in
6 possession continues in possession of the premises without a valid rental
7 agreement, as that term is defined in AS 34.03.360, and without the consent of
8 the landlord; or

9 (3) when, without a notice to quit, a tenant or person in possession
10 continues in possession of the premises after the tenancy has been terminated by
11 issuance of an order of abatement under AS 09.50.210(a).

12 * Sec. 2. AS 34.03.225(a) is amended to read:

13 (a) A mobile home park operator may evict a mobile home or a mobile home
14 park dweller or tenant only for one of the following reasons:

15 (1) the mobile home dweller or tenant has defaulted in the payment of
16 rent owed;

17 (2) the mobile home dweller or tenant has been convicted of violating
18 a federal or state law or local ordinance, and that violation is continuing and is
19 detrimental to the health, safety, or welfare of other dwellers or tenants in the mobile
20 home park;

21 (3) the mobile home dweller or tenant has violated a provision,
22 enforceable under AS 34.03.130, of the rental agreement or lease signed by both
23 parties and not prohibited by law including rent and the terms of agreement; and

24 (4) a change in the use of the land comprising the mobile home park,
25 or the portion of it on which the mobile home to be evicted is located; however, all
26 dwellers or tenants so affected by a change in land use shall be given a quit date
27 during the calendar year falling no earlier than May 1 and no later than
28 October 15, and at least 365 [180] days' notice, or longer if a longer notice period is
29 provided in a valid lease, except that only 180 days' notice is required if a suitable
30 place to relocate the mobile home is found and the mobile home park owner or
31 operator pays the disconnection, relocation, and reestablishment costs of the

1 mobile home or \$5,000, whichever is less, and a longer notice period is not
2 provided in a valid lease; if the change in use of land will require relocating 10 or
3 more mobile homes, the mobile home park owner or operator may contribute to
4 a pool \$5,000 for each mobile home being relocated, and the pool shall pay the
5 actual disconnection, relocation, and reestablishment costs of each mobile home;
6 however, the pool may not be required to pay more than \$5,000 in actual costs of
7 disconnection, relocation, and reestablishment for a mobile home.

8 * Sec. 3. AS 34.08.620(a) is amended to read:

9 (a) A declarant of a common interest community containing conversion
10 property, and any dealer who intends to offer units in a common interest community
11 containing conversion units, shall give each residential tenant and each residential
12 subtenant in possession of a portion of conversion property notice of the conversion
13 and provide each person with the public offering statement no later than 180 days
14 before the tenant and any subtenant in possession are required to vacate. If the
15 conversion property consists of a mobile home park, notice of the conversion and
16 delivery of a public offering statement shall be provided no later than one year before
17 the tenant and any subtenant in possession are required to vacate, with a quit date
18 during the calendar year falling no earlier than May 1 and no later than
19 October 15. The notice must set out generally the rights of tenants and subtenants
20 under this section and shall be hand delivered to the tenant or subtenant in possession
21 or mailed by certified mail, return receipt requested, to the tenant and subtenant at the
22 address of the unit or any other mailing address provided by a tenant. The failure to
23 give notice as required by this section is a defense to an action for possession and the
24 terms of the tenancy may not be altered during the notice period provided by this
25 subsection. A tenant or subtenant may not be required to vacate upon less than 180
26 days' notice and a tenant and a subtenant in possession in a mobile home park may not
27 be required to vacate upon less than one year's notice except for one of the following
28 reasons:

29 (1) the tenant or subtenant has defaulted in the payment of rent owed;

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31 state law or local ordinance, and that violation is continuing and is detrimental to the

1 state law or local ordinance, and that violation is continuing and is detrimental to the
2 health, safety, or welfare of other dwellers or tenants in the mobile home park; and
3 (3) the tenant or subtenant has violated a provision, enforceable under
4 AS 34.03.130, of the rental agreement or lease signed by both parties and not
5 prohibited by law including rent and the terms of agreement.

22-LS0216\O
Kurtz
3/2/01

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13 (2) when,

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CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Central Microfilm Services
Department of Education & Early Development
State of Alaska

22-LS0216\O
Kurtz
3/2/01

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17 (2) the mobile home dweller or tenant has been convicted of violating
18 a federal or state law or local ordinance, and that violation is continuing and is
19 detrimental to the health, safety, or welfare of other dwellers or tenants in the mobile
20 home park;

21 (3) the mobile home dweller or tenant has violated a provision,
22 enforceable under AS 34.03.130, of the rental agreement or lease signed by both
23 parties and not prohibited by law including rent and the terms of agreement; and

24 (4) a change in the use of the land comprising the mobile home park,
25 or the portion of it on which the mobile home to be evicted is located; however, all
26 dwellers or tenants so affected by a change in land use shall be given a quit date
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28 October 15, and at least 365 [180] days' notice, or longer if a longer notice period is
29 provided in a valid lease, except that only 180 days' notice is required if a suitable
30 place to relocate the mobile home is found and the mobile home park owner or
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8 and provide each person with the public offering statement no later than 180 days
9 before the tenant and any subtenant in possession are required to vacate. If the
10 conversion property consists of a mobile home park, notice of the conversion and
11 delivery of a public offering statement shall be provided no later than one year before
12 the tenant and any subtenant in possession are required to vacate, with a quit date
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16 or mailed by certified mail, return receipt requested, to the tenant and subtenant at the
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18 give notice as required by this section is a defense to an action for possession and the
19 terms of the tenancy may not be altered during the notice period provided by this
20 subsection. A tenant or subtenant may not be required to vacate upon less than 180
21 days' notice and a tenant and a subtenant in possession in a mobile home park may not
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ALASKA STATE LEGISLATURE



Senate Rules Committee
•
Senate Judiciary Committee
•
Department of Law
Budget Subcommittee

While in Session
State Capitol, Rm. 9
Juneau, Alaska 99801
(907) 465-3704
Fax: (907) 465-2529

While in Anchorage
716 West 4th Ave., Ste 440
Anchorage, Alaska 99501
(907) 269-0169
fax: (907) 269-0172

SENATE MINORITY LEADER JOHNNY ELLIS

MEMORANDUM

To: Members of Senate Labor and Commerce Committee
Senator Phillips Chair
Senator Leman
Senator Davis
Senator Torgerson
Senator Austerman

From: Tyson Fick, Staff to Senator Ellis

Date: March 8, 2001

RE: Senate Bill 6 Amendments

I was asked to draft conceptual amendments to Senate Bill 6 for hearing in the Senate Labor and Commerce Committee on March 8, 2001. The areas of concern were changing the dates of what is considered the summer months; and adding language which would allow for owners and developers to pool the funds required for relocation in order to account better for variances in actual costs.

Both versions "L" and "O" have the same change on Page 3, section 2, lines 27 and 28. Specifically, the altered language changes "...during the calendar year falling no earlier than **April 1** and no later than **September 30.**" The new language changes the dates read "...no earlier than **May 1** and no later than **October 15.**" There is a similar date change on Page 4, Section 3, lines 18 and 19.

Addressing the request for an amendment to allow pooling of funds in the event of a larger mobile home park; version "L" adds language to that effect on Page 4, Section 2, Lines 2 through 7. However, the question was raised as to the necessity of such a change. Through some research it was found that pooling funds is currently allowed. This is why I requested two versions for consideration. In version "O" only the dates are changed and nothing is added to permit pooling funds.

22-LS0216U
Kurtz
2/28/01

*43 trailer
Place 36
April/May*

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17 (2) the mobile home dweller or tenant has been convicted of violating
18 a federal or state law or local ordinance, and that violation is continuing and is
19 detrimental to the health, safety, or welfare of other dwellers or tenants in the mobile
20 home park;

21 (3) the mobile home dweller or tenant has violated a provision,
22 enforceable under AS 34.03.130, of the rental agreement or lease signed by both
23 parties and not prohibited by law including rent and the terms of agreement; and

24 (4) a change in the use of the land comprising the mobile home park,
25 or the portion of it on which the mobile home to be evicted is located; however, all
26 dwellers or tenants so affected by a change in land use shall be given a quit date
27 during the calendar year falling no earlier than April 1 and no later than
28 September 30. and at least 365 [180] days' notice, or longer if a longer notice period
29 is provided in a valid lease, except that only 180 days' notice is required if a
30 suitable place to relocate the mobile home is found and the mobile home park
31 owner or operator pays the disconnection, relocation, and reestablishment costs

May 1 - Oct 15

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of the mobile home or \$5,000, whichever is less, and a longer notice period is not provided in a valid lease.

* Sec. 3. AS 34.08.620(a) is amended to read:

(a) A declarant of a common interest community containing conversion property, and any dealer who intends to offer units in a common interest community containing conversion units, shall give each residential tenant and each residential subtenant in possession of a portion of conversion property notice of the conversion and provide each person with the public offering statement no later than 180 days before the tenant and any subtenant in possession are required to vacate. If the conversion property consists of a mobile home park, notice of the conversion and delivery of a public offering statement shall be provided no later than one year before the tenant and any subtenant in possession are required to vacate, with a quit date during the calendar year falling no earlier than April 1 and no later than September 30. The notice must set out generally the rights of tenants and subtenants under this section and shall be hand delivered to the tenant or subtenant in possession or mailed by certified mail, return receipt requested, to the tenant and subtenant at the address of the unit or any other mailing address provided by a tenant. The failure to give notice as required by this section is a defense to an action for possession and the terms of the tenancy may not be altered during the notice period provided by this subsection. A tenant or subtenant may not be required to vacate upon less than 180 days' notice and a tenant and a subtenant in possession in a mobile home park may not be required to vacate upon less than one year's notice except for one of the following reasons:

Oct. 15

Nov 15

- (1) the tenant or subtenant has defaulted in the payment of rent owed;
- (2) the tenant or subtenant has been convicted of violating a federal or state law or local ordinance, and that violation is continuing and is detrimental to the health, safety, or welfare of other dwellers or tenants in the mobile home park; and
- (3) the tenant or subtenant has violated a provision, enforceable under AS 34.03.130, of the rental agreement or lease signed by both parties and not prohibited by law including rent and the terms of agreement.

SENATE BILL NO. 6

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION**

BY SENATORS ELLIS, Davis

Introduced: 1/8/01

Referred: Labor and Commerce, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to required notice of eviction to mobile home park dwellers and**
2 **tenants before redevelopment of the park."**

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

4 *** Section 1. AS 09.45.090(a) is amended to read:**

5 (a) For property to which the provisions of AS 34.03 (Uniform Residential
6 Landlord and Tenant Act) apply, unlawful holding by force includes each of the
7 following:

8 (1) when, for failure or refusal to pay rent due on the lease or
9 agreement under which the tenant or person holds, and after service, under
10 AS 09.45.100(b), of the written notice required by AS 34.03.220(b) by the landlord for
11 recovery of possession of the premises if the rent is not paid, the tenant or person in
12 possession fails or refuses to vacate or pay the rent within seven days;

13 (2) when,

14 (A) after a violation of a condition or covenant set out in

1 AS 34.03.120(a), other than a breach of AS 34.03.120(a)(5) due to the
2 deliberate infliction of substantial damage to the premises, or after a breach or
3 violation of a condition or covenant in a lease or rental agreement and
4 following service of written notice to quit, the tenant fails or refuses to remedy
5 the breach or to deliver up the possession of the premises within the number of
6 days provided for termination under AS 34.03.220(a)(2);

7 (B) after a violation of AS 34.03.120(a)(5) by deliberate
8 infliction of substantial damage to the premises, following service of written
9 notice to quit, the tenant fails or refuses to deliver up the possession of the
10 premises by the date set out in the written notice to quit under
11 AS 34.03.220(a)(1);

12 (C) after a violation of AS 34.03.220(e) following
13 discontinuance of a public utility service, following service of written notice to
14 quit, the tenant fails or refuses to deliver up the possession of the premises by
15 the date set out in the written notice to quit under AS 34.03.220(e);

16 (D) the landlord requires the tenant to vacate the premises for a
17 reason set out in AS 34.03.310(c)(2) or (c)(4) - (7), following service of
18 written notice to quit, the tenant fails or refuses to deliver up the possession of
19 the premises within the longer of 30 days or the period of notice for the
20 landlord's recovery of possession of the premises set out in the rental
21 agreement;

22 (E) in a mobile home park, there is to be a change in the use of
23 land for which termination of tenancy is authorized by AS 34.03.225(a)(4),
24 following service of written notice to quit, the mobile home dweller or tenant
25 fails or refuses to vacate within the period [NUMBER OF DAYS] provided
26 for termination under AS 34.03.225(a)(4);

27 (F) after termination of a periodic tenancy as prescribed by
28 AS 34.03.290(a) or (b), following service of written notice to quit, the tenant
29 remains in possession without the landlord's consent after expiration of the
30 term of the rental agreement or after the date of its expiration;

31 (G) after the tenant has violated AS 34.03.120(b) or the tenant

1 has used the dwelling unit or allowed the dwelling unit to be used for an illegal
 2 purpose in violation of AS 34.03.310(c)(3) other than a breach of
 3 AS 34.03.120(b), following service of written notice to quit, the tenant fails or
 4 refuses to deliver up the possession of the premises within five days; or

5 (H) following service of written notice to quit, a person in
 6 possession continues in possession of the premises without a valid rental
 7 agreement, as that term is defined in AS 34.03.360, and without the consent of
 8 the landlord; or

9 (3) when, without a notice to quit, a tenant or person in possession
 10 continues in possession of the premises after the tenancy has been terminated by
 11 issuance of an order of abatement under AS 09.50.210(a).

12 * Sec. 2. AS 34.03.225(a) is amended to read:

13 (a) A mobile home park operator may evict a mobile home or a mobile home
 14 park dweller or tenant only for one of the following reasons:

15 (1) the mobile home dweller or tenant has defaulted in the payment of
 16 rent owed;

17 (2) the mobile home dweller or tenant has been convicted of violating
 18 a federal or state law or local ordinance, and that violation is continuing and is
 19 detrimental to the health, safety, or welfare of other dwellers or tenants in the mobile
 20 home park;

21 (3) the mobile home dweller or tenant has violated a provision,
 22 enforceable under AS 34.03.130, of the rental agreement or lease signed by both
 23 parties and not prohibited by law including rent and the terms of agreement; and

24 (4) a change in the use of the land comprising the mobile home park,
 25 or the portion of it on which the mobile home to be evicted is located; however, all
 26 dwellers or tenants so affected by a change in land use shall be given a quit date
 27 during the calendar year falling no earlier than April 1 and no later than
 28 September 30, and at least 365 [180] days' notice, or longer if a longer notice period
 29 is provided in a valid lease, except that only 180 days' notice is required if the
 30 mobile home park operator finds suitable places for the dwellers or tenants to
 31 move their homes, pays the disconnection, relocation, and reestablishment costs

1 of the mobile home or \$5,000, whichever is less, and a longer notice period is not
2 provided in a valid lease.

3 * Sec. 3. AS 34.08.620(a) is amended to read:

4 (a) A declarant of a common interest community containing conversion
5 property, and any dealer who intends to offer units in a common interest community
6 containing conversion units, shall give each residential tenant and each residential
7 subtenant in possession of a portion of conversion property notice of the conversion
8 and provide each person with the public offering statement no later than 180 days
9 before the tenant and any subtenant in possession are required to vacate. If the
10 conversion property consists of a mobile home park, notice of the conversion and
11 delivery of a public offering statement shall be provided no later than one year before
12 the tenant and any subtenant in possession are required to vacate, with a quit date
13 during the calendar year falling no earlier than April 1 and no later than
14 September 30. The notice must set out generally the rights of tenants and subtenants
15 under this section and shall be hand delivered to the tenant or subtenant in possession
16 or mailed by certified mail, return receipt requested, to the tenant and subtenant at the
17 address of the unit or any other mailing address provided by a tenant. The failure to
18 give notice as required by this section is a defense to an action for possession and the
19 terms of the tenancy may not be altered during the notice period provided by this
20 subsection. A tenant or subtenant may not be required to vacate upon less than 180
21 days' notice and a tenant and a subtenant in possession in a mobile home park may not
22 be required to vacate upon less than one year's notice except for one of the following
23 reasons:

24 (1) the tenant or subtenant has defaulted in the payment of rent owed;

25 (2) the tenant or subtenant has been convicted of violating a federal or
26 state law or local ordinance, and that violation is continuing and is detrimental to the
27 health, safety, or welfare of other dwellers or tenants in the mobile home park; and

28 (3) the tenant or subtenant has violated a provision, enforceable under
29 AS 34.03.130, of the rental agreement or lease signed by both parties and not
30 prohibited by law including rent and the terms of agreement.

AMENDMENT

OFFERED IN THE SENATE
TO: SB 6

BY SENATOR PHILLIPS

1 Page 1, line 2, following "relating to":

2 Insert "security deposits and prepaid rent; and relating to"

3

4 Page 3, following line 11:

5 Insert a new bill section to read:

6 "* Sec. 2. AS 34.03.070(g) is amended to read:

7 (g) If the landlord or tenant gives notice that complies with AS 34.03.290, the
8 landlord shall mail the written notice and refund required by (b) of this section within
9 21 [14] days after the tenancy is terminated and possession is delivered by the tenant.
10 If the tenant does not give notice that complies with AS 34.03.290, the landlord shall
11 mail the written notice and refund required by (b) of this section within 30 days after
12 the tenancy is terminated, possession is delivered by the tenant, or the landlord
13 becomes aware that the dwelling unit is abandoned. If the landlord does not know the
14 mailing address of the tenant, but knows or has reason to know how to contact the
15 tenant to give the notice required by (b) of this section, the landlord shall make a
16 reasonable effort to deliver the notice and refund to the tenant."

17

18 Renumber the following bill sections accordingly.

Sectional Analysis Senate Bill 6

According to the Legislative Legal Department this bill requires that a mobile home park tenant being evicted due to a change in the use of land be given one year's notice, unless the park owner or operator pays the costs of relocating the mobile home. It also adds the provision that tenants evicted due to a change in land use may not be made to vacate during the winter.

Section 1. Changes the wording of the definition of unlawful holding by force. The change is to stay in uniform with the new notice provisions of section 3.

Section 2. Changes the subsection on reasons for evicting a mobile home park tenant to take into account the new notice provisions of section 3.

Section 3. Adds a new subsection requiring that a mobile home park tenant being evicted due to a land use change be given a quit date between April 1 and September 30 and at least 365 days notice of eviction, unless the mobile home park owner or operator pays the actual cost of moving the mobile home, not to exceed \$5,000 in which case only 180 days notice is required.

Section 4. This section adds the requirement that the quit date fall between April 1 and September 30 to the existing law which provides for one year's notice for a mobile home park tenant being evicted due to a change in land use. It is a change to correspond to the changes made in section 3.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 7, 2001

SUBJECT: Sectional Summary of Notice of Eviction to Mobile Home Park Dwellers (SB 6)

TO: Senator Johnny Ellis
Attn: Tyson Fick

FROM: Kathryn L. Kurtz *KK*
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

This bill requires that a mobile home park tenant being evicted due to a change in the use of land be given one year's notice, unless the park owner or operator pays the costs of relocating the mobile home. It prohibits park owners and operators from requiring these tenants and mobile home park tenants whose parks are being converted to common interest communities to vacate during the winter.

Section 1. Changes the definition of unlawful holding by force in the landlord tenant act to take into account the new notice to quit provisions of section 3.

Section 2. Changes the subsection on reasons for evicting a mobile home park tenant to take into account the new notice to quit provisions of section 3.

Section 3. Adds a new subsection requiring that a mobile home park tenant being evicted due to a change in the use of the land on which the mobile home is located be given a quit date between April 1 and September 30 and at least 365 days notice of eviction, unless the mobile home park owner or operator pays the actual cost of moving the mobile home, not to exceed \$5,000, in which case only 180 days notice need be given.

Section 4. Existing law provides one year's notice for a trailer park tenant being evicted due to a conversion to a common interest community; this section adds a requirement that the quit date fall between April 1 and September 30, to correspond to the changes made in section 3.

KLK:glc
01-106.glc

Alaska State Legislature

February 26, 2001

House Representative Eric Croft
House Representative Lisa Murkowski
House Representative Sharon Cissna
House Representative Beth Kartulla
State Senator Johnny Ellis

RE: HB 11 An Act relating to required notice of eviction to mobile home park dwellers and tenants before redevelopment of the park.

Dear Legislators:

We totally support House Bill 11, and its companion Senate Bill 6. We wish to thank you for your sponsorship. On our behalf you have acted on the Mobile Home Task Force Report recommendations to provide us statutory protection.

The increase in the notice period and the calendar restrictions for moving are sorely needed and are excellent as written. But regarding the money, we are very concerned that it's not enough to prevent the loss of homes.

When the task force made their recommendations, we didn't have any actual moves to learn from. Now we do. We've located people who have moved their mobile homes, and the costs far exceed \$5,000.

We urgently request that further research into these costs be made and the money figure changed if necessary to protect our homes.

For further research, we provide you a list of the following people who have already moved:

Dean & Marla Boyle, 907-332-1986
Ron Okegawa, 907-333-6807
Allen Hood, 907-333-4370

Linnie Pacillo, 907-338-0268
Ken Kropidowski, 907-338-0533
Kim Baughman, 907-338-8650

We will continue to work at the Anchorage Assembly level to urge passage of local ordinances we need for our protection. At the state level, we appreciate all your efforts on our behalf - your bills are a giant first step to eventually provide an umbrella of protection to all mobile home tenants.

Sincerely,

The Alaska Manufactured Home Resident Advisory Council
Mobile Home Residents
Concerned Citizens

184

Elena [unclear] 561-3046

Annie Stevens 562-6991

2610

[unclear] 563-2450

537-0139

397-2508

397-2506

4987

553-2091

SMENSE 276-3046

561-2374

538-8296

BYRON STANLEY 929-3021

Kathleen Bragg 694-1575

563-1625

[unclear] Mike

Cydney [unclear] 243-0343

Stephanie Wheeler 276-3046

BILL BOBBICK 272-3050

Wendy Jane Michael 243-1558
Anchorage Neighborhood Housing

[unclear] 337 7005

Catholic Social Services
Beyond Shelter Program
276 3046

Memorandum

To: Senator Bettye Davis
Senator Johnny Ellis
Cc: Representative Eric Croft
Representative Lisa Murkowski
From: Stephanie Wheeler
Date: 02/28/01
Re: Senate Bill 6

I am the Program Director for the Beyond Shelter and St. Francis House programs – programs of Catholic Social Services.

Thank you for the opportunity to provide input for Senate Bill 6. Currently the Beyond Shelter Program is assisting with the relocation planning of forty-two (42) Plaza 36 residents needing to relocate the Plaza 36 Mobile Home Community by May and July. The concerns/issues of relocating a mobile home community are many and Senate Bill 6 addresses two of these major concerns for residents needing to relocate: adequate notice of closure and financial compensation for relocation costs.

Adequate planning for Mobile Home Residents is crucial for residents who are impacted by the redevelopment of their community. A 365-day notice will help residents explore options and finalize a plan for relocation. Additionally, Senate Bill 6 addresses the issue of relocating during appropriate seasons, so residents are not being forced to move during the winter months.

In conjunction with adequate planning time, financial compensation will assist residents with some of the relocation costs so that residents are not forced to abandon or sell their homes but can successfully relocate their homes to another area.

Mobile Homes/parks help meet the housing needs and provide a source of low cost housing to many families living in Alaska. We encourage the legislature to begin addressing other issues such as code compliance (or neglect issues) and help to establish acceptance for resident-owned mobile home communities in the private market. The cost for inspections and upgrades can be overwhelming for many residents who need to bring their homes up to code.

As two Anchorage area mobile home communities currently face the challenge of relocation, the total impact will not be fully understood until residents actually relocate. It is our hope that residents currently facing relocation and those who may be facing relocation in the future are not left homeless by this process. Thank you!

Subject: Anchorage Caucus meeting 2/17

Date: Tue, 20 Feb 2001 09:38:45 -0900

From: Sherry Hill <Sherry.Hill@css-ak.org>

To: "Senator_Jerry_Ward@Legis.state.ak.us" <Senator_Jerry_Ward@Legis.state.ak.us>,
"Representative_Gary_Stevens@legis.state.ak.us" <Representative_Gary_Stevens@Legis.state.ak.us>,
"Representative_Norman_Rokeberg@legis.state.ak.us" <Representative_Norman_Rokeberg@Legis.state.ak.us>,
"Representative_Brian_Porter@legis.state.ak.us" <Representative_Brian_Porter@Legis.state.ak.us>,
"Senator_Randy_Phillips@legis.state.ak.us" <Senator_Randy_Phillips@Legis.state.ak.us>,
"Senator_Drue_Pearce@legis.state.ak.us" <Senator_Drue_Pearce@Legis.state.ak.us>,
"Representative_Lisa_Murkowski@legis.state.ak.us" <Representative_Lisa_Murkowski@Legis.state.ak.us>,
"Representative_Eldon_Mulder@legis.state.ak.us" <Representative_Eldon_Mulder@Legis.state.ak.us>,
"Representative_Kevin_Meyer@legis.state.ak.us" <Representative_Kevin_Meyer@Legis.state.ak.us>,
"Representative_Lesil_McGuire@legis.state.ak.us" <Representative_Lesil_McGuire@Legis.state.ak.us>,
"Senator_Loren_Leman@legis.state.ak.us" <Senator_Loren_Leman@Legis.state.ak.us>,
"Representative_Pete_Kott@legis.state.ak.us" <Representative_Pete_Kott@Legis.state.ak.us>,
"Senator_Rick_Halford@legis.state.ak.us" <Senator_Rick_Halford@Legis.state.ak.us>,
"Representative_Andrew_Halcro@legis.state.ak.us" <Representative_Andrew_Halcro@Legis.state.ak.us>,
"Representative_Gretchen_Guess@legis.state.ak.us" <Representative_Gretchen_Guess@Legis.state.ak.us>,
"Representative_Joe_Green@legis.state.ak.us" <Representative_Joe_Green@Legis.state.ak.us>,
"Senator_Johnny_Ellis@legis.state.ak.us" <Senator_Johnny_Ellis@Legis.state.ak.us>,
"Representative_Fred_Dyson@legis.state.ak.us" <Representative_Fred_Dyson@Legis.state.ak.us>,
"Senator_Dave_Donley@legis.state.ak.us" <Senator_Dave_Donley@Legis.state.ak.us>,
"Senator_Bettye_Davis@legis.state.ak.us" <Senator_Bettye_Davis@Legis.state.ak.us>,
"Representative_Eric_Croft@legis.state.ak.us" <Representative_Eric_Croft@Legis.state.ak.us>,
"Representative_Harry_Crawford@legis.state.ak.us" <Representative_Harry_Crawford@Legis.state.ak.us>,
"Senator_John_Cowdery@legis.state.ak.us" <Senator_John_Cowdery@Legis.state.ak.us>,
"Representative_Sharon_Cissna@legis.state.ak.us" <Representative_Sharon_Cissna@Legis.state.ak.us>,
"Representative_Con_Bunde@legis.state.ak.us" <Representative_Con_Bunde@Legis.state.ak.us>,
"Representative_Ethan_Berkowitz@legis.state.ak.us" <Representative_Ethan_Berkowitz@Legis.state.ak.us>

CC: Karleen Jackson <Karleen.Jackson@css-ak.org>

Anchorage legislators: Karleen Jackson, Executive Director of Catholic Social Services, spoke at the Legislative Caucus meeting on Saturday, February 17 during the public testimony segment of the meeting. A copy of her testimony follows below.

Sherry Hill, Director of Community Relations
Catholic Social Services

I'm Karleen Jackson, Executive Director of Catholic Social Services which operates 11 programs serving more than 19,000 people annually -

through three emergency shelters: Brother Francis Shelters in Anchorage and Kodiak serving homeless adults, and Clare House serving homeless women and women with children;

two homes for teens that don't have the option of living with their families: McAuley Manor for teen girls, and opening in April, Charlie Elder House for teen boys.

The CSS Center providing non-shelter based emergency outreach and support services to families and individuals - many who struggle with poverty through: the St. Francis House food pantry, clothing room, and emergency financial assistance; Beyond Shelter case management for families and individuals transitioning from homelessness to permanent independent living;

Immigration and Refugee services for those seeking legal assistance to live in our State; Special Needs Respite care provided for children with developmental disabilities; pregnancy support services; and licensed child placement through our Adoption Program.

CSS clients are impacted by all the issues mentioned at the February 17, 2001 Anchorage Legislative Caucus - yet, the challenges they face precluded their participation in that event. On their behalf, I applaud the appointment of APD Chief, Walt Monegan. I also encourage each of us to consider the impact on those who are homeless or living in poverty as we implement the Anchorage Comprehensive Plan, Transportation Plan, Coastal Trail Plan; and as we deal with other issues before the Anchorage Assembly, Alaska School Districts, University of Alaska, and Legislature.

Specifically, I encourage us to expedite the API rebuild process; to support SB6/HB11 regarding forced mobile home community moves; SB90 providing resources to support the richness brought to our State through Immigrants; HB23 regarding intensive family preservation services; SB46 and HBs 75/56 increasing the minimum wage; and continued level of funding and income requirements for Denali Kidcare.

I also encourage further consideration of the pros and cons of HB29 regarding the Safe Surrender of unwanted infants; as well as the implementation of high school exit exams for teens who have not been adequately prepared - yet risk further barriers to independent living without a high school diploma.

If you would like to discuss the impact of these issues on the more than 19,000 people served by CSS each year, please contact me, or CSS Community Relations Director, Sherry Hill.

Thank you.

Karleen Jackson
Catholic Social Services Executive Director
phone/297-7742; fax/272-7370; e-mail "karleen.jackson@css-ak.org"
or
Sherry Hill - phone 297-7753; fax/272-7370; e-mail "sherry.hill@css-ak.org"

FISCAL NOTE

**STATE OF ALASKA
2001 LEGISLATIVE SESSION**

Fiscal Note Number: _____
 Bill Version: SB 6
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title "An Act relating to required notice of eviction to the mobile home park dwellers and tenants . . ." BRU Civil Division
 Component Fair Business Practices
 Sponsor Senator Ellis
 Requester Senate Labor and Commerce Component No. 2206

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Part-time						
Temporary						

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

SB 6 requires that when a mobile home is to be evicted from a mobile home park because the land is to be used for another purpose, the date to quit the park must be between April 1 and September 30. In addition, at least 365 days notice must be provided to the dwellers or tenant, unless the mobile home park operator finds a suitable place for the mobile home and pays certain specified costs for moving the home. In that case, 180 days notice is adequate, unless the lease provides for a longer notice period.

Passage of this legislation will have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson Phone 465-5370
 Division: Attorney General's Office Date/Time 2/28/01 11:42 AM
 Approved by: Kathryn Daughhete for Bruce M. Botelho, Attorney General Date 2/28/01
 Agency: Department of Law

For distribution information, call the Governor's Legislative Office

SB

9

**SENATE COMMITTEE REPORT
First Committee of Referral**

DATE: 1/8/01

FURTHER:

Date of 5-Day Notice: 1/17/01
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 1/24/01

Labor and Commerce Committee considered SENATE BILL NO. 9

"An Act extending the termination date of the State Board of Registration for Architects, Engineers, and Land Surveyors."

and recommends:

- be replaced with CS SBA (L+C) ()
- 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
- new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
TXED - L	1/23	3.0		

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Robert D. Herman</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>Betty Davis</i>	✓			
CHAIR: <i>[Signature]</i>	✓			



ALASKA STATE LEGISLATURE
SENATOR RANDY PHILLIPS
Senate District L

Session (Jan-May)
State Capitol, Rm 103
Juneau, AK 99801
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Interim
P.O. Box 142
Eagle River, AK 99577
(907) 694-4949
(907) 694-4948 Fax

Senate Labor & Commerce Committee

MEMORANDUM

TO: Senate President Rick Halford

FROM: Senator Randy Phillips *Rep*

SUBJECT: SB9 Extended Board: Architects, Engineers, Land Surveyors

DATE: 1-24-01

CSSB9 Passed out of Senate Labor & Commerce Committee yesterday, Jan. 23, with a positive fiscal note, and therefore, may require a Finance Committee Referral.

Copy of CSSB9 and the current fiscal note is attached.

Thank you.

22-LS0242\C
Lauterbach
1/17/01

CS FOR SENATE BILL NO. 9()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR THERRIAULT

A BILL

FOR AN ACT ENTITLED

1 "An Act extending the termination date of the State Board of Registration for
2 Architects, Engineers, and Land Surveyors; relating to the temporary member of that
3 board; and providing for an effective date."

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

5 * Section 1. AS 08.03.010(c)(3) is amended to read:

6 (3) State Board of Registration for Architects, Engineers, and Land
7 Surveyors (AS 08.48.011) -- June 30, 2005 [2001];

8 * Sec. 2. The uncodified law of the State of Alaska enacted in sec. 31, ch. 47, SLA 1998, is
9 amended to read:

10 Sec. 31. TEMPORARY BOARD MEMBER. After considering
11 recommendations made by the Alaska chapter of the American Society of Landscape
12 Architects, the governor shall appoint a landscape architect to the Board of
13 Registration for Architects, Engineers, and Land Surveyors. The person appointed

1 under this section

2 (1) must have been a resident in the state for three consecutive years
3 immediately preceding appointment;

4 (2) serves in an advisory, nonvoting capacity on the board;

5 (3) is [NOT] entitled to receive state money for per diem or travel
6 expenses for work as a board member;

7 (4) serves a term that expires June 30, 2005 [2001]; and

8 (5) must be registered as a landscape architect under AS 08.48 [BY
9 THE DATE DETERMINED UNDER SEC. 30 OF THIS ACT].

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

12 TRANSITION: TEMPORARY BOARD MEMBER. The term of office of a person
13 holding a temporary position on the Board of Registration for Architects, Engineers, and Land
14 Surveyors before July 1, 2001, expires June 30, 2001. The person is eligible for
15 reappointment under sec. 2 of this Act to a term beginning July 1, 2001, so long as the
16 member continues to meet the qualifications set out in sec. 2 of this Act. The temporary
17 member may remain in the position until the governor names a new appointee or reappoints
18 the temporary member.

19 * Sec. 4. Section 3 of this Act takes effect immediately under AS 01.10.070(c).

20 * Sec. 5. Sections 1 and 2 of this Act take effect July 1, 2001.

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSSB 9 (L&C)
 () Publish Date: _____

Revision Date/Time (Note if correction): 1/23/2001 4:45p.m. Dept. Affected: DCED
 Title: An act extending the termination date of the BRU: Occupational Licensing
State Board of...AELS... Component: Occupational Licensing
 Sponsor: Senator Therriault
 Requester: Senate Labor & Commerce Component Number: 2360

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel	3.0	3.0	3.0	3.0		
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	3.0	3.0	3.0	3.0		

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()	3.0	3.0	3.0	3.0		
-------------------------------	------------	------------	------------	------------	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1156 RSS	3.0	3.0	3.0	3.0		
TOTAL	3.0	3.0	3.0	3.0		

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The bill extends the State Board of Registration for Architects, Engineers, and Land Surveyors to June 30, 2005. Funding for the board is included in the FY 2002 Operating Budget request. The Board meets four times each year and costs shown on this fiscal will fund travel for the landscape architect position when attending meetings and exams in Anchorage, Juneau, and Fairbanks. The costs will be funded by licensing fees.

For informational purposes, the attached page shows expenditure and revenue information for the last two fiscal years.

Prepared by: Jennifer Strickler, Administrative Manager Phone (907) 465-2144
 Division: Occupational Licensing Date/Time 01/23/2001 4:45p.m.
 Approved by: Commissioner Deborah B. Sedwick Date 1/23/2001
 Agency: Dept. of Community and Economic Development

For distribution information, call the Governor's Legislative Office

ANALYSIS: (continued)

CSSB 9: An Act extending the termination date of the State Board of Registration for Architects, Engineers, and Land Surveyors...

Page 2 of 2

FY 1999 Expenditures

FY 2000 Expenditures

Personal Services:

Direct	159,973.14	174,878.69
Indirect	133,565.85	135,294.18

Travel:

Direct	34,872.23	36,454.57
Indirect	1,886.77	1,287.12

Contractual Services:

Direct	99,152.53	101,261.19
Indirect	74,610.41	89,851.03

Supplies:

Direct	1,808.87	1,280.46
Indirect	9,432.86	7,675.87

Equipment

Direct	0.00	0.00
Indirect	6,735.89	3,387.79

TOTAL:	522,038.55	551,370.90
---------------	-------------------	-------------------

REVENUE:	131,325.92	1,095,757.18
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FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 9
 () Publish Date: _____

Revision Date/Time (Note if correction): 1/19/2001 2:37pm Dept. Affected: DCED
 Title: An Act extending the termination date of the BRU: Occupational Licensing
 State Board of Registration for Architects, Eng., and L.S. Component: Occupational Licensing
 Sponsor: Senator Therriault
 Requester: Senate Labor & Commerce Component Number: 2360

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005		
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0		

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0		
-------------------------------	------------	------------	------------	------------	--	--

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2002	FY 2003	FY 2004	FY 2005		
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0		

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

POSITIONS	FY 2002	FY 2003	FY 2004	FY 2005		
Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The bill extends the State Board of Registration for Architects, Engineers, and Land Surveyors to June 30, 2005. Funding for the board is included in the FY 2002 Operating Budget request and new funds are not required. For informational purposes, the attached page shows expenditure and revenue information for the last two fiscal years.

Prepared by: Jennifer Strickler, Administrative Manager Phone (907) 465-2144
 Division: Occupational Licensing Date/Time 1/19/2001 2:37pm
 Approved by: Commissioner, Deborah B. Sedwick Date 1/19/2001
 Agency: Dept. of Community and Economic Development

For distribution information, call the Governor's Legislative Office

ANALYSIS: (continued)

SB 9: An Act extending the termination date of the State Board of Registration for Architects, Engineers, and Land Surveyors

Page 2 of 2

FY 1999 Expenditures

FY 2000 Expenditures

Personal Services:

Direct	159,973.14	174,878.69
Indirect	133,565.85	135,294.18

Travel:

Direct	34,872.23	36,454.57
Indirect	1,886.77	1,287.12

Contractual Services:

Direct	99,152.53	101,261.19
Indirect	74,610.41	89,851.03

Supplies:

Direct	1,808.87	1,280.46
Indirect	9,432.86	7,675.87

Equipment

Direct	0.00	0.00
Indirect	6,735.89	<u>3,387.79</u>

TOTAL:	522,038.55	<u>551,370.90</u>
---------------	-------------------	--------------------------

REVENUE:	131,325.92	1,095,757.18
-----------------	-------------------	---------------------

SENATOR
GENE THERRIAULT

Mailing Address:
119 N. Cushman, Suite 101
Fairbanks, Alaska 99701
(907) 488-0857
Fax: (907) 488-4271



Senate

While in session
State Capitol
Juneau, Alaska
99801-1182
(907) 465-4797
Fax: (907) 465-3884
Senate District O

Senate Bill 9

"An Act extending the termination date of the State Board of Registration for Architects, Engineers, and Land Surveyors."

Sponsor:

Senator Gene Therriault

A handwritten signature in black ink, appearing to read "Gene T.", written over the printed name of the sponsor.

Sponsor Statement

Under AS 08.48.011 the State Board of Registration for Architects, Engineers, and Land Surveyors regulates the professions of registered architects, engineers, and land surveyors by ensuring that the requirements laid out for licensure are met and adhered to.

The Board consists of 10 members appointed by the governor having the qualifications as set out in AS 08.48.031. The board consists of two civil engineers, two land surveyors, one mining engineer, one electrical or mechanical engineer, one engineer from another branch of the profession of engineering, two architects, and one public member. Section 31, ch. 47, SLA 1998 provided for a landscape architect to sit as a temporary non-voting board member whose term is also set to expire June 30, 2001.

The regulation and licensing of qualified architects, engineers, and land surveyors safeguards the public by ensuring the competence and integrity of those who represent themselves as being registered architects, engineers, and land surveyors.

The Board of Registration for Architects, Engineers, and Land Surveyors is set to expire June 30, 2001 under AS 08.03.010, Termination of State Boards and Commissions. If the Legislature does not act to extend the Board, it would have one year, until June 30, 2002 to administratively conclude its affairs. Senate Bill 9 will extend the Board for another four years.

Subject: AELS Sunset Bill

Date: Wed, 17 Jan 2001 13:31:06 -0900

From: "Daphne Brown" <dbrown@kumin.alaska.com>

To: <Senator_Gene_Therriault@legis.state.ak.us>

CC: "Nancy Hemenway" <Nancy_Hemenway@dced.state.ak.us>, <Heather_Brakes@legis.state.ak.us>

Dear Senator Therriault;

I am writing as Chair of the State Board of Registration for Architects, Engineers and Land Surveyors (AELS) in support of extending the Board and the temporary Landscape Architect member. The board oversees the licensing of architects, engineers, land surveyors and landscape architects in the state in the interest of the public with respect to health safety and public welfare. We have recently begun licensing landscape architects and highly recommend the temporary landscape architect position be retained as a designated non-voting member of the board. This board member assists the remainder of the board in understanding the nuances of their profession in addition to helping develop applicable regulations.

We also request that the landscape architect board member be reimbursed for expenses when attending state board meetings or applicable national licensing board meetings. Presently the landscape architect board member's expenses are paid for by the local landscape architecture professional society. Since we as a board serve in the interest of the public and do not "represent" the individual professional societies, we firmly believe all the expenses related to board business should be paid for out of our budget and not contributed by the various professional groups.

If you have any questions, please do not hesitate to call. Thank you for your support.

Sincerely,

Daphne E. Brown, AIA
Chair AELS Board
Architect Member
907/272-8833 (wk)
907/272-7733 (fax)
907/248-2980 (hm)

ALASKA BOARD OF REGISTRATION FOR ARCHITECTS, ENGINEERS
AND LAND SURVEYORS

January 17, 2001

Senator Gene Therriault
State Capitol
Juneau, AK 99801-1182

Dear Senator Therriault,

I am writing in support of SB 9, an Act extending the termination date of the State Board of Registration for Architects, Engineers, and Land Surveyors (AELS).

The AELS board supports extending the termination date of the AELS Board until June 30, 2005. Additionally, the board supports amending the bill to extend the temporary, non-voting Landscape Architect member until the next board sunset date of June 30, 2005, and to provide for the same travel reimbursement privileges as every other board member.

The enabling legislation to license landscape architects, HCS CSSB 110(Fin), passed the legislature in 1998 and became effective on August 20, 1998. Under the bill, landscape architects are required to become licensed and the bill added a temporary, non-voting board member to serve on the board. That temporary member's term expires on June 30, 2001.

The AELS board also supports amending the statutes so the board may, by regulation, require continuing education (CEU) for license renewal. Statutory authority to adopt continuing education regulations would allow the board to develop effective and appropriate requirements for each profession, and would provide registrants with sufficient lead time to comply with requirements.

Sincerely,



Daphne Brown, Chair

JAN-17-01 WED 10:34 AM

FAX NO:

P. 02

Tony Knowles, Governor

Alaska Department of Community and Economic Development

Division of Occupational Licensing

P.O. Box 110808, Juneau, AK 99811-0808

Telephone: (907) 465-2534 • Fax: (907) 465-2974 • Text Telephone: (907) 465-5437

Email: license@dced.state.ak.us • Website: www.dced.state.ak.us/occ/

November 22, 2000

Legislative Budget and Audit Committee
Division of Legislative Audit
PO Box 113300
Juneau, AK 99811-3300

Dear Ms. Davidson,

Thank you for this opportunity to comment on the Preliminary Audit Report (#08-20001-00). We concur that the Board of Registration for Architects, Engineers and Land Surveyors should be continued through June 30, 2005. Our comments regarding the audit recommendations follow.

Recommendation No. 1. The legislature should consider revising statutes requiring continuing education for architects, engineers, and land surveyors.

The board discussed this recommendation at length during its November 16-17 meeting. The board supports continuing education requirements. The board and the division recommend amending the statutes so the board may, by regulation, require continuing education for license renewal. This amendment would allow the board to develop continuing education requirements that best serve the public. Flexible statutory authority would permit the board to adjust continuing education regulations when experience with the system demonstrated a need for change.

Recommendation No. 2. The legislature should consider revising the structure of the state Board of Registration for Architects, Engineers and Land Surveyors (BRAELS).

The percentage of Alaska engineers who are mining engineers is low. The board does not believe the relatively small number of mining engineers has made it difficult to fill the designated board seat. Several years ago the legislature considered removing the requirement that one of the five engineers on the board be a mining engineer, and the legislature decided not to make the change. The designation of board seats does not have to correlate to the percentage of licensees. The importance of competent mining engineering to sound state development may warrant a designated board seat.

Recommendation No. 3. In order to improve statutory clarity, the legislature should consider amending the board's statutes related to licensure of architects by comity.

The board has adopted regulations that address this issue. However, a statutory change may help clarify the law and reduce the potential for litigation.

Sincerely,



Catherine Reardon
Director

"Promoting a healthy economy and strong communities"

**ENVIRONMENTAL & ENGINEERING CONSULTANTS**

Ph: (907) 452-5688 Fax: (907) 452-5694 Email: Info@NortechEngr.com
2400 College Road Fairbanks, Alaska 99709

SENT BY TELEFAX

January 17, 2001

Senator Gene Therriault
Alaska State Capitol,
MS 3100
Juneau, AK 99801-1182

RE: Senate Bill 9

Senator Therriault:

This letter is in support of Senate Bill 9, an Act extending the termination date of the State Board of Registration for Architects, Engineers, and Land Surveyors until June 30, 2005.

The board serves an important role in protecting the general public by licensing professional architects, engineers and land surveyors.

I trust this information is sufficient for your needs at the present time. If you have any additional questions feel free to contact me.

Sincerely

NORTECH

A handwritten signature in cursive script, appearing to read "John Hargesheimer".

John Hargesheimer, PE, CIH, DEE
Principal & CEO



Alaska Professional Design Council
P.O. Box 103115, Anchorage, AK 99510-3115

January 17, 2001

Heather Brakes
State Capitol
Juneau, Alaska 99801-1182

Subject: Legislative Recommendation:

Dear Ms. Brakes

We support the position forwarded to you by John Hargesheimer PE yesterday.

Copy Enclosed.

His position will be posted in our news letter which will go out in about 10 days.

If you have any questions please feel free to call myself (907) 272-1405 or Sam Kito.

Thank you very much for your prompt work on this matter.

Sam Kito III
Chair
Legislative Liaison Committee

Jeffery Wilson
President
Alaska Professional Design Council

Member Societies

American Congress of Surveying and Mapping (ACSM) - American Society of Civil Engineers (ASCE)
Alaska Society of Professional Engineers (ASPE) - Alaska Society of Professional Land Surveyors (ASPLS)
American Institute of Architects (AIA) Alaska Chapter - Structural Engineers Association of Alaska (SEAA)
Architecture/Engineering Marketing Association of Alaska (AEMAA) - Consulting Engineers Council of Alaska (CECA)
American Society of Landscape Architects (ASLA) Alaska Chapter - Professional Engineers in Private Practice (PEPP) Alaska Chapter

Audit Report

DEPARTMENT OF LABOR AND
WORKFORCE DEVELOPMENT
DIVISION OF WORKERS' COMPENSATION

October 31, 1999



Audit Control Number:

07-4601-00

Division of Legislative Audit
P.O. Box 113300, Juneau, Alaska 99811-3300

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

DIVISION OF LEGISLATIVE AUDIT

The Legislative Budget and Audit Committee is a permanent interim committee of the Alaska Legislature. The committee is made up of five senators and five representatives, with one alternate from each legislative chamber. The chairmanship of the committee alternates between the two chambers every legislature.

The committee is responsible for providing the legislature with audits of state government agencies. The programs and activities of state government now cost more than \$6 billion a year. As legislators and administrators try increasingly to allocate state revenues effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by the Division of Legislative Audit helps provide that information.

As a guide to all their work, the Division of Legislative Audit complies with generally accepted auditing standards established by the American Institute of Certified Public Accountants and with government auditing standards established by the U.S. General Accounting Office.

Audits are performed as mandated by Alaska Statutes or at the direction of the Legislative Budget and Audit Committee. Individual legislators or committees can submit requests for audits of specific programs or agencies to the committee for consideration. Copies of all completed audits are available from the Division of Legislative Audit's offices in either Juneau, Anchorage, or our web site <http://www.legis.state.ak.us/legaud/web/default.htm>.

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Representative Con Bunde
Representative Eric Croft
Representative Gary Davis
Representative Gene Therriault
Representative Eldon Mulder (alternate)

Senator Randy Phillips, Vice Chair
Senator Al Adams
Senator Rick Halford
Senator Sean Parnell
Senator Gary Wilken
Senator Drue Pearce (alternate)

DIVISION OF LEGISLATIVE AUDIT

Pat Davidson, CPA
Legislative Auditor

P.O. Box 113300
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ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347
Internet e-mail address:
legaudit@legis.state.ak.us

October 31, 1999

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT DIVISION OF WORKERS' COMPENSATION

October 31, 1999

Audit Control Number

07-4601-00

This report summarizes our review of the workers' compensation program administered by the Department of Labor and Workforce Development, Division of Workers' Compensation (DWC). This audit evaluates the State's workers' compensation program and the operations of DWC in the context of the legislative intent that accompanied the 1988 statutory changes made to the Workers' Compensation Act. In the report we discuss the reporting process, second injury fund issues, enforcement of uninsured employer sanctions, compensation issues, frivolous controversies, rehabilitation of injured workers, and insurance rates.

The audit was conducted in accordance with generally accepted government auditing standards. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology section.

A handwritten signature in cursive script that reads "Pat Davidson".

Pat Davidson, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 of the Alaska Statutes and a special request by the Legislative Budget and Audit Committee, we conducted a performance audit of the workers' compensation program administered by the Department of Labor and Workforce Development. Alaska Statute 23.30 requires employers to maintain insurance coverage for the purpose of compensating workers injured in the course and scope of their employment. The Division of Workers' Compensation (DWC) administers the program with oversight by the Alaska Workers' Compensation Board (AWCB). Our review also considered workers' compensation insurance issues administered by the Department of Community and Economic Development (DCED), Division of Insurance (DOI).

Objectives

The objective of our audit was to evaluate the workers' compensation program and assess agency administration and enforcement, as well as the functional application of the Alaska Workers' Compensation Act as it relates to legislative intent.

Scope and Methodology

The scope of the audit encompassed all major operations of the workers' compensation program, including the administrative, reemployment benefits, and adjudicatory sections of DWC. Our scope also included reviewing the regulation of insurance companies by DOI.

We gained an understanding of the workers' compensation program to identify opportunities where operations could be improved to better serve stakeholders. Our examination involved the review and analysis of operating policies, practices, control activities and the current organizational structure and staffing. Specifically, we obtained and/or reviewed:

- Alaska Workers' Compensation Act (AS 23.30).
- Alaska insurance statutes (Title 21).
- Relevant state regulations.
- Budget documents.
- Organizational charts.
- Job descriptions.
- AWCB annual reports.
- AWCB bulletins.
- Case files.
- Compromises and releases.
- Workers' compensation rates and rating value filings.
- National Council on Compensation Insurance Annual Statistical bulletins.
- Audio tapes from the governor's workshop on workers' compensation held August 6-8, 1998.

To understand and evaluate the current climate of the program, we considered legislative intent outlined in Chapter 79, SLA 1988. We reviewed analysis, comments, and various other documents considered by the legislature during the 1988 statutory revisions. Additionally, we reviewed various Alaska Superior and Supreme Court rulings and Alaska Workers' Compensation Board decisions and orders to provide historical perspective and to better understand the public policy rationale behind the statutory changes made. We considered the operational practices of the divisions in conjunction with the legislative intent and the law and discussed these practices with workers' compensation attorneys. Discussions with the attorneys were to obtain their perception of workers' compensation in Alaska. We interviewed DWC hearing officers about the effect of certain court decisions on board deliberations and decision making.

To promote our understanding, we attended hearings and prehearings and interviewed staff about the workers' compensation claim process. We reviewed each step of the claim process including identifying the various forms required by law or regulation and the associated legal and regulatory timelines. We considered the effect of these timelines towards meeting legislative intent.

We tested controls over the verification of the annual reports filed by insurers or adjusters. We analyzed insurer or adjuster annual reports for timeliness, completeness, and accuracy. When penalties were assessed on annual reports, we tested the accuracy of the amount assessed. We recalculated program receipts including penalties and late fees as well as expenditures. We traced this data from the state accounting system to supporting documents to ensure expenditures made on behalf of injured workers were in accordance with the orders and awards of the Workers' Compensation Board. We tested revenues to ensure accurate accounting.

We analyzed regulation changes made during the past five years and evaluated prescribed forms for clarity and consistency with regulation timelines. We evaluated these changes for any impact on efficiency and complexity of the claim process.

We developed an understanding of the reemployment benefits process through interviews with staff and review of case files to evaluate the program's effectiveness. We also investigated the potential cost shifting to the Division of Vocational Rehabilitation for reemployment training.

We evaluated the manner in which physicians are identified and selected to perform second independent medical evaluations. We reviewed the physicians' application file for compliance with the law and regulations.

We evaluated the effectiveness of procedures used to identify uninsured employers and to enforce compliance with legal requirements. We also reviewed the extent of prosecutorial referrals to the Department of Law.

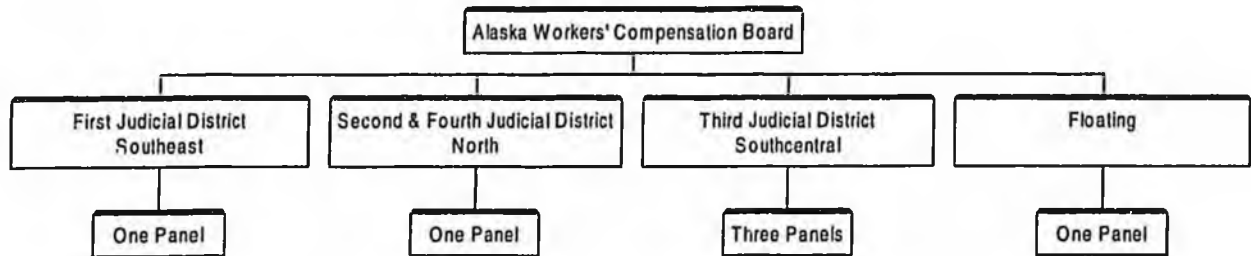
We discussed procedures for evaluating the reasonableness, adequacy, and fairness for proposed rates with DOI. We reviewed statistical trends related to workers' compensation premiums in Alaska and investigated the intent of a 2.7% tax assessed on workers' compensation insurance premiums. We attended proceedings of the Alaska Workers'

Compensation Review and Advisory Committee to obtain an understanding of its role in advising the director of DOI.

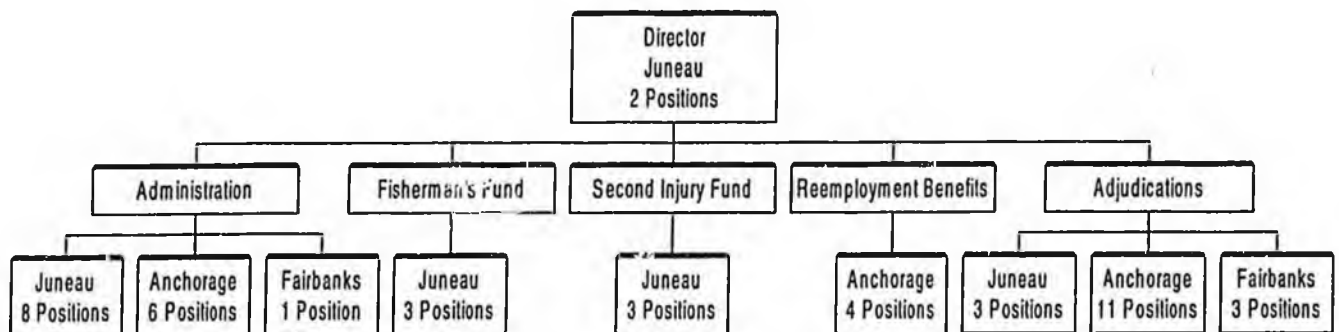
We reviewed recent prosecutions of workers' compensation fraud cases and discussed investigative procedures with the DOI representatives.

We also documented changes in staffing including turnover and budgeted positions. We also scheduled funding appropriated to DWC over the past nine years and analyzed authorized capital funding.

Alaska Workers' Compensation Board



Division of Workers' Compensation



ORGANIZATION AND FUNCTION

The Department of Labor and Workforce Development

Under the provisions of Title 23 of the Alaska Statutes, the Department of Labor and Workforce Development (DLWD) is charged with fostering and promoting the welfare of the wage earners of the State, improving working conditions, and advancing opportunities for profitable employment. The department is responsible for administering:

- employment services, unemployment insurance, and workers' compensation programs;
- enforcing laws and regulations dealing with job safety, hours of work, wages, work conditions, and public employer/employee labor relations; and
- collecting, analyzing, and disseminating labor and population statistics.

Included in the provisions of Title 23 is the Alaska Workers' Compensation Act. This law requires employers to pay medical costs and part of lost wages if an employee is injured, or becomes ill, because of work conditions. In cases of death, dependents receive benefits.

The Division of Workers' Compensation (DWC) and the Alaska Workers' Compensation Board (AWCB) were organized in the Department of Labor and Workforce Development in response to, and derive their purpose from, the Alaska Workers' Compensation Act. (See organizational chart on the facing page.)

Purpose of the Workers' Compensation Act

The primary purpose of the Workers' Compensation Act is to ensure that Alaska workers who suffer injury or illness arising from their employment are provided adequate medical care, prompt payment of benefits and, if needed, voluntary rehabilitative services. An employer must buy the insurance from a licensed insurance company or be self-insured. An employer cannot require an employee to pay any part of the insurance premium. Neither DWC nor AWCB pay benefits.

The Division of Workers' Compensation

The Alaska Workers' Compensation Board

The Alaska Workers' Compensation Act established a 13-member board to adjudicate disputes between employees and employers, or their insurers. Twelve members are equally composed of representatives from the industry and labor markets. The commissioner of DLWD sits as the 13th member for the board as a whole, serving as chairman and executive officer of the board.

The 13 member AWCB is divided into six panels composed of three members per panel for the purposes of presiding over claim hearings. Each panel includes the commissioner of DLWD as chairman of the panel, a representative of industry, and a representative of labor. In practice, the commissioner typically designates a DWC hearing officer as his designee on

the panels. Except for the commissioner or his designee, each representative is appointed by the governor for a three-year term and is subject to confirmation by a majority of the legislature. The terms of an industry and labor member of each panel may not expire in the same year. The management and labor members are entitled to compensation in the amount of \$50 a day for each day or portion of a day spent in actual meetings or on pre-authorized actual business.

A southern panel sits for the first judicial district, a northern panel sits for the second and fourth districts, three southcentral panels cover the third judicial district, and one panel serves as a floating panel for any judicial district.

AWCB is supported administratively by DWC. In the event of a dispute over a claim for benefits, AWCB panels schedule, hear and decide disputed cases. AWCB issues orders, including formal decisions and orders (D&O), to resolve such disputes. Its decisions are binding and reversible only by appeal to the state courts.

Administration

DWC is the administrative arm of AWCB in enforcing the Alaska Workers' Compensation Act. It collects and disseminates information about the workers' compensation program and provides administrative support to the board.

In Juneau, positions are primarily responsible for entering data, such as notices of occupational injury or illness and related physician reports, as well as employer required reporting including compensation reports and annual reports. In Anchorage, where the majority of claims are processed, the staff focuses on maintaining claim files and related form filings.

Adjudications

DWC works with employees and employers to mediate disputes and resolve issues before it becomes necessary to appear before AWCB. If disputes cannot be mediated, then AWCB hears the case and issues D&Os that are binding on all parties.

The adjudication staff assists injured workers in understanding their rights and responsibilities when filing a claim. Workers' compensation officers educate injured workers of the claim process and preside over pre-hearings prior to the claim being heard by AWCB. As the designated chairman of the AWCB panel, the hearing officers review cases prior to the hearing date and are responsible for issuing the AWCB's decision on behalf of the presiding panel.

Reemployment Benefits

DWC also oversees the administration of a voluntary vocational rehabilitation or reemployment program for workers unable to return to previous employment.

An employee may request an evaluation for reemployment benefits after reporting an injury to his/her employer. The Reemployment Benefits Administrator (RBA) may assign a rehabilitation specialist to evaluate the injured worker. Injured workers eligible for reemployment benefits are entitled to undertake a reemployment plan, the costs of which are paid for by the insurer. The RBA helps resolve disputes between injured workers and insurers.

Second Injury Fund

The Second Injury Fund encourages the employment of previously injured workers by protecting employers from disproportionate liability in the event a workplace injury produces a condition significantly worse than the second injury alone. Injured workers with a qualifying preexisting condition may join the fund, which reimburses the employer for the costs of benefits related to the preexisting condition. The fund provides a mechanism of shifting the risk of providing benefits related to the second injury and the total paid to the injured worker by reimbursing benefit costs beyond 104 weeks of compensation.

An employer must demonstrate that it had written documentation that an employee had a qualifying pre-existing condition, the employee was hired or retained with full knowledge of the condition, and a subsequent injury resulted in a condition substantially greater than the pre-existing condition alone.

Fisherman's Fund

The Fishermen's Fund was established in 1951 and provides for treatment and care of Alaska's licensed commercial fishermen who are injured or become ill due to fishing-related activities on shore in Alaska or in Alaskan waters.

The fund is not an insurance program, but an emergency fund payer of last resort. Benefits are awarded only after other coverage is fully considered from private health or vessel insurance, and public programs (except Medicaid). Benefits from the fund are financed from each commercial fisherman's license/permit fee.

As stated in the Objective, Scope and Methodology section of this report, the Fisherman's Fund was not included in our audit.

The Department of Community and Economic Development

The Department of Commerce and Economic Development was reorganized into the Department of Community and Economic Development (DCED) in FY 00. DCED is charged with the duty to work with Alaska's private sector and communities in creating new

jobs for Alaskans, strengthening Alaska's competitiveness in the world marketplace, and maintaining a fair and consistent business regulatory environment in the State.

The Division of Insurance

Title 21 of the Alaska Statutes provides DCED's Division of Insurance (DOI) with the authority and responsibility of regulating all aspects of the insurance industry in the State. The mission of the division is to protect and serve Alaska by developing, interpreting, and enforcing the insurance statutes and regulations, protecting and educating the Alaskan consumer, and enhancing the insurance business environment.

Filings Review Section

The primary duties of the filings review section involve reviewing and approving insurance rates, including workers' compensation. The section publishes consumer information detailing how insurance rates are calculated in Alaska.¹

DOI licenses organizations that provide data collection and rate-making services to insurers. This oversight is carried out under provisions in Alaska law requiring rates not to be excessive, inadequate, or unfairly discriminatory. The National Council on Compensation Insurance, Inc. is the approved workers' compensation insurance rating organization for the State of Alaska, as well as 37 other states.

Financial Examination Section

The responsibility of the financial examination section is to enforce financial, tax, and trust requirements for insurance entities providing services in Alaska. The section also conducts examinations of insurance companies and agencies to determine whether the requirements of Alaska insurance law on financial areas are being met. The section is responsible for issuing certificates of authority to domestic insurers and to insurance companies who wish to be admitted to do business in the State. The section also collects all premium taxes and fees charged to insurance companies and brokers under Title 21.

The premium tax is deposited into the General Fund. Tax revenues attributable to workers' compensation were \$4.1 million, \$3.4 million, and \$3.4 million for calendar years 1996 through 1998, respectively.

Investigation Section

The investigation section enforces statutes and regulations by investigating claims of fraud and other violations, including incidences of workers' compensation fraud.

¹The *Workers' Compensation Rating Guide* may be obtained by contacting DOI or visiting its website at <http://www.dced.state.ak.us/insurance/pubs.htm>.

Consumer Services Section

The consumer services section examines insurance companies' records to ensure the consumer is treated fairly and the contract of insurance is adhered to. The section is responsible for investigating frivolous controversion determinations referred to the division by the AWCB.

Market Examination Section

The market examination section conducts compliance examinations and analyzes the non-financial operations of admitted insurers and other entities in the State. Examinations may be limited or comprehensive and include evaluating the performance and compliance with Alaska laws and regulations.

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BACKGROUND INFORMATION

Workers' compensation laws require employers to obtain insurance or a certificate of self-insurance in order to conduct business. The insurance is paid for by the employer and is designed to compensate employees who are injured or disabled while working. The insurance serves to protect employers from costs involved in litigating the questions of negligence and fault each time an employee is hurt on the job. The workers' compensation law is intended to provide benefits, paid by the employer's insurer, to cover the medical costs related to treating the injury involved and the worker's loss of earning capacity. These laws also provide benefits for dependents of workers who are killed because of work-related accidents or illnesses. However, the law is not intended to compensate either the injured workers or their families for pain and suffering.

In the 1980s there were concerns about the cost of workers' compensation insurance

Various representatives of Alaska's leading businesses established the Workers' Compensation Committee of Alaska (WCCA) in 1981. The mission of WCCA was "to utilize every legitimate step to protect businesses and jobs by keeping insurance premiums low." In 1982, WCCA joined with representatives of state chapters affiliated with the American Federation of Labor and Congress of Industrial Organizations to select representatives for an ad hoc committee. The committee was to recommend changes to the Alaska workers' compensation statutes for the legislature.

The ad hoc committee was composed of five members each from labor organizations and businesses. Several members of WCCA served on the ad hoc committee as business representatives. In 1986, in response to concerns over increasingly high insurance rates, the ad hoc committee asked WCCA to develop a list of issues to address. WCCA believed its recommendations represented a balance between employees and employers. The Department of Labor and Workforce Development (DLWD)² supported WCCA and agreed to work with the organization reflecting the perspective of Governor Cowper.³ DLWD agreed to assist, with the proviso that the process examine the entire workers' compensation system and not have its sole aim the reduction of premiums.

Three central factors were identified as contributing to higher premiums

In its efforts to address the concern of high insurance rates in Alaska, WCCA identified three nationwide factors that contributed to increasing premium costs for workers' compensation insurance:

- Rising medical costs;
- Extended disability payments to individuals capable of returning to work; and

²The Department of Labor was reorganized into the Department of Labor and Workforce Development in FY 00. In this section, we will use the new acronym for the agency, DLWD.

³Suggested legislative revisions to the existing law was tempered by Governor Cowper's insistence that any bill affecting workers' compensation must lower costs to Alaska's employers.

- Vocational rehabilitation costs to retrain injured individuals for alternative work.

In 1988 the legislature comprehensively revised the workers' compensation statutes

Based upon its investigation and research in these three areas, WCCA developed model legislation for consideration. The legislation was aimed primarily at reducing the costs of premiums. After legislative deliberations, the comprehensive rewrite of the law adopted most of WCCA's recommendations and responded in total to the concerns set out by the group. The legislature included significant cost containment measures that put more requirements on injured workers, and provided employers' insurers more discretion and authority regarding the medical treatment sought by injured workers.

Changes in the law accompanied by extensive legislative intent

In addition to substantially amending the State's workers' compensation statutes the legislature adopted extensive intent that accompanied the law. Changes made to the statutes reflected the sentiments set out in the intent. For example, the first intent statement is as follows:

(a) It is the intent of the legislature that AS 23.30 be interpreted so as to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of AS 23.30. [Emphasis added.]

The new law reduced the number of times an injured worker could change attending physicians before obtaining the employer's approval (presumably making the process more *quick and efficient*). The new law limited the frequency of treatment an injured worker could receive from an attending physician. WCCA believed, and the legislature evidently concurred, that requiring substantiation for continuing treatment would reduce costs. Workers who continually sought medical opinions to support their claims of injury, it was believed, were driving costs higher. By making treatment and physicians subject to review, the process was thought to be more *fair and predictable*. This pre-approval requirement would result in benefits *at a reasonable cost to the employers*.

Legislative intent wanted courts to give more deference to board decisions

The second element of the adopted legislative intent was directed at the state courts. Apparently there was some feeling that the old workers' compensation law served as a basis for decisions that were too often of excessive benefit to injured workers. Given the separation of powers doctrine, the impact of legislative intent on court decisions may have been problematic, at best. However, we have reviewed court decisions that considered legislative intent. Specifically, the intent stated:

(b) The legislature declares that the workers' compensation laws must not be construed by the courts in favor of any party. It is the specific intent of the legislature that workers' compensation cases be decided on their

merits, except when otherwise provided by statute. It is also the intent of the legislature that the board possess the greatest possible authority in the exercise of its fact finding responsibilities and that the board's decisions be conclusive unless the court finds that a reasonable person could not have reached the conclusion made by the board. [Emphasis added.]

WCCA, in developing the model legislation that was adopted in large measure by the legislature, felt it was important that the Alaska Workers' Compensation Board (AWCB) have the weight of fact-finding authority. Under the revised statutes AWCB decisions are conclusive unless the courts find that a reasonable person could not have reached the conclusion made by the board. If supported by evidence, the legislature wanted the courts to uphold AWCB rulings, called decisions and orders, as decided. In those instances when the court was called upon to decide a case, the legislature emphasized the courts should do so on the merits of the case and within the confines of the statute.

Legislative intent addressed perceived disincentives to return to work

The third legislative intent statement commented that another element of the statutory revisions was to minimize perceived disincentives to return to work. The legislature set out:

(c) It is the intent of the legislature in amending AS 23.30.175 regarding benefits payable to recipients not residing in the state to

(1) recognize the levels of workers' compensation benefits brought about by the high cost of living that exist in the state as compared to other localities;

(2) increase incentives to return to work; and

(3) remove obstacles to the utilization of vocational rehabilitation that may be brought about by the payment of worker's compensation benefits at the high levels provided by the Alaska worker's compensation law to individuals residing in localities with living costs lower than those in Alaska. [Emphasis added.]

WCCA believed that disincentives to return to work were inherent in the old law and needed to be removed. The organization believed benefits paid to individuals residing outside the State were too high, given that they were based on typically higher Alaskan wage rates. The new law also intended to remove obstacles to providing rehabilitation benefits. It was believed the provisions in the new statute were structured to provide benefits to those truly in need and most likely to benefit. The new legislation sought to expedite the vocational rehabilitation process by incorporating relatively brief timelines with the expectation of producing more successful outcomes. The law was also directed at eliminating what was seen as the growing trend towards injured workers "extorting" higher settlements in lieu of the employer providing mandatory vocational rehabilitation training.

Legislative intent emphasized enforcement of legal requirements and obtaining accurate data

After including an intent statement that it wanted the new laws to encourage workplace safety, the legislature gave particular emphasis to the importance of enforcement and record keeping. Specifically, the legislature set out its intent as follows:

(d) It is the intent of the legislature in amending AS 23.30.075(b) and AS 23.30.155 that the division of workers' compensation, division of insurance, and Department of Law strictly enforce the punishment authorized under AS 23.30.075(b) and the reporting requirements and penalties for noncompliance under AS 23.30.155. Strict enforcement is necessary because

- (1) the state has failed to impose the punishment authorized under AS 23.30.075(b) against those employers who fail to obtain workers' compensation insurance or to qualify as a self-insurer; and*
- (2) there is a lack of specific data from the division of workers' compensation and division of insurance to adequately assess the efficiency and costs of the workers' compensation system. [Emphasis added.]*

The old law required reporting on a claim-by-claim basis as well as an interim and anniversary basis. This process hindered the division's ability to collect, summarize, and analyze the data that resulted in the increasing insurance rates. While developing its model legislation, WCCA found the lack of data discouraging in its attempt to understand the reasons for increasing premiums. The organization believed that an annual standard reporting process for insurers would provide a basis for comparability and understanding of insurance premium trends. It appears WCCA encouraged the legislature to require collecting the total amount of all compensation by type, medical and related benefits, vocational rehabilitation expenses, legal fees, and penalties paid on all claims during the preceding calendar year.

The legislature wanted to encourage compliance with the reporting requirements by assessing penalties against insurers who fail to comply with reporting requirements as well as provisions for those who demonstrate good faith intent to comply with the requirements.

Responsibilities under the Workers' Compensation Act

Employers are legally required to provide compensation to employees injured in the course and scope of their employment. When an employee is injured or becomes ill as a result of work conditions, they are required to submit a completed report of occupational injury or illness to the employer and the Division of Workers' Compensation (DWC). An employee is required to give notice of the injury to DWC and the employer within 30 days after the injury. However, failure to give notice does not prohibit a claim from eventually being made.

An average of 28,100 Notices of Occupational Injury or Illness are filed annually

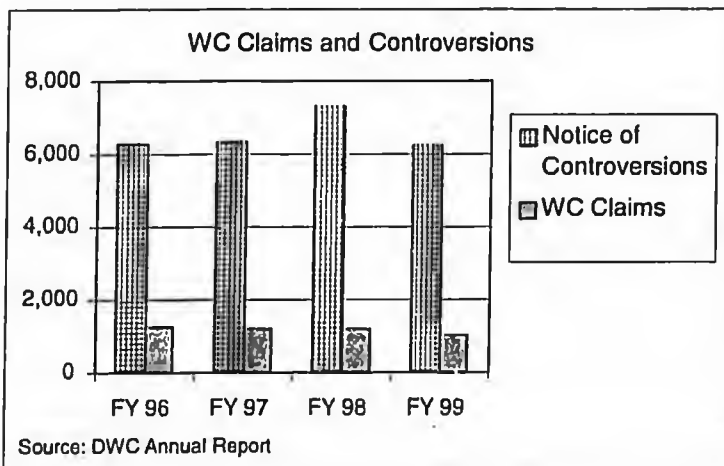
Based on an analysis of the DWC records covering the previous four fiscal years (July 1 to June 30) as reported in the agency's annual report, an average of 28,100 reports of occupational injury or illness are processed annually.

Type of Injury/Illness	FY 96	FY 97	FY 98	FY 99
Time Loss	8,984	9,654	10,003	9,490
Fatality	21	38	33	31
No Time Loss	18,989	19,214	18,529	17,516
Total	27,994	28,906	28,565	27,037

Source: DWC Annual Reports

As reflected by the figure above, about a third of notices represent claims involving time loss from work. A relatively small number involve worker fatalities.

Nearly 1,200 workers' compensation claims filed annually



If benefits for time loss or payment for medical treatment are controverted, that is, not paid by an insurer, an injured worker can file a claim to seek compensation for the work-related injury or illness. Compensation can take many forms including paying a physician for treatment on behalf of an injured worker or paying the injured worker wages while unable to work.

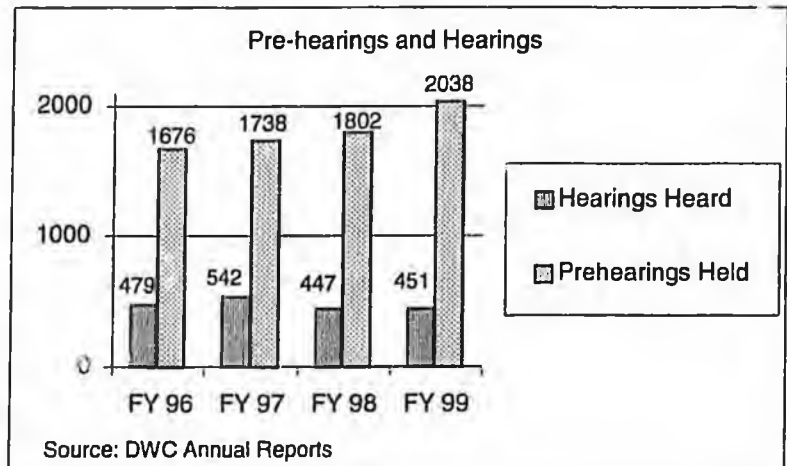
A claim presents the dispute to DWC and its adjudicatory authority, AWCB. DWC processes an average of 1,175 claims per year. A controversion notice, completed by the employer's insurer and served to DWC and the injured worker, informs the injured worker that benefits will not be paid based upon a specific dispute surrounding the injury or illness.

DWC processed an average of 6,500 controversion notices during FY 96 through FY 98. It is important to note that the number of controversion notices do not relate directly to the number of claims. A controversion can be filed on report of occupational injury or illness, a claim, or for a specific medical treatment and as such, there can be more than one controversion per claim.

On average, 1,800 pre-hearings and 479 hearings are heard annually to settle disputes

Requests for conferences answered by the employer or insurer, are scheduled for a pre-hearing with a workers' compensation officer I or II.

Pre-hearings are designed to identify and simplify the issues to present to AWCB. For those requests that were not answered by the employer, DWC schedules a hearing before AWCB within 60 days of the filing of the request.



There is not a direct correlation between the number of pre-hearings held and the number of hearings scheduled. Each claim can have multiple pre-hearings. On average, AWCB conducts 1,800 pre-hearings per year. Approximately 570 hearings are scheduled each year, however on average only 479 (85%) are actually conducted. Additionally, 4% are partially resolved or settled and 11% are continued into the next calendar year. In total, over the past three years AWCB has issued an average of 370 decision and orders per year.

AWCB approves approximately 570 compromise and release agreements annually

At any point in the pre-hearing and hearing process, the parties may agree to settle before formally presenting their case to the board. This settlement is referred to as a compromise and release (C&R). AWCB has approved approximately 570 C&Rs per year for the past three years. During the same period, AWCB denied an average of 90 C&Rs per year. However, the parties can revise the C&Rs and re-present them to AWCB for approval. Therefore, the number of approvals per year can include the C&Rs that were also included in the total denied C&Rs for the year.

A party can request an appearance in front of AWCB for reasons other than filing a claim for benefits. A petition provides the avenue for an injured worker to request the joiner of claims for multiple injuries into one claim or for a party to join an existing claim such as a physician who has not been paid because the claim for medical treatment has been controverted. A petition also allows the employer to request approval to terminate existing benefits altogether or for either party to request a second independent medical evaluation. DWC processed an average of 351 petitions per year over the previous three years.

Approximately 500 injured workers are evaluated annually for reemployment benefits

Between 30% to 40% of workers' compensation reports of injury DWC receives each year involve serious injuries that result in time-loss away from the job. Serious time-loss injuries

may permanently preclude a worker from returning to the position held at the time of injury. In such cases the injured worker may be eligible for reemployment benefits.

An injured worker or employer may request an eligibility determination from the Reemployment Benefits Administrator (RBA). An employer may request a determination at anytime, however an employee is required to make the request within 90 days of the workplace injury unless unusual and extenuating circumstances prevents the employee from making a timely request.⁴ Each year, approximately 1,000 claimants seek reemployment benefits, but only about half are actually referred for an eligibility determination.

Once an acceptable request has been made and a medical report is received stating the worker may not be able to return to their prior occupation, the injured worker is assigned a rehabilitation specialist for an eligibility determination. Rehabilitation specialists must be Certified Disability Management Specialists or Certified Rehabilitation Counselors. Rehabilitation specialists sometimes perform contractual work outside the DWC reemployment benefits program for other rehabilitative agencies or private insurers.

The rehabilitation specialist obtains information regarding the worker's job duties at the time of injury and positions held or trained for in the previous 10 years. The determination also examines whether the worker received rehabilitation training through a previous work injury. Finally, the employer is queried whether substitute work within the claimant's physical capacities is available. The rehabilitation specialist uses the information in concert with statutory eligibility requirements and recommends the RBA either rule the worker eligible or ineligible for reemployment benefits.

Those determined eligible and choose to accept reemployment benefits select a rehabilitation specialist to design a plan incorporating the interests and goals of the worker. Reemployment plans may consist of academic, vocational, on the job training, or self-employment. The workers' compensation law limits the cost of a plan to a maximum of \$10,000 (excluding evaluation and monitoring costs) and requires the plan be completed within a two-year period. A plan may begin upon employer and employee approval. If the parties cannot agree, the employer may submit a second rehabilitation plan and either party may request their plan be reviewed by the RBA for approval. All things being equal, the RBA must approve the plan that ensures remunerative employability in the shortest possible time.⁵ Any appeals above that level must go before AWCB for hearing.

Upon reaching medical stability, reemployment benefit participants participate in the cost of their rehabilitation by receiving their permanent partial impairment (PPI) benefits at the temporary total disability (TTD) benefit rate. If PPI benefits are exhausted before completion or termination of the plan, benefits decrease to "41(k)" wages, calculated at 60% of the

⁴ The RBA has interpreted unusual and extenuating circumstances to include instances where the treating physician did not inform the injured worker that there was a possibility that he or she may be permanently precluded from returning to their job as a result of the injury.

⁵ Alaska Statute 23.30.041(i) references remunerative employability, which is defined in AS 23.30.041(q)(7) as "having the skills that allow a worker to be compensated with wages or other earnings equivalent to at least 60 percent of the worker's gross hourly wages at the time of injury...."

employee's spendable weekly wages.⁶ However, if the plan is completed or terminated, the injured worker is entitled to their PPI benefits in a lump sum.⁷

The progress of plan participants is monitored by rehabilitation specialists and reported to the RBA. Participants must cooperate with plan objectives and responsibilities, such as maintaining acceptable grades and contact with the rehabilitation specialist. Participants who do not cooperate may have their plan terminated or benefits suspended. However, such actions may be appealed to the RBA and ultimately to AWCB.

A C&R between the employer and employee can be signed at any time during the reemployment process.

⁶Alaska Statute 23.30.041(k) states in part, "[i]f an employee reaches medical stability before completion of the plan, [TTD] benefits shall cease and permanent impairment benefits shall then be paid at the employee's [TTD] rate. If the employee's permanent impairment benefits are exhausted...the employer shall provide wages equal to 60 percent of the employee's spendable weekly wages but not to exceed \$525, until completion or termination of the plan."

⁷Alaska Statute 23.30.041(k) states in part, "[a] permanent impair benefit remaining unpaid upon the completion or termination of the plan shall be paid to the employee in a single lump sum."

REPORT CONCLUSIONS

Our analysis of the workers' compensation program considered laws, legislative intent accompanying the amended statute, and regulations related to state operations. As discussed in the Background Information section, extensive legislative intent accompanied the comprehensive revision to the Workers' Compensation Act (WCA) in 1988. We focused on key aspects of this intent, which provided a context for our evaluation of the State's workers' compensation program. These key concepts were as follows:

- quick, efficient, fair, and predictable delivery of indemnity and medical benefits;
- reasonable costs to employers;
- laws not being construed by the courts in favor of any party;
- compensation cases decided on merits;
- strict enforcement of reporting requirements; and
- strict enforcement of punishment for uninsured employers.

Our analysis of the 1988 changes in the workers' compensation program identified the primary objective of the legislature in changing the law was to lower workers' compensation costs to Alaskan employers. It was widely reported that the pre-1988 law favored injured workers, at the expense of state businesses and economic development.

In our view, the 1988 revisions were not made with the specific intent of disadvantaging injured workers. Rather, the statute was to be balanced between the interests of injured workers and the insurance companies who provided protection to employers. Workers' compensation premiums paid by employers were on the rise primarily due to increasing medical costs, extended disability payments made to workers thought capable of returning to work, and the costs of retraining individuals for alternative work.

The legislature, as discussed in this section, achieved its policy objective of lower workers' compensation costs. However, in achieving this goal, a situation has developed due to a variety of circumstances that have left injured workers disadvantaged by the statute. Such circumstances, that we believe are an unintended by-product of the 1988 amendments, have resulted in a situation where more consideration is provided to employers and insurance companies than to injured workers.

As set out in this report, circumstances have developed that limit the protections the legislature meant to be in place, and strictly enforced, to the benefit of workers. Specifically, as discussed in this section:

1. The policing of uninsured employers is largely ineffective due to administrative shortcomings in the Division of Workers' Compensation (DWC) and the prosecutorial philosophy of the Department of Law.
2. Sanctions against frivolous controversies have been rendered ineffective by the policies and practice of the Division of Insurance.

3. In addition to these administrative and interagency coordination problems, in places where the statutes may lack clarity, they have been interpreted and applied to the benefit of the insurance companies. Specifically, when calculating penalties and penalty "forgiveness" provisions of the statutes, DWC does so in a manner most beneficial to insurance companies.

Meanwhile, provisions put in the 1988 statutes as part of a legislative desire to control, if not lower workers' compensation insurance rates have, over time, become increasingly contrary to the interests of injured workers. Specifically, as discussed later in the section:

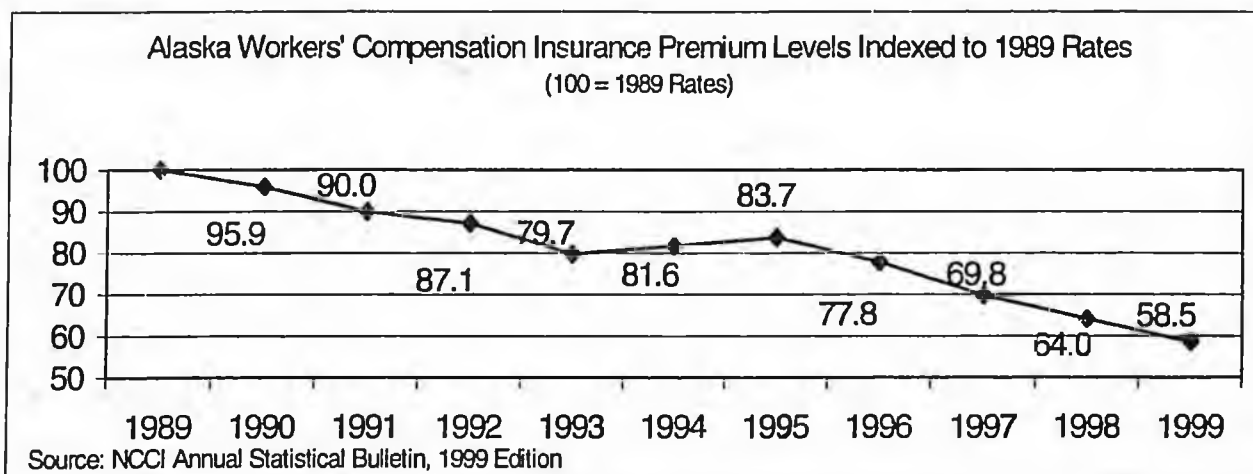
1. The caps on injury awards and burial costs set out in statute in 1988, have eroded over time by inflation.
2. The complexity of the disputed claims process has generally, in our view, worked to the disadvantage of injured workers who often cannot obtain appropriate representation, or who are inordinately affected by delays in the quasi-judicial process.
3. Constraints on the eligibility requirements for injured workers to qualify for retraining and reemployment benefits have proven to be overly restrictive.

Accordingly, the underlying theme to the Findings and Recommendations section of the report addresses this unbalanced situation. We suggest where state agencies could improve their procedures to tighten the enforcement of the statute as intended by the legislature. We also identify where the statutes could possibly be amended to add clarity or additional enforcement authority in order to provide a better, overall, even-handed mechanism for implementing the workers' compensation law.

A complete discussion of conclusions of this review is as follows.

The public policy objective of decreasing workers' compensation premiums has been achieved

As discussed in Background Information section of this report, the primary public policy issue triggering the 1988 revision to the Workers' Compensation Act were high insurance premium rates. In our view, the primary goal of the act has been achieved. According to statistics provided by the National Council on Compensation Insurance, Inc. (NCCI), workers' compensation insurance rates in Alaska have decreased in eight of the last ten years. As evidenced on the graph on the following page, overall this equates into a decrease of 41.5% since 1989. However, it is important to appreciate the fact the cost of providing workers' compensation insurance in Alaska is typically higher than many other states for which comparable data was available. Ultimately this is realized in insurance premium rates.



Compensation inequities in the law result in an imbalance toward injured workers

The 1988 comprehensive rewrite of the workers' compensation laws was intended to arrive at a balance between injured workers' interests and employers' rising insurance costs. The rewrite successfully addressed the concerns over rising workers' compensation insurance costs. However, achievement of this public policy objective has caused an imbalance that results in hardships to some injured workers. Our review of the law indicates that certain aspects of the workers' compensation system are not consistent with the explicit legislative intent that addresses fairness. Some of the inequities to injured workers result from inflation in addition to compensation policy decisions established at the time the law was adopted.

The value of benefits paid to injured workers has declined for some types of compensation where the law sets a maximum. In two of these areas, the established cap has remained unchanged since the laws were adopted in 1988. With regard to funeral expenses, the compensation has remained unchanged since adoption in 1983. Some examples of statutes establishing an upper limit, where benefits are affected by inflation include:

- Alaska Statute 23.30.190: In case of an impairment partial in character but permanent in quality, and not resulting in permanent total disability, the whole person value of \$135,000 is multiplied by the employee's percentage of permanent impairment of the whole person.⁸
- Alaska Statute 23.30.215: With regard to compensation for death, reasonable and necessary funeral expenses are not to exceed \$2,500.

⁸This section is titled compensation for permanent partial impairment; rating guides. The section states that the percentage of permanent impairment of the whole person is the percentage of impairment to the particular body part, system, or function converted to the percentage of impairment to the whole person. The existence and degree of permanent impairment shall be made strictly and solely under the whole person determination as set out in the *American Medical Association Guides to the Evaluation of Permanent Impairment*.

- Alaska Statute 23.30.041(1): Provides a cap for reemployment plan costs. The employer is to pay the costs of the plan, however total costs of the plan may not exceed \$10,000.

Based on the consumer price index, the value of the dollar has decreased by 40% since 1988. As an example, at today's dollars, the whole body value would be increased from \$135,000 to approximately \$189,660.

Other policy decisions or omissions that adversely affect an injured worker and are seemingly unfair include:

- Alaska Statute 23.30.220(a)(4)(A): Exclusion of overtime or premium pay, if at the time of injury, the employee's earnings were calculated by the day, hour, or by the output of the employee.
- Alaska Statute 23.30.155(d): Interim benefit payments only when a payment of temporary disability benefits is controverted solely on the grounds that another employer or another insurer of the same employer may be responsible for all or a portion of the benefits.

An example of an inequity with regard to overtime occurs when an injured worker, paid on an hourly basis, may work seven days a week, two weeks on and two weeks off. The employer may pay overtime for weekend work. However, the overtime pay rate is not included in the calculation of gross weekly earnings. The gross weekly earnings are computed by dividing the employee's base pay rate, not including overtime or premium pay, earned during any period of 13 consecutive calendar weeks within the 52 weeks immediately preceding the injury that is most favorable to the employee.

With regard to interim pay, if an employer controverts an injured worker's right to compensation, payment is normally discontinued⁹ or not initiated. By statute, the injured worker has the presumption of compensability, however if there is substantial evidence to the contrary¹⁰ and a dispute exists between the injured worker and the employer, the injured worker is penalized by not receiving benefits until a decision is made in his or her favor on the claim. Any delay works against an injured worker, as an insurer has financial incentive to delay payment of a claim.

Legislative intent per Chapter 79, SLA 1988 states the law is to ensure, in part, fair delivery of indemnity and medical benefits to injured workers. The provisions discussed above appear to be inconsistent with this intent. (See Recommendation No. 2.)

⁹Unless the payment was for a temporary disability payment controverted solely on the grounds that another employer or another insurer of the same employer may be responsible for all or a portion of the benefits.

¹⁰Attorneys representing injured workers reported "substantial evidence" has a lower threshold than clear and convincing evidence.

The workers' compensation disputed claim process is complicated to claimants

The Alaska Supreme Court has said that DWC has the responsibility to fully advise the claimant of his right to compensation and how to pursue that right under the law.¹¹ Additionally, DWC's mission statement is to assure prompt benefits and care to injured Alaskan workers.

DWC Mission Statement

To assure that Alaskan workers who suffer work related injuries or illnesses are provided adequate medical care, prompt payment of benefits, and if needed voluntary rehabilitative services.

As discussed in the Background Information section, an average of 28,100 reports of occupational injury are processed annually by DWC. For the majority of injuries, the process is relatively straightforward. Of the 28,100, approximately only 1,175 are disputed through the workers' compensation claim process (see Exhibit A on the following page). However, the process for resolving a claim dispute is confusing for the claimants due to the complicated and litigious nature of the process. A claim dispute typically begins when an insurer chooses not to pay medical or benefit compensation that an injured worker believes is due. Although work related injuries have a presumption of compensability, an insurer can deny benefits with substantial evidence to the contrary. Once denied, a litigious-like process often begins involving factors such as discovery, serving of documents, employer-requested medical examinations, and second opinions.

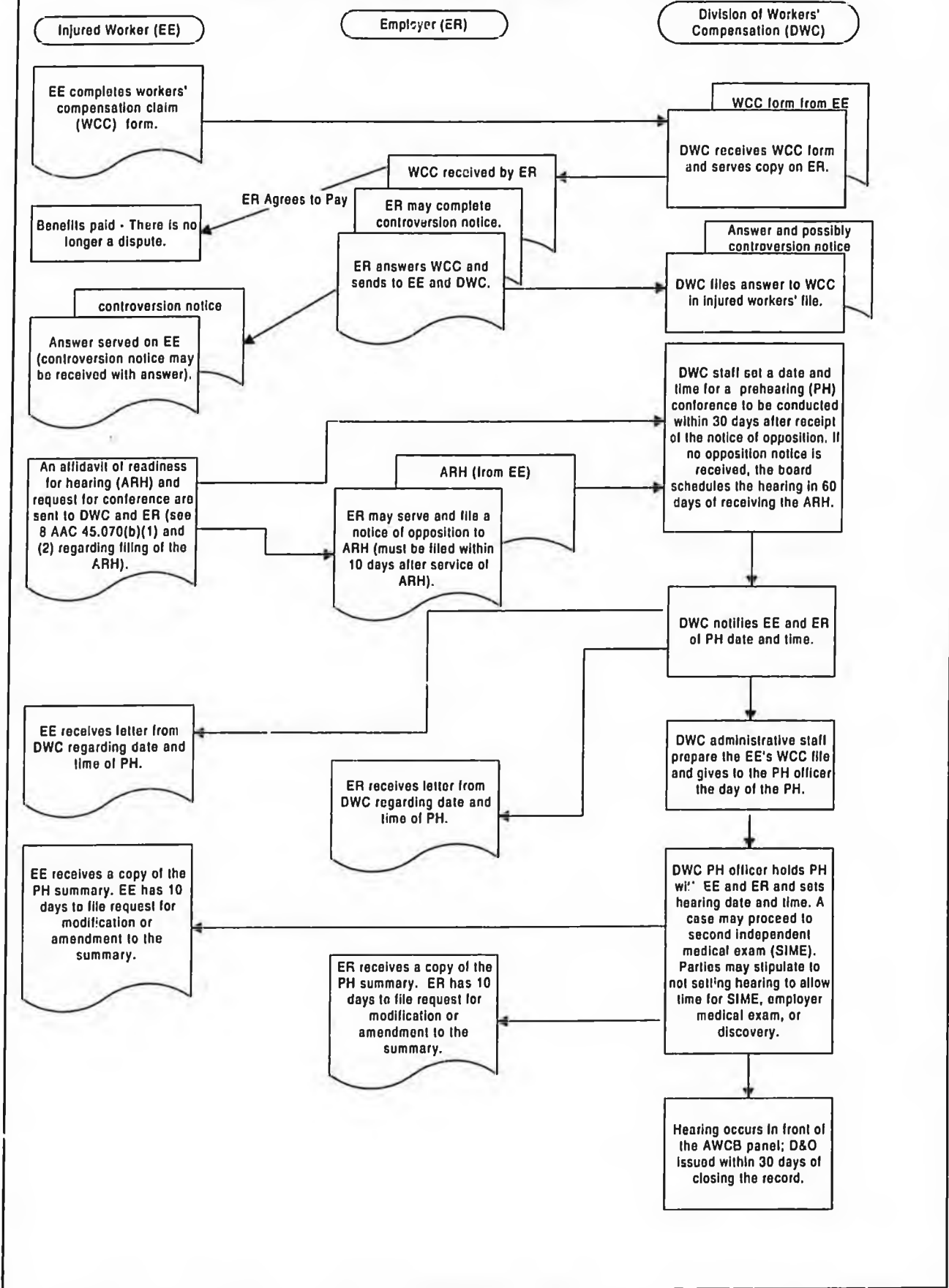
Injured workers involved with disputed claims expressed frustration with understanding the statutes and regulations, including the associated timelines, legal documents, and hearings. Some injured workers also described difficulty in securing legal counsel due to either complexity of the injured worker's case, or size of the attorney's current caseload. Attorneys expressed the need to specialize in worker's compensation cases due to the complexity of the process.

Specifically, testimonial evidence about the complicated nature of the process was obtained from the following sources:

- Audio taped testimony by injured workers and doctors at the governor's workshop on workers' compensation held August 6, 1998 through August 8, 1998.
- Interviews with workers' compensation attorneys.
- Discussions with numerous injured workers and treating physicians in unsolicited phone conversations.
- Discussions with DWC hearing officers.

¹¹*Richard v. Fireman's Fund Insurance Company*, 384 P.2d 4 (Alaska 1963). A workers' compensation board or commission owes to every applicant for compensation the duty of fully advising him as to all the real facts which bear upon his condition and his right to compensation so far as it may know them, and of instructing him on how to pursue that right under the law.

**EXHIBIT A
DISPUTED WORKERS' COMPENSATION CLAIM PROCESS**



There is limited published information available to the public describing the claims resolution process step-by-step, to make it less imposing and more user friendly. Such information is needed to augment the limited staff time available to assist injured workers. DWC literature does not provide enough substance for someone to adequately understand all of the nuances of the process given its litigious nature.¹²

Guidance for the injured worker is also provided in the WCA outlined in statutes, and the Department of Labor and Workforce Development (DLWD) regulations. The WCA is a legal process that incorporates judicial procedures that the average layperson is not likely to understand. Although regulations are intended to further define the process, they identify as many as 25 timelines specific to the disputed claims and reference civil court rules, further complicating the process.

DWC should consider the complexity of the program and the Alaska Supreme Court mandate describing its responsibility to fully advise the claimant of his or her right to compensation and how to pursue that right under the law. (See Recommendation No. 3.)

Laws against uninsured employers have not been "strictly" enforced

Alaska Statute 23.30.075 requires employers not exempted¹³ to insure and keep insured for the employer's liability to injured employees. Upon conviction, violators are subject to a \$10,000 fine and imprisonment for not more than one year.

The law is consistent with legislative intent, codified in Chapter 79, SLA 1988 which states, in part:

It is the intent of the legislature in amending AS 23.30.075(b)...that the division of workers' compensation, ...and Department of Law strictly enforce the punishment authorized under AS 23.30.075(b)....Strict enforcement is necessary because (1) the state has failed to impose the punishment authorized under AS 23.30.075(b) against those employers who fail to obtain workers' compensation insurance or to qualify as a self-insurer....

DWC has one position that oversees enforcement of the mandatory insurance clause of the WCA (see inset on next page). The position is responsible for identifying potentially uninsured employers, working with the employer to obtain compliance, and when necessary, filing accusations and seeking prosecution against uninsured employers. Once an accusation is filed, a hearing is scheduled before the Alaska Workers' Compensation Board (AWCB). If

¹²Workers' Compensation and You brochure is provided in both paper format at DWC offices, and on the internet at <http://www.labor.state.ak.us/wc/wcbrochr.htm>. This brochure provides the injured worker with information identifying their responsibilities and the responsibilities of the employer.

¹³Alaska Statute 23.30.230 exempts certain employee/employer relationships from the Workers' Compensation Act. Specifically, part-time baby-sitters; cleaning persons; harvest help and similar part-time or transient help; a person employed as a sports official on a contractual basis and who officiates only at sports events in which the players are not compensated; a person employed as an entertainer on a contractual basis; a commercial fisherman, certain taxi drivers; certain Alaska Temporary Assistance Program recipients engaged in required work activities; certain players or coaches employed by a professional hockey team.

DWC Had an Extended Vacancy in the Position Responsible for Monitoring Uninsured Employers

DWC has one employer enforcement position responsible for carrying out the division's investigative function. DWC held the position vacant for 11½ months during FY 98. During the time the position was vacant, it was reclassified to a workers' compensation (WC) officer I from a WC officer II. Additionally, nearly 200 complaints concerning uninsured employers accumulated while the position was vacant.

Prior to reclassification, the position supervised two WC officer I positions. Currently, the position has no subordinates.

The position description questionnaire (PDQ) document describes the position's primary duties as identifying employers who have not filed notice of insurance, to contact such employers to advise them of insurance requirements, to request coverage information, and to work with the employers to promote voluntary compliance. Employers who fail to comply are reported to the supervisor for enforcement action.

Currently, the position represents the totality of the division's enforcement effort. The PDC states 85% of the position's time is to be spent on investigations. However, actual time spent is approximately 50%.

In addition to employer investigation, the position coordinates second independent medical examinations, serves as a pre-hearing officer, reviews adjudicated cases for frivolous controversion determinations, and more recently, performs limited Year 2000 remediation efforts.

the employer has not obtained insurance by the hearing date, AWCB may issue a stop order, barring the employer from using further employee labor.¹⁴

We noted the following weaknesses in how DWC monitored uninsured employers:

- Identification of potentially uninsured employers is effective, but additional follow through is necessary.

Between June 1998 and mid-September, 1999, over 31,000 potential employers were identified through the cross match process discussed in inset on the next page. Most of these employers are in compliance with the law, filing required policy information with DWC.¹⁵ However, approximately 4.5% of employers have not submitted proof of coverage. As of the date of this report, DWC had filed 56 accusations, however over 900 non-responsive, potentially uninsured employers remain. This leaves the status of insurance coverage for a significant number of Alaskan workers in question. (See Recommendation No. 4.)

- DWC has not sought prosecution against uninsured employers in recent years.

In a 1993 memo, the Department of Law (DOLaw) criminal division administrator set forth guidelines whereby uninsured employers will be referred for prosecution. The guidelines require DLWD investigators to submit a report to the prosecutor documenting that the uninsured employer knew of the requirement to obtain workers' compensation insurance but failed to do

¹⁴Alaska Statute 23.30.080(d) states "If an employer fails to insure...the board may issue a stop order prohibiting the use of employee labor by the employer until the employer insures...If an employer fails to comply with a stop order issued under this section, the board shall assess a civil penalty of \$1,000 per day."

¹⁵Alaska Statute 23.30.085(a) states "An employer subject to this chapter, unless exempted, shall initially file evidence of compliance with the insurance provisions of this chapter with the board, in the form prescribed by it. The employer shall also give notice of compliance within 10 days after the termination of the employer's insurance by expiration or cancellation." Filing an insurance/adjuster notice (form 07-6119) constitutes proof of insurance.

so. Current DWC procedures do not effectively document violations or enforcement efforts. In our view, DWC's actions are not consistent with legislative intent that sanctions be strictly enforced.

Prior to FY 98, DLWD's Labor Standards and Safety (LSS) Division provided DWC with resources to investigate employers and pursue litigation on those determined to be uninsured.¹⁶

The agencies involved were unable to provide sufficient information to identify quantitative and qualitative outcomes of LSS investigative resources. However, successful prosecutions occurred while the cooperative effort was in effect. Since the contractual relationship with LSS ceased, DWC has not referred any uninsured employers to DOLaw for prosecution.¹⁷ (See Recommendation Nos. 4 and 5.)

- Effectiveness of employer enforcement efforts is not appropriately measured.

In the FY 00 operating budget documents, DWC provided data that appeared to indicate a decline in uninsured injuries during FY 99. However, when the data is examined on a calendar year basis, it actually indicates an increase over a three-year period leading into FY 99.¹⁸ Moreover, our review found the data to be inaccurate and unreliable.

When an injury report is received for which the DWC data entry clerk cannot locate an insured employer, the injury is recorded as uninsured. Because of various factors including a backlog of recording insurance policy information, unreported alternate business names, and employer misspellings, many of these injuries are likely insured but are erroneously recorded as uninsured. DWC has not adequately researched injury reports initially recorded as uninsured to determine an accurate count of uninsured injuries.

DWC Utilizes Sound Procedures to Identify Uninsured Employers

Aside from soliciting public complaints, DWC has used a business name cross match process using DLWD's unemployment insurance and workers' compensation databases to identify uninsured employers.

DWC has initiated steps to improve the efficiency of the cross match process. This includes modifying the insurance/adjuster notice form to capture employer's federal employer identification number (FEIN). DLWD's employment security database uses the FEIN, which will also be captured in the new workers' compensation database. Cross matching the FEIN field in the two databases should improve the efficiency of the cross match process.

DWC has also identified the advantage of enabling system queries for employers whose insurance is about to expire. If properly utilized, the feature could function as an improved proactive enforcement tool to identify uninsured employers early and seek voluntary compliance before uninsured accidents occur.

¹⁶Reimbursable services agreements (RSA) funded aggregate LSS personal services and travel costs for \$6,500, \$24,000, and \$23,800 for FY 95, FY 96, and FY 97, respectively. For FY 98 \$23,600 was budgeted, however DWC did not establish or execute the RSA, so further LSS investigative resources were not provided.

¹⁷However, there have been prosecutions of uninsured employers as a result of LSS enforcement of the contractor licensing program.

¹⁸The workers' compensation information system indicates the number of uninsured injuries were 82, 89 and 102 in calendar years 1996, 1997, and 1998 respectively. Although examination of the data on a calendar year basis indicates an increase in uninsured injuries, DWC provided data in its operating budget documents that indicate a decline during FY 99.

- Data entry backlog and untimely insurer filing contributes to inaccurate management information.

Alaska statute requires employers to provide proof of coverage and policy information to the division. To accomplish this, DWC utilizes an insurance/adjuster notice to document policy information including the dates of policy coverage, and the names of businesses insured by the policy. Although statute puts the burden on filing policy information with employers, insurers actually file these insurance/adjuster notices.

At the time of fieldwork, DWC was experiencing a 42-day backlog on recording insurance/adjuster notices. The backlog can contribute to insured employers appearing to be uninsured for which an injury notice is received. Additionally, the system generates automatic notices to employers when a policy expires and updated policy information is not input into the system within 21 days. If updated policy information is not recorded in the system within another 10 days, a second, resolute notice is sent. (See Recommendation No. 4.)

The aforementioned problem is further exacerbated by the fact that insurers are submitting insurance adjuster notices in an untimely manner. Alaska Statute 23.30.085(a) requires notices to be filed within 10 days of a policy expiration or cancellation. A sample of 22 insurance/adjuster notices providing proof of coverage found that on average, insurers filed notification 38 days late. In contrast, policy cancellation notices were typically filed in a timely manner.¹⁹ Not receiving policy information in a timely manner has the potential for insured injuries to appear uninsured. There exists a potential that injured workers inquiring about the insurance status of their employer may be reluctant to file a claim for fear it will cause their employer to be sanctioned for not having insurance.

The Division of Insurance (DOI) within the Department of Community and Economic Development has not enforced insurer compliance provisions of the Workers' Compensation Act

Alaska Statute 23.30.155(o) states:

The board shall promptly notify the division of insurance if the board determines that the employer's insurer has frivolously or unfairly controverted compensation due under this chapter. After receiving notice from the board, the division of insurance shall determine if the insurer has committed an unfair claim settlement practice under AS 21.36.125.²⁰ [Emphasis added.]

As discussed in the Background Information section, the intent accompanying the 1988 revision of the Workers' Compensation Act clearly directs DOI to exercise strict enforcement of requirements and penalties under AS 23.30.155. This suggests to us that the

¹⁹Insurers have incentive to file cancellations. Alaska Statute 23.30.030(5) states "A termination of the policy by cancellation is not effective as to the employees of the insured employer covered by it until 20 days after written notice of the termination has been received by the board."

²⁰Alaska Statute 21.36.125 outlines illegal claims practices.

legislature wanted determinations of frivolous controversions referenced in AS 23.30.155(o) to be actively pursued to protect the public and provide balance to the workers' compensation law.

The term "frivolous controversion" is not defined in statute. However, the Alaska Supreme Court has determined that an employer must have specific evidence for a good faith controversion.²¹

DOI has the authority to pursue unfair claim settlement *practices*. The agency has defined the term "practice" referenced in AS 23.30.155(o) to require repetitive unfair acts. Such an approach is inconsistent with the legislature's desire that prohibitions against frivolous controversions be strictly enforced.

We reviewed the four frivolous controversion determinations referred to DOI by AWCB between 1997 and July 1999 (see Exhibit B on following page). To date, DOI has not demonstrated effective resolution of frivolous controversion complaints. This practice has resulted in one component of the important balance of fairness in the law between the interests of insurers and protection of injured workers to fall on the side of insurers.

Unfair claim practice complaints arising out of frivolous controversion determinations referred to DOI stay in a seemingly perpetual state of limbo. Although warranted, no enforcement action has been initiated. Such practices foster frustration on the part of injured workers and contribute to a public perception of ineffective government.

Aside from frivolous controversions, the WCA mandates certain other insurer requirements. For example, AS 23.30.030(4) states, in part:

The insurer shall provide claims facilities through its own staffed adjusting facilities located within the state, or by independent, licensed, resident adjusters with power to effect settlement within the state.

The WCA does not provide for how compliance is to be accomplished. Although enforcement responsibility of this requirement is not explicitly assigned, it is most congruous with the statutory purpose of DOI. The provision does not fit within the existing definition of an unfair claim settlement practice and has not been strictly enforced.

Internal controls over processing of annual reports received from insurers are weak

Annual reports filed by insurers or adjusters are to be filed on "a form prescribed by the board."²² The reports identify the compensation by type, the number of claims received, and the percentage controverted. As stated in the Background Information section of this report,

²¹The court ruled in *Harp v. ARCO Alaska, Inc.*, 831 P.2d 352 (Alaska 1992) that a controversion notice must be filed in good faith to protect an employer from imposition of a penalty. The court determined that for a controversion notice to be filed in good faith, the employer must possess sufficient evidence in support of the controversion that, if the claimant does not introduce evidence in opposition to the controversion, the board would find that the claimant is not entitled to benefits.

²²See Alaska Statute 23.30.155(m).

EXHIBIT B

Frivolous Controversion Investigations are not Consistent with Legislative Intent

DOI complaint number 97-00659MJ was opened in December 1997 as a result of AWCB decision & order no. 97-0212. The DOI consumer services specialist investigating the case originally concluded that the case was not a frivolous controversion. DOI recorded the complaint disposition as "company position upheld" on the division's database. However, a Department of Law (DOLaw) review found the controversion was without merit. DOLaw cited two Alaska Supreme Court cases that indicated it was inappropriate for DOI to relitigate facts decided by another administrative tribunal (in this case, AWCB). DOLaw stated that if the insurer appealed the AWCB order, and the order had been stayed pending the outcome of the appeal, DOI should wait until the appeal was resolved prior to reaching any conclusions in the investigations. The employer/insurer did not appeal the decision, however the injured worker appealed his seasonal employment status to the superior court. DOI wrote the injured worker in September 1998 inquiring about the status of his appeal. The injured worker did not respond, and entered into a compromise and release agreement the same month. The consumer services specialist said the complaint should have been closed and recorded as "insufficient information" due to the non-responsiveness of the injured worker.

DOI complaint number 98-00543DB was opened in December 1998 as a result of AWCB decision & order no. 98-0092. The controversion was not based on any medical evidence, but rather only consisted of the adjuster's belief that an ear infection could not have been employment related. The complaint appears to indicate a clear violation of AS 21.36.125(4) in that the insurer did not conduct a reasonable investigation of the claim within 30 days (as required by 3 AAC 26.050). DOI has not taken any enforcement action on the case.

DOI complaint number 98-00542GC was opened in December 1998 as a result of AWCB decision & order no. 98-0095. The basis for the controversion was that the injured worker's chiropractor exceeded the treatment frequency outlined in 8 AAC 45.082. The most recent correspondence in the complaint file was dated January 1999. The consumer services specialist initially working on the case retired in March 1999. Any analysis of the case, if performed, was not documented in the complaint file. A note on the cover of the complaint file stated that the case was "ready to review and close." A consumer services specialist asserted the director would review the complaint, as there did appear to be a violation of the insurance code.

A fourth frivolous controversion determination was made in May 1999 as a result of AWCB decision & order no. 99-0108. Although AWCB referred the determination two days later, it was not received by DOI. After our inquiry, the case was referred a second time and a complaint file was established subsequent to the date of this report.

these reports also identify the medical and related benefits, vocational rehabilitation expenses, legal fees, including fees paid to attorneys and other costs of litigation, and penalties paid on all claims during the preceding calendar year.

We identified internal control weaknesses with regard to administering and reviewing insurers' annual reports. Internal control is a process designed to provide reasonable assurance regarding the achievement of objectives in financial reporting, effectiveness of operations, and compliance with applicable laws and regulations. Control activities are critical to ensure that policies, procedures, and directives are carried out.

We identified instances where DWC did not enforce AWCB directives²³ and other instances where the agency was unable to produce adequate support for amounts reported on the annual report summary, or had conflicting supporting schedules. Specifically, we made the following observations:

- The Second Injury Fund (SIF) administrator reported DWC spent approximately three weeks compiling data and creating the annual report for an insurer not filing on the form prescribed by the board.
- Annual reports are accepted from insurers in as many as six different formats.
- Adjuster reports were submitted on behalf of multiple insurers, instead of requiring a discrete annual report for each insurer code as set out in the AWCB. ²⁴
- Annual report amounts provided to the board concerning uninsured employers were unsupported.
- A count of annual compensation types on DWC's penalty summary schedule did not reconcile to the DWC data system, resulting in an unexplained difference of 383 compensation types.
- Multiple insurer codes were assigned to single insurers. For example, Fireman's Fund – American Auto Insurance was assigned both insurer code 2 and 384; and Alaska Airlines was assigned both code 901 and 775.

An additional weakness exists with regard to other internal control procedures. A significant portion of the data disclosed on annual reports is not independently verified for accuracy. Some of the annual report information could be, however is not, reconciled to the compensation reports, such as information pertaining to medical, rehabilitation plan costs, interest, and employer and employee attorney fees. Other information on the annual report is

²³The process and format are outlined in Alaska Workers' Compensation Board Bulletins (AWCBB) 95-06 and 96-10. These bulletins require annual reports to be submitted electronically, in a specific format. A waiver of the electronic filing requirement can be requested by insurance companies. However, if the electronic filing requirement is waived, the insurer still must file on a form prescribed by the board.

²⁴The attachment to AWCBB 96-10 states that "An annual report needs to be filed for each [discrete insurer] code." An insurer code is a number assigned by DWC for each insurer/adjuster combination.

not captured on a compensation report by DWC such as information pertaining to evaluation costs, rehabilitation specialist fees, litigation, and other costs. As such, there is no supporting information allowing DWC to verify the accuracy of the annual report for these areas.

A final issue regarding internal controls over the annual reports deals with the calculation of contributions to the SIF. Insurer's contributions to the SIF are based upon an annual contribution percentage²⁵ multiplied by the permanent and temporary disability payments as reported on the annual report. After insurers submit contributions to the SIF, the contribution calculations are verified for accuracy by the data system. However, the system is programmed to disregard calculated variances under 10% from annual reports. Theoretically this practice would permit insurers to remit only 90% of contributions payable to the SIF without identifying the variance in an exception report.

The legislature intended strict enforcement of reporting requirements. In the past, a lack of specific data impaired the ability to adequately assess the efficiency and costs of the workers' compensation program. Sufficient internal controls are integral to an accurate and sound reporting system. (See Recommendation No. 7.)

DWC is waiving late compensation report penalties in a manner inconsistent with the law

Insurers file two types of reports with DWC. Insurers file compensation reports as defined under AS 23.30.155(c) when compensation to an injured worker has begun or has been increased, decreased, suspended, terminated, resumed, or changed in type. Penalties are imposed for each instance a compensation report is filed late.²⁶ However, compensation report penalties are not assessed until after the insurer's or adjuster's annual report is filed.

On an annual basis, insurers file a second report, called the annual report, required under AS 23.30.155(m), which presents the total amount of compensation by type, as well as other information previously described.

A percentage of accumulated compensation report penalties may be waived, but only if the annual report meets certain statutory requirements. The first requirement²⁷ is for DWC to determine whether the annual report is (1) timely, (2) complete, and (3) accurate. If an annual report is determined to be timely, complete, and accurate, only then may the commissioner evaluate the timeliness of compensation reports. A percentage of the late compensation report penalties may be waived if at least 95% of compensation reports were filed timely.

²⁵ A contribution amount is based upon the contribution percentage in effect at the time of the injury.

²⁶ Alaska Statute 23.30.155(c) states "If the board and the employee are not notified within 28 days prescribed by this subsection for reporting, the insurer or adjuster shall pay a civil penalty of \$100 for the first day plus \$10 for each day thereafter that the notice was not given. Total penalties under this subsection may not exceed \$1,000 for failure to file a required report."

²⁷ Alaska Statute 23.30.155(m) provides "If the annual report is timely and complete when received by the board and provides accurate information about each category of payments, the commissioner shall review the timeliness of the insurer's or adjuster's reports filed during the preceding year under (c) of this section." Section (c) outlines the process for filing compensation reports with the State.

DWC is circumventing the first requirement by disregarding the requisite for timely, complete, and accurate criteria. Consequently, penalties are calculated and waived regardless of whether the annual reports are timely, accurate, and complete. We identified 17 instances where annual reports were determined to be incomplete, however late compensation report penalties were still waived.

If the annual report is timely, complete, and accurate, statutes dictate a second step for calculating the amount of late compensation report penalties to waive. The amount waived is to be based upon the percent of reports filed timely. To calculate the percentage, DWC is to divide the number of timely compensation reports by the number of total compensation reports filed.²⁸

However, DWC is inappropriately using two inherently different units of measure for the calculation. That is, the number of late compensation reports is divided by a system-generated count of the total number of compensation types reported on all compensation reports filed by a particular insurer or adjuster. A compensation report may have several compensation types disclosed on a single report.²⁹ In short, DWC uses an inaccurate and inflated compensation type count as a base, rather than the actual total compensation reports filed. The practice results in an improved timeliness calculation since the percentage of late reports is lower than if the units of measure were consistent. The improved timeliness calculation provides the insurer or adjuster an undue benefit by artificially distorting the calculated timeliness of compensation reports.

We reviewed a sample of 72 compensation reports, which had a total of 89 compensation types. This indicates the number of compensation reports filed is overstated by 23.6%. Likewise, workload reports presented to the board which indicated 18,549 compensation reports filed is probably closer to 15,000. We applied this data to the most recently completed reporting year and concluded late compensation report penalties were likely understated by approximately an additional \$11,500. This includes calculating penalties on each insurer code individually rather than by adjuster but does not include a \$23,000 impact of incomplete annual reports (which is discussed in Recommendation No. 12).

Legislation amending the reporting statutes in 1988 intended strict enforcement of the reporting requirements and penalties for noncompliance under AS 23.30.155. Strict enforcement was deemed necessary due to the lack of specific data from DWC and DOI to adequately assess the efficiency and cost of the workers' compensation system. (See Recommendation No. 8.)

²⁸Alaska Statute 23.30.155(m) states, in part, "If during the preceding year the insurer or adjuster filed at least 99 percent of the reports on time, the penalties assessed under (c) of this section shall be waived. If during the preceding year the insurer or adjuster filed at least 97 percent of the reports on time, 75 percent of the penalties assessed under (c) of this section shall be waived. If during the preceding year the insurer or adjuster filed 95 percent of the reports on time, 50 percent of the penalties assessed under (c) of this section shall be waived."

²⁹Compensation types include temporary total disability, temporary partial disability, permanent partial impairments, permanent total disability, AS 23.30.041(k) and 25% late payment penalties to injured workers.

Inappropriate Second Injury Fund-related accounting and administrative practices exist

The SIF is organizationally structured to include three personnel to oversee the administrative duties of the fund. Alaska statute requires administrative expenses of the SIF to be expended from the fund.³⁰ A review of SIF personal services charges indicated a total of nine individuals had all or part of their payroll funded from the SIF during FY 98 and FY 99. Although most of the personal services charges to the SIF appeared reasonable, the amounts were estimates of actual time spent on SIF duties and were not supported by adequate documentation. Additionally, a review of the actual job duties of the administrative clerk II³¹ indicated the position's job duties consisted almost entirely of keying insurance/adjuster notice forms into the workers' compensation system. We could not identify any reasonable correlative purpose for the position's personal services charges to the SIF in light of the intent of the SIF and actual job duties. (See Recommendation No. 9.)

DWC continues to pay "supplemental" benefits to individuals who may not be entitled

Alaska Statute 23.30.172 was created by Chapter 51, SLA 1974 and was amended before being repealed by Sec. 11 Chapter 75, SLA 1977.³² The law provided supplemental benefits to injured workers receiving workers' compensation payments from their insurer at the time the section was added.³³ The section was effectively a mechanism to provide a cost of living allowance to supplement injured workers' primary indemnity payments. Specifically, AS 23.30.172 originally read as follows:

Benefits for temporary and permanent disability shall be calculated under this chapter according to currently existing benefit rates regardless of the benefit rates in existence at the time of the injury, unless this calculation would cause a decrease in the actual benefits receivable.

The legislation stated that funds needed to carry out the provisions of AS 23.30.172 were to be appropriated annually from the General Fund.

Currently, approximately 25 individuals are still receiving benefits under this program.³⁴ However, our review concluded only one recipient was still receiving ongoing primary compensation from their insurer.³⁵ Despite the fact most recipients no longer receive the primary benefits originally qualifying them for state payments under AS 23.30.172, DWC

³⁰Alaska Statute 23.30.040(h) states "Administration expenses of the state under this section and AS 23.30.205 must be paid from the second injury fund."

³¹This position organizationally reports to the SIF administrator and has historically been funded 100% from the SIF.

³²Chapter 252, SLA 1976 added a prerequisite in that only individuals receiving temporary total disability for more than two years or permanent total disability were eligible for the "supplemental" benefits.

³³Section 2, Chapter 51, SLA 1974, provides "The provisions of this Act apply to persons receiving benefits under AS 23.30 before the effective date of this Act."

³⁴Additionally, two law offices receive nominal monthly payments from the program, presumably as a result of securing AS 23.30.172 benefits for clients.

³⁵During FY 99, two supplemental benefit recipients were receiving ongoing compensation from their insurers. However, one of the individuals died in December 1998.