ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672
10615 SENATE LABOR & COMMERCE

has requested and the legislature has continued to appropriate funding to pay supplemental benefits to these individuals. DWC was appropriated $204,600 to pay supplemental benefits during FY 99.

Many of the supplemental benefit recipients no longer reside in Alaska. Our attempts to contact recipients were unsuccessful in over 30% of the cases. Nine of the monthly general fund warrants are mailed in care of third parties or to financial institutions for direct deposit. DWC does not verify individuals are still living and remain disabled. Such practices increase the likelihood of the fraudulent receipt of benefits. DWC was notified in January 1999 of a particular supplemental benefit recipient who was deceased. Despite notification, DWC continued to pay monthly supplemental benefits through April 1999. One of the posthumous warrants was fraudulently endorsed. Additionally, our review concluded most benefit calculations were not supported by evidence of actual earnings. See Recommendation No. 10 for further discussion.

Relatively few injured workers qualify for reemployment training benefits

As discussed in the Background Information section of this report and expressed in the intent accompanying the 1988 comprehensive revision to the workers' compensation law, the legislature wanted to increase incentives for injured workers to return to work and remove obstacles to the utilization of vocational rehabilitation or reemployment benefits.

A primary concern regarding reemployment benefits was perceived disincentives for injured workers to return to work. The law was crafted to provide reemployment benefits to workers most likely to use the benefit, and truly desire and need the services. Accordingly, a $10,000 limit on reemployment benefit costs was implemented and other rules were put in place that served to limit accessibility to reemployment benefits to such individuals.

During 1997, 474 injured workers were referred to a rehabilitation specialist for eligibility determinations. Of this total, almost 60% were determined eligible for reemployment benefits, while nearly a third were determined ineligible, and the remaining 9% were placed in suspension status for various reasons such as pending medical information. From our review, it appears the statute has succeeded in limiting access to reemployment benefits.

Some efforts to extend fair benefits were overturned by Alaska Supreme Court interpretations.

Alaska Statute 23.30.041(e)(2) requires that while assessing the eligibility for reemployment benefits, consideration must be given to other jobs the worker "*has held or received training for within 10 years before the injury.*" Similarly, AS 23.30.041(e)(1) requires an injured worker to be unable to carry out the demands of the job at the time of injury in order to be cligible for reemployment benefits. If the worker can return to any of these jobs, he or she is deemed ineligible for benefits. The ten year "look back" provision in AS 23.30.041(e)(2) adversely affects younger workers that are more likely to have held entry-level positions within 10 years prior to the injury.

EXHIBIT C

Alaska Supreme Court Decisions Provide Comments and Guidance Regarding the Provision of Reemployment Benefits

Konecky v. Camco Wireline, Inc., 920 P.2d 277 (Alaska 1996)
Konecky became injured while working as a hoist operator that required actual duties characterized as "very heavy level." Konecky was unable to perform his actual job duties, but could perform the "medium work level" as the position was described in *Selected Characteristics of Occupations Defined in the Revised Dictionary of Occupational Titles* (SCODDOT). A labor market survey found the hoist operator occupation did not exist at a "medium work level," indicating the SCODDOT job description was inaccurate. The Alaska Supreme Court concluded legislative intent that the law *"ensure the quick, efficient, fair and predictable delivery of...benefits to injured workers at a reasonable cost to the employers..."* could not overcome the clear language of the statute that SCODDOT must be used as a reference when determining an injured workers' physical capacity under subsection (e). As such, Konecky was ultimately found ineligible for reemployment benefits.

Moesh v. Anchorage Sand & Gravel, 877 P.2d 763 (Alaska 1994)
Previously the reemployment benefits administrator (RBA) only considered positions which paid a "remunerative" wage while performing the ten year "look back" provision required by AS 23.30.041(e)(2).[36] In the ten years prior to his injury, Moesh held two positions he could still perform. However, the positions paid less than 60% of his wage at the time of injury. As such, Moesh could not be considered employed at the "remunerative" wage referenced in AS 23.30.041(i), which requires that reemployment benefits ensure remunerative employability in the shortest time possible. Rehabilitation plans must meet this criterion to be considered viable.

Originally the RBA found Moesh eligible for reemployment benefits. The insurer appealed, contending remunerative employability was not expressly listed in AS 23.30.041(e), and as such it could not be a factor in determining reemployment benefits eligibility. Furthermore, the insurer argued that the "look back" requirement was unambiguous and must be applied as written. The Alaska Supreme Court concurred, ruling:

> *[I]n order for remunerative employability to be considered a factor in determining reemployment benefits eligibility, the Alaska legislature must amend the statute to expressly include remunerative employability under AS 23.30.041(e).*

Accordingly, Moesh was found ineligible for reemployment benefits and case law dictates remunerative employability is not applicable until after an injured worker is determined eligible for reemployment benefits.

Rydwell v. Anchorage School District and Scott Wetzel Services, 864 P.2d 526 (Alaska 1993)
Alaska Statute 23.30.041(f)(3) states that a person is not eligible for reemployment benefits if, at the time of medical stability, no permanent impairment is identified or expected. After a workplace injury, Rydwell had physical capacities less than the physical demands of her position and was unable to return to work. However, the impairment did not translate to a permanent impairment under the *American Medical Association's Guides to the Evaluation of Permanent Impairment* (AMA Guides) cited in AS 23.30.190(b). Consequently, her doctor gave her a permanent impairment rating of zero. The Alaska Supreme Court ruled the same criteria of AS 23.30.190(b) is applicable under AS 23.30.041(f)(3). Accordingly, Rydwell was ineligible for reemployment benefits.

[36]According to AS 23.30.041(q)(7): *"remunerative employability" means 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 the injury . . ."*

Statute requires the use of the United States Department of Labor publication *Selected Characteristics of Occupations Defined in the Revised Dictionary of Occupational Titles* (SCODDOT) while defining injured workers' physical capacities under subsection (e) (see *Konecky vs. Camco Wireline,* Exhibit C on facing page). SCODDOT definitions may and have differed from the actual physical demands of injured workers' job duties. The publication contains a disclaimer serving to warn that descriptions within the publication may not coincide with actual job descriptions. Specifically, the disclaimer states:

> *The user should be cautious in interpreting the information in this publication. Occupational definitions...are composite descriptions of occupations as they may typically occur and may not coincide with a specific job as actually performed in a particular establishment or in a given industry.*

The RBA reported Alaska is unique in that it is the only state that has injured workers' reemployment benefit eligibility contingent upon SCODDOT descriptions.

During the course of our review, we examined a sample of 43 ineligible determinations made during 1997. For each determination, we attempted to identify the reason for ineligibility. We made the following observations:

1. Ten year "look back" is the predominant reason for ineligibility determinations. From a sample of 43 ineligible determinations made during 1997, 21 or 49% of the individuals were found ineligible under the provisions of AS 23.30.041(e)(2).

   However, the summary information maintained by DWC did not provide the level of detail necessary to determine the number of instances, if any, whereby the injured worker could not perform the actual duties of jobs under the "look back" provision, but was found ineligible because of an inaccurate SCODDOT description. Additionally, we were unable to assess whether any individuals were determined ineligible for reemployment benefits because they could return to a position held in the last ten years, but the position could not be expected to provide remunerative employment (see *Moesh v. Anchorage Sand & Gravel*, Exhibit C on facing page).

2. Many injured workers are determined able to return to the job performed at time of injury. In our sample of 43 ineligible determinations, 9 or 21% were found ineligible under the provisions of AS 23.30.041(e)(1).

   Despite serious injuries, reportedly, many injured workers attempt to return to the same or similar job as that performed at the time of injury. Again, DWC records precluded us from assessing whether any injured workers were determined ineligible for reemployment benefits due to SCODDOT descriptions which differed significantly from actual job duties (see *Konecky v. Camco Wireline, Inc.* Exhibit C on facing page).

3. Some reasons for ineligibility determinations were not documented. For seven individuals, or 16% of our sample, the reason the individual was determined ineligible for reemployment benefits was not documented.

4. Other reasons were cited for ineligibility determinations. For the remaining six, or 14%, there were other reasons for ineligibility determinations cited under AS 23.30.041(f). These include instances where the employer offered the injured worker a position within his or her physical capacities, the injured worker was previously rehabilitated, or no permanent impairment was identified at the time of medical stability.

   DWC does not maintain records to determine the number of instances, if any, whereby the injured worker could not perform the duties of the position held at the time of injury but upon medical stability did not qualify for an impairment rating under the *American Medical Association Guides to the Evaluation of Permanent Impairment* referenced in AS 23.30.190(b) (see *Rydwell v. Anchorage School District and Scott Wetzel Services*, Exhibit C on page 36). (See Recommendation No. 11 for further discussion.)

Injured workers receiving assistance outside DWC results in nominal cost shifting.

During the course of our review, it came to our attention that injured workers have applied for benefits from both the DWC reemployment benefits program and the DLWD Division of Vocational Rehabilitation (DVR).

To appreciate the extent of the practice, we attempted to cross match DVR records with 43 individuals that applied, but were determined ineligible for, reemployment benefits during calendar year 1997.

The cross match indicated nine individuals, or approximately 20.9% sought similar reemployment or vocational rehabilitation benefits from the two agencies. However, upon closer examination of the statistics, only six, or 14% sought DVR assistance after the workplace injury that prompted their request for DWC reemployment benefits. DVR records indicated a total of $9,323 was expended for these six applicants.

Federal regulations governing DVR operations require the agency to assess whether "comparable benefits" are available for an applicant prior to expending federal or state matching funds.[37] However, DVR cannot categorically deny applicants based upon the availability of workers' compensation reemployment benefits. In fact, there have been instances whereby DVR funds have been used to supplement a plan initiated through the reemployment benefits program. In these cases, the amount of DVR funds expended on applicants is likely less than that expended on the aforementioned individuals determined ineligible for DWC reemployment benefits.

DWC has not proactively investigated opportunities provided by Electronic Data Interchange

In FY 00, DWC had 38 budgeted full-time staff in the following sections: administration, adjudications, reemployment benefits, and SIF. Three additional full-time positions were

[37]Comparable benefits may consist of a number of sources, including Medicaid, Medicare, private health or disability insurance, and workers' compensation.

budgeted in the fisherman's fund section. Up to four administrative staff perform data input into the database. Currently, DWC staff must input information off report of injury forms, compensation reports, medical summaries, and insurance policy notices, among other forms. Data input and reconciliation is a labor-intensive process. In mid-October, 1999, DWC administrative staff reported to us that it had over a 30 day backlog on many types of forms (see also Recommendation No. 4 on uninsured employers).

Our review of workers' compensation practices in other states identified a trend towards electronically submitted benefit payment records from insurance carriers. These benefit payment records are submitted on nationally standardized electronic reporting forms developed in 1993 by the International Association of Industrial Accident Boards and Commissions (IAIABC) Electronic Data Interchange (EDI) Project. The IAIABC project was an effort to standardize the reporting forms and data requirements among the states and firms that report to states' workers' compensation agencies.

DWC recently developed a new computer data system, reportedly to alleviate Year 2000 compliance issues. The extent of system modification necessary to accommodate EDI is unknown. If determined compatible, incorporation of EDI standardized data could result in significant savings for both the state agencies and the insurance carriers. (See Recommendation No. 1.)

(Intentionally left blank)

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Division of Workers' Compensation (DWC) management should develop a strategic plan to better accomplish the agency's operating mission.

From our review of DWC operations we identified various inefficiencies that in our view should be addressed in a long-term manner as part of a comprehensive strategic plan. Strategic planning is the process of determining long-term goals and then identifying the best approach for achieving those goals.

DWC sets out in its mission statement the agency's responsibility to assure Alaskan workers who suffer work related injury or illness are provided adequate medical care, prompt payment of benefits and, if needed, voluntary rehabilitative services. To meet this mission, DWC adjudicates disputed claims in a quasi-judicial process, tracks and records aspects of compensation payments made to workers, investigates uninsured employers, and oversees the Second Injury Fund, among other administrative tasks.

Manual processing of much of the paperwork related to claims and payments is inefficient

As discussed in the Report Conclusions section of this report, DWC has a paper intensive process used to account for work related injuries. The division receives, reviews, and records in one fashion or another paperwork related to approximately 28,100 workplace injuries each year including such things as reports of injuries, medical summaries, compensation reports, and annual report data from insurance companies.

During the course of our review, we identified other states that took a much more automated approach to such paperwork – termed electronic data interchange (EDI). Utilization of an EDI system makes more extensive use of electronic filing for both injured employers and insurance companies. This eliminates much of the manual processing of workers' compensation paperwork. Electronically processing data from reports of injuries, compensation reports, and proof of coverage statements, with appropriate controls would result in more accurate data, while also allowing DWC to redirect resources within its current budget.

As additional states adopt the nationally standardized forms, the number of insurance carriers that are adopting the standard is also increasing. Benefits are realized on the part of both the insurance carriers and workers' compensation divisions. These benefits include reduced data entry costs, reduced errors, improved error detection, reduced filing space requirements, faster management reporting, automatic reconciliation, high productivity without increased staff, uniform and timely communications, rapid exchange of business data, reduced paper usage, reduced mail sorting, and delivery activities. Benefits resulting in savings eventually will be realized through decreased workers' compensation premiums and agency savings.

Some of the resources utilized by DWC to review, accumulate, and record payment information from insurance companies can be effectively used to improve weaknesses addressed in the following recommendations. These recommendations address in part, improved agency outreach and assistance to Alaskan workers injured on the job, increased monitoring of the annual and compensation reporting process, and better enforcement of uninsured employer compliance.

Additionally, DWC could perhaps consider developing an alternative resolution process for workers. Development of a mediation process where workers and insurers can attempt a resolution of disputed claims in an informal setting, would seemingly be in the interest of both parties. Workers claiming injury could avoid the lengthy, quasi-judicial hearing process currently in place. This process is full of procedural delays and, often antagonistic, legal stratagems that are of little benefit to the injured worker. Also, insurers would realize savings from having to utilize less legal resources.

Strategic plan would have to reflect a commitment to real and relevant performance goals

By recognizing efficiencies in one area of operations, resources can be utilized to expand services to injured workers and employers. Development of a comprehensive strategic plan that reflects a commitment to both adopt relevant performance measures and data collection systems would allow the agency to ensure operational objectives are being achieved. Current performance measures utilized by DWC as reflected by the agency's budget documents, primarily measure outputs rather than outcomes. DWC's budget documents use the number of injury-related reports handled and the timelines for hearings as measures of operational effectiveness. Program performance measures that reflect program costs and efficiencies could be added to the identified budget document program measures.

There is currently significant interest in the legislature for developing, measuring, and reviewing relevant operational performance measures as part of the budget review process. A DWC strategic plan should reflect the following key concepts:

(1) a primary intent to develop initiatives to better assist and inform injured workers;
(2) commitment to progressing with technological improvements in paper handling that achieves necessary cost savings;
(3) demonstration that the agency is achieving key operational objectives that fulfill the tenets of the division's mission statement.

A strategic plan which includes the aforementioned elements would demonstrate DWC's good-faith commitment to fully achieving the division's mission statement in an efficient, creative, and dynamic manner. Development of such a plan along with demonstrated program achievements, would likely go a long way to identify efficiencies that could be attained and the opportunities for reallocation of resources to address other workers' compensation needs.

Recommendation No. 2

DWC's director should propose legislative changes to improve balance in the workers' compensation laws.

As stated in the Report Conclusions section of this report, the 1988 comprehensive rewrite of the workers' compensation laws was intended to arrive at a balance between the injured workers' interests and the employers' rising insurance costs. Over the intervening period, the policy objective of lowering workers' compensation rates has been achieved. However, in achieving this goal, circumstances have developed that shift the balance between injured workers and employers to the disadvantage of the injured workers.

To reiterate our concerns regarding deficiencies, we identified the following areas where, in our view, the Workers' Compensation Act, as administered currently and in today's economy, works to the disadvantage of injured workers.

1. Fixed benefit amounts have not kept pace with the inflation and cost of living. Some examples of fixed benefit amounts that have not changed since the act came into law in 1989 include compensation for permanent partial impairment, death benefits, and rehabilitation plans. In the case of an impairment partial in character, but permanent in quality,[38] and not resulting in a permanent total disability, the compensation equals $135,000 multiplied by the employee's percentage of permanent impairment of the whole person.

   In the case of death, compensation known as a death benefit includes reasonable and necessary funeral expenses not exceeding $2,500. Finally, the reemployment plan is paid on an expense incurred basis and may not exceed $10,000. Based upon the consumer price index, the value of today's dollar has decreased 40% since 1988. Therefore, the value of the 1988 whole body compensation of $135,000 would equal $189,662 in today's dollars. Furthermore, with regard to reemployment plans, the average cost of tuition at the University of Alaska has increased by over 150% between 1988 and 1999.

2. Overtime and premium pay is excluded in the determination of spendable weekly wage. For employee's earnings that are calculated by the day, hour, or by the output of the employee, overtime and premium pay is excluded in the determination of spendable weekly wage.[39] As an example, an hourly employee injured while working on the North Slope is likely working an unusual work week, which would encompass overtime and shift differential pay. The compensation could include hazard pay as well. Any overtime or premium pay would not be included in the compensation calculation, yet may be an integral component of what the worker relies upon in each paycheck. The statute

[38] See AS 23.30.190.

[39] Alaska Statute 23.30.220(4)(A) states that *"if at the time of injury, the employee's earnings are calculated by the day, hour, or by the output of the employee, the employee's gross weekly earnings are the employee's earnings most favorable to the employee computed by dividing by 13 the employee's earnings, not including overtime or premium pay, earned during the period of 13 consecutive calendar weeks within the 52 weeks immediately preceding the injury."*

implicitly ignores the loss of pay, health insurance, leave and retirement contributions when calculating a worker's average weekly spendable wage. These exclusions in the calculation have a significant impact on the injured worker.

3. Interim compensation is allowed under limited circumstances. Interim compensation is allowed only for temporary disability benefits that are 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.[40]

The above examples show how the current law does not meet the legislative intent as prescribed in Chapter 70, SLA 1988 which states the law is to ensure the *"fair delivery of indemnity and medical benefits to injured workers."*

We recommend that DWC revisit the current maximum compensation benefits with consideration of today's cost of living. Additionally, certain aspects in the determination of spendable weekly wage and interim pay should be evaluated. DWC should then develop a comprehensive legislative package for the consideration of the legislature. This proposed legislation could either: (1) change the fixed upper limit amounts in statute, or (2) eliminate the fixed upper limit amounts in statute and establish a regulatory process where changes based upon the consumer price index could be periodically addressed.

Recommendation No. 3

DWC's director should increase outreach, education, and technical assistance to injured workers with regard to their rights and responsibilities under the workers' compensation laws when a disputed claim occurs.

As described in the Report Conclusions section of this report, the Alaska Workers' Compensation Act is a complex law that describes the process to follow when seeking compensation for work related injuries. The act incorporates judicial procedures that the average layperson has difficulty understanding. If a dispute arises between an employer's insurer and the injured worker, the litigious process of filing a claim for benefits[41] frustrates many claimants. There is limited published information available to the public that explains the claims process step-by-step to make it more user friendly.

The courts have stated AWCB has a duty to instruct the injured worker on how to pursue the injured worker's rights under the law.[42] Current information does not provide the injured worker with adequate, easy-to-understand direction, on the process to follow.

---

[40]See AS 23.30.155(d).

[41]Alaska Statute 23.30.110. Procedure on claims. Subject to the provisions of AS 23.30.105, a claim for compensation may be filed with the board in accordance with its regulations at any time after the first seven days of disability following an injury, or at any time after death, and the board may hear and determine all questions in respect to the claim.

[42]See footnote 10 on page 22.

DWC should provide more outreach and public education of the injured workers' rights and responsibilities under the law. Informative prehearings[43] could be used as a means to educate an injured worker even if a claim, petition, or request for prehearing has not been filed. DWC should consider developing a procedures reference manual, which is less legalistic than the *Alaska Workers' Compensation Laws and Regulations Annotated* however more comprehensive than the *Workers' Compensation and You* brochure, which provides guidance to the injured workers and providers. A video could be developed that sets forth procedures in a clear and concise manner. During the course of our review, an insurer's attorney reported interest among the insurance community in assisting in the production and funding of such a venture.

Recommendation No. 4

DWC's director should take proactive measures to identify and monitor uninsured employers.

Another responsibility of DWC is the enforcement of state laws that require businesses and other employers with employees to obtain and maintain workers' compensation insurance. Workers who are injured while working for uninsured, as compared to insured, employers have greater difficulty obtaining funds to cover medical costs and lost wages. Although DWC has been successful in identifying uninsured employers, opportunities exist to improve the process used to monitor Alaskan employers. As of mid-October, 1999, DWC has not completely resolved the insurance status of approximately 900 potentially uninsured employers. Additionally, procedural problems have contributed to inefficient enforcement efforts. Specifically, enforcement efforts could be improved substantially if DWC:

1. Eliminated the backlog that contributes to significant inefficiencies. At the end of fieldwork, the data entry backlog for recording insurance policy information exceeded 40 days. This backlog has contributed to insured injuries being erroneously recorded as uninsured in the workers' compensation system, prompting unnecessary review by employer enforcement personnel.

   The workers' compensation system automatically generates notices when a policy expires and updated policy information is not recorded into the system. The backlog has resulted in unnecessary notices, which in turn has increased expenses and caused complaints from insured employers.

   Recording updated policy information when received will result in less effort expended to investigate insured employers, improve the accuracy of management information and produce favorable relations with compliant employers.

[43] In 8 AAC 45.065 it provides for informative prehearings *"even if a claim, petition, or request for a prehearing has not been filed, the board or its designee will exercise discretion directing the parties or their representatives to appear for a prehearing."*

2. Fully resolved injuries reported as uninsured and corrected system data to promote accurate uninsured injury statistics. Injury reports involving employees of apparently uninsured employers should be quickly confirmed and if erroneous, the insurance status disposition should be corrected in the system. Injuries that are ultimately determined to be uninsured should be fully investigated with appropriate corrective and enforcement action pursued.

3. Developed amendments to AS 23.30.085 for legislative consideration that institute penalties for filing insurance/adjuster notices in an untimely manner.[44] Although statute places the burden of filing insurance/adjuster notices on the employer, insurers typically file new and renewed policy information.[45] Notices that are filed untimely can cause insured injuries occurring shortly after a scheduled policy expiration to appear uninsured. A sample of 22 insurance/adjuster notices providing proof of coverage found that on average, insurers filed notification 38 days late.

   Currently, the Workers' Compensation Act does not provide sanctions for noncompliance. In contrast to this lack of disincentive, insurers have a vested interest to file cancellations promptly. Specifically, AS 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.*

   Our review indicated policy cancellation notices were typically filed timely, over 20 days in advance of scheduled policy expirations.

   Shifting the requirement of filing policy information to insurers and establishing a penalty for untimely filing would reduce unnecessary investigative efforts and improve the integrity of the workers' compensation system.

4. Documents the entirety of employer enforcement correspondence and effort. Adjudications related to uninsured injuries often require the DWC employer enforcement officer to testify as to the interaction of DWC with the uninsured employer. The level of enforcement action undertaken and the amount, frequency, and timing of correspondence with employers often was not documented. A review of the 1998 uninsured injury report indicated at least 37 employers appeared to remain uninsured at the time of our review, or could not be located in the workers' compensation system. Additionally, agency records did not identify any documentation that the employer was contacted in 25 (68%) of these cases. Not having adequate documentation and enforcement follow through increases the

---

[44] A penalty mechanism exists but is not effective. Alaska Statute 23.30.085(b) states *"If an employer fails, refuses, or neglects to comply with the provision of this section, the employer shall be subject to the penalties provided in AS 23.30.070 for failure to report accidents...."* The statutory reference (AS 23.30.070) does not impose a penalty unless a compensable injury occurs and an award is issued by the board.

[45] Alaska Statute 23.30.085(a) requires employers to file evidence of compliance with the insurance provisions of the Workers' Compensation Act within 10 days after the termination of the employer's insurance by expiration or cancellation.

State's exposure, potentially resulting in liability for compensation when an uninsured employer has inadequate resources to pay significant indemnity awards.[46]

5. Sought revisions to the Alaska business license. The Department of Law (DOLaw) has established criteria requiring prosecutorial referrals include documentation that the employer knew of the mandatory insurance clause of the Workers' Compensation Act. Lack of such documentation of due notice has reportedly served as a barrier to prosecutorial referrals. Accordingly, DWC and the Department of Community and Economic Development, Division of Occupational Licensing should work cooperatively to implement a new business license application[47] that puts an employer on notice it must obtain workers' compensation insurance for its employees. Such notification can serve as documented proof that the employer knew of its responsibilities under the Workers' Compensation Act, thus eliminating a significant barrier to prosecution.

Recommendation No. 5

The legislature should consider amending AS 23.30.075 to empower the Alaska Workers' Compensation Board (AWCB) to sanction uninsured employers.

Current documentation maintained by DWC precludes an accurate quantification of uninsured injuries reported to AWCB. As discussed in the prior recommendation, we suggest DWC adopt measures to improve the employer investigative function including pursuing the amendment of AS 23.30.085 to allow the agency to sanction insurers that file notification of insurance in an untimely manner. In addition, we believe further statutory changes should be considered to give AWCB greater authority in dealing with uninsured employers.

We recognize finite prosecutorial resources coupled with stringent DOLaw referral requirements inevitably means not all uninsured employers will be prosecuted. However, under these circumstances uninsured employers are not subject to any sanctions for failing to insure employees.

Some states sanction uninsured employers while still avoiding costly and time-consuming criminal prosecutions. For example, California employers are required to pay penalties of $1,000 per employee in noncompensable cases and $5,000 per employee in compensable cases. Other states have adopted legislation that automatically increases compensation payable to uninsured injured workers by 50% or calculates penalties at several times what the employer would have paid for insurance during the period it illegally failed to secure coverage.

---

[46] Two Alaska Supreme Court decisions found DLWD, formerly the Department of Labor, negligent for failing to abate known workplace safety violations, see *Wallace v. State of Alaska*, 557 P. 2d 1120 (Alaska 1976) and *Adams v. State of Alaska*, 555 P. 2d 235 (Alaska 1976).

[47] An Alaska business license is required to legally conduct business within the State. To obtain a business license, a business entity must complete an Alaska business license application (form 08-4181). A State of Alaska contractor's license application (form 08-4027) informs applicants of the requirements to provide workers' compensation insurance as well as provide proof of coverage or explain why the business entity is exempt from the requirement.

In our view, sanctioning employers that have violated the mandatory insurance clause of the Workers' Compensation Act would likely have a significant deterrent effect and achieve compliance with the law in a way that cannot otherwise be accomplished.

Recommendation No. 6

The Department of Community and Economic Development's director of the Division of Insurance (DOI) should implement policies and procedures that ensure timely enforcement of insurer-compliance provisions of the Workers' Compensation Act.

As discussed in the Report Conclusions section of this report, AWCB is required to notify DOI when frivolous controversion determinations are made. Our review concluded DOI investigation efforts of frivolous controversion complaints have not been consistent with legislative intent that prohibitions against such acts be strictly enforced.

Alaska Statute 21.36.320 vests the director of DOI with the authority to conduct investigations and determine whether an insurer engaged in an unfair or deceptive act or practice. Although the term "frivolous controversion" is not defined in statute, the cases we reviewed contained apparent violations of the Insurance Act. Unfair or deceptive activity need not reach the high threshold of a general business practice before corrective action is initiated. Authority to impose significant sanctions for a single unfair or deceptive violation rests with the director.[48]

The consumer service specialist interviewed asserted the maximum penalty would not offset the administrative expense of holding a hearing and consequently would be imprudent to conduct. However, utilizing proceedings in conjunction with imposing sanctions authorized by the Insurance Act would likely have a significant deterrent effect to unfair or deceptive acts, including frivolous controversions. If DOI believes the maximum penalty authorized by current law is inadequate to discourage unfair claims acts, the agency should draft statutory amendments with sufficient sanctions for legislative consideration.

The director should implement policies and procedures that include prudent investigative standards and timeframes in which complaints are fully resolved. Procedures should incorporate the exercise of corrective enforcement authority vested with the director. Additionally, DWC and DOI should coordinate efforts and produce a collective agreement of each agency's responsibility for enforcement of all provisions of the Workers' Compensation Act. The frivolous controversion determinations thus far forwarded to the division should be addressed in an expeditious manner.

---

[48] Alaska Statute 21.36.320(d) states in part "*...the director may, after a hearing, order restitution, assess a penalty of not more than $2,500 for each violation or $25,000 for engaging in a general business practice in violation of this chapter.*" Alaska Statute 21.36.320(e) states "*If the director determines after a hearing that the person charged knew or should have known that the person was in violation of this chapter, in addition to the penalty prescribed in (d) of this section, a suspension or revocation of the person's license and a penalty of not more than $25,000 for each violation or $250,000 for engaging in the general business practice in violation of this chapter may also be ordered by the director.*"

Unresolved frivolous controversion investigations have fostered frustration on the part of injured workers and contribute to the public's perception of government ineffectiveness. Strict enforcement of the Insurance and Workers' Compensation Acts is essential to fulfilling the legislative intent and maintaining a balance between the interests of insurers and the protection of the public.

Recommendation No. 7

DWC's director should improve controls over review of insurers' annual reports.

DWC has weak controls over collection, review, and recording of data included in insurers' annual reports. Alaska law requires the board establish a format on which to receive the annual reports. The board has established the format in AWCB Bulletins. However, the format as prescribed is not enforced.

In addition to DWC's lack of enforcement of board prescribed directives, we also identified other issues associated with the submission of annual reports such as:

- Lack of support for uninsured employer compensation
- System provided count of compensation types did not reconcile to penalty summary schedules.
- Insurers were assigned multiple codes.
- Independent verification of data was not performed.
- High threshold (10%) on exception report variances.

The annual reporting is a labor intensive and cumbersome process for DWC staff. For calendar year 1997, there were approximately 180 insurers/adjusters required to submit summary information by injured worker. Insurers or adjusters must submit information on all claims paid during the year. This information needs to be reported by type of cost, as prescribed in statute.

Internal control procedures provide reasonable assurance regarding the achievement of objectives with regard to effectiveness of operations and compliance with applicable laws and regulations. It is crucial for DWC to establish internal control procedures, and to enforce those already established, in order to ensure accurate and efficient reporting.

We recommend DWC enforce its established procedures by requiring insurers to submit their information as prescribed by AWCB Bulletins. We also recommend amounts reported to the board be adequately supported, independent verification be performed, annual report summary amounts are reconciled to the workers' compensation data system, and reasonable exception report variances established.

Recommendation No. 8

DWC's director should adopt a methodology for assessing compensation report penalties that is consistent with statute.

DWC is assessing compensation report penalties in a manner inconsistent with law. Alaska Statute 23.30.155(m) reads in part:

> *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 insurers or adjusters reports filed during the preceding year under (c) of this section.* [Emphasis Added.]

This requirement states that complete, timely, and accurate annual report information is necessary ***prior to*** review of the compensation reports for timeliness. However, DWC is waiving penalties on late compensation reports whether or not the annual reports are accurate, timely, and complete. In our testing, we identified 17 instances where an annual report was determined to be incomplete, however late compensation report penalties were still waived. As a result of this practice, DWC inappropriately waived approximately $105,000 in second injury fund (SIF) penalty revenues during FY 99.

We also question the methodology used by DWC to waive the penalties on the compensation reports. Alaska Statute 23.30.155(m) also reads 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% of the penalties assessed under (c) of this section shall be waived.* [Emphasis Added.]

Based upon this statute, the waiver should be based on the total number of late compensation reports per adjuster or insurer compared to the total number of compensation reports for each particular adjuster or insurer. However, to calculate the percentage to waive, DWC is using inherently different units of measure. As explained in the Report Conclusion section, DWC is dividing the number of late compensation reports for a particular insurer or adjuster by a system generated count of the total number of compensation types reported on all compensation reports filed by a particular insurer or adjuster. Using the inflated count of compensation types per report as the percentage base instead of a count of discrete reports, the percentage of late reports will be lower than it should be. We estimate late compensation report penalties were understated by approximately $11,500 due to this practice.

Late compensation report penalties are deposited into the SIF. The effect of the combined penalty under-assessments discussed above is that the balance in the SIF will be less than it

would have been if penalties were imposed accurately. This results in the need for a higher contribution rate to collect additional revenue from all insurers.

Additionally, we identified a component goal in the FY 00 budget documents of the SIF is to:

> *reduce the amount of penalties currently paid by insurance companies for late compensation report filings by increasing communication with insurance companies and increasing their awareness of the reporting requirements according to law.*

We recommend DWC reconsider its methodology for assessing penalties to ensure compliance with the law. We also recommend DWC establish goals to increase reporting compliance rather than reducing the amount of insurer penalties.

Recommendation No. 9

The director of the Division of Workers' Compensation should correct inappropriate administrative and accounting practices.

Alaska Statute 23.30.040(a) states:

> *Money in the second injury fund may only be paid for the benefit of those persons entitled to payment of benefits from the second injury fund under this chapter.*

Although one administrative clerk II is organizationally placed under the SIF, the position's actual job duties are not related to the administrative duties of the SIF. Since the job duties of the position do not benefit injured workers who have joined the SIF, the appropriateness of allocating the position's personal service costs to the SIF is questionable. DWC's current practice decreases the retention rate of the fund, which ultimately could inflate the amount of contributions insurers pay. During FY 99, inappropriate SIF personal services totaled $28,143.

The director of DWC should ensure personal service charges are supported by adequate documentation. Additionally, all personal services charged to the fund should be true administrative expenses of the SIF.

Recommendation No. 10

The director of the Division of Workers' Compensation should resolve the legality of "supplemental" benefits and rectify internal control weaknesses over such expenditures.

Alaska Statute 23.30.172 was effectively a mechanism to provide a cost of living allowance to supplement injured workers' primary indemnity payments. Fiscal Year 99 budget documents indicate $204,600 allocated for 35 claimants. During FY 99, 26 individuals received supplemental benefits.[49] In FY 98 and FY 99, General Fund expenditures totaled $171,155 and $168,143, respectively. During FY 99, $36,500 of the allocation was transferred to other DWC operations. Our review identified several areas that need to be addressed. Specifically, the director should initiate the following measures:

1. Obtain the attorney general's opinion when assessing the legality of issuing supplemental benefits under AS 23.30.172 to individuals who no longer receive primary workers' compensation benefits from their insurer. Our review concluded 24 of the 26 recipients that received supplemental benefits during FY 99 no longer receive primary benefits from their insurer. DWC continues to pay supplemental benefits despite the fact recipients do not receive the primary benefits that originally qualified them for benefits under AS 23.30.172.

   Most of the supplemental benefit recipients have likely settled their claim through a compromise and release (C&R) order, discharging their insurer from further benefit payments. DWC asserts a C&R order would only release the insurer from further indemnity payments, not the State. Such an interpretation is not supportable in the absence of documentation specifically binding the State to indefinite supplemental benefits.

   In our view, the totality of benefits discussed herein represent one homogeneous indemnity benefit with the only distinction being the payer. The supplemental benefits the State issues are merely a counter inflation component of the original benefit and should cease when insurer-issued benefits are terminated, regardless of the reason such primary benefits are discontinued (whether due to the worker recovering from their disability or settling through a C&R order).

   At the end of fieldwork, only one of the supplemental benefit recipients continued to receive primary compensation from their insurer. Supplemental benefits paid to this single recipient total $370 per month. Confining benefit payments strictly to eligible recipients receiving benefits from their insurer would realize annual general fund savings of $153,091.

2. Exercise a greater level of monitoring over the expenditure of supplemental benefits. It is likely that at least one individual is legally entitled to supplemental benefits under AS 23.30.172. As discussed in the Report Conclusions section of this report, internal controls over such expenditures are inadequate. DWC should implement policies and procedures to reduce the risk of the fraudulent receipt of benefits.

   Nine recipients have monthly warrants sent to third parties or financial institutions for direct deposit. The potential magnitude of the internal control weaknesses are

[49] See footnote 34 on page 34.

underscored by the fact that DWC does not periodically contact recipients and our attempts to establish contact with recipients were not successful in over 30% of the cases. General fund warrants exceeding $6,020 were issued to a supplemental benefits recipient after DWC received notification of the recipient's death. One warrant in the amount of $1,505 was fraudulently endorsed.

A procedure consisting of periodic confirmation that recipients continue to be eligible should be adopted. Such confirmation could be accomplished by soliciting physician affidavits certifying beneficiaries continue to be permanently totally disabled.

3. Adequately support benefit calculations based upon workers' wages. Most of the supplemental benefit calculations were based upon unsupported employee average weekly earnings. For example, one individual with unsupported wages reported average weekly earnings of $600 per week at the time of his 1962 injury. Given that the 1975 Alaska average weekly wage was only $248, the amount of the unsupported average weekly earnings is suspect. Benefit expenditures should not be initiated without adequate supporting documentation.

Appropriations should only be sought for activities that constitute a genuine public purpose and expenditures only made for valid obligations of the State. Accordingly, paying supplemental benefits should be discontinued for individuals not legally entitled and controls should be implemented to adequately safeguard resources.

Recommendation No. 11

DWC's reemployment benefits administrator should capture ineligibility determination statistics for policymakers and stakeholders.

Balancing the statutory language of the law and legislative intent of quick, efficient, fair, and predictable service sometimes represents a dichotomy.

Intuitively an injured worker who cannot perform the actual physical requirements to return to his or her job at the time of injury should be entitled to reemployment benefits. However, Alaska Supreme Court rulings have underscored instances of perceived unfairness in the law, highlighting the existence of sometimes-conflicting goals.

Having adequate information is essential for making informed decisions while considering future revisions of the Workers' Compensation Act. Accordingly, the reemployment benefits administrator should capture the reasons an injured worker is determined ineligible for reemployment benefits. Statistics should be maintained to measure the frequency and extent of perceived inequitable outcomes. Specifically, the reemployment benefits administrator should note whenever an individual is unable to return to his or her job at the time of injury, but is ineligible for reemployment benefits for the following reasons:

- The injured worker is physically capable of performing job duties of the position at the time of the injury, as described in *Selected Characteristics of Occupations Defined in the Revised Dictionary of Occupational Titles.*

- The individual has held or received training for a position in the past 10 years which he or she is capable of performing, however the position does not pay 60% of his or her salary at the time of injury, consequently not meeting the threshold of remunerative employability.

- At the time of medical stability,[50] the injured worker does not qualify for an impairment rating under the guidelines set forth in the *American Medical Association's Guides to the Evaluation of Permanent Impairment.*

Additionally, having accurate information as to the success of reemployment training would be beneficial to policymakers.

Arctic Adjusters Annual Report

Insurer	(In)Complete Annual Report Penalty
Lumbermen's Mutual	**Incomplete**
American Motorists	**Incomplete**
US Fidelity and Guaranty	Complete
American Manufacturers Mutual Insurance	Complete
Continental Insurance	Complete
Insurance State of PA	Complete
St. Paul Fire and Marine	Complete
Federal Express	**Incomplete**
Columbia Health Care	**Incomplete**

This schedule represents an annual report penalty summary for Arctic Adjusters. Arctic Adjusters files on behalf of specific insurers. However, annual report penalties are calculated based upon adjuster instead of insurer. This is not consistent with the board's directive to file a report for each insurer code.

In this example, instead of assessing a civil penalty of $1,000 for each incomplete annual report totaling $4,000, the DWC assessed a civil penalty to Arctic Adjusters of just $1,000.

Recommendation No. 12

DWC's director should seek legal clarification with regard to the methodology for assessing annual report penalties.

DWC accepts annual reports from adjusters on or before March 1 of each year. Alaska Statute 23.30.155(m) reads in part that *"the insurer or adjuster shall file a verified annual report on a form prescribed by the board."* DWC provided us with an AWCB Bulletin 96-10 which prescribed the form for submitting the annual report. This board directive states in part:

> *Attached is a new format and records layout indicating the necessary report fields, including the new rehabilitation cost fields.*

[50]Alaska Statute 23.30.395(21) defines medical stability as *"the date after which further objectively measurable improvement from the effects of the compensable injury is not reasonably expected to result from additional medical care or treatment, notwithstanding the possible need for additional medical care or the possibility of improvement or deterioration resulting from the passage of time; medical stability shall be presumed in the absence of objectively measurable improvement for a period of 45 days; this presumption may be rebutted by clear and convincing evidence."*

The attachment states that *"an annual report needs to be filed for each code."*

Our interpretation of the statute indicates to us that the board could prescribe the form which insurers or adjusters should follow in submitting the annual report. More specifically, the board could prescribe whether these reports were submitted by adjusters on behalf of a number of discrete insurers, or by discrete insurer code. The statute, in our view, allows the board to dictate the form.

However, DWC accepts adjuster's reports on behalf of multiple insurers instead of a discrete annual report for each insurer code and assess penalties in that manner. Several adjuster annual reports for the calendar year 1997 were reviewed and found to be incomplete, with problematic data attributable to particular insurers. DWC asserts that the statute allows filing by insurer or adjuster regardless of the form prescribed by the board in the AWCB Bulletin. Additionally, the statutes state that *"If the annual report is incomplete when filed, the insurer or adjuster shall pay a civil penalty of $1,000."*

DWC assesses penalties by adjuster instead of by insurer code. Calculations based upon insurers instead of adjuster would have resulted in an additional $23,000 in FY 99 general fund revenue being collected (see inset on facing page). The strictest of enforcement would require civil penalties for incomplete reports to be assessed for each insurer.

(Intentionally left blank)

STATE OF ALASKA

Tony Knowles, Governor

Department of Labor and Workforce Development

OFFICE OF THE COMMISSIONER

P.O. Box 21149
Juneau, AK 99802-1149
Phone: (907) 465-2700
Fax: (907) 465-2784

February 4, 2000

Ms. Pat Davidson
Legislative Auditor
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811-3300

Dear Ms. Davidson:

Re: Response to Preliminary Audit Report - 07-4601-00
Division of Workers' Compensation

We have reviewed the preliminary audit report on the Division of Workers' Compensation (DWC), and appreciate this opportunity to comment on the recommendations presented. In general, with some major exceptions, we concur with the background information and conclusions presented. We also agree with many of the recommendations outlined in the Preliminary Audit Report. Our specific comments on the Background, Conclusions, and Recommendations follows:

BACKGROUND INFORMATION AND REPORT CONCLUSIONS

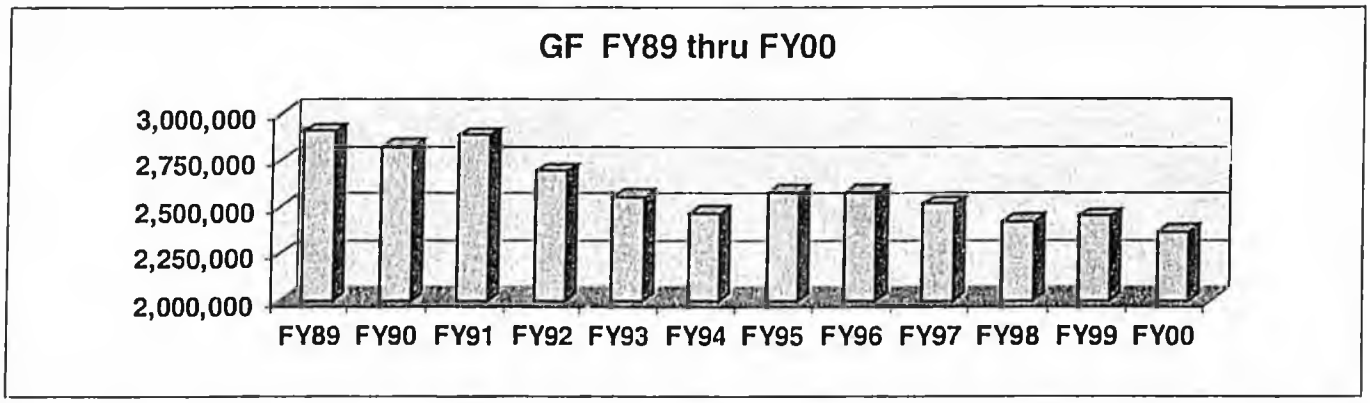
The background information presented captures the essence of the intent of the 1988 statute changes, and we appreciate its inclusion in the audit report. We believe the audit does a good job outlining the history and changes that occurred regarding the 1988 amendments to the workers compensation act. There was a reduction of indemnity and medical benefits with the intention to lower cost to employers and still be fair to employees. The DWC feels the audit did a fair assessment of the legislative intent and we agree with the outline of the responsibilities under the workers compensation act, and the workload portrayed.

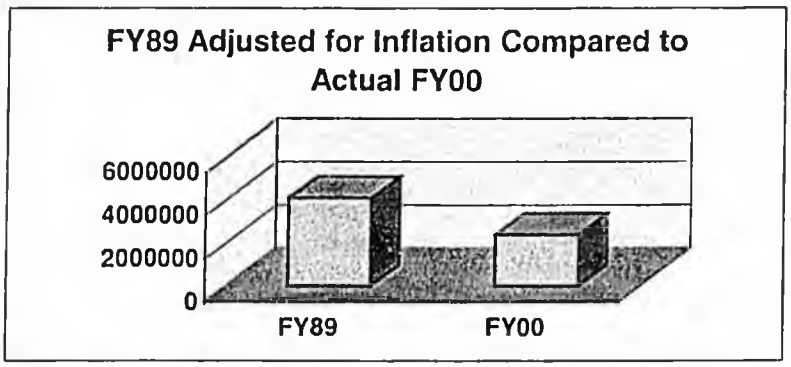
We are less in concurrence with the Conclusions presentation and strongly object to the conclusion of ineffectiveness due to administrative shortcomings in the DWC. Conspicuously absent in your analysis are the impacts on the DWC from the 1988 law changes, and whether the DWC is adequately funded to perform the many statutory mandates imposed. We believe presentation of this information and the changes in funding and positions since the statute change would more fairly represent the constraints under which the DWC now operates.

In FY89, the first year the 1988 reforms went into effect, the DWC had a staff of 48 employees and a general fund budget of 2.9 million. Currently, in FY00, the DWC has 39 employees and a general fund budget

of 2.367 million. This is a decline of 9 employees and over 500,000 dollars in general fund support. This is approximately an 18.5% decline in actual dollars during the period of time analyzed in the audit. This becomes further problematic when you consider the audit discussion on the impacts of inflation during that period of time. Taking the audit's reported 40% increase in the consumer price index for this period, the DWC should have received 4.066 million in FY00 to maintain funding at FY89 levels. This amounts to a reduction in funding of over 40% when adjusted for inflation.

To illustrate this graphically:





The DWC does agree with the audit conclusion on the compensation inequities in the law. The most obvious problem is the setting of upper limits to compensation such as permanent impairment, death benefits and reemployment benefits, which are negatively impacted by inflation. The auditors indicate that these benefits have decreased by 40% since the 1988 amendments went into effect, based on the consumer price index. We would add that maximum and minimum weekly compensation rates as set in Alaska Statute 23.30.175(a) would be impacted by inflation in the same way.

The DWC takes exception to some of the other conclusions in the report, but will address the specifics of those disagreements while responding to the recommendations of the audit.

Recommendation No. 1

DWC management should develop a strategic plan to better accomplish the agency's op rating mission.

DWC agrees with the overall recommendation of a strategic plan in principle. The division does strategic planning from year to year, but the efficacy of that planning is impacted by budgetary constraints and cuts.

Manual processing of much of the paperwork related to claims and payments is inefficient.

DWC believes the report is correct in stating that tremendous efficiencies could be gained through adoption of Electronic Data Interchange (EDI) technologies. The current backlog in processing injury reports, establishing claims, and entering compensation reports is not likely to improve given current staffing shortages and budgetary constraints. As stated in the audit conclusions, the International Association of Industrial Accident Boards and Commissions (IAIABC) is working with states and industry to adopt ANSI standards for EDI transactions involving proof of insurance, claims, and compensation reports. Implementation of EDI technology could radically improve the division's efficiency in entering insurance notices, claims, and compensation reports without any increases in personnel services.

Although the current computer system was designed to be compatible with Internet access, EDI capability will still take considerable capital investment. The DWC believes this investment could result in efficiencies allowing current resources to be focused on other problem areas.

The DWC has started investigating some electronic data filing issues and is looking into a pilot project with Fisherman's Fund in an attempt to move in this direction. But, in order to make such a project realistic DWC must secure capital project funding.

The audit suggests the DWC should consider developing an alternative resolution process for workers' compensation. The DWC does use an alternative resolution process through the current prehearing process. Workers' compensation officers attempt to resolve and settle cases at the prehearing level to reduce the number of cases that need to be scheduled for formal hearings. This, again, is impacted by budgetary constraints. As a result, the number of workers' compensation officers available for alternative resolution has declined.

Strategic plan would have to reflect a commitment to real and relevant performance goals.

DWC agrees this is a good idea, but has to be considered along with realistic budgetary considerations. If the only certainty is further cuts to general funds it makes very little sense to develop goals that

are unattainable, and the strategic plan becomes an exercise in futility.

Recommendation No. 2

DWC's Director should propose legislative changes to improve balance in the workers' compensation laws.

We concur with this conclusion and recommendation. The 1988 amendments to the workers' compensation act substantially reduced benefits to injured workers'. This resulted in a reduction of overall premium rates to employers. While the reduction in premium resulted in a favorable situation to employers, the reduction of benefits has become problematic to employees. This situation compounds as inflation erodes the fixed benefits such as permanent impairment benefits, reemployment benefits, funeral expenses, maximum and minimum compensation rates. The auditor's research indicates that the consumer price from 1988 to the present rose 40%. We don't dispute that number or the resulting problems to injured workers from diminished benefits. The DWC believes, and the auditor's report seems to concur, these problems would be best addressed by indexing these benefits. As an alternative to indexing, benefits should be reviewed by the legislature on a regular basis to prevent levels from being drastically reduced due to inflation. At the very least, the current problem with benefit inadequacy should be addressed by the legislature.

As noted above, over the same period of time, there was significant reduction in funding to the DWC. This further frustrates injured workers, employers and insurers because the DWC is less able to provide adequate services in a quick and efficient manner.

The DWC must be adequately funded to fully inform employees of their rights, to address disputes, investigate uninsured employers, and provide all of the services that are required by law.

The DWC believes that the Director should work with the legislature to introduce legislation to solve the current budgetary problems through alternative funding, such as user fees.

Recommendation No. 3

DWC's Director should increase outreach, education, and technical assistance to injured workers with regard to their rights and responsibilities under the workers' compensation laws when a disputed claim occurs.

We do not fully concur with this recommendation. We do agree that the workers' compensation law is very complex, and that the DWC has a responsibility to provide assistance in understanding the process. We believe DWC meets this intent, within the constraints of process

complexity and funding limitations, through use of hard copy and Internet documents, and by providing technical assistance.

The audit report acknowledges the level of complexity inherent in the workers compensation process, using the following statements:

- "…the complicated and litigious nature of the process."
- "…difficulty in getting an attorney to accept cases due to either complexity of the injured worker's case,…".
- "Attorneys expressed the need to specialize in worker's compensation cases due to the complexity of the process."
- "The WCA is a legal process that incorporates judicial procedures that the average layperson is not likely to understand."

The audit states that "DWC literature does not provide enough substance for someone to understand all of the nuances of the process given its litigious nature". We believe it is the inherent complex litigious nature, acknowledged by the audit report, that precludes literature with enough substance for the average lay person to understand all of the nuances. Complex legal processes do not lend themselves to over simplified explanations that retain accuracy and can address every claimant situation.

The second area we find problematic with this recommendation is the realistic potential for implementing desirable alternatives, such as videos, for increased outreach and education. As discussed above in the Background section, funding and position reductions have occurred over the last decade. We believe that alternatives need to be considered within the context of these reductions, which limit the likelihood of developing and implementing labor-intensive or costly options.

DWC, however, believes this may be a good recommendation provided funding can be obtained for these types of projects. This funding needs to be maintained over time because any video, or publication has to be updated as the law changes through the legislative process and court action.

Recommendation 4

DWC's Director should take proactive measures to identify and monitor uninsured employers.

This recommendation had five subsections that will each be addressed separately. Legislative Audit stated enforcement action could be improved substantially if DWC:

1. Eliminates the backlog that contributes to significant inefficiencies.

The data entry backlog in processing insurance notices has been eliminated. The primary cause of the backlog was due to alpha and beta testing of DWC's new database system May through August. Current processing occurs within 2-3 days of receipt of notice.

2. Fully resolves injuries reported as uninsured and corrected system data to promote accurate uninsured injury status.

With the implementation of a new database in September of 1999, there are now procedures to quickly identify and resolve uninsured claims. As noted in the audit report, new features include capture of DOL UI account and federal Employee Identification Numbers (EIN) to help identify employers listed on insurance notices. It is projected to take approximately a one-year cycle to adequately clean up the data. In addition, the new system triggers a system reminder message to the Workers' Compensation Officer II (WCO) noting the creation of an uninsured claim. This allows the WCO to follow up and resolve the issue in a timely manner.

We object to the audit statement that 31,000 employers were identified as potentially uninsured, and that 900 employers remain non-responsive. We believe this statement is misleading. First, there are only about 16,000 registered employers in the state. Second, of the referenced 900 non-responsive employers 450 responses were available at the time of audit. Third, the source of the data was not DWC official records. The business name cross match process described in the audit was a first attempt screening tool to assist in designing a method for identifying uninsured employers. It was not ever intended as a definitive method for identifying potential uninsured employers, nor were the results assumed to be accurate. For example, an employer listed under similar but slightly different names in the two systems causes a false assumption of "uninsured" upon crossmatch. The accurate method for identifying uninsured employers is the EIN cross match feature described above.

3. Develops amendments to AS 23.30.085 for legislative consideration that institute penalties for filing insurance/adjuster notices in an untimely manner.

DWC supports the concept of instituting insurer penalties for filing insurance/adjuster notices in an untimely manner. DWC attempted to address this through adoption of regulation in FY99, however, DOLaw informed DWC that the regulation was not supported by current statutory language and felt this type of approach would require statutory change.

4. Documents the entirety of employer enforcement correspondence and effort.

We concur that documenting full employer enforcement effort is a good idea. When the new computer system is fully implemented the system will track forcement actions that took place regarding individual employ .

We take objection, however, to information presented in the Audit conclusions. The conclusion section correctly presents a decrease in DWC prosecution referrals, but does not fairly present the reasons. The cessation of the contractual relationship for investigation services with DOL's Labor Standards and Safety Division is a direct result of reduced funding. Also, as noted in the audit conclusion section, DOLaw has set forth guidelines for prosecution referral. Although Legislative Audit's view is that these guidelines are not consistent with legislative intent that sanctions be strictly enforced, DOL must operate within the limitations of the guidelines established by DOLaw.

We also believe the statement that "DWC has not sought prosecution against employers in recent years" is erroneous and misleading. There was in fact a successful prosecution last year and DWC is currently working on cases for prosecution. Also, it must be noted that there were **no** prosecutions of uninsured employers prior to 1995, and since then there have been a number of successful prosecutions.

Nevertheless, the DWC agrees that increased regulation and prosecution of uninsured employers would improve the system. This does require adequate funding and budgetary solutions as well as statutory fixes.

5. Seek revision to the Alaska business license.

We concur that DWC, Department of Community and Economic Development, and the Division of Occupational Licensing should work cooperatively to implement a new business license application that puts an employer on notice it must obtain workers' compensation insurance for its employees.

Recommendation 5

The legislature should consider amending AS 23.30.075 to empower the Alaska Workers' Compensation Board (AWCB) to sanction uninsured employers.

The DWC agrees with this recommendation. The added penalties would likely provide a deterrent to uninsured employers. The DWC feels the 50% penalty tacked onto compensation due an employee is an especially good idea. The injured worker is the most adversely affected by the employer being uninsured and should therefore receive the benefit of the penalty.

Recommendation 6 - The Department of Community & Economic Development, Division of Insurance is Primary Responder.

Recommendation 7

DWC's Director should improve controls over review of insurers' annual reports.

This recommendation addressed several issues. The following responds to each separately:

1. Recommend that DWC enforce its established procedures requiring insurers to submit their information in board-established format. **DWC requires annual report data to be submitted in the board-prescribed format.** About 80% of insurers submit annual reports by electronic media, as allowed by regulation. The ease of using the electronic data is impacted by three factors: the difference between DWC and the submitter's data system/software, the wide range of data processing knowledge among submitters, and the medium on which reports are submitted such as, diskettes, 9 track, and magnetic tape. In addition, about 20% of insurers submit their reports on paper when electronic submission is not possible due to manual systems or incompatible file types. DWC does acknowledge that on going improvement in data systems and procedures will contribute to improving the efficiency of the annual report submission process.

The audit conclusion states that the SIF administrator spent three weeks creating an annual report for an insurer not filing on the form prescribed on the board. This misrepresents the situation. The insurer filed all the required information in the required format on paper. Electronic submission did not occur because file types were incompatible. This information was then manually entered in the Workers Compensation System.

2. Recommend independent verification be performed. **We agree that there is a need for better independent verification of the annual report.** Data submitted on the annual report (suspense file) is compared to data from the DWC database (extract file). Suspense file data does not have a corresponding data extract for some of the payments made such as medical benefits paid, vocational rehabilitation benefits, or legal fees. This information is not entered on the DWC database due to three factors: the old computer system did not have the capacity to capture this data; the insurers/adjusters/employers do not report this data; and there is inadequate staffing to enter this data. The insurers/adjusters/employers could be required to report this information but additional funding is needed for system programming and for data entry staff.

3. Recommend annual report summary amounts should be reconciled to workers' compensation data system. **The audit report did not provide enough information for us to address this recommendation.**

4. Recommend reasonable exception report variances be established. **Reasonable variances are established and used.** The auditors state that the 10% allowable variance between the suspense file and the extract

file is too high and inconsistent with legislative intent. The 10% variance, however, was established and is permitted under 8 AAC 45.136. We therefore consider this a reasonable measure to use.

5. Insurers were assigned multiple codes.
DWC agrees there are "insurers assigned to multiple codes", and that this is to be expected. This is because one insurance company can have multiple insurer/adjuster codes, depending on how many adjusters are handling claims for the insurer. Additionally, insurance companies change adjusters periodically. DWC acknowledges that the use of codes resulted in some duplications and errors in the old system. **DWC is designing an Annual Report component for the new system that will record annual reports based on the unique combination of insurer/adjuster name instead of insurer/adjuster codes.**

Recommendation 8

DWC's Director should adopt a methodology for assessing compensation report penalties that is consistent with statute.

DWC believes the current methodology for assessing penalties is consistent with statute (AS 23.30.155(c) and (m)). The auditors, however, raise a valid question of interpretation for which DWC will seek clarification.

The DWC acknowledges the audit may be correct in its interpretation of what constitutes a compensation report. The DWC interprets each compensation payment, listed on a report form, as a separate report. This interprets the statute broadly, and it was the only way the old computer system counted the compensation reported. The new system will have the capacity to count compensation payments listed on a report form as just one report. Again this is subject to interpretation and the disaffected parties have a right to appeal this issue to the Board and then the court. This could also lead to an unintended consequence. If DWC adopts the audit's interpretation of AS 23.30.155(m) and (c), and the Board and the court's rule this is a correct interpretation, the insurers/adjusters/employers could file each payment on a separate compensation report form. This would effect the same count result as our current interpretation, but would require additional staff time to enter data because of the increase in forms filed.

The Audit failed to point out that prior to 1995 these penalties were not collected. While there may be disputes or disagreements regarding interpretation of AS 23.30.155(m) and (c), the Division has made major improvements in collecting these penalties since 1995.

Recommendation 9

The Director of the Division of Workers' Compensation should correct inappropriate administrative and accounting practices.

The DWC believes there are no administrative expenses that are inappropriately being charged to the SIF. In fact, if anything, the DWC is very conservative in charging staff time to the second injury fund. The audit correctly quotes AS 23.30.040(a) *Money in the second injury fund may only be paid for the benefit of those persons entitled to payment of benefits from the second injury fund under this chapter.* The audit fails to mention that AS 23.30.040(h) says: *Administration expenses of the state under this section and AS 23.30.205 must be paid from the second injury fund.*

The audit suggests one Administrative Clerk II (ACII) position may be charging more personal services to SIF than is appropriate. It is also suggested that "the Director of DWC should ensure personal service charges to the SIF are supported by actual documentation.

The basis for charging time against the SIF was reviewed in the past to determine an equitable cost allocation. The SIF uses the Workers Compensation system data for determining benefits eligibility, for tracking payments to the second injury fund and for assessing penalties that are paid to the SIF. The data entry for this and other related data is performed by five positions. It is estimated that SIF related work is the equivalent of one full time position. As a result, we determined it is more efficient to charge one position to the SIF rather than require detailed time charging by five employees. This allows for adequate charge back for use of Workers' Compensation resources with minimal administrative and management oversight.

Recommendation 10

The Director of the DWC should resolve the legality of "supplemental" benefits and rectify internal control weaknesses over such expenditures.

DWC concurs with the recommendation that a system which better monitors the AS 23.30.172(172) grant expenditures is needed. The DWC believes that these cases should be monitored periodically by division staff to ascertain the payments are being accurately paid to the correct person and to take corrective action if needed. DWC staff is implementing a system that will contact the individual claimants regularly to assure that they remain entitled to payments.

The DWC does question some of the findings and recommendations of the audit. The audit contends that because 24 of the claimants being paid under 172 entered into a compromise and release with an insurer they probably are not entitled to further payments from the State. The audit further contends that the claimants are not receiving primary payment from the employers/insurers and are therefore probably not entitled to 172 payments. DWC submits this is an oversimplification and may be jumping to an unsubstantiated and possibly erroneous conclusion. A compromise and release can be submitted on a claim and the injured worker may still be entitled to 172 payments. The compromise and release may allow for the purchase of an annuity, a

common practice in long term cases. An annuity payment does not show up on the workers' compensation system, yet payments can be made to the claimant for life. If the compromise release had such an annuity proviso, the state, in all likelihood, remains responsible for payment of compensation under 172.

This situation is further complicated by the fact that the state may need to file a valid (legally supported) controversion (see AS 23.30.155(a), (c) and (o)) before it can stop these compensation payments. Even if the State finds valid legal cause to controvert these payments, the fact that the State has made these over such a long period of time (payments date back to as early as the mid 1970's) the State may have waived its right to terminate these benefits.

Nevertheless, DWC feels this matter should be investigated. DWC will attempt to obtain copies of all compromise and releases regarding these cases. These documents may be in archives or a copy might be obtained from the employers/insurers/adjusters. After these documents are obtained, if it is possible to obtain them, they will be referred to the Attorney General along with a request for an opinion as to whether the State has a right to stop these payments.

Recommendation 11

DWC's Reemployment Benefits Administrator should capture ineligibility determination statistics for policymakers and stakeholders.

DWC concurs with this recommendation. We agree that it is worth while to research certain reemployment benefits determinations to provide information on whether the use of *Selected characteristics of occupations as described in the Dictionary of occupational titles* (SCODOT) is fair and appropriate. The law requires the use of the SCODOT to describe the physical requirements of a job at the time of injury. This must be done even if the actual physical requirements of the job are not the same as those described in the SCODOT. This has led to reemployment benefit ineligibility determinations when an injured worker can not physically return to work.

The law also requires a determination of ineligibility if the injured worker can return to any job he/she had in the ten years prior to injury. This is required even if the past job pays less than a remunerative wage (defined in law as 60% of spendable wage at time of injury).

Further, the law requires a permanent impairment ratable under the AMA Guides to Rating Permanent Impairment (Guides) as a prerequisite to entitlement to reemployment benefits. Some workers could be disabled and not have a ratable impairment under the Guides, and therefore found ineligible for reemployment benefits. Certain injuries and illnesses are not ratable under the Guides.

The DWC has some information on the above three issues, but the statistics are not complete. We know the three situations exist and have resulted in reemployment benefits ineligibility determinations, but we don't know how large a problem this is. Again, this would require funds for staff and computer programming to capture this information in a fully quantifiable way.

Recommendation 12

DWC's Director should seek legal clarification with regard to the methodology for assessing annual report penalties.

We do not concur with this recommendation. AWCB bulletins are advisory in nature and do not carry the force of law. AS 23.30.155(m) allows for either the insurer or adjuster to file annual reports and states that penalties shall be paid by the insurer or adjuster. It is DWC's practice to charge penalties to the party who submitted the annual report. The DWC has interpreted this within the latitude allowed by statute to avoid litigation on this point. If the DWC adheres to the audit's interpretation of AS 23.30.155(m) the disaffected adjusters, insurers and employers have a right to appeal this to the Workers' Compensation Board and the Courts. DWC believes this could increase staff time and litigation costs, and in the end the Board and the Courts would likely rely on statute rather than the auditor's interpretation.

We appreciate the courtesy and professionalism of the audit staff, particularly their efforts to minimize the impact of their inquiries on DWC operations.

If you have any questions or require additional information, please contact JoEllen Hanrahan, Internal Auditor, at 465-5673, or Director Paul Grossi, at 465-2790.

Sincerely,

Ed Flanagan
Commissioner

EF/JH:ets

cc: JoEllen Hanrahan, Internal Auditor
Paul Grossi, Workers' Compensation Director
Remond Henderson, ASD Director

Tony Knowles, Governor

Alaska Department of Community and Economic Development

Division of Insurance
P.O. Box 110805, Juneau, AK 99811-0805
Telephone: (907) 465-2515 • Fax: (907) 465-3422 • Text Telephone: (907) 465-5437
Email: Insurance@dced.state.ak.us • Website: www.dced.state.ak.us/insurance/

February 4, 2000

VIA FACSIMILE (907) 465-2347

Ms. Pat Davidson, C.P.A., Legislative Auditor
Alaska State Legislature
Legislative Budget and Audit Committee
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811-3300

Dear Ms. Davidson:

Commissioner Sedwick of the Department of Community and Economic Development has asked me to respond to the Division of Legislative Audit's Preliminary Audit Report (the report) dated October 31, 1999, and specifically to Recommendation No. 6, which relates directly to the operations of the Division of Insurance (DOI). This letter explains the DOI's plan for prompt and effective response to AS 23.30.155(o) referrals by the Alaska Workers' Compensation Board (AWCB), within the limits of the current statute, AS 21.36.125. The DOI is already going forward with this plan and has also taken action as discussed in this letter to implement other parts of the report's recommendation to the DOI on pages 48-49.

The report's conclusions on page 19 include the statement that sanctions against frivolous controversions have been rendered ineffective by the policies and practice of the DOI. In support of this conclusion, the report asserts that the legislature intended frivolous controversion referrals to be actively pursued, and notes that DOI has not yet resolved any of the four cases (listed on Exhibit B) referred to it between December of 1997 and July of 1999. See report pages 28-30. The DOI agrees that AS 23.30.155(o) directs it to actively investigate frivolous controversion referrals by the AWCB. The DOI has developed investigative standards and time guidelines for doing so, and is now actively investigating insurer conduct in five cases referred by the AWCB. The DOI's plan for prompt investigation of pending and future referrals is discussed in Section I of this letter.

However, the DOI respectfully disagrees with the report's interpretation of the term "practice," which is referenced in AS 23.30.155(o), but is derived from and is an essential part of the statutory language of AS 21.36.125. For the reasons described in more detail in Section II below, the DOI believes that AS 21.36.125, as interpreted by regulation, as well as court decisions and published commentary, requires repeated acts, not just a single incident, to constitute an unfair claims settlement practice. The report asserts on page 29 that this approach "is inconsistent with the legislature's desire that frivolous controversions be strictly enforced." If the DOI's interpretation is inconsistent with the legislature's desire to strictly enforce prohibitions on frivolous controversions, then the legislature should clarify this by changing the statute.

I. DOI Revamps Past Frivolous Controversion Complaint Handling Practices.

The DOI agrees that it is responsible under AS 23.30.155(o) to examine whether insurer controversions that the AWCB has determined to be frivolous are unfair claims settlement practices prohibited under AS 21.36.125, and to take administrative actions to impose penalties where indicated. The DOI is now actively investigating all the frivolous controversion decisions referred to it by the AWCB, though it has not yet completed any investigation or determined whether further administrative action is warranted. Please see the attached reply to Exhibit B for the current status of each of the referrals.

When the first frivolous controversion finding by the AWCB under AS 23.30.155(o) came to the DOI in December, 1997, it differed significantly from other unfair claims settlement practices complaints the DOI handles. Frivolous controversion referrals were a tiny (but very important) slice of the more than 1,000 consumer complaints received and handled by DOI over a two year period beginning in December 1997. In the typical consumer complaint, the DOI collects facts and determines whether the insurer's conduct toward the consumer justifies the DOI's intervention. In most cases, the DOI pursues consumer complaints only if the consumer remains actively interested in seeking relief from the insurer.

The DOI now understands clearly that it has enforcement responsibilities under AS 23.30.155(o), which make frivolous controversion referrals different from other kinds of consumer complaints. The DOI agrees that its investigation is mandatory under AS 23.30.155(o). The DOI will not re-examine a determination of frivolous controversion by the AWCB. The DOI's statutory duty is to determine whether the frivolous controversion found by the AWCB constitutes an unfair claim settlement practice in violation of AS 21.36.125, and if so, what penalties are appropriate. The DOI will conduct this investigation without regard to whether there is a consumer complainant asking to pursue the matter.

The DOI therefore made significant improvements in its handling of these cases in November 1999. Upon receipt of a referral from the AWCB for unfair or frivolous controversion under AS 23.30.155(o), the DOI will review to determine jurisdiction. Unless it lacks jurisdiction, the DOI will then review the facts of the case to look for violations of AS 21.36.125, and will determine what company records or other materials to examine for evidence of similar controversions, or of other actions that constitute unfair claims settlement practices. After required documents are received, the DOI will promptly review the materials and recommend appropriate disposition, including initiation of administrative actions seeking penalties if warranted.

The decision to initiate an administrative proceeding does not depend on the expense of the hearing. The decision concerning whether to hold a hearing is made by the director with advice of counsel, and will include consideration of the deterrent effect on unfair and deceptive acts including frivolous controversions. The director will also consider the legislative intent, as described in the report and the intended equitable balance between the interests of insurers and the protection of the public.

The DOI will develop additional procedures for handling frivolous controversion referrals from the AWCB, including guidelines for investigation and administrative procedures, as it gains experience with investigations of these cases. The DOI's goal for frivolous controversion referrals currently under investigation is to initiate administrative action if warranted, or resolve by settlement or closure, within six months. For cases received in the future, the six month time line will begin from receipt of the AWCB referral.

II. An Unfair Claims Settlement Practice Under AS 21.36.125 Means Repeated Unfair Acts.

The DOI's responsibility under AS 23.30.155(o) is to determine whether an insurer that unfairly or frivolously controverted a worker's compensation claim (as determined by the AWCB) has also committed or engaged in an unfair claims settlement practice within the meaning of AS 21.36.125.[1] This section is set out below, with emphasis added to the language that states the repetitive action requirement. **An unfair controversion determined by the AWCB does not by itself equate to an unfair claim settlement practice under AS 21.36.125 because what this statute forbids is some form of repetitive practice.** More than ten years

---

[1] Sec. 21.36.125. Unfair claim settlement practices. A person may not commit or engage in with such frequency as to indicate a practice any of the following acts or practices:

(1) misrepresent facts or policy provisions relating to coverage of an insurance policy;

(2) fail to acknowledge and act promptly upon communications regarding a claim arising under an insurance policy;

(3) fail to adopt and implement reasonable standards for prompt investigation of claims;

(4) refuse to pay a claim without a reasonable investigation of all of the available information and an explanation of the basis for denial of the claim or for an offer of compromise.settlement;

(5) fail to affirm or deny coverage of claims within a reasonable time of the completion of proof-of-loss statements;

(6) fail to attempt in good faith to make prompt and equitable settlement of claims in which liability is reasonably clear;

(7) compel insureds to litigate for recovery of amounts due under insurance policies by offering substantially less than the amounts ultimately recovered in actions brought by those insureds;

(8) attempt to make an unreasonably low settlement by reference to printed advertising matter accompanying or included in an application;

(9) attempt to settle a claim on the basis of an application that has been altered without the consent of the insured;

(10) make a claims payment without including a statement of the coverage under which the payment is made;

(11) make known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

(12) delay investigation or payment of claims by requiring submission of unnecessary or substantially repetitive claims reports and proof-of-loss forms;

(13) fail to promptly settle claims under one portion of a policy for the purpose of influencing settlements under other portions of the policy;

(14) fail to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement; or

(15) offer a form of settlement or pay a judgment in any manner prohibited by AS 21.89.030 .

ago, after extensive public comment in a regulatory proceeding, the DOI adopted a regulation interpreting the frequency requirement of this statute. The DOI's regulation proceedings, regulation and public comment, the model from which AS 21.36.125 was developed,[2] caselaw interpreting similar statutes in other states[3] and published commentary[4] all confirm the statutory interpretation that a violation of AS 21.36.125 involves repeated unfair acts in claims settlement.

The DOI developed regulations on unfair claims practices between 1984 and 1989. To interpret AS 21.36.125, the DOI proposed the following statement of purpose and definition:

> **3 AAC 26.010. PURPOSE.** The purpose of 3 AAC 26.010- 3 AAC 26.900 is to define minimum standards for the fair settlement of claims. Violation of the established standards with such frequency as to indicate a general business practice constitutes an unfair claims settlement practice or act under AS 21.36.125.
>
> **3 AAC 26.300. DEFINITIONS.** In this chapter, . . .
> (6) "frequency as to indicate a general business practice" means at least three violations of the established standards within a calendar year.

During the regulation adoption process, conducted in full compliance with the Administrative Procedures Act, there was extensive comment from the public, especially from the insurance industry. As a result, the proposed statement of purpose and definition was revised. The revised versions adopted then and remaining in effect today are the following:

3 AAC 26.010. PURPOSE. (a) The purpose of 3 AAC 26.010 - 3 AAC 26.300 is to

---

[2] AS 21.36.125 is based on a section added in 1972 to the model Unfair Trade Practices Act developed by the National Association of Insurance Commissioners (NAIC). In 1990, the NAIC amended this section and moved it to a separate model, the Unfair Claims Settlement Practices Act. The procedural history of the model indicates that the original version defined an unfair claims settlement practice as one which was committed or performed with such frequency as to indicate a general business practice. The current version also makes an act an improper claims practice if "if is committed flagrantly and in conscious disregard of this Act or any rules promulgated hereunder." See NAIC Model Regulation Service, p. 900-2, 900-10.

[3] See, for example, Mean v. Burns, 509 A. 2d 11 (Connecticut 1986) (claims under the state Unfair Insurance Practices Act require a showing of more than a single act of insurance misconduct); United States Liability Insurance Company v Johnson and Lindberg, 617 F. Supp. 968 (D.C.Minn 1985) (party asserting the violation must show that the insurer's violation was a general business practice as opposed to an inadvertent occurrence); Klaudt v. Flink, 658 P.2d 1065 (Montana 1983) (The court held (contrary to Alaska caselaw) that statute similar to AS 21.36.125 created third party cause of action, but required a showing that lack of good faith or unfair trade practice was company's general business practice).

[4] David R. Andersen, *State Unfair Insurance Trade Practices and Claim Laws: the NAIC Model,* ___ Journal of Insurance Regulation 64, at 69-70 (adapted from a 1987 presentation to the American Bar Association).

define minimum standards for claim settlement acts and practices.

(b) Violation of a standard is an unfair or deceptive act and is prohibited.

(c) Violation of a standard with such frequency as to indicate a general business practice is an unfair or deceptive practice and is prohibited.

(d) Violation of a standard by a person who knew or should have known an act or practice violated the standard is subject to an additional penalty under AS 21.36.320 (e).

3 AAC 26.300. DEFINITIONS. . . . .
(6) "frequency as to indicate a general business practice" means violation of any one standard committed on one or more percent of claims handled within a 12-month period, or the repeated violation of a single standard without reasonable explanation;

Under existing law[5] and regulations, the above interpretation is the standard the DOI must use in investigating unfair controversions as possible violations of the unfair claims settlement practices statute. The regulation answers some, but not nearly all, of the questions about the proper interpretation of AS 21.36.125. Therefore, whether any particular frivolous controversion referral will result in a finding of an unfair claims settlement practice is a decision that must be made on the basis of the individual facts presented.

The report impliedly rejects the DOI interpretation that AS 21.36.125 means repeated acts. Citing AS 21.36.320, the report says, "Authority to impose significant sanctions for a single unfair or deceptive practice rests with the Director." (page 48 and footnote 48). AS 21.36.320(d) does authorize the director to impose a penalty up to $2500 for a single violation, but this section applies to violations of many statutes besides AS 21.36.125. AS 21.36.320 establishes the penalties for all the practices forbidden in the Alaska Insurance Code's Unfair Trade Practices chapter, AS 21.36. Some of the statutes in this chapter, such as AS 21.36.030. Misrepresentation and false advertising of insurance policies, or AS 21.36.060. False financial statements, clearly do prohibit single acts. It follows that a statute authorizing penalties for the entire chapter must provide a penalty available for a single act violation. It does not follow from the availability of a single act penalty, that the "such frequency as to establish a general business practice" language of AS 21.36.125 can be ignored.

The legislature may wish to consider declaring a finding of unfair or frivolous controversion by the AWCB to be direct grounds for sanctions under the insurance code by linking directly to AS 21.36.320(d), thus bypassing AS 21.36.125 entirely. This could be accomplished by amending AS 21.36.320(d) to read:

(d) In addition to an order issued under (c) of this section, the director may, after a hearing, order restitution, assess a penalty of not more than $2,500 for each violation of this chapter <u>or each unfair or frivolous controversion determined by the Workers' Compensation Board,</u> or $25,000 for engaging in a general business practice in violation of this chapter.

It would also be necessary to drop the reference to AS 21.36.125 in AS 23.30.155(o).

III. Cooperating With The Division Of Worker's Compensation To Enforce The

[5] A currently pending bill, SB 177, would amend AS 21.36.125 to provide a single act as the standard for this statute.

Statutes.

As suggested in Recommendation No. 6 of the report (page 48), the director and staff of the DOI met with Paul Grossi, director of DWC, to discuss the coordination of efforts between these agencies, and each agency's responsibilities for enforcement of Worker's Compensation Act provisions. DOI is developing a draft memorandum of agreement to specify its responsibilities for enforcement of AS 23.30 provisions. This will cover unfair or frivolous controversion, adjuster residency requirement, and coordination of investigative resources on fraud issues, among other topics.

This discussion also identified some areas in which statutory clarifications would assist enforcement. AS 23.30.030(4) contains a requirement that each insurer provide claims facilities located in the state or by independent licensed resident adjusters with power to effect settlement in the state. This statute appears in a section entitled "Required Policy Provisions," and there is no indication how it is to be enforced if the insurer does not comply. In the past, the DOI has assumed jurisdiction and rendered a decision under this statute, but interpreted it to mean that, if a company did any resident adjusting, it could also use out-of-state adjusters. Please see In the Matter of the Petition of Firemen's Fund Insurance Co., SC 86-3, Decision and Order (August 8, 1986). The director at the time of this decision believed that there was a risk of pushing an insurer out of the Alaska market, and therefore chose not to strictly enforce the resident adjuster requirement. The DOI recommends that the legislature consider possible revision of AS 23.30.030(4) to take account of this, but at this time will enforce the statute as written.

The DOI notes that AS 23.30 contains three statutes which specifically identify duties that the division of insurance is to perform. One of these is AS 23.30.155(o), discussed above. The others are AS 23.30.025[6] and AS 23.30.030.[7] The DOI does carry out these assigned responsibilities and no issues have been raised regarding its handling of them. In addition, under the Alaska Insurance Code, the DOI is responsible for oversight of the rates and rating practices employed by insurers for use with workers' compensation insurance. The division is proud of its

---

[6] Sec. 23.30.025. Approval and coverage of insurance policies.

(a) An insurer may not enter into or issue a policy of insurance under this chapter until its policy form has been submitted to and approved by the director of the division of insurance. The director of the division of insurance may not approve the policy form of an insurance company until the company files with it the certificate of the director of the division of insurance showing that the company is authorized to transact the business of workers' compensation insurance in the state. The filing of a policy form by an insurance company with the board for approval constitutes, on the part of the company, a conclusive and unqualified acceptance of the provisions of this chapter, and an agreement by it to be bound by them.

[7] Sec 23.30.030. Required Policy Provisions

. . . .

(7) If the insurer fails or refuses to pay a final award or judgment (except during the pendency of an appeal) made against it, or its insured, or if it fails or refuses to comply with a provision of this chapter, the director of the division of insurance shall revoke the approval of the policy form, and may not accept further proofs of insurance from it until it has paid the award or judgment or has complied with the violated provision of this chapter, and has resubmitted its policy form and received the approval of the form by the director of the division of insurance.

role in helping to achieve the Legislature's goal of reducing workers' compensation insurance rates, and ensuring a robust, competitive insurance marketplace in Alaska.

Conclusion

I appreciate the attention that the Division of Legislative Audit has focused on the question of strict enforcement of unfair or frivolous controversion. The DOI has significantly overhauled its processing of these referrals in recent months, and has set a goal of resolving or initiating administrative action on all AWCB referrals of frivolous controversion decisions within six months with the benefit of experience gained by concluding cases already referred to the DOI, the director will establish additional guidelines for processing these referrals.

Sincerely,

Robert A. Lohr
Director

RAL/lvs6301.doc
cc: Deborah B. Sedwick, Commissioner
Department of Community and Economic Development

ADOI Reply to Exhibit B to Preliminary Legislative Audit

This report summarizes the current status of the four frivolous controversion investigations discussed in Exhibit B to the Preliminary Legislative Audit Report. DOI has also taken action in two recent frivolous controversion referrals not mentioned in the audit report.

AWCB Decision 97-0212. The Division of Insurance (DOI) reopened complaint number **97-00659MJ** on December 22, 1999 and required the company to produce all claims handling records for the past four years, including the reasons for each grievance submitted, not only those involving worker compensation matters. The insurer is also required to provide, for the twelve month period before the AWCB order, the records of each worker compensation claim for which a benefit was controverted, to explain the reason for each controversion or delay in payment, and to identify the ultimate resolution or disposition including the amount of interest or penalty paid. Also the insurer must submit a detailed outline of any actions taken by the insurer in the past twelve months for the purpose of avoiding unfair or frivolous controversions and/or assuring that all claims are handled in accord with Alaska's claim settlement standards. On January 19 the insurer delivered a preliminary response of over 1000 pages, but requested an extension to February 18 to produce the grievance, controversion and remaining statistical data.

AWCB Decision 98-0092. The DOI has reviewed complaint number **98-00543DB** for possible administrative action. When the complaint was opened, DOI directed the insurer to provide copies of the claim file and to respond to the DOI with an explanation for the actions which resulted in the AWCB finding. The DOI has now required the insurer, the claim adjustment company, and the local adjuster agency in Alaska to provide additional records and information regarding each company's complaint, controversion and corrective settlements standards. The required information is to be supplied to the DOI by January 31, 2000. The insurer requested and received an extension to February 21 to produce requested records. The local resident adjuster's office provided records on January 31. The DOI is following up with the claim adjustment (management) company for not meeting the January 31 deadline for producing records.

AWCB Decision 98-0095. The DOI has reviewed complaint number **98-00542GC** for possible administrative action. The DOI has required the insurer to produce the detailed complaint, controversion and corrective settlement standards information to the DOI by January 31, 2000. Three representatives of the insurer met with DOI staff on January 19 to present a preliminary report showing the number of claims and controversions in the four year period. The DOI is working on developing a sampling approach because of the extensive records involved.

AWCB Decision 99-0108. Complaint number **99-00439DB** arrived at the DOI on 11/12/99 as a second copy of the DWC notice of final determination issued on 5/12/99. The DOI sent the complaint to the insurer and directed it to provide a copy of the claim file with an explanation for the action that resulted in the AWCB finding. While the time for reply was pending another notice has been sent to the insurer requiring that it provide the detailed complaint, controversion and corrective settlements standards information to the DOI by the end of January, 2000. Documents were received on January 19 and are now being reviewed by DOI staff.

AWCB Decision 99-0210. The AWCB forwarded its decision on Pool-v-City of Wrangell on October 15, 1999. Based on advice of counsel, on December 22, 1999 the DOI director found lack of jurisdiction over the Alaska Municipal League/Joint Insurance Association (AML/JIA) under AS 21.76.020. However, when the AML/JIA was formed, its Board of Trustees agreed to comply with AS 21.36.125. The DOI director therefore requested the AML/JIA to explain its procedures for determining whether its own claims practices comply with AS 21.36.125.

AWCB Decision 99-0249. The DOI opened complaint number **99-00469DB** on December 10, 1999, based on the referral by the AWCB on December 8, 1999. The DOI directed the insurer to provide a copy of the claim file with explanation for its action and the detailed complaint, controversion and corrective settlements standards information to the DOI by the end of January 2000.

(Intentionally left blank)

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit

P.O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347
Internet e-mail address:
legaudit@legis.state.ak.us

February 17, 2000

Members of the Legislative Budget
and Audit Committee:

We have reviewed the Department of Labor and Workforce Development's (DLWD) response to our audit report. A central theme of DLWD's response involves the inadequacy of agency funding to perform the many statutory mandates imposed by the 1988 law changes. We acknowledge that past budgetary cuts contributed to the operating problems discussed in our report. Budget constraints and funding issues were enumerated in the response to 7 of the 12 recommendations. Following are a few examples:

> Page 59: *The current backlog . . . is not likely to improve given current staffing shortages and budgetary constraints.*
>
> Page 59 and 60: *If the only certainty is further cuts to general funds . . . the strategic plan becomes an exercise in futility.*
>
> Page 61: *We believe DWC meets this intent, within the constraints of process complexity and funding limitations, ...*
>
> Page 68: *Again, this would require funds for staff and computer programming to capture this information in a fully quantifiable way.*

The perspective evidenced by such comments is counter productive. By focusing entirely on budgetary constraints at almost every turn, the Division of Workers' Compensation (DWC) is dismissing out of hand opportunities that may exist to make agency operations more efficient and effective. We recommend that DLWD evaluate the recommendations and determine which would have the highest return in the shortest amount of time. We acknowledge DLWD is most familiar with agency internal resources and capabilities, and employs individuals with intimate knowledge of Alaska's workers' compensation program. We are confident that this expertise can be tapped to take action on the issues discussed in the report.

In addition to our perspective on the tenor of the agency's response, we also offer comments on specific agency responses to the following recommendations:

Recommendation No. 4

DWC's director should take proactive measures to identify and monitor uninsured employers.

DLWD response at page 62 asserts the report claims 31,000 employers were identified as potentially uninsured. DLWD objects to such a statement. However, an attentive review of the report reveals the 31,000 is a reference to potential employers, not uninsured employers. Furthermore, the 450 employer responses DLWD refers to were reviewed before the conclusion of the audit, and the insured status of over 900 employers remained unresolved.

In the report, we conclude DWC does not maintain adequate documentation related to uninsured employers. DLWD argues that the source of uninsured employer information was not official DWC records. When specifically asked about other official records, DLWD did not produce any alternative sources of data and declined to state exactly what, if anything, the agency considered to be official records related to monitoring uninsured employers.

DLWD contends the report makes an *"erroneous and misleading"* statement that DWC has not sought prosecution against uninsured employers in recent years. As identified in footnote 17 of the report, the successful prosecution referred to in the agency's response was a result of the Division of Labor Standards and Safety's contractor licensing program. Other than coordination with DWC, such as confirming the employer had not filed proof of insurance, the allegations were investigated and charges were filed independently of DWC monitoring efforts.

Recommendation No. 7

DWC's director should improve controls over review of insurers' annual reports.

Functioning as the administrative arm of the Alaska Workers' Compensation Board (AWCB), the division receives, and should implement policy and procedure directives issued by the board. AWCB has issued bulletins directing the implementation of some effective internal control procedures. However, DWC has not followed or implemented these directives.

On page 64, the DLWD response states *"DWC requires annual report data to be submitted in the board-prescribed format."* Although annual report data is submitted either electronically or on paper, DWC has not enforced AWCB directives that require reports to be filed on the annual report **form** prescribed by the board. In essence, such a practice has resulted, in at least one instance, shifting the burden and cost of preparing annual reports to the State.

On page 64, the DLWD response states *"DWC does acknowledge that* [ongoing] *improvement in data systems and procedures will contribute to improving the efficiency of the annual report submission process."* In our view, adopting procedures consistent with the previously issued AWCB directives would significantly contribute to improving the efficiency of the annual reporting process.

DLWD attributes the lack of independent verification of annual report data to reasons such as insurers or adjusters not reporting the data. However, compensation reports request this data. DWC has the authority to require insurers and adjusters to complete all sections of a report. Furthermore, DWC should consider designing forms that only captures relevant and utilized information.

The DLWD response asserts there was insufficient information to address the recommendation that annual report summary amounts be reconciled to the workers' compensation data system. DWC's annual report summary data indicated insurer code "093," which is assigned to uninsured employers, reported $14,763 in total claim-related expenditures for 1997. However, when requested to provide the annual reports supporting the figures, DWC said no reports were filed by uninsured employers for the year. DWC could not provide any documentation, nor a reasonable explanation as to why the annual report summary contained the erroneous data.

Furthermore, our review concluded a reconciliation of summary schedule compensation types to the workers' compensation system was not performed. DWC could not demonstrate that all compensation types were properly accounted for, that timeliness calculations for waiving penalties were accurate, or that potential resulting penalties were ultimately assessed and collected. In the absence of such controls, there is insufficient assurance that all penalties required by statute are assessed.

In DLWD's response, on page 64, the agency asserts *"reasonable exception report variances are established and used."* We acknowledge that a 10% variance between the suspense file and the extract file is permissible under state regulations. However, given the accuracy of computer processing, a 10% variance seems to us to be excessive. As discussed on page 32 of the report, the potential magnitude of this variance level is underscored. Specifically, DWC would be unaware of significant underpayments statutorily payable to the Second Injury Fund (SIF), even if insurers were to remit only 90% of total assessments due.

The DLWD response, on page 65, states *"DWC acknowledges that the use of codes resulted in some duplications and errors in the old system."* We understand the annual report component of the new workers' compensation system is still not complete. However, the inherent potential for human error will continue even in the new system. As an example, just as DWC inadvertently assigned the same insurer code to multiple insurers, and multiple insurers the same insurer code, a potential exists to make similar mistakes. DWC should establish internal controls to minimize the potential frequency and magnitude of such errors.

Recommendation No. 8

The DWC's director should adopt a methodology for assessing compensation report penalties that is consistent with statute.

DLWD's response at page 65 states with regard to interpretation of AS 23.30.155(m) that *"The auditors ... raise a valid question of interpretation for which DWC will seek clarification."* We are encouraged that DWC will seek clarification on this issue.

However, with regard to the second part of this recommendation, DWC states *"the audit may be correct in its interpretation of what constitutes a compensation report."* We are not questioning DWC's definition of a compensation report, but rather the methodology DWC uses to calculate the percentage of reports considered late.

Each discrete compensation report may contain several compensation types. DWC is using inherently different units of measure in the equation used to determine the percentage of late reports. This calculation is critical in determining if penalties should be waived.

To determine the percentage of late reports, DWC is dividing the number of late discrete reports by the total number of compensation types listed on the discrete reports. Simply stated, once DWC has defined what the agency considers to be a "report" (that is, discrete reports or compensation types listed on each discrete report), the same unit of measure should be used to calculate the percentage. See inset at right.

Methodologies to Determine the Percentage of Late Compensation Reports

For each insurer, DWC should use:

$$\frac{\text{Late } \textbf{discrete reports}}{\text{Total } \textbf{discrete reports}}$$

Or

$$\frac{\text{Late } \textbf{compensation types} \text{ reported}}{\text{Total } \textbf{compensation types} \text{ reported}}$$

However, DWC inappropriately uses a different basis for the numerator than for the denominator as follows:

$$\frac{\text{Late } \textbf{discrete reports}}{\text{Total } \textbf{compensation types} \text{ reported}}$$

As stated in the report on page 50, use of the inflated count of compensation types per discrete report as the percentage base instead of the count of discrete reports results in a smaller calculated amount of late compensation report penalties being assessed on insurers. Accordingly, we disagree with DWC's assertion that *"this would effect the same count result as our current interpretation, but would require additional staff time to enter data because of the increase in forms filed."* DWC's current methodology precludes an accurate computation.

Recommendation No. 9

The director of the Division of Workers' Compensation should correct inappropriate administrative and accounting practices.

The DLWD response on page 66 asserts the audit report fails to cite AS 23.30.040(h), which requires administration expenses related to the SIF to be expended from the fund. Contrary to DLWD's assertion, the report cites the requirement in footnote 30, on page 34.

Although administering the SIF requires the workers' compensation database and information system, DLWD has not produced any supporting evidence to reasonably conclude data entry attributable to the SIF represents a workload equivalent to one full time position.

To avoid the appearance that DWC is in violation of AS 23.30.040(a), we reiterate the recommendation and assert that charges to the SIF should be supported by adequate documentation.

Recommendation No. 10

The director of DWC should resolve the legality of "supplemental" benefits and rectify internal control weaknesses over such expenditures.

We have reviewed DLWD's response and reaffirm our position concerning this recommendation. In the response, on page 67, DLWD portrays the likelihood of obtaining documentation to support the expenditures as remote. We are concerned over the lack of documentation DWC maintains to support continued expenditures, which over the years represents millions of dollars. In short, DWC has repeatedly submitted budget requests and has obtained legislative appropriations without adequate support.

The legislature intended these funds strictly for issuing supplemental benefits under AS 23.30.172, and has allocated the appropriations accordingly. However, DLWD has transferred funds earmarked for issuing supplemental benefits to augment DWC operations. Specifically, during the last three years, DLWD shifted $96,500 of these appropriations for other purposes including travel, capital outlay, supplies, and other services or charges. At a minimum, the FY 01 budget request should be reduced by $48,000 below what was appropriated in FY 00.

Recommendation No. 12

DWC's director should seek legal clarification with regard to methodology for assessing annual report penalties.

On page 54 of our audit report, we recommended DWC's director seek legal clarification with regard to the methodology for assessing annual report penalties. The recommendation

arises from differing interpretations of statute. Alaska statutes reads, in part "*the **insurer or adjuster** shall file a verified annual report on a **form prescribed by the board.**"* [Emphasis added.]

In our opinion, there is ambiguity in that the statute allows annual reports to be filed by insurer or adjuster on a form prescribed by the board. However, the form prescribed by the board in AWCB bulletins requires a discrete annual report to be submitted for each insurer code.

DLWD's response states that the agency does not concur with this recommendation. DLWD states that the AWCB bulletins are advisory in nature and therefore DWC assesses penalties on the party that submits the annual report, whether it is the insurer or the adjuster. DWC states the agency has interpreted this within the latitude allowed by statute to avoid litigation on the issue.

In our view, lack of guidelines allows adjusters or insurers to manipulate the amount of penalties assessed. As such, well-informed adjusters may choose to submit an annual report on behalf of multiple insurers to significantly reduce exposure to penalties. As discussed in the Background Information section of this report, Chapter 79, SLA 1988, section 1(e) states that it was the intent of the legislature in amending AS 23.30.155 that DWC **strictly enforce** the reporting requirements and penalties for noncompliance. DWC's current practice and accompanying rationale is not consistent with this intent. If indeed the AWCB bulletins are only advisory in nature, we suggest DLWD clarify this statute in regulation.

Pat Davidson

Pat Davidson, CPA
Legislative Auditor

SB

10

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: SB 10
() Publish Date:

Revision Date/Time (Note if correction): 01/19/2001 3:30pm
Dept. Affected: DCED
Title: An Act extending the termination date of the Board of Public Accountancy.
BRU: Occupational Licensing
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)

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

Full-time						
Part-time						
Temporary						

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

The bill extends the Board of Public Accountancy 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 3:30pm
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

(Rev 11/2000 OMB)

ANALYSIS: (continued)
SB 10: An Act extending the termination date of the Board of Public Accountancy
Page 2 of 2

	FY 1999 Expenditures	FY 2000 Expenditures
Personal Services:		
Direct	32,189.06	42,786.55
Indirect	28,317.15	23,533.78
Travel:		
Direct	14,880.13	13,262.86
Indirect	400.01	223.89
Contractual Services:		
Direct	49,354.63	51,956.93
Indirect	15,818.07	15,629.16
Supplies:		
Direct	0.35	57.02
Indirect	1,999.85	1,335.18
Equipment		
Direct	0.00	0.00
Indirect	1,428.07	589.29
TOTAL:	**144,387.32**	**149,374.66**
REVENUE:	**63,117.59**	**279,515.14**

Alaska State Legislature

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 Q

Senate Bill 10 **"An Act extending the termination date of the Board of Public Accountancy."**

Sponsor: **Senator Gene Therriault**

Sponsor Statement

Under AS 08.04.010 the State Board of Public Accountancy regulates the professions of certified public accountants and public accountants by ensuring that the requirements laid out for licensure are met and adhered to.

The Board consists of seven members appointed by the governor. Each member shall be a resident of this state for at least one year. Five members shall be certified public accountants or public accountants and two members shall be public members.

The regulation and licensing of qualified certified public accountants safeguards the public by ensuring the competence and integrity of those who represent themselves as being certified public accountants.

The State Board of Public Accountancy 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 10 will extend the Board for another four years.

Email: Senator_Gene_Therriault@legis.state.ak.us

ALASKA SOCIETY OF CPAs
341 W. TUDOR #105
ANCHORAGE, AK 99503
(907) 562-4334
800-478-4334
FAX (907) 562-4025

January 19, 2001

Senator Gene Therriault
State Capitol
Juneau, AK 99801-1182

Dear Senator Therriault:

As the current president of the Alaska Society of Certified Public Accountants, I am writing to you in support of SB 10 which extends the termination date of the State Board of Public Accountancy to June 30, 2005. This board is not only important to certified public accountants' throughout Alaska, but it is important to all Alaskans. The public has a vested interest in the reliability of financial information and that this financial information is presently fairly. The board meets the public interest by making sure that not only new applicants for licensure meet certain standards, but all of those licensed continue to meet standards in professional conduct and continuing education. The Board of Directors of the Alaska Society of Certified Public Accountants has asked me to contact you in support of SB 10.

If we can be of any further assistance, please don't hesitate to contact us.

Sincerely,

Michael M. Kelliher

Michael M. Kelliher, CPA
President

Walsh
Kelliher
&Sharp

A Professional
Corporation

Certified Public
Accountants
Advisors
to Business

Post Office Box 74510

January 19, 2001

Senator Gene Therriault
State Capitol
Juneau, AK 99801-1182

Dear Senator Therriault:

I am writing you in support of SB 10 which extends the termination date of the State Board of Public Accountancy to June 2005. I believe this board continues to serve the public interest by ensuring those licensed as Certified Public Accountants meet the qualifications specified in the statutes and regulations.

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

Best regards,

Mike

Michael M. Kelliher, CPA

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: 1/23/01

Labor and Commerce Committee considered SENATE BILL NO. 10

"An Act extending the termination date of the Board of Public Accountancy."

and recommends:

[ ] be **replaced** with____ **CS** _____ (_____)

[ ] 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#
DCED	1/9		✓	1

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

[ ] **APPROPRIATION - no fiscal note**

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
Orbin D. Liman	✓			
[illegible]	✓			
[illegible]	✓			
Betty J. Davis	✓			
CHAIR: [illegible]	✓			

Official Business

COMMITTEE: L & C

DATE: 1-23-01

Subject of meeting: SB 10-

SIGN-IN

PLEASE PRINT!

NAME	ADDRESS (MAILING) & (ZIP)	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
Catherine Reardon	Division of Occupational Licensing PO 110806 Juneau 99811	465-3538	DCED	Yes

Audit Report

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT
STATE BOARD OF ACCOUNTANCY
SUNSET REVIEW

October 20, 2000

Audit Control Number:

08-20000-00

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.

BUDGET AND AUDIT COMMITTEE

Representative Gail Phillips, Chair
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
Juneau, Alaska 99811-3300

(907) 465-3830, Juneau
(907) 561-1445, Anchorage
(907) 465-2347, Juneau Fax

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit

P.O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347
Internet e-mail address:
legaudit@legis.state.ak.us

October 20, 2000

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 COMMUNITY AND
ECONOMIC DEVELOPMENT
STATE BOARD OF ACCOUNTANCY
SUNSET REVIEW

October 20, 2000

Audit Control Number

08-20000-00

This audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1). Alaska Statute 44.66.050(c) lists criteria to be used to assess the demonstrated public need for a given board, commission, agency, or program subject to the sunset review process. Currently under AS 08.03.010(c)(1), the Board of Public Accountancy is scheduled to terminate on June 30, 2001. The board would be allowed one year in which to conclude its administrative affairs.

Article IX, Section 14 of the Alaska Constitution, requires that the position of Legislative Auditor be filled by a certified public accountant (CPA). Likewise, the professional staff at the Division of Legislative Audit are either licensed or are pursuing licensure as CPAs. Since the board is responsible for licensing and regulating CPAs, our agency may be perceived as not being independent. As required by generally accepted government auditing standards, we are disclosing this perceived lack of independence.

In our opinion, the Board of Public Accountancy should be reestablished. The regulation and licensure of public accountants is necessary to the protection of the public's welfare. We recommend the legislature extend the Board of Public Accountancy until June 30, 2005.

Except for the issue related to the independence standard discussed above, 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 set out on page one of this report.

Pat Davidson

Pat Davidson, CPA
Legislative Auditor

TABLE OF CONTENTS

OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Public Accountancy. As required by AS 44.66.050(a), the committee of reference shall consider this report during the legislative oversight process to determine whether the board should be reestablished. Currently, under AS 08.03.010(c)(1) the board will terminate on June 30, 2001, and will have one year from that date to conclude its affairs.

Objectives

There are two central, interrelated, objectives of our report. They are:

1. To determine if the termination date of the board should be extended.

2. To determine if the board is operating in the public's interest. The assessment of the operations and performance of the board, was based on criteria set out in AS 44.66.050(c). Criteria set out in this statute relate to the determination of a demonstrated public need for the board.

Scope and Methodology

Another auditor at our direction, and under our supervision, conducted a majority of this review. The auditor is subject to the licensing and regulatory oversight of the Board of Public Accountancy. We are satisfied that the contractor's work was competent and sufficient. However, the auditor, as is our agency,[1] is not independent as to the licensing and oversight of the board. Government audit standards require that any time the auditor is not independent, either in reality or perception, the *"...impairment should be reported in the scope section of the audit report."* This lack of perceived independence is so noted.

Our audit reviewed the operations and activities of the Board of Public Accountancy for the period of FY 98 through FY 00.

During the course of our examination, we reviewed and evaluated the following:

1. Compliance with statutes and regulations related to the certification of public accountants. Our evaluation addressed considerations of applications, testing of candidates, and continuing education necessary for an individual to maintain his/her license in good standing.

2. Minutes of meetings of the Board of Public Accountancy.

[1] Article IX, Section 14 of the Alaska Constitution, requires that the position of Legislative Auditor be filled by a certified public accountant (CPA). Likewise, the professional staff at the Division of Legislative Audit are either licensed or are pursuing licensure as CPAs. Since the board is responsible for licensing and regulating CPAs, our agency may be perceived as not being independent, under the requirements of generally accepted government auditing standards.

3. Annual reports issued by the board.

4. Complaints filed with the Division of Occupational Licensing and the Department of Law.

5. Office of the Ombudsman closed case file.

6. Other documents deemed pertinent.

We also conducted interviews with employees of the Division of Occupational Licensing within the Department of Community and Economic Development, and the chair of the Board of Public Accountancy.

ORGANIZATION AND FUNCTION

The Board of Public Accountancy is established under the authority of AS 08.04.010. The seven member board is appointed by the governor to four-year staggered terms.

Five of the members must be certified public accountants or public accountants currently licensed in the State of Alaska. Two members represent the general public. See the listing to the right for current board members.

Board of Public Accountancy
as of October 1, 2000

Professional Members

Dean W. Nelson, Chair, CPA
Marjorie J. Kaiser, CPA
Steven R. Tarola, CPA
Sandra R. Wilson, CPA
Linda Thomas, CPA

Public Members

Kathleen B. Shreiber
Lottie C. Fleeks

The board is responsible for safeguarding the public interest by ensuring the competence and integrity of those who hold themselves out to the public as certified public accountants.

The board evaluates the qualifications of candidates, administers examinations, issues certificates and licenses to practice, promulgates rules of professional conduct, and takes disciplinary action.

The board is charged by statute with granting a certificate of "Certified Public Accountant" (CPA) to individuals at least 19 years of age and of good moral character that:

1. have satisfied the applicable education requirements;
2. have passed written examination requirements; and
3. have provided evidence of satisfactory work experience.

Department of Community and Economic Development, Division of Occupational Licensing

The Department of Community and Economic Development, Division of Occupational Licensing provides administrative and investigative assistance to the Board of Public Accountancy. Administrative assistance includes budgetary services and functions such as collecting fees, maintaining files, receiving and issuing application forms, and publishing notices of examinations and meetings.

Alaska Statute 08.01.065, mandates the department, with the concurrence of the board, adopt regulations to establish the amount and manner of payment of fees for applications, examinations, licenses, registration, permits, investigations, and all other fees as appropriate for the occupations covered by the statute.

Alaska Statute 08.01.087 empowers the Division of Occupational Licensing with the authority to conduct an investigation on its own initiative or in response to a complaint.

(Intentionally left blank)

REPORT CONCLUSIONS

In our opinion, the Board of Public Accountancy is operating in an efficient and effective manner and should continue to regulate certified public accountants and public accountants. We believe the board is safeguarding the public interest by ensuring the competence and integrity of those who hold themselves out to the public as certified public accountants or public accountants.

The Board of Public Accountancy has been found to serve a public purpose and has demonstrated an ability to conduct its business in a satisfactory manner. The board continues to propose changes to regulations to improve the effectiveness of the board and ensure that certified public accountants and public accountants licensed in the State of Alaska are competent and capable of maintaining the integrity of the profession.

Alaska Statute 08.03.010(c)(1) requires the Board of Public Accountancy be terminated on June 30, 2001. Under AS 08.03.020, the board has a one-year period to administratively conclude its affairs. We recommend the legislature extend the board's termination date to June 30, 2005.

(Intentionally left blank)

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Board of Public Accountancy should revoke regulations specifying the continuing education requirements for practitioners who "vouch" for the experience of license applicants.

In order to be licensed as a certified public accountant (CPA) an applicant must work a minimum of 500 hours performing what is termed "the attest function." The attest function refers to a certain type of work a CPA must do in order to issue a formal opinion on a given set of financial statements. Such work is a specialty of CPAs, distinct from other types of work a CPA may do such as tax preparation, bookkeeping, and management advisory services. An applicant must work these hours under the direct supervision of an individual already licensed as a CPA.

Making distinctions between CPAs based on continuing education requirements is faulty

In November 1996, the board amended its regulations that placed additional requirements on the supervising CPA. The board adopted 12 AAC 04.183(e) which stated

> *Effective January 1, 1998, the board will only consider an applicant's work performing the attest function if the applicant gained the experience under the* ***direct supervision of a certified public accountant who has completed a minimum of 24 hours of auditing and accounting continuing education*** *during the calendar year immediately before supervising the applicant and during each calendar year after 1996 that the certified public accountant supervised the applicant.* [Emphasis added.]

By adopting such a requirement the board effectively makes a distinction between licensed CPAs based on the nature and extent of their continuing professional education (CPE). Adoption of this regulation suggests that only practicing CPAs that have taken CPE related to auditing and accounting are permitted to act as supervisor and, accordingly, vouch for the hours worked by a CPA applicant performing the attest function. The board seems to be saying that it cannot rely on the "quality" of the attest function hours unless the supervising CPA has the right kind of continuing education hours.

By extension, if a CPA isn't qualified to supervise a CPA candidate, it implies the board should not allow such a CPA to offer their services to the public.

Reliance should be placed on quality control requirements for validity of attest experience

There are better alternative controls in place to assure the quality of an applicant's attest function hours. Since attest function hours are those related to the issuance of a formal opinion on a set of financial statements, the work of the supervising CPA, who vouches for the applicant, must satisfy other quality control regulations that must be followed by professionals issuing financial statement opinions.

Currently, a CPA must indicate on their license renewal application whether they *"issued a report on audited or reviewed financial statements"* – that is, performed the attest function -- over the previous two years. If such a report was issued, then the CPA must certify that, within the last three years they had *"undergone a quality review that is acceptable to the board."* The board then goes on to specify in regulation its requirements for an acceptable quality review. Accordingly, since all attest function experience was presumably gained on work subject to these quality review requirements, it seems this process provides more assurance such experience was appropriate and of sufficient quality than the nature of the supervisor's CPE.

We recommend that the Board of Public Accountancy revoke this licensing regulation, and place more reliance on the quality control program requirement that it has put in place for engagements being worked on by the supervising CPAs who are vouching for the attest function experience of license applicants.

Recommendation No. 2

The Board of Public Accountancy should exercise due care in licensing professionals.

Current state regulation at 12 AAC 04.181(a) and (b) requires that an applicant applying for license as a CPA earn at least a minimum number of what are termed "experience points." These points are awarded based on the applicant's educational and work experience background. Work related experience points must be earned by performing the attest function under the direct supervision of a CPA for the entire experience period.

An applicant was issued a license in January 1999 based on the work experience in a public accounting firm working directly under the supervision of a certified public accountant for the period of January 2, 1996 through January 2, 1999. The accountant that was named as the applicant's direct supervisor for the period, however, was not licensed as a CPA until October 1998. Under the requirements of 12 AAC 04.181 the applicant that applied for licensure is not qualified for licensure since the supervisor only had two months of experience as a CPA.

While the individual who applied for licensure in this instance may be qualified for licensure under the statutes and regulations of the State of Alaska, that qualification was not evident upon review of the applicant's file. We recommend that the Board of Public Accountancy revise its procedures related to issuing licenses to ensure that the supervising official

maintained a current CPA license for the entire supervisory period. This will ensure that future licenses are issued appropriately and in accordance with regulatory requirements.

Recommendation No. 3

The Office of the Governor should ensure that appointments to the board are made in a timely manner.

The Board of Public Accountancy is a seven-member board with two public members and five licensed CPAs appointed by the Office of the Governor.

State law requires vacancies on the board be filled within 60 days. Over the three-year period covered by this review, there were two vacancies that did not receive appointments for over nine months.

We recommend the Office of the Governor fill vacancies in accordance with statute.

(Intentionally left blank)

ANALYSIS OF PUBLIC NEED

The following analysis of board activities relate to the "public need factors" set out in the "sunset" review law, AS 44.66.050. The ***italicized, shaded, and bold face phrases*** are taken from AS 44.66.050 (c) (1) – (9). These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

Determine the extent to which the board, commissions, or program has operated in the public interest.

The Board of Public Accountancy has operated in the public interest. The board adopted or revised regulations regarding quality review of CPAs offering audit and review attestation services, cheating on the Uniform CPA examination, and continuing education requirements for applicants renewing their existing licenses.

The board has served the public by adopting quality review regulations[2] similar to those of other states. These are regulations the board originally considered in 1991 and tabled at that time due to logistics of implementation and concern from the professional community of the cost of implementation.

These regulations provide more assurance that Certified Public Accountants practicing in the State of Alaska and issuing attestation reports, independent audits and reviews, on financial statements are providing their audit and review services in accordance with American Institute of Certified Public Accountants (AICPA) guidelines regarding attestation services. The quality review program requires certified public accountants, who are providing audit and review services, to be reviewed in accordance with the American Institute of Certified Public Accountants standards regarding quality review audits.

In protecting the welfare of the public and ensuring a high level of professionalism, competence and moral character the board has served the public through its examination and licensing of qualified applicants. The board changed regulations involving applicants who are caught cheating on the Uniform CPA examination.[3]

The board has protected the public by ensuring that the State's practicing certified public accountants meet the continuing education requirements. The board adopted changes in the current regulations mandating that professionals obtain an additional eight hours of

---

[2] Alaska Statute 08.04.426 states that the board may by regulation require, on either a uniform or random basis, as a condition to issuance and renewal of permits under this chapter, that applicants undergo a quality review conducted in a manner the board may specify.

[3] State regulation 12 AAC 04.235 states that if the board determines that an applicant has cheated on or breached security provisions of the examination for certified public accountant, the board will:

(1) void the examination score;
(2) prohibit the candidate from sitting for future examination;
(3) refuse to issue a certificate or permit to that applicant based on that examination score; and
(4) revoke or suspend a certificate or permit issued to that applicant based on that examination score.

continuing education when they fail to meet their continuing education requirements on the renewal date of their license.

Determine the extent to which the operations of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices, which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

In 1998, legislation was adopted allowing the board to adopt additional disciplinary regulations for acts of cheating and other unauthorized acts related to the Uniform Certified Public Accountant Examination. This legislation ensures the continued ethical and moral character of future applicants applying for licensure in the State of Alaska.

In 1997, legislation was adopted establishing quality review requirements which became effective January 1, 1998. This legislation ensured that CPAs practicing in the State and issuing attestation reports on financial statements are providing their audit and review services in accordance with AICPA guidelines regarding attestation services. The quality review program requires CPAs, who are providing audit and review services, to be audited themselves in accordance with standards issued by AICPA.

Determine the extent to which the board, commission, or agency has recommended statutory changes that are generally of benefit to the public interest.

The board supported legislation, which was introduced in 1997 that expands the mandate of the board to effect disciplinary action on applicants suspected of cheating on the Uniform CPA examination. The legislation is consistent with the current statute for public accountancy and allows the board to regulate the profession with the same consistency and in the same manner in which it currently oversees the other license-holders and examination applicants under its purview. The legislation was adopted by the legislature in 1998.

The board supported additional legislation that was originally introduced in 1991 allowing the board to adopt quality review regulations. Other jurisdictions have similar quality review standards making this legislation consistent with not only current statutes and regulations, but other jurisdictions' statutes and regulations as well. These statutory provisions were adopted by the legislature in 1997.

Determine the extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of services, economy of service, and availability of services that it has provided.

The location, date and time of upcoming board meetings and notices of proposed changes in regulations are published in the *Anchorage Daily News*, the *Fairbanks Daily News-Miner* and the *Juneau Empire*. The board's meeting agenda sets aside adequate time for the board to take public comment. Minutes of the board's meetings reflect public participation throughout the meeting. Proposed regulations are circulated to those affected by the proposed regulations

through professional trade journals, public notice advertisement, or direct mail correspondence from the Division of Occupational Licensing.

On one occasion the board failed to provide proper notice of a teleconference meeting. While the Division of Occupational Licensing initiated the purchase for advertising on November 22, 1999 (Monday) for a meeting being held on November 30, 1999 (Tuesday), the order did not arrive at any of the local newspapers in time to be published until November 27, 1999 (Saturday). This provided public notice of only one day. This is not sufficient under AS 08.01.050 or internal Division of Occupational Licensing policy. Additionally, there is only a record of the advertising in one publication. Publications of the notice should occur in all three major population centers of the State.

While the board properly noticed proposed changes in quality review standards for CPAs licensed in the State, many of the affected license holders did not receive notice of the formal regulatory change. As a result, the board issued a significant number of memorandums of agreement allowing practitioners to renew their licenses on the condition they meet the requirements of the regulations within a specified period.

Determine the extent to which the board has encouraged public participation in the making of its regulations and decisions.

Public notice of proposed regulations are published in major newspapers. Meetings, on an overall basis, are adequately advertised, and time is set aside for public testimony.

Major proposed regulation changes were circulated throughout the professional community by either direct response mailing to the affected license holders, or providing the proposed changes to the State's accounting organizations. Feedback resulted in changes to the proposed regulations addressing the profession's concerns. The Alaska Society of Certified Public Accountants has requested board support for legislation sought by the society.

Determine the efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved.

During the past three years (FY 98 through FY 00) the Division of Occupational Licensing opened up 28 investigative cases involving activities regulated by the Board of Public Accountancy. Of these 28 investigations, the division has completed and closed 27 cases.

Eight of these 27 cases were resolved by the division without involvement by the board – through the use of a warning letter, 4 instances of voluntary compliance, and 3 determinations of no violation.

For the 19 cases requiring board action, 15 involved the necessity of the practitioner involved to obtain a qualified peer review. The board closed 14 cases by directing the license holder to obtain a qualified peer review as required by regulation, and in the other instance determined that a peer review requirement was not applicable. In the other four cases the board: reinstated two licenses; denied one individual appealing the administrative denial of their license; and directed one licensee to obtain necessary continuing education while fining and reprimanding them. No licenses were revoked, suspended, or placed on probation.

Determine the extent to which the board regulates entry into an occupation or profession and whether it has presented qualified applicants to serve the public.

Listed below is a summary of new licenses and permits issued by the board for the period under review.

New Licenses and Permits Issued (Exclusive of Renewals)	FY 98	FY 99	FY 00	Total	Active as of June 30, 2000
Certified Public Accountants	48	49	51	148	766
Resident Partnerships, Corporations and Limited Liability Companies	5	7	8	20	85
Non-resident General Permits	3	5	4	12	11

Overall the application process for licensing appears reasonable and appropriate. The licensing process is neither unduly restrictive nor too lax. Continuing education is required and adequately monitored by the board to promote a high level of quality performance and to help ensure the integrity of the profession.

Each applicant is required to satisfy the requirements for licensing. Board meeting minutes reflect that the board considers each application and verifies the licensing requirements are satisfied prior to issuing a license.

Determine the extent to which state personnel practices, including affirmative action requirements, have been complied with by the board to its own activities and the area of activity or interest.

The Office of the Ombudsman received no complaints regarding the Division of Occupational Licensing or the Board of Public Accountancy. We did not find any evidence that the board was not complying with the state personnel practices, including affirmative action in qualifying applicants. In no instances has the board denied an applicant a license based on personal attributes.

Determine the extent to which statutory, regulatory, budgeting or other changes are necessary to enable the board to better serve the interest of the public and to comply with the factors enumerated in this subsection.

The board continues to recognize the need to evaluate the Americans with Disabilities Act, to determine its impact on the profession. The board will consider whether any statutory or regulatory changes are needed to ensure compliance.

The board, with the assistance of the American Institute of Certified Public Accountants and the National Association of State Boards of Accountancy (NASBA), recognized the need to evaluate and explore implementation of a "substantial equivalency" concept to simplify the licensing of applicants from other jurisdictions by reciprocity. This will allow certified public accountants to practice across state lines in states that meet Uniform Accountancy Act Standards.

The board recognized the need to evaluate standards to ensure that applicants for licensure are qualified and distinguish between qualification standards required of both public and non-public accountants. The board continues to evaluate the existence of business entities that provide public accounting services but are not CPA firms. The board may propose future regulations as needed based upon the actions of other state boards of accountancy and national organizations.

Nationally, the public accounting profession continually considers issues that may have an impact on industry standards. The board continues to be active in addressing these issues ensuring that certified public accountants licensed in the State of Alaska are represented.

(Intentionally left blank)

Tony Knowles, Governor

Alaska Department of Community and Economic Development

Division of Occupational Licensing
P.O. Box 110806, Juneau, AK 99811-0806
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 (#08-20000-00). We concur that the Board of Public Accountancy should be continued through June 30, 2005.

Our comments regarding recommendations in the audit are as follows:

Recommendation No. 1. Board of Public Accountancy should revoke regulations specifying the continuing education requirements for practitioners who "vouch" for the experience of license applicants.

Through the chair, the board has stated that the intent of the regulation was to ensure that those who supervised candidates claiming attest hours were, in fact, currently informed of appropriate practices and standards. However, the board does understand the basic issue of the audit recommendation. The board chair stated the board is in the process of reviewing all forms for licensing and renewal, including the processes related thereto and will most certainly consider this recommendation as part of that process review.

Recommendation No. 2. The Board of Public Accountancy should exercise due care in licensing professionals.

The division and the board believe the board has exercised due care. The Board has, in fact, reviewed all candidates' applications using checklists and a second board member has reviewed the work. However, to improve the process, the board chair has stated the board will modify the application form to request of the Supervisory CPA the date of issuance of his or her license.

Recommendation No. 3. The Office of the Governor should ensure that appointments to the board are made in a timely manner.

Through its chair, the board has stated that the board will facilitate in any way possible in assisting the Office of the Governor in finding qualified board members, as need arises in the future.

Sincerely,

Catherine Reardon
Director

SB

30

LEGISLATIVE ACTION CALL

ALASKA STATE CHAMBER OF COMMERCE

Date: March 28, 2001

To: ASCC Members

From: Pamela La Bolle, President

Re: HB 58/SB 30 - Unemployment Compensation Benefits

Legislation has been introduced to increase the maximum weekly benefit amount for unemployment compensation and to change the manner in which the state sets the maximum weekly benefit amount. House Bill 58 is presently being heard by the House Labor and Commerce Committee, and the Legislators need to know how you, as employers of Alaska's workforce, would be impacted by the proposed legislation.

ACTION: After reviewing the background information, please answer the questions and fax your responses back to ASCC's Juneau office at (907) 463-5515 or to the House Labor and Commerce Committee (Rep. Lisa Murkowski, Chairman) at (907) 465-2293. If you wish to comment further to the committee, Chairman Murkowski's e-mail address is representative_lisa_murkowski@legis.state.ak.us

Background: The purpose of the Unemployment Compensation program is to replace a portion of lost wages for workers who are involuntarily unemployed, while they seek employment. The current maximum weekly benefit amount (MWBA) is $248, or 38.8% of Alaska's average weekly wage. (Alaska is one of 12 states, however, that pay an additional weekly benefit allowance for dependent children). Increases in the benefit amount are presently determined by the Legislature, and the last increase was in 1997.

House Bill 58 and Senate Bill 30 (Introduced at the request of the Governor)

- *Raising the Maximum Weekly Benefit Amount*

The Alaska Department of Labor proposes to increase the maximum weekly benefit amount (MWBA) to $320, or 50% of Alaska's average weekly wage. This would occur in two phases; the first phase would raise the MWBA from $248 to $284, with a cost of $5 million dollars. The second increase in the MWBA would be from $284 to $320, with an additional $5 million dollar cost. Employers would begin to pay for the increase in tax year 2003, when the average employer tax rate would increase from 2.08% to 2.18%, and then increase again to 2.28% by 2005. The average employee tax rate would remain at the present 0.54% in the first phase and increase to 0.57% by the 2005 tax year.

- *Establishing a new methodology for setting the maximum weekly benefit amount*

The Alaska Department of Labor proposes that rather than having the Legislature establish the MWBA, it would be set automatically each year at 50% of Alaska's average weekly wage for that year.

ALASKA STATE CHAMBER OF COMMERCE

FAX Poll on Unemployment Compensation Benefits

Your input is needed. Please return by FAX to ASCC at (907) 463-5515 or to Chairman Lisa Murkowski of the House Labor and Commerce Committee at (907) 465-2293.

1. Should the maximum weekly benefit amount for unemployment compensation be increased from the present amount of $248 and, if so, by how much?

A. Yes, it should be increased to the proposed amount of $284, an increase of 14.5%. 12%

B. Yes, it should be increased to the proposed amount of $320, an increase of 29%. 2%

C. Yes, but increased by a lesser percentage than either of the proposed increases. 26%

D. No, it should not be increased at this time. 60%

2. Should the Legislature continue to be responsible for determining the maximum weekly benefit amount, or should the amount be set automatically each year by the Alaska Department of Labor at 50% of Alaska's average weekly wage.

A. The Legislature should retain the responsibility for determining the benefit amount. 80%

B. The benefit amount should be set automatically each year by the Alaska Department of Labor at 50% of Alaska's average weekly wage. 20%

Comments: _____

Chamber – no position

12% responded.

600 mbshp.

4-10-01
SB 30
Hand-out
LaBelle
during mtg.

Alaska State Chamber of Commerce

Unemployment Compensation Increase Survey
Comments Received

- This system is not a one size fits all. A lot of small businesses with a few employees never draw these benefits, and some businesses are seasonal and some are not. Yet we all pay the same rate!

- There is a problem with people who work the system. Example: Showing up late or not showing up at all, getting fired and drawing this until it runs out. Again and again some employers have had to alert others of repeat offenders until they finally move out of the area.

- Average wages in Alaska from 1997 to present have increased an average of 1-2.5% each year. Unemployment increases to be at the same level wouldn't be at 14-25%, but something far less.

- Unemployment Insurance should be treated like any other insurance. If an individual has numerous claims, they should have a higher rate. Example: A person that works in the summer and collects unemployment benefits in the winter. Sometimes even living in Hawaii, Etc. Perhaps reduced benefits for repeated claims!

- No increase in taxes, we pay enough now!

- Keep the employers' rate at 2.08% and increase the employees' rate to .64 in 2003 and increase to .74 in 2005. This is an employee benefit that employees should not be required to burden.

- Do not give it to the Department of Labor to control. This would be like letting the prisons be run by criminals.

- Deny benefits to those employees who voluntarily resign or leave a position. Cover only those employees who are employed through no fault of their own.

- Due to the cyclical nature of state employment and to the variability of job security, a 50% weekly wage average minimum benefit amount is the least we can do to add to the stability of our communities through wage-earner consistency.

- The more you pay in unemployment compensation, the more this will become another welfare program and take away people's motivation to find another job. We need incentives to get people to look for work not deterrents to keep them from working.

- Employee and employer contributions should be adjusted proportionately. The proposed increase in minimum wage, if implemented, will significantly impact average wage statistics. Implications should be analyzed prior to action.

- It strikes me that we should encourage businesses rather than penalize them with increased taxes, no matter how small. The legislature should retain control over benefit amount and not let the judgement of indexing settle level of benefit.

- Per capita and non-existent inflation, there is no rational reason to increase the benefit amount.

- Using 3% inflation rate compounded yields:
  1997- $248
  1998-$255.44
  1999-$263.10
  2000-$270.99
  2001-$279.13

- Unemployment checks were never intended to replace wages or meet "minimum wage" standards. Increasing weekly benefits will only serve to keep the person unemployed longer. Hey, what is wrong with adding a few bucks between jobs? Keep it that way and we won't have to add another 5 million dollars to our deficit spending operating budget.

STATE OF ALASKA

Department of Labor and Workforce Development

OFFICE OF THE COMMISSIONER

Tony Knowles, Governor

P.O. Box 21149
Juneau, AK 99802-1149
Phone: (907) 465-2700
Fax: (907) 465-2784

March 28, 2001

The Honorable Randy Phillips
Chair, Senate Labor and Commerce Committee
Capitol, Room 103
Juneau, AK 99801

Dear Senator Phillips:

Please schedule Senate Bill 30 for a hearing in the Senate Labor and Commerce Committee at your earliest convenience.

Senate Bill 30 changes the Unemployment Insurance (UI) weekly benefit amount from its current maximum rate of $248 a week to $284 a week and then ties the maximum weekly benefit amount to the average weekly wage in 2003.

The Unemployment Insurance (UI) program was established over 60 years ago to provide a safety net to workers during spells of unemployment. Sixty years later, under current Alaska law, an unemployed Alaskan's check replaces less than 30 percent of the average weekly wage. While wages and prices have risen, Alaska's UI benefits haven't changed since 1997. In fact, Alaska ranks nearly last in the nation in replacing wages lost to unemployment.

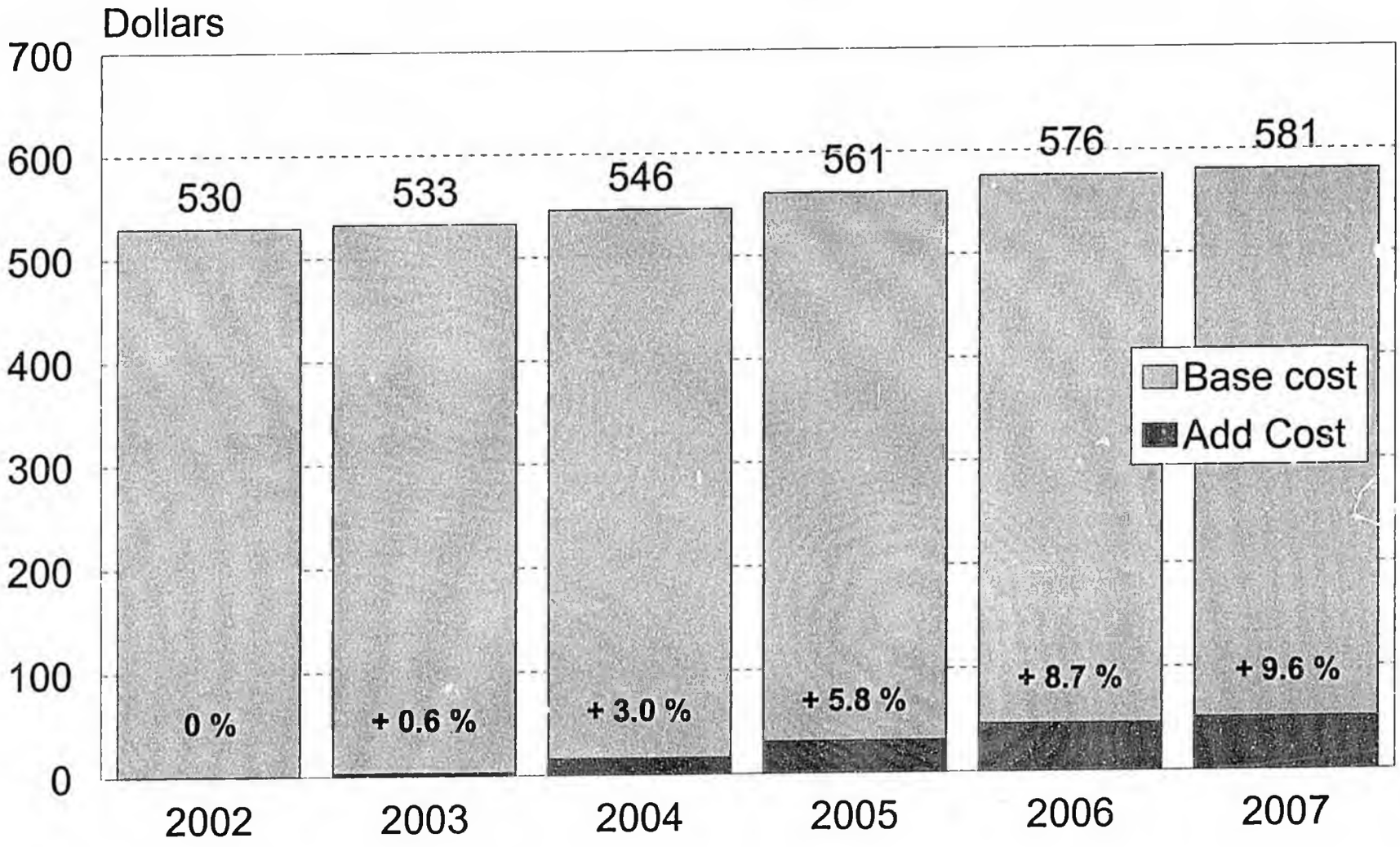
This bill is important, not only to Alaska's working families, but also to a healthy Alaska economy. Almost every UI dollar is quickly returned to the economy, strengthening the business climate and stabilizing the work force needed by employers.

Your favorable consideration of this request is most appreciated.

Sincerely,

Ed Flanagan
Commissioner

Estimated Max Cost per Worker for Average Employer
(5 years to reach cost of proposal)



Source: Alaska Department of Labor & Workforce Development