

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

11241 SENATE LABOR & COMMERCE

1 Insert "hearings office"

2

3 Page 36, line 27:

4 Delete "office of the commission"

5 Insert "hearings office"

6

7 Page 37, line 2:

8 Delete "commission"

9 Insert "hearings office"

10

11 Page 37, line 4, through page 41, line 21:

12 Delete all material and insert:

13 *** Sec. 64.** AS 23.30.125(a) is amended to read:

14 (a) A compensation order becomes effective when filed with the director [IN
15 THE OFFICE OF THE BOARD] as provided in AS 23.30.110, and, unless
16 proceedings to suspend it or set it aside are instituted as provided in (c) of this section,
17 it becomes final on the 31st day after it is filed.

18 *** Sec. 65.** AS 23.30.125(c) is amended to read:

19 (c) If not in accordance with law, a compensation order filed by a hearing
20 officer as provided in (a) of this section may be suspended or set aside, in whole or
21 in part, through injunction proceedings in the superior court brought by a party in
22 interest against the division [BOARD] and all other parties to the proceedings
23 [BEFORE THE BOARD]. The payment of the amounts required by an award may
24 not be stayed pending final decision in the proceeding unless upon application for an
25 interlocutory injunction the court on hearing, after not less than three days' notice to
26 the parties in interest and the director [BOARD], allows the stay of payment, in
27 whole or in part, where irreparable damage would otherwise ensue to the employer.
28 The order of the court allowing a stay must [SHALL] contain a specific finding, based
29 upon evidence submitted to the court and identified by reference to it, that irreparable
30 damage would result to the employer, and specifying the nature of the damage.

31 *** Sec. 66.** AS 23.30.125(d) is amended to read:

1 (d) If an employer fails to comply with a compensation order making an
2 award that has become final, a beneficiary of the award or the director [BOARD] may
3 apply for the enforcement of the order to the superior court. If the court determines
4 that the order was made and served in accordance with law, and that the employer or
5 the officers or agents of the employer have failed to comply with it, the court shall
6 enforce obedience to the order by writ of injunction or by other proper process to
7 enjoin upon the employer and the officers and agents of the employer compliance with
8 the order.

9 * Sec. 67. AS 23.30.125(f) is amended to read:

10 (f) Subject to an employer's or employee's burden of proof, a finding of fact
11 made by the hearing officer [BOARD] as a part of a compensation order is
12 conclusive unless the court specifically finds that a reasonable person could not have
13 reached the conclusion made by the hearing officer [BOARD]."
14

15 Renumber the following bill sections accordingly.

16

17 Page 46, lines 4 - 11:

18 Delete all material.

19

20 Renumber the following bill sections accordingly.

21

22 Page 55, line 24:

23 Delete "the commission,"

24

25 Page 56, lines 3 - 9:

26 Delete all material and insert:

27 (35) "director" means the director of the division of workers'
28 compensation;

29 (36) "division" means the division of workers' compensation;

30 (37) "hearing officer" means a hearing officer employed under

31 AS 23.30.112 to hear workers' compensation claims and petitions under this chapter;

1 (38) "hearings office" means the workers' compensation hearings
2 office established by AS 23.30.007."

3

4 Page 56, lines 13 - 20:

5 Delete all material and insert:

6 **** Sec. 103.** AS 39.25.120(c) is amended by adding a new paragraph to read:

7 (20) the reemployment benefits administrator of the division of
8 workers' compensation in the Department of Labor and Workforce Development."

9

10 Renumber the following bill sections accordingly.

11

12 Page 56, line 25:

13 Delete "and"

14 Insert ";

15 Following "AS 23.30.395(3)":

16 Insert "; and AS 39.50.200(b)(31)"

17

18 Page 56, line 28:

19 Delete "sec. 86"

20 Insert "sec. 87"

21

22 Page 56, line 29:

23 Delete "sec. 86"

24 Insert "sec. 87"

25

26 Page 57, lines 13 - 18:

27 Delete all material.

28

29 Renumber the following bill sections accordingly.

30

31 Page 58, line 13:

- 1 Delete "Section 110"
- 2 Insert "Section 109"
- 3
- 4 Page 58, line 14:
- 5 Delete "sec. 111"
- 6 Insert "sec. 110"

2-18-04

To Whom it may Concern,

I'm not a writer of letters
so please Bear with me. I've
been involved in a workers
comp case since 1999. my case
has had 4 workers comp rulings
2 superior court hearings and
been in front of a Social Security
law judge. Why? Because of
the States Outdated laws. Alaskas
Comp laws are for the employer
(who have the access to attorneys)
let the injured employee try to
get one. Its almost impossible
unless a person is totally disabled
as I was.

Following the workers comp
handbook as I did is going to
end up costing me 4 to 5 thousand
a month in benefits. It
needs rewritten!

Having occasion to call the
State Ombudsman in Anchorage

a couple years ago to find out who to call on a Comp problem (They had no answers) but did volunteer the information that Workers Comp was there #1 Complaint!

As for the specific Insurance problem the state has ~~has~~ right now I suggest you look at California who ends up yearly with a surplus each year by every worker in the state paying a .25% insurance on their wages. It's not a tax! It's insurance. Every one is required to have car insurance.

State Comp laws need updated and re-written so the playing field can be leveled out right now the employer can do most anything they want.

I have had many phone calls from injured parties. I can't give them legal advice all I can do is tell them

They have to stand up and
try to fight the messed up
system

Thank You
Terry Hezzenberger
Soldotna
260 - 4700

Law Offices of
Kalamarides & Lambert

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ANCHORAGE, ALASKA 99501
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LEGAL ASSISTANTS
PHYLLIS LAVITA
DOUGLAS JOHNSTON

March 2, 2004

Senate Labor and Commerce Committee

Re: Senate Bill 311

I have been an attorney for almost 28 years. During that time I have represented many injured workers before the Alaska Workers Compensation Board. I have co-authored a book on Alaska Workers Compensation Law. Also, I have conducted several seminars.

During these 28 years I have seen the law go through several changes.

Several of the proposed changes in Senate Bill 311 and House Bill 45 should not be adopted. These provisions are as follows.

Section 10 eliminates AS 23.30.005. This is the section that created the Alaska Workers Compensation Board. In its stead there is a creation of the Alaska workers compensation division.

The rationale for this is that the Board is unfair to the Employer. The concept of a hearing officer performing the pre hearing conferences, the hearings and writing the decisions makes the process more efficient. This could not be farther from the truth.

As it is presented the hearing officer will be greatly overwhelmed. A hearing officer will have to handle a huge load of cases. At least 300 cases were decided in 2003. Add to that number an equal number of settlements and the caseload ready for hearings was over 600 cases.

A hearing officer cannot carry a huge case load, run all the pre hearings, conduct hearings and publish the decisions timely.

At present, pre-hearings are conducted by pre hearing officers trained for that position. They have some power to decide issues. They could have more power to decide preliminary issues. Due to their case they cannot conduct hearings.

The panels then hear the cases on hearing dates and the decisions are written.

The Alaska Workers Compensation Board has decided over 300 cases last year. The vast majority were published within 30 days of the hearing date. Of this at least 50% were decided in favor of the employer. The system works. It should not be broken.

This is a grave mistake. I have found that the scrutiny of the Board members in all the panels assure consistency and credibility of the process. Most of the panel members have been around for several years. Their costs are minimal. They tend to evaluate the witnesses with the wealth of their experiences. In essence, these Board members constitute the jury. Hearing officers alone cannot perform this function.

My clients have more faith in the judgment of the lay members. Even if they lose their cases they accept the decision of the Board. The lay members of the Board ensure that the injured workers are being judged fairly. This process also removes any fear by injured workers that only lawyers are judging their cases.

Through the proposed act the Board's duties are replaced with that of a hearing officer, the director, or the division. Again there is no sense in making this change. There is no need for this aggressive change.

Some complain that the decisions of the panels are in favor of the employees and against the employers. A comparison of the published decisions for the past couple of years dispels this notion. It is almost even between the employer and the employee.

Section 11 proposes to add a new section AS 23.30.007. This provision proposes to establish a Workers Compensation Appeals Commission. According to the Bill's advocates, this provision will lend consistency and efficiency to the law. All hearing officers will be required to follow the precedent from these decisions.

This section is an enormous expensive change in the Act. The cost of creating, and maintaining this Commission and its staff will approach \$700,000. This includes the costs of additional appeals to the Alaska Supreme Court from this commission.

Right now there are not enough appeals to the Superior Court to even keep the Commission active. Last year there were approximately 36 appeals to the Superior Court. With that number of appeals the three commissioners would be twiddling their thumbs collecting in excess of \$100,000 plus in benefits apiece.

A more appropriate remedy would be to codify that the decisions of the Superior Court are to be followed by all panels of the Alaska Workers Compensation Board.

The method of selection of the Commissioners are not subject to any scrutiny. The selection will politicize the compensation system. The Alaska Bar Association on Judicial Conduct, and The Alaska Judicial Council are not involved in the process as they are with the appointment and conduct of Judges. It is purely a political decision. There is too much politics in the appointment process.

Finally, the time in Section 109 and 110 for enactment of the Bill is 45 days. This includes firing of all the current hearing officers, hiring of all officers, appointment of commissioners and staff. This limitation invites chaos. There are several cases presently scheduled beyond the effective date of this bill. It is impossible for the Division to respond to the changes of the act in such a short time.

The system works. It doesn't need any changes.

Joseph A. Kalamarides.

TO: Senator Con Bunde

FROM: Paul Rasmussen
Mountain Tops, LTD
6605 Arctic Spur Rd
Anchorage, AK 99518
272-8107, fax 272-8710

Dear Senator Bunde

7/30/03

Alaska is losing insurance carriers who, in spite of large premiums, seem unable to be profitable in our state. With the increasing costs of insurance and subsequently, worker compensation insurance, reform is needed. Workers comp is a growing cost to businesses. That increased cost reflects on the strength of our economy and our state.

By changing some of the current regulations, we can lessen the cost of insurance to businesses, which in turn keeps inflation down, employment up, and our state's economy growing. We also must factor in increased rates when determining pay raises which stifles commerce.

Allow all businesses to self-insure to a set amount (amount depends on the size of business). Currently, only large businesses are allowed to self-insure. The only insurance that would be mandated is a catastrophic policy for the worst or multiple injuries. To self-insure, an interest bearing "medical and compensation" savings account would be set up with the state. Granted, there isn't much interest to receive with the rates as low as they are. The state would get a percentage of the interest for managing the account. The business would also receive a percentage depending on their safety record. When a portion of the original account is used, the business would be required to bring the account back the original balance, within a set period of time. By having interest accruing for a company with an excellent safety record, a business would possibly not have to pay into the account when it is utilized for a small claim. If a business has a poor safety record, they would be required to use the old system. This would be an incentive to keeping a safe working environment.

If this is completely impossible, at the very least, allow businesses to purchase insurance with deductibles. At this time, no plan deductibles are allowed.

With a business the size of Mountain Tops, LTD, a \$10,000 medical and compensation savings account would be more than adequate. I could save \$15,000 a year by having this system. This equates to having a minimum wage employee. Imagine what would happen to the unemployment rate (and overall economy) if each business in our state hired one more employee. How would that reflect on the state's budget if there were less people on unemployment or welfare and more people working?

I implore you to stand up to the insurance industry lobbyists and protect the workers, businesses and economy of this great state.

Sincerely,

Paul Rasmussen
Mountain Tops, LTD

2-18-04

To Whom it may concern,

I'm not a writer of letters
so please bear with me. I've
been involved in a workers
comp case since 1999. my case
has had 4 workers comp rulings
2 superior court hearings and
been in front of a Social Security
law judge. Why? Because of
the States Outdated laws. Alchias
Comp laws are for the employer
(who have the access to attorneys
let the injured employee try to
get one. Its almost impossible
unless a person is totally disabled
as I was.

Following the workers comp
handbook as I did is going to
end up costing me 4 to 5 thousand
a month in benefits. It
needs rewritten!

Having occasion to call the
State Ombudsman in Anchorage

a couple years ago to find out who to call on a Comp problem (They had no answer) but did volunteer the information that Workers Comp was there #1 Complaint!

As for the specific Insurance problem the state has ~~has~~ right now I suggest you look at California who ends up yearly with a surplus each year by every worker in the state paying a .25% insurance on their wages. It's not a tax! It's insurance. Every one is required to have car insurance.

State Comp laws need updated and rewritten so the playing field can be leveled out right now the employer can do most anything they want.

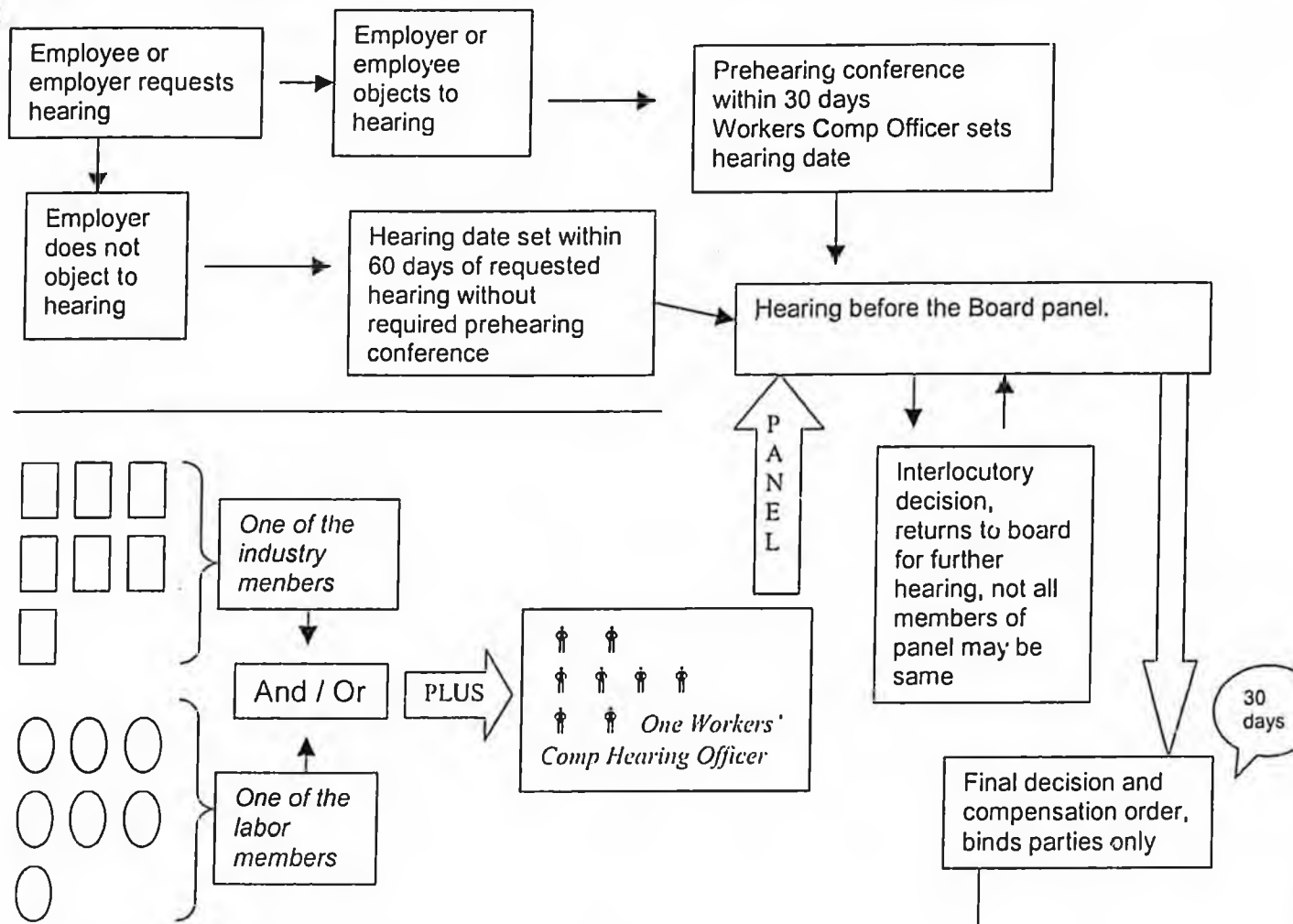
I have had many phone calls from injured parties. I can't give them legal advice all I can do is tell them

They have to stand up and
try to fight the messed up
system

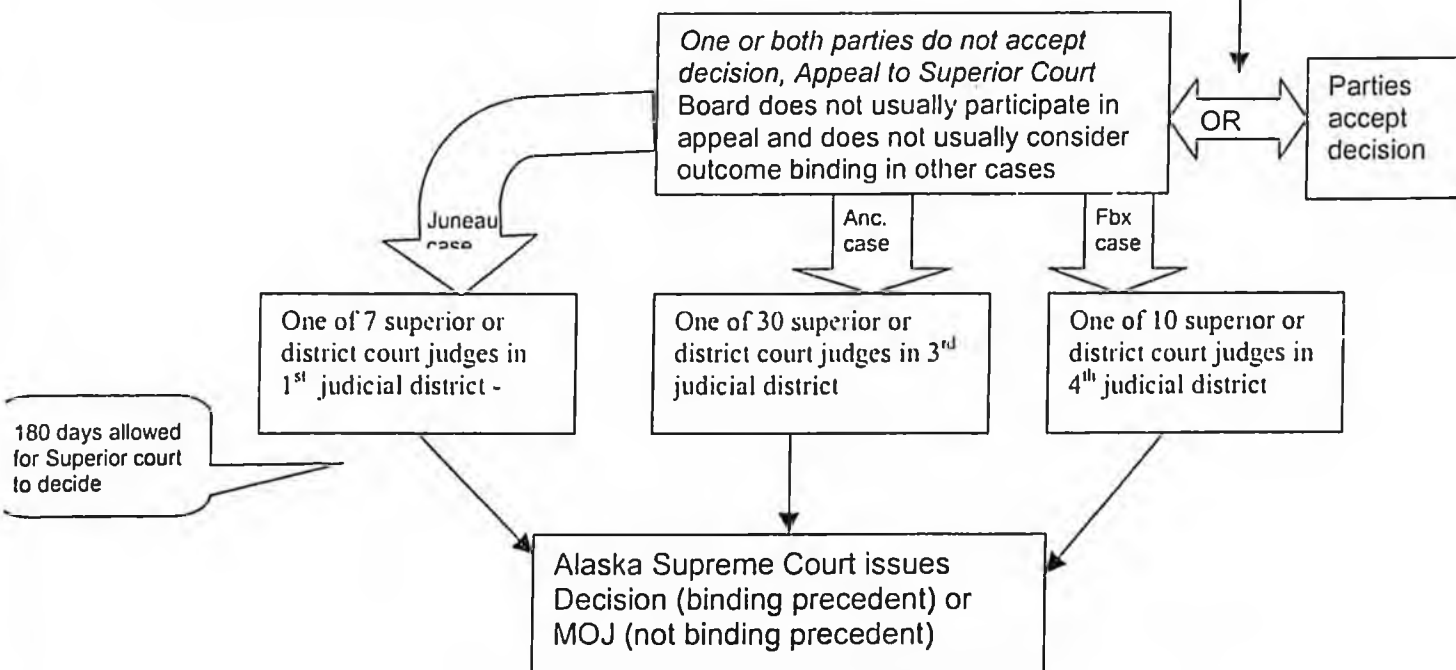
Thank You
Terry Heggenberger
Soldotna
260 - 4700

Start here

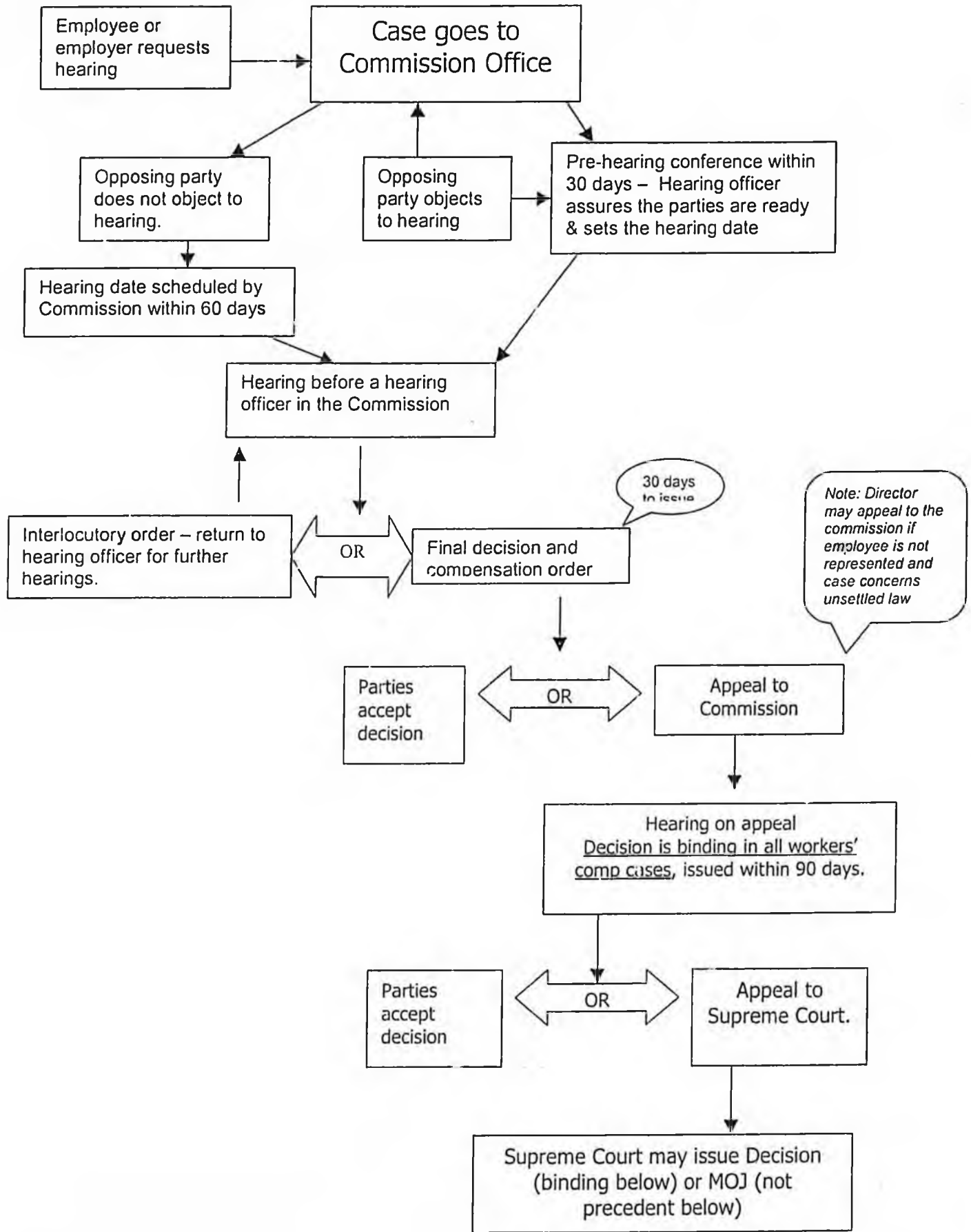
EXISTING STRUCTURE OF WORKERS COMPENSATION ADJUDICATIONS



*Note: There is no right to preemptory challenge Board member or hearing officer.
On challenge for cause, hearing officer & member decide if can fairly hear case.
There is no right to a full panel of one labor member plus one industry member, but a hearing officer is always present.*



Proposed Structure of Workers Compensation Adjudication





807 G Street, Suite 356, Anchorage, AK 99501

907.258.2625 907.279.3615

1.800.337.3682 www.amljia.org

February 14, 2004

Senator Con Bunde, Chairman
Senate Labor & Commerce Committee
Alaska State Legislature
Alaska Capitol Building
Juneau, Alaska 99811

Dear Senator Bunde:

The Alaska Municipal League Joint Insurance Association supports the concept of workers' compensation reform as contemplated in SB311. The bill should streamline the hearing and appeal process with little change in benefits available to injured workers.

In Alaska, 2004 will prove to be a difficult year for workers' compensation, as the National Council on Compensation Insurance (NCCI) rates have increased at an average of 21.5%. This, coupled with the increased costs in reinsurance, will likely mean increases in workers' compensation rates for Alaska employers in excess of 25 percent. Higher premiums affect business owners and economic development, as well as our schools, cities and boroughs.

There are a number of reasons for the increases nationally, including medical expense inflation, investment income losses, slow economic growth, and workforce demographics. Controlling these factors is obviously beyond the control of Alaska's State Legislature. What is in your control, however, is dealing with the inefficiencies in our own system.

By changing the system as the Governor has proposed, the hearing and appeal process should be more efficient and decisions should be more predictable and consistent. Injured workers should see speedier resolution of their claims and employers should see reduced costs associated with litigation and better decision-making associated with predictable results.

While only a small percentage of workers' compensation claims are disputed, these controverted claims often result in hideous expenses. Money spent on attorney fees offer no solace to either the injured worker or the employer. Reducing these costs by making the process quicker, while not a complete answer to Alaska's workers' compensation crisis, merits your consideration.

Sincerely,

A handwritten signature in black ink that reads 'Kevin'.

Kevin Smith
Executive Director

Fiscal Notes

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SB 311
() Publish Date: _____

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

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

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

POSITIONS

F. I-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
Significant reform to the adjudication process for workers' compensation claims is proposed in this comprehensive legislation. In time, these streamlining measures are projected to save allocated loss adjustment expenses presently incurred in resolving disputes in claim and benefit obligations. As an authorized self-insured employer, the state will experience these savings in its self-insurance program administered by Risk Management. In future years, Risk Management's workers' compensation premium assessments to state agencies will reflect the reductions actually realized as premium charges are developed from actual claims expense incurred.

Prepared by: J. Brad Thompson, Director Phone 465-5723
Division Director Date/Time 2/9/04 9:15 AM
Approved by: Mike Miller, Commissioner Date 2/9/2004
Agency Department of Administration

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB311-ACS-AC-2-9-04
 () Publish Date: _____

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

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

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

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

POSITIONS

Full-time	3					
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: Doug Wooliver Administrative Attorney Phone 463-4750
 Division Alaska Court System Date/Time 2/9/04 11:37 AM
 Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 2/9/2004
 Agency Alaska Court System

SB311-ACS-AC-2-9-04
Alaska Court System Fiscal Analysis

Senate Bill 311 makes several changes to the way the Department of Labor and Workforce Development (the agency) and the Alaska Court System resolve workers' compensation disputes and appeals. Most important for purposes of the court's fiscal note is that appeals from the newly-created Workers' Compensation Appeals Commission (commission) will bypass the superior court and go directly to the supreme court.

The court system does not believe that the creation of the new commission will result in a decrease in the number of workers' compensation cases that are appealed to the court system each year. However, bypassing the superior court will lead to a significant increase in the number of these appeals that go to the supreme court. This is because the superior court resolves about 75% of the workers' compensation cases appealed to the court system. Of the yearly average of 36 appeals filed with the superior court, only 9 (25%) are further appealed to the supreme court. Because the bill bypasses the superior court the supreme court anticipates that it will see all 36 cases.

Although the removal of these cases from the superior court will ease the workload of that court, the reduction is only slightly more than an average of one case a year per judge.¹ Although this will allow judges some additional time to focus on other cases, it is not a significant enough reduction to produce a cost savings. However, an additional 27 cases a year for the supreme court would represent a greater than 10% increase in its civil caseload.

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

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

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

¹ By way of comparison, the statewide average of cases per superior court judge is 500 to 600 cases a year.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 311
 (S) Publish Date: 2/09/04

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

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation revises AS 21 regarding state regulation of the insurance code by strengthening protections for consumers and restructuring the Board of the Alaska Insurance Guaranty Association. It also eliminates the cap on the assigned risk pool surcharge.

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

Prepared by: Linda S. Hall, Director Phone (907) 269-7900
 Division Insurance Date/Time 2/5/04 3:36 PM
 Approved by: Edgar Blatchford, Commissioner Date 2/5/2004
 Agency Department of Community & Economic Development

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: SB 311
 (S) Publish Date: 2/09/04

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title An Act relating to improvements in the RDU Administration and Support
workers' compensation system Component Legislation and Regulations
 Sponsor Rules
 Requester Governor Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill makes systemic improvements in the delivery of workers' compensation benefits and enforcement of workers' compensation insurance requirements. The bill improves the system adjudication of dispute.

 Passage of this legislation would have no foreseeable fiscal impact on the Department of Law. In fact, the Department of Law believes that the systemic changes to the workers' compensation system will result in reduced claim administration costs over time.

Prepared by: Kathryn A. Daughhetea, Director Phone 465-3673
 Division Administrative Services Date/Time 1/29/04 2:07 PM
 Approved by: Kathryn Daughhetea for Gregg D. Renkes, Attorney General Date 1/29/2004
 Agency Department of Law

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: SB 311
(S) Publish Date: 2/09/04

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

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	380.1	380.1	380.1	380.1	380.1	380.1
Travel	(20.6)	(20.6)	(20.6)	(20.6)	(20.6)	(20.6)
Contractual	168.4	95.3	95.3	95.3	95.3	95.3
Supplies	14.4	14.4	14.4	14.4	14.4	14.4
Equipment	24.3	24.3	24.3	24.3	24.3	24.3
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	566.6	493.5	493.5	493.5	493.5	493.5

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1157 Workers Safety Account	566.6	493.5	493.5	493.5	493.5	493.5
TOTAL	566.6	493.5	493.5	493.5	493.5	493.5

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

POSITIONS

Full-time	4	4	4	4	4	4
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached.

Prepared by: Paul Lisankie, Director Phone 465-2790
Division: Workers' Compensation Division Date/Time 2/6/04 9:37 AM
Approved by: Greg O'Claray, Commissioner Date 2/6/2004
Agency: Department of Labor and Workforce Development

FISCAL NOTE #3

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL VERSION: SB 311

ANALYSIS: (continued)

This legislation establishes a Workers' Compensation Commission, eliminates the Workers' Compensation Board, and transfers a number of functions from the Division of Workers' Compensation and the former Workers' Compensation Board to the new commission. The fiscal note displays the net change in costs associated with these changes. Changes include:

	Existing WC Division	New WC Appeals	Net Change
Personal Services	(803.8)	1,183.9	380.1
Travel	(36.8)	16.2	(20.6)
Contractual	(88.9)	257.3	168.4
Supplies	(8.6)	23.0	14.4
Equipment		24.3	24.3
Total	(938.1)	1,504.7	566.6

New Workers' Compensation Appeals Commission budget component:

Operating Expenditures:

Personal Services: The Appeals Commission is comprised of 13 new positions:

	<u>Range</u>
Commission, Chair	30 F
Commission, Member	29 C
Commission, Member	29 C
Comm. Hearing Officer	24 D
Comm. Hearing Officer	24 D
Comm. Hearing Officer	24 D
Comm. Hearing Officer	24 C
Comm. Hearing Officer	24 C
Comm. Hearing Officer	24 C
Admin. Services Mgr./ Commission Clerk	23 A
Admin. Assistant	13 A/B
Admin. Clerk III	10 A/B
Admin. Clerk II	8 A/B

The personal services costs of \$1,183.9 are associated with the above positions. Steps for Appeals Commission Hearing Officers are assumed to cover the range of experience of the potential incumbents mandated by the bill.

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

In order to insure that there is someone available to assist the chair in diverse "court clerk," budget/fiscal, and organizational administration functions (while still keeping total staffing requirements low) a higher level administrative manager position is included. In the state personnel system an Administrative Services Manager is identified as a "principal assistant to a division director" for managing administrative functions while insuring financial integrity and mission accomplishment.

FISCAL NOTE #3

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL VERSION: SB 311

ANALYSIS: (continued)

Travel: Travel costs of \$16.2 have been minimized by basing the Appeals Commission and holding all its appeals hearings in Anchorage. Commission administrative staff are also located in Anchorage. Five Appeals Commission Hearing Officers are based in Anchorage and one in Fairbanks. Planned travel includes 3 trips to Juneau for the Commission chair and Commission Clerk/Administrative Services Manager as well as Hearing Officer travel once per month to Juneau for hearings, and Hearing Officer travel once every two months to Fairbanks to back up/fill in for resident.

Contractual: The bill requires that Appeals Commission offices and staff be "physically separate" from the Workers' Compensation Division offices and staff. The contractual budget of \$257.3 includes on-going contractual costs (telephones, leases, equipment maintenance, etc.) of \$184.2 and one-time costs of achieving the mandated physical separation of \$52.5 in Anchorage and \$20.6 in Fairbanks for a total of \$73.1. Those costs include demolition, construction, staff relocation, and voice and data line wiring.

Supplies and Equipment: A budget of \$23.0 for general office supplies and \$24.3 for equipment is necessary to operate the Appeals Commission.

New Fees/Fines:

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

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

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

Existing Workers' Compensation budget component:

Operating Expenditures:

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

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

FISCAL NOTE #3

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL VERSION: SB 311

ANALYSIS: (continued)

The personal services cost reductions of (\$803.8) are associated with the 9 full-time positions above. Savings from Board members are reflected below under travel and stipends.

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

The bill shifts to the Appeals Commission Hearing Officers the requirement to hold prehearing conferences needed for planning hearings and to resolve discovery disputes. In Anchorage, where there are currently three WCO II's and two technicians, this reduction and shifting other work will require one less Workers' Compensation Officer II.

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

Contractual and Supplies: Reflects reductions in fixed costs, space lease in Anchorage and Fairbanks, and other contractual costs totaling (\$88.9). And also reflects transferring (\$8.6) for supplies to the Appeals Commission.

Funding

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

SB 311

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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 6, 2004

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

Dear President Therriault:

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

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

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

GOVERNOR'S TRANSMITTAL LETTER

The Honorable Gene Therriault
February 6, 2004
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Board members provide, many members lack even a general legal training and background, much less specialized knowledge of workers' compensation law.

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

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

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

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

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

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

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

SB 311

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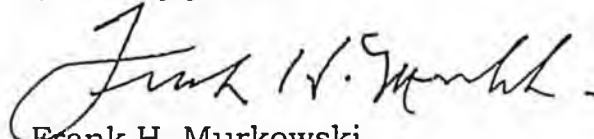
The composition of the Board of Governors of the Alaska Insurance Guaranty Association would be modified under the bill to include representatives from management, labor, and insurance licensees. This change would expand the expertise of the Board of Governors to better address workers' compensation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

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

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

I urge your prompt and favorable action on this measure.

Sincerely yours,



Frank H. Murkowski
Governor

Enclosure

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

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

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

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

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

Reorganization streamlines adjudicative and appeal process.

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

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

Consistency, and predictability increased in process.

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

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

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

In companion bills HB 403 // SB 276

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

HB 450 - SB 311
Section by Section Analysis

This legislation substantially reforms the workers' compensation system. First, this legislation makes changes to the agency that protects workers compensation recipients from nonpayment by insolvent insurers, and protects employers who purchased insurance from liability in the event of insurer nonpayment. Second, it replaces the present system of administering the workers' compensation act, AS 23.30, with a new system that divides adjudication of claims and petitions arising under the act from the executive functions of administration, investigation, and enforcement. The Alaska Workers' Compensation Board, (board) composed of 7 panels of volunteer members and the Commissioner of Labor and Workforce Development, is removed and its adjudication functions are transferred to a Workers Compensation Appeals Commission, (commission), which is separated from the Division of Workers Compensation (division) and its director. Third, this legislation changes the process of adjudication to encourage consistency in legal interpretation. Cases are heard first by hearing officers. The commission, composed of three attorneys with experience in workers' compensation, acts as an appellate body with broad powers of review. The commission's decisions will be published and are binding on the hearing officers. The commission's decisions may be appealed directly to the Supreme Court, without review by the Superior Court. Fourth, the director is given stronger enforcement tools and direct power to administer, investigate, and enforce obligations. These include new civil penalties against uninsured employers, subpoena powers, the power to examine employer books, the power to intervene in disputed cases and the power to file an appeal.

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

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

To assist the reader, an attached appendix groups the sections by general subject matter.

- Section 1** is a declaration of legislative intent to reform the workers' compensation insurance system to ensure payment of benefits when an insurer becomes insolvent, expand representation of workers compensation on the Alaska Insurance Guaranty Association, and reduce the costs of workers' compensation premiums to employers.
- Section 2** amends AS 08.18.101(1) to remove a reference to the board and transfers the authority to issue certificates of self-insurance from the board to the director of the division of workers' compensation.
- Section 3** creates a new statutory provision, AS 21.09.090(e) which provides that insurers that transact workers' compensation insurance in this state must maintain in the state a special deposit of cash or securities for the protection of persons in Alaska covered under workers' compensation insurance. The insurer must maintain this special deposit as long as there is any outstanding liability for workers' compensation. If an insurer is unable to pay workers' compensation because it is an insolvent insurer, the deposit will be immediately available to the Alaska Insurance Guaranty Association for continuation of claims benefits to eligible workers. This revision provides additional financial protection for Alaskan workers in the event that workers' compensation insurer becomes insolvent and unable to pay claims.
- Section 4** amends AS 21.24.130(d) to make a technical change regarding the special deposit described in Section 3 above.
- Section 5** repeals and reenacts AS 21.80.050 relating to the board of governors of the Alaska Insurance Guaranty Association. The composition of the board of governors of the Alaska Insurance Guaranty Association is modified by this provision to include representatives from management, labor and a licensed insurance provider, agent, broker or manager. This change will expand the expertise of the board of governors to better address workers' compensation issues. Section 107 below provides for the transition of the terms of the members of the current board of governors.
- Section 6** amends AS 21.80.180(6) to exclude workers' compensation claims from the definition of "covered claim" if the insured's net worth exceeds \$25,000,000 the year preceding the date the insurer becomes an insolvent insurer.
- Section 7** amends AS 23.30.05.067(a)(1)(B) to remove a reference to the board and to replace the board by the director of the division of workers compensation as the recipient of reports. This amendment conforms to the amendment to AS 23.30.155(m) at Section 81 below.
- Section 8** amends AS 23.05.067(e) to include fees received by the commission in those fees deposited in the workers' safety and compensation account. It also adds new language to permit the legislature to appropriate funds to the commission

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

Section 9 codifies a statement of legislative intent relating to the workers' compensation system. It declares the intent of the legislature to create a fair system not favoring to the interests of workers or employers, but based on mutual compromise. This declaration draws upon previous uncodified statements of legislative intent and adds language regarding the fair, careful and rational examination of evidence.

Section 10 repeals and reenacts AS 23.30.005. It creates, within the Department of Labor and Workforce Development, a Division of Workers' Compensation and a director of the Division, appointed by the commissioner. The director must have three years experience in the field of workers' compensation. The section gives the director general powers and duties regarding administration, regulation, investigation and enforcement of the workers' compensation laws and system. The department has the power to adopt regulations proposed by the director, instead of the board, regarding medical care and rehabilitation providers. This provision transfers certain administrative duties previously assigned to the board to the director, including the obligation to notify the state, or a political subdivision of the state, if it revokes a contractor's self-insurance certificate.

Section 11 adds three new statutory provisions. The first, AS 23.30.007, establishes a new workers' compensation appeals commission within the Department of Labor and Workforce Development, with jurisdiction to hear all administrative appeals arising under the workers' compensation act. The commission consists of three members, appointed for staggered terms of four years, appointed by the governor and confirmed by a majority of the legislature. The governor may make appointments to fill vacancies in the same manner for the completion of the vacant term. A majority of the members is a quorum. The governor appoints a commission chair from the commission members for a three-year term. Members must be licensed to practice law in Alaska, have five years experience of workers' compensation law, and take the oath of office. Reasons for removal by the Governor of a commission member are set out, as well as an opportunity to respond to the Governor's charges. Reasons for removal include: misconduct in office, ethical violations, conviction of a felony, conviction of a misdemeanor regarding workers' compensation, inability to serve or handle the caseload, incompetence, etc. The salary of members (Range 29) and the chair (Range 30) is stated. The commission is required to be housed separately from the division to mark the separation of the judicial process in the workers' compensation system from the administrative and enforcement process.

Section 11 also, in the new statutory provision AS 23.30.008, sets out the powers and duties of the new workers' compensation appeals commission and, in AS 23.30.009, the powers and duties of the chair of the commission. The commission replaces the superior court as the body hearing administrative appeals in the workers' compensation system, and its decisions will be binding and have the force of legal precedence. The commission's decisions are final and conclusive, except that the Supreme Court may review the commission's decisions. The commission operates like an appellate court, circulating confidential draft decisions among the members, and indexing and publicizing its formal decisions. The commission has the power to adopt regulations and rules of procedure for hearings and appeals, to adopt an official seal, and generally to carry out the powers and duties expressly granted or necessarily implied by the Act. The commission shall award attorney fees to successful appellants, but, as currently is the rule, attorney fees may not be awarded against an employee unless the appeal was frivolous, unreasonable or taken in bad faith. The chair of the commission exercises general supervision of the office of the commission. The chair has the power to employ and supervise staff and hearing officers, assign work, establish a time management system, manage the calendar of hearings and prepare the annual budget of the commission. The chair must prepare and make public an annual report of the commission's performance.

Section 12 amends AS 23.30.011(c), which relates to extraterritorial coverage of workers injured outside Alaska while working for Alaska employers or while under contract formed in Alaska. It removes references to the board and reassigns powers and duties to the division. Certificates of insurance issued by other states must be filed in the division instead of the board. The director replaces the board as the appointed out of state employer's agent for service of process. The director, instead of the board, shall serve notice of claims. Evidence of self-insurance must satisfy the director, instead of the board; and, the director may require the out of state employer to file satisfactory security to cover the amount of a claim.

Section 13 amends AS 23.30.012 relating to settlement of claims. It divides the current statute into two subsections. It removes references to the board and transfers from the board to the director the power to approve the form of settlements. It requires that settlements be filed in the division. A new provision requires that in cases where workers are not represented by an attorney licensed to practice in this state, or where a beneficiary is a minor, the settlement must be reviewed by a hearing officer and may be approved when it is in the best interests of the worker or beneficiary. The hearing officer may hold a hearing and require an impartial medical examination. This is a change from current

law, which requires all workers, regardless of representation or circumstances, to obtain board permission and approval to settle their claims.

Section 14 amends AS 23.30.015(b), which relates to assignments of rights to recover damages against third parties. It removes references to the board and changes the place to file compensation orders from the board to the commission, and conforms the statute language to modern use.

Section 15 amends AS 23.30.015(e). It removes references to the board and transfers the power to determine the attorney fee offset in third party settlements from the board to a hearing officer. It modernizes the statute language and assigns the director the duty to prepare a schedule of present values for determining third-party settlement offsets.

Section 16 amends AS 23.30.015(j) to remove references to the board, to change the recipient of notice of a third party action for damages from the board to the division, and to require additional notice to the commission if a hearing has been requested in the workers' compensation case.

Section 17 amends AS 23.30.025(a) to remove references to the board and to change the place where insurance company policy forms are filed from the board to the division.

Section 18 amends AS 23.30.030(5) relating to effective dates of policy termination by cancellation. It removes references to the board and reassigns the receipt of notice of termination from the board to the division.

Section 19 amends AS 23.30.030(6) relating to the power to make orders or awards against employers, insurers, or both. It removes references to the board and reassigns making the order or award from the board to a hearing officer.

Section 20 amends AS 23.30.040(a) relating to administration of the second injury fund, which is reassigned from the commissioner to the director. Also, it removes references to the board and reassigns the power to order payments from the fund from the board to the director.

Section 21 amends AS 23.30.040(d) relating to refund of a payment made into the second injury fund. It removes references to the board and reassigns the power to direct a refund from the board to the director.

Section 22 amends AS 23.30.041(a) to remove references to the board and reassign employment of the reemployment benefits administrator and authorization for his staff from the board to the director.

Section 23 amends AS 23.30.041(b) to remove references to the board and reassign from the board to the department the adoption of regulations implementing the reemployment benefits section and setting standards for rehabilitation specialists.

- Section 24** amends AS 23.30.041(d) to remove references to the board and reassign from the board to a hearing officer the power to review the decisions of the reemployment benefits administrator.
- Section 25** amends AS 23.30.041(h) to remove references to the board and to include a physician appointed by the director, instead of by the board, as a possible source of a prediction of medical stability for a reemployment plan.
- Section 26** amends AS 23.30.041(j) to modernize statute language, remove references to the board, and replace board with a hearing officer as the reviewer of reemployment benefits administrator decisions on rehabilitation plans.
- Section 27** amends AS 23.30.041(o) to remove reference to the board and replace the board with a hearing officer as the reviewer of decisions made by the reemployment benefits administrator on non-cooperation by an employee.
- Section 28** amends AS 23.30.041(p) to remove references to the board. It replaces the board with the director as the holder of a public meeting to select a proposed date on which a new edition of the US Department of Labor's Dictionary of Occupational Titles shall be implemented. The department replaces the board as the agency selecting the date proposed and the director replaces the board as the person giving notice of the selected date.
- Section 29** amends AS 23.30.041(q) to remove references to the board and replace the board with the division as the agency receiving filed waivers of rehabilitation benefits and serving notices of the waivers. The amendment also replaces the board with the director as the agency proscribing or approving the form of such waivers.
- Section 30** amends AS 23.30.045(d) relating to the requirement that awardees of contracts from the state or political subdivisions of the state have workers' compensation insurance. The amendment removes references to the board and changes the agency that furnishes proof of insurance from the board to the division, and the agency that grants certificates of self-insurance from the board to the director, conforming to Section 12 above.
- Section 31** amends AS 23.30.045(e) relating to the obligations of contracting agencies of the state or political subdivision of the state if a contractor has lost coverage. The amendment removes references to the board and replaces the board with the director as the agency notifying the state or political subdivision of the revocation of self-insurance, conforming to Section 12 above.
- Section 32** amends AS 23.30.065 to remove references to the board and to replace the board with the division as the agency with the power to require and inspect employer records of injury.
- Section 33** amends AS 23.30.070(a) to remove references to the board and to replace the board with the division as the agency where employer reports of injury to or

death of an employee are filed and which may require certain information in reports of injury or death.

Section 34 amends AS 23.30.070(b) to modernize language, to remove references to the board, to replace the board with the division as the agency where supplemental reports of the employee's condition are filed, and to replace the board with the director as the agency with power to require such reports.

Section 35 amends AS 23.30.070(d) to remove references to the board and to provide that compliance with the reporting requirements of the section are met by mailing to the division instead of the board.

Section 36 amends AS 23.30.070(f) to remove references to the board, to replace the board with a hearing officer, who after a hearing, may require an employer to pay the penalties for failure or refusal to report as provided by this section.

Section 37 amends AS 23.30.075 to remove references to the board, to replace the board with the division as the agency which must be provided satisfactory proof of financial ability to pay compensation and as the source of the copy of the certificate of self-insurance. The director replaces the board as the agency that may exercise discretion to require acceptable security, indemnity or bond from an employer to secure payment of compensation liabilities.

Section 38 amends AS 23.30.080(d) regarding proceedings to obtain stop work orders against uninsured employers. The amendment provides that the director may petition a hearing officer for a stop work order, replacing the general grant of authority of the board to issue a stop work order. A new provision permits the hearing to be held on short notice if the director presents evidence that a hazard in the employment constitutes a danger that could reasonably be expected to cause an employee of the uninsured employer death or serious physical harm. Finally, the amendment removes references to the board and transfers the power to assess a civil penalty from the board to a hearing officer.

Section 39 creates two new statutory provisions relating to penalties against uninsured employers. AS 23.30.080(e) authorizes the director to petition a hearing officer to order a civil penalty of \$100 for each uninsured employee for each day the employee is employed without coverage. The penalty is payable to the state. As in AS 23.30.080(d) relating to stop work orders, failure to file evidence of insurance with the division would create a rebuttable presumption of failure to insure. Also as in 23.30.080(d), the civil penalty hearing may be held on short notice if the director presents evidence that a hazard in the employment constitutes a danger that could reasonably be expected to cause an employee of the uninsured employer death or serious physical harm. AS 23.30.080(f) authorizes the director to declare an employer in default if the employer fails to pay a civil penalty under subsection 080(d) (failing to

comply with a stop work order, \$1000 per day) or subsection 080(f) (failure to insure employee \$100 per employee per day) within seven days of the date ordered. Upon filing a certified copy of the penalty order and a declaration of default with the clerk of the superior court, the court shall enter judgment for default. The attorney general, as requested by the director, shall take appropriate action to collect on the default judgment, and a writ of execution may be issued on the judgment. The person against whom the judgment is issued may seek court review of the judgment as allowed by the Civil Rules.

Section 40 amends AS 23.30.085(a) relating to filing evidence of compliance with workers' compensation insurance requirements. The amendment removes references to the board, replaces the board with the division as the agency with which evidence is filed and which may provide copies of the certificate of self-insurance. The amendment also replaces the board with the director as the person who prescribes the form of evidence of insurance.

Section 41 amends AS 23.30.090 to remove reference to the board and substitute the director for the board as the agency that issues certificates of self-insurance. This section adds a provision for a hearing conducted by hearing officer before revocation of self-insurance certificates, and for the director to amend, adopt or reject the hearing officer's proposed decision.

Section 42 amends AS 23.30.090 to add a new statutory provision, AS 23.30.090(b), that testimony in a self-insurance revocation hearing shall be recorded but not transcribed unless further review is initiated.

Section 43 amends AS 23.30.095(a) to conform language to modern usage. It also removes references to the board and replaces the board with a hearing officer as the agency that reviews employee claims for medical benefits beyond two years from the date of injury, and authorizes continued care or treatment.

Section 44 amends AS 23.30.095(c) relating to reports and claims for medical treatment by removing references to the board and reassigning its functions. This section replaces the board with the division as the agency that receives filed physician reports; replaces the board with the director as the agency that approves the form for reports; and, replaces board with a hearing officer as the agency that decides to excuse failure to give notice and makes awards of medical benefits. This section also transfers authority to make regulations from the board to the director, who proposes regulations, and the department, which adopts the proposed regulations.

Section 45 amends AS 23.30.095(d) to remove references to the board and transfer authority from the board to a hearing officer to order suspension of payment of compensation during a period of unreasonable refusal to obtain medical treatment.

- Section 46** amends AS 23.30.095(e) relating to independent medical examinations. It removes references to the board and transfers from the board to a hearing officer the authority to make orders for medical examinations, suspend or forfeit compensation during a period of refusal to attend an examination, and order autopsies in cases of death. It also modernizes the language of the statute and conforms it to current usage.
- Section 47** amends AS 23.30.095(f) relating to regulation of fees charged for medical treatment. The amendment removes references to the board. It transfers authority to regulate charges for medical treatment to the department and adopt, by regulation, fee schedules. It transfers to the director authority to determine usual, customary and reasonable fees in the community and propose fee schedules to the department for adoption.
- Section 48** amends AS 23.30.095(h) to remove references to the board and replaces the board with the division as the place pleadings and physician reports are filed. The amendment also modernizes language in the statute to current usage.
- Section 49** amends AS 23.30.095(j) to remove references to the board and to reassign from board to the director authority to appoint a medical services review committee or contract with organizations to assist and advise the director, instead of the board, in matters respecting medical care under the workers' compensation act.
- Section 50** amends AS 23.30.095(k) to remove references to the board and transfers authority to the director to require a second independent medical examination from a list maintained by the director. The report of the examination is sent to the division instead of the board.
- Section 51** amends AS 23.30.100(a) to remove a reference to the board and substitute the division as the recipient of notice of an injury or death. The amendment also modernizes the statute language.
- Section 52** amends AS 23.30.100(c) to remove reference to the board and substitute the division's office as the recipient of filed notices of injury or death.
- Section 53** amends AS 23.30.100(d) to remove references to the board and to transfer authority to a hearing officer to determine that an employer has not been prejudiced by failure to give notice or to excuse the failure to give notice. The amendment also modernizes the language of the statute.
- Section 54** amends AS 23.30.105(a) to remove references to the board and transfers to a hearing officer the authority to determine if an employee who fails to file a claim within the time allowed by the statute has full right to claim compensation, time limitations notwithstanding.
- Section 55** amends AS 23.30.107 to remove references to the board and to replace the board with the division as the agency where a petition for protective order

must be filed and where workers' compensation files are maintained. The amendment also replaces the board with the division and commission as agencies that may release records as provided by the statute and replaces the board with the commission or a hearing officer as authorized to discuss records in a decision and order.

Section 56 amends AS 23.30.108(a) to remove a reference to the board and replace the board with the division as the agency where a petition is filed. The amendment also conforms language to correct usage. This section also amends AS 23.30.108(b) to remove references to the board and substitute office of the commission for board as the agency scheduling prehearing conferences, and replacing the board's designee with a hearing officer as the person conducting the prehearing conference. In addition, the division is required to notify the commission of petitions for protective orders. Finally, this section amends AS 23.30.108(c) to authorize a hearing officer, instead of the board's designee, to direct parties to release or produce documents and make rulings on discovery matters. It creates a new provision for an expedited review of a hearing officer's discovery rulings by the commission and sets deadlines for response to a petition for review by the commission.

Section 57 amends AS 23.30.110 to remove references to the board throughout the statute and to transfer certain powers and duties to hearing officers and the office of the commission. The amendment also adds petitions to the statute to regularize procedure for claims and petitions into a single process, and adds the phrase "opposing party" to include persons other than the employer who require service of a claim or petition. This section substitutes certified mail for registered mail. It provides that the office of the commission is the place to file an affidavit of readiness for hearing. A hearing officer, instead of the board or board designee, is authorized to conduct pre-hearing conferences, plan discovery and other preliminary matters, and set a reasonable hearing date if a party opposes a hearing request. A hearing officer, instead of the board, shall schedule unopposed hearing requests within 60 days, and give notice to the parties. This section transfers authority to prescribe controversion forms from the board to the director. This section also transfers authority to make decisions and grant continuances from the board to the hearing officer. The word "parties" replaces "claimant and employer" as persons who may present evidence at a hearing. In addition to the authority to award benefits, the amendment adds authority to dismiss a claim, after an employee's death. Finally, the language of the statute is conformed to current usage.

Section 58 creates two new statutory provisions, AS 23.30.110(i) and (j), which authorize the dismissal of certain claims before a hearing on the merits and the grant of summary decisions in certain instances. Dismissal of claims, described in AS

23.30.110(i), may occur when the claim is for relief that cannot be granted under the workers' compensation act, there is a lack of jurisdiction over the subject of the claim or the person requesting dismissal, there is improper service of the claim, the claim has not been prosecuted or a hearing not requested within two years as required by the statute, or, the claim is barred by a statute of limitation. If defects in jurisdiction, service or the requested relief are cured within 60 days, the order of dismissal may be vacated. Grant of summary decision on petition, authorized in AS 23.30.110(j), is permitted at any time if a hearing officer determines that all reasonable discovery has been made on the issues presented in the petition, and the record shows there is no genuine issue of material fact and the petitioner is entitled to a decision as a matter of law. The hearing officer may file a compensation order in favor of the petitioner if the summary decision disposes of all issues in the claim regarding the petitioner. This provision establishes a means of obtaining final rulings on matters of law where the facts are not disputed, without forcing parties to proceed together to a full hearing on the merits.

Section 59 creates a new statutory provision, AS 23.30.112, relating to the qualification, employment, authority and duties of hearing officers. This amendment provides that claims and petitions will be heard by hearing officers employed by the commission. The amendment provides that hearing officers must be licensed to practice law in Alaska and have three years of experience in workers' compensation or a similar field of practice. This amendment places hearing officers in the partially exempt service, provides for their salary at Range 24, and exempts them from AS 23.40. This amendment sets standards for performance of their duties. Authority previously granted to the board is transferred to hearing officers: to issue subpoenas and request enforcement of their subpoenas by the superior court, require reports of treatment, and arrange hearings to preserve testimony in other states. This amendment transfers to hearing officers certain provisions regarding standards for hearings previously conducted by the board. A new provision makes specific which portions of the Alaska Administrative Procedure Act apply to hearings. New provisions set standards for impartiality, performance of duties and disqualification from a hearing. Another new provision prohibits *ex parte* communications with the hearing officer. Finally, this amendment transfers from the board to the hearing officer the requirement that the hearing be recorded and be public.

Section 60 amends AS 23.30.115 relating to witness fees and subpoenas to appear as a witness. This section removes references to proceedings before the board and substitutes hearings before a hearing officer or the commission. This section substitutes the word "hearing" for "proceeding" because witnesses (as distinct from parties) are not required by subpoena to appear at other forms of

proceedings before the commission or a hearing officer. A new provision is added to allow the commission clerk to issue subpoenas for hearings, depositions, and production of records, and to direct the superior court to enforce the subpoenas at the request of the commission as provided in AS 44.62.590.

Section 61 amends AS 23.30.120(b) to remove a reference to the board and transfer to a hearing officer the authority to excuse failure to give notice. This amendment conforms to Section 53 above. There is no change to the substance of AS 23.30.120, which contains the presumption that “a claim comes within the provisions” of the workers’ compensation act.

Section 62 repeals and reenacts AS 23.30.122, relating to determinations of the credibility of witnesses. The former statute provided that the board had the sole power to determine credibility of witnesses and that the board’s findings concerning the weight of a witnesses testimony, including medical testimony and (unsworn) reports were conclusive. The amendment transfers to the hearing officer only the sole power to determine the credibility of a witness who appears before the hearing officer in hearing. Section 65 includes provisions transferring to the commission the authority to make conclusive findings concerning the weight of evidence. A new provision is added to require specific findings when credibility is disputed.

Section 63 creates a new statutory provision, AS 23.30.124, which clarifies the process and time for reconsideration of a compensation order (hearing officer’s decision) and limits the delay of finality of a compensation order by limiting the time for reconsideration. Reconsideration may be ordered upon the hearing officer’s own motion or on petition of a party filed within 15 days of mailing of the compensation order. The hearing officer’s power to order reconsideration expires 30 days after the compensation order. If the hearing officer does not file an order of reconsideration within 30 days of the date the compensation order was mailed, any pending petition for reconsideration is denied. However, if a hearing officer issues an order of reconsideration, then the compensation order which is being reconsidered is stayed until the decision on reconsideration is filed by the hearing officer. The hearing officer must file his or her decision on reconsideration within 30 days of when the order for reconsideration was filed. This amendment also provides that reconsideration is made on the record and any additional argument allowed by the hearing officer.

Section 64 repeals and reenacts AS 23.30.125 relating to review of compensation orders. It replaces superior court review of board decisions with commission review of compensation orders (hearing officer decisions). The amendment sets a date on which compensation orders are final unless review is undertaken. It makes explicit that the commission has the power to review hearing officer

decisions and orders, and that orders may not be suspended, reconsidered or set aside except through the commission process. This amendment also creates a provision for stays on appeal, requiring that a party desiring a stay of an order pending appeal to produce evidence of irreparable damage and allowing a hearing on the stay by the commission on three days notice to the parties and director.

Section 65 creates four new statutory provisions relating to commission review of director decisions, commission procedure on appeal, commission authority to review and judicial review of commission proceedings. The first, AS 23.30.126, establishes commission review of director decisions that affect a right, privilege, benefit or duty under the act. It describes the method of undertaking review and allows 30 days for a director decision to be appealed to the commission. This provision also establishes the same standard for obtaining a stay of appeal of a director decision as of a compensation order; the party seeking a stay must demonstrate irreparable damage.

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

The third new statutory provision in Section 65, AS 23.30.128, establishes the commission's broad authority to review and act on appeals. The commission may review de novo all exercises of discretion, factual findings, and legal conclusions below, except that a hearing officer's findings regarding the credibility of a witness who appeared in the hearing is binding on the commission. Any other finding, including the weight given expert evidence, may be set aside by the commission. If not set aside, the hearing officer's findings are conclusive. This statute provides that the commission review will be on the record, except that briefs and argument shall be allowed. The exception is that the commission may receive evidence in applications for a stay of a decision below (see section 64 above), attorney fees and costs of

appeal, waiver of fees for indigent appellants, and dismissal of appeals for failure to prosecute or settlement. This provision also gives the commission wide discretion to act on appeal. The commission may expedite appeals. It may affirm, reverse or modify a decision; remand matters it determines were improperly or insufficiently developed, or remand for further action without relinquishing jurisdiction. It may reconsider its decisions on specific grounds listed in subsection (f): misapplication or failure to apply directly controlling law; overlooking or misconceiving a material fact; misunderstanding a material question in the case presented on appeal; or, applying law that has subsequently changed. AS 44.62 does not apply to proceedings of the commission. This provision balances shorter time for appeal and reconsideration (30 days) with sufficient time for collegial consideration of the merits of the appeal before a commission decision (90 days). This provision sets out clearly when a decision of the commission is final, to avoid confusion as to dates of finality.

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

Section 66 amends AS 23.30.130 to remove references to the board, transfer the authority of the board to modify decisions to a hearing officer, conform the statute language to modern usage, and to add the director to those who may petition for modification of a compensation order. This provision also limits modification based on mistake of fact to mistake of material fact. This provision does not limit the type of fact that may be the subject of mistake, but does require that the mistake be one that is important to the outcome.

- Section 67** amends AS 23.30.135 regarding investigation proceedings before the division to remove references to the board, transfer the authority of the board to make investigations under the act, take testimony and hold hearings to the director, give the director power to issue subpoenas and examine records relating to the investigation and requires the superior court to enforce the director's subpoenas.
- Section 68** amends AS 23.30.140 to remove reference to the board and transfer the authority of the board to require appointment of a guardian to receive compensation to the director.
- Sections 69** amends AS 23.30.145(a) to remove references to the board, transfer the authority of the board to award attorney fees to a hearing officer, and conform the language of the statute to modern usage.
- Sections 70** amends AS 23.30.145(b) to remove references to the board, transfer from the board to a hearing officer the authority to award costs and attorney fees and conform the language of the statute to modern usage.
- Section 71** amends AS 23.30.155(a) to remove a reference to the board and transfer the authority to prescribe forms from the board to the director.
- Section 72** amends AS 23.30.155(b) to remove a reference to the board and transfer from the board to a hearing officer the authority to vary periodic payments from the biweekly standard.
- Section 73** amends AS 23.30.155(c) to remove references to the board, transfer the authority of the board to prescribe forms to the director, and replace the board with the division as the agency receiving notices and filings of compensation reports. The language of the statute is also conformed to modern usage.
- Section 74** amends AS 23.30.155(d) to remove references to the board and replaces the board with the division as the agency where controversion notices are filed. The amendment also conforms language to modern usage.
- Section 75** amends AS 23.30.155(e) to remove a reference to the board and transfer the authority to excuse nonpayment of compensation from the board to a hearing officer.
- Section 76** amends AS 23.30.155(f) removes a reference to stay of payment on appeal issued by a court and substitutes a reference to stay of payment by order of the commission. This conforms to the provisions of Section 64 above.
- Section 77** amends AS 23.30.155(h) to remove references to the board, transfer the authority to initiate investigations, order independent medical examinations, and take other action to protect the parties' rights from the board to the director. The provision also gives the director the authority to file petitions in

disputed matters for a hearing before a hearing officer. The provision also conforms the language of the statute to modern usage.

Section 78 amends AS 23.30.155(i) to remove references to the board and transfer the authority to require the employer to make deposits with the Department of Revenue to secure payment of compensation from the board to the director.

Section 79 amends AS 23.30.155(j) to remove a references to the board and transfer the authority to approve offset of overpayments exceeding 20% of periodic compensation payments from the board to a hearing officer.

Section 80 amends AS 23.30.155(k) to remove reference to the board and transfer the authority to inspect receipts from the board to the director.

Section 81 amends AS 23.30.155(m) to remove references to the board. This provision transfers to the director the authority of the board to prescribe forms; the authority of the commissioner to review the timeliness of insurer and adjuster annual reports; and the authority of the commissioner to give notice of penalties. This provision also replaces the board with the division for the agency receiving annual reports.

Section 82 amends AS 23.30.155(o) to remove references to the board. It transfers the obligation to notify the division of insurance of frivolous or unfair controversion determinations from the board to the director, and the authority to make such determinations from the board to a hearing officer.

Section 83 amends AS 23.30.170(a) to remove references to the board, modernize the language of the statute and conform it to other usage in the act, replace the board with the division as the recipient agency for petition filings, transfer the authority to make investigation from the board to the director, and transfer authority to make supplementary orders to a hearing officer.

Section 84 amends AS 23.30.170(b) to remove references to the board, transfer the authority to declare awards in default from the board to a hearing officer, and transfer authority to request collection of defaulted payments by the attorney general from the commissioner to the director. The provision also makes a technical amendment, replacing applicant with petitioner to conform to current usage.

Section 85 amends AS 23.30.175(a) to remove references to the board and transfer the authority to determine spendable weekly wages, order adjustment of compensation rates, and direct deduction of prior payments from unpaid compensation from the board to a hearing officer.

Section 86 creates a new statutory provision, AS 23.30.175(b)(5), which caps compensation paid to non-resident recipients at the compensation rate the recipient would receive if residing in Alaska. The effect of the amendment is to allow compensation rates paid to a non-resident to decrease by cost of

living adjustments for the recipient's area of residence, but not to allow the compensation rate to rise higher than the Alaska rate if the cost of living is higher in the recipient's area of residence.

Section 87 amends AS 23.30.175(c) to remove a reference to the board and transfer the authority to provide cost of living comparisons from the board to the department.

Section 88 amends AS 23.30.180 to remove a reference to the board and transfer the authority to determine inflation adjustments and reductions of permanent total compensation for prior payment of permanent partial disability compensation from the board to a hearing officer. This amendment also conforms the language of the statute to modern usage.

Section 89 amends AS 23.30.190(b) to remove a reference to the board and transfer the authority to adopt schedules for injuries that cannot be rated by use of the American Medical Association Guides from the board to the department.

Section 90 amends AS 23.30.190(d) to remove references to the board, transfer from the board to the director the requirement to hold open hearings on the adoption date for new editions of the American Medical Association Guides and the authority to select and publish a date that new editions will be used for impairment ratings.

Section 91 amends AS 23.30.200(b) to remove a reference to the board and transfer the authority to fix wage-earning capacity from the board to a hearing officer.

Section 92 amends AS 23.30.205(c) to replace the commissioner with the director for receipt of notice of award or adjudication respecting the second injury fund.

Section 93 amends AS 23.30.205(f) to replace the commissioner with the director as the recipient of notice of possible claim against the second injury fund.

Section 94 amends AS 23.30.215(d) to remove references to the board, transfer the authority of the board to a hearing officer to commute payments of future compensation to persons residing outside the United States or Canada, and conform the language of the statute to modern usage. This amendment also adds the director and employer to the persons who may petition for commutation.

Section 95 amends AS 23.30.220(a) to remove references to the board, transfer the authority to determine matters relating to gross weekly earnings from the board to a hearing officer and conforms the language of the statute to modern usage.

Section 96 amends AS 23.30.240 to transfer the authority to approve executive officer waivers of coverage from the commissioner to the director.

- Section 97** amends AS 23.30.250(b) to remove references to the board, transfer the authority to determine and order reimbursement in cases in which a person obtained compensation and benefits by knowingly making false and misleading statements. This amendment also transfers the authority to make attorney fee awards against that person, and to declare an order in default, from the board to the hearing officer.
- Section 98** amends AS 23.30.260 to remove a reference to the board, transfer the power to approve fees for representation to a hearing officer and commission, clarifies that the statute refers to representation or advice with respect to a claim, and conforms the language of the statute to modern usage.
- Section 99** amends AS 23.30.395(28) to remove a reference to the board and replaces the board with the division as the agency which is furnished proof of financial ability to make direct payments.
- Section 100** amends AS 23.30.395 to add new subsections defining the commission, director, division and hearing officer.
- Section 101** amends AS 39.25.120(c)(14) to remove a reference to the board and substitute the division as the employer of the rehabilitation administrator.
- Section 102** amends AS 39.25.120(c) to add new subsections including hearing officers and the reemployment benefits administrator of the division in the list of partially exempt employees.
- Section 103** amends AS 39.50.200(b)(31) to remove a reference to the board and substitute the commission.
- Section 104** amends AS 44.62.330(a)(15) to remove a reference to the board and to substitute the division and director. This provision also modernizes the reference to the act by substituting the statute citation.
- Section 105** repeals AS 21.39.155(c), relating to the assigned risk pool, and AS 23.30.395(3), defining the board.
- Section 106** provides that the cap on non-resident compensation rates applies only to compensation for injuries on or after the effective date of Section 86.
- Section 107** creates a new provision of uncodified law that establishes a transition period during which the director of insurance will name members of the board of governors of the Alaska Insurance Guaranty Association to serve staggered initial terms, sets dates of expiration of the current board of governors and permits a member of the board to continue to serve until a successor is appointed.
- Section 108** creates a new provision of uncodified law that establishes the initial appointment of members of the commission by staggered terms.

Section 109 creates a new provision of uncodified law that establishes a transition period during which matters pending before the board may be completed, setting an expiration date for the terms of members of the board, and providing for continuation of effect notwithstanding a transfer of function from the board to the commission or director. This provision also continues in force all regulations, orders, decisions, or certificates issued by the board until revoked, modified or vacated under the provisions of this bill; continues in effect all contracts, rights, liabilities or obligations; and transfers the property of the board or other state agencies to implement the provisions of this bill.

Section 110 creates a new provision of uncodified law permitting the director of insurance in the Department of Community and Economic Development and Department of Labor and Workforce Development to proceed to adopt necessary regulations to implement this bill, but not before the effective date of the bill.

Section 111 gives Section 110 an immediate effective date.

Section 112 gives all Sections except Section 110 an effective date of July 1, 2004.

Appendix

Changing insurance guaranty assoc.	Creating the commission system	Creating or changing legal process	New penalties or other enforcement changes	Essentially conforming amendments
<p>Sec 1 is a declaration of legislative intent</p> <p>Sec 3 creates AS 21.09.090(e) which provides that insurers that transact workers' compensation insurance in this state must maintain in the state a special deposit of cash or securities</p> <p>Sec 5 reenacts AS 21.80.050 to expand the board of governors of the Alaska Insurance Guaranty Association.</p> <p>Section 6 amends AS 21.80.180(6) Excludes wkrs' comp claims from "covered claim" if the insured's net worth exceeds \$25,000,000</p> <p>Sec 105 repeals AS 21.39.155(c) relating to assigned risk pool</p> <p>Sec 107 uncodified law provides transition period for new Ak Ins Guaranty Assoc , members serve staggered terms.</p>	<p>Sec 9 codifies statement of legislative intent re: the workers' compensation system.</p> <p>Sec 10 repeals & reenacts AS 23.30.005. Creates in Dept of Labor a Division of Workers' Compensation and a director.</p> <p>Sec 11 adds new AS 23.30.007, creates workers' compensation appeals commission</p> <p>Adds new AS 23.30.008, sets out the powers & duties of new commission.</p> <p>Adds new AS 23.30.009 sets out powers & duties of chair of commission.</p> <p>Sec 59 creates new AS 23.30.112 establishing hearing officer employment & qualifications. Sets standards of impartiality & disqualification & bars ex parte communication. May issue subpoenas, require medical examinations, arrange hearings, as board did. Parts of APA made to apply.</p>	<p>Sec 13 amends AS 23.30.012 re: settlement of claims, allows w/o approval if EE has lawyer.</p> <p>Sec 56 amends AS 23.30.108 relating to discovery. Discovery conferences conducted by hearing officer, who can issue orders, expedited review of discovery orders allowed to the commission.</p> <p>Sec 57 adds petitions to permitted pleadings, allows all parties to present evidence at hearing, allows hearing officer to hold scheduling conferences and set reasonable hearing date.</p> <p>Sec 58 creates a new provision for dismissal of claims: relief demanded cannot be granted under the act, no jurisdiction, improper service, failure to prosecute, statute of limitation. Also gives hearing officer power to grant summary judgment if no dispute of fact and discovery complete.</p> <p>Sec 60 amends AS 23.30.115 to allow commission clerk to issue subpoenas.</p>	<p>Sec 38 amends AS 23.30.080(d) to authorize the director to seek a stop work order against uninsured employers and to allow the hearing for the order to be heard on short notice when job hazards present could cause immediate death or serious physical harm to workers. Penalty is \$1000 if order is disobeyed.</p> <p>Sec 39 creates two new statutes about penalties against uninsured employers. AS 23.30.080(e) allows the director to seek civil penalties of up to \$100/day per uninsured employee. It also allows the hearing for penalty to be heard on short notice when job hazards present could cause immediate death or serious physical harm to workers. The second new statute, AS 23.30.080(f) authorizes director to declare default if penalties in (d) or (e) are unpaid more than 7 days, file with court for judgment and request attorney general to enforce judgment by writ of execution.</p>	<p>Sec 2 amends AS 08.18.101(1)</p> <p>Sec 4 amends AS 21.24.130(d)</p> <p>Sec 7 amends AS 23.50.05.067(a)(1) (B)</p> <p>Sec 8 amends AS 23.05.067(e)</p> <p>Sec 12 amends AS 23.30.011(c)</p> <p>Sec 14 amends AS 23.30.015(b)</p> <p>Sec 15 amends AS 23.30.015(e).</p> <p>Sec 16 amends AS 23.30.015(j)</p> <p>Sec 17 amends AS 23.30.025(a)</p> <p>Sec 18 amends AS 23.30.030(5)</p> <p>Sec 19 amends AS 23.30.030(6)</p> <p>Sec 20 amends AS 23.30.040(a)</p> <p>Sec 21 amends AS 23.30.040(d)</p> <p>Sec 22 amends AS 23.30.041(a)</p> <p>Sec 23 amends AS 23.30.041(b)</p> <p>Sec 24 amends AS 23.30.041(d)</p> <p>Sec 25 amends AS 23.30.041(h)</p> <p>Sec 26 amends AS 23.30.041(j)</p> <p>Sec 27 amends AS 23.30.041(o)</p> <p>Sec 28 amends AS 23.30.041(p)</p> <p>Sec 29 amends AS 23.30.041(q)</p> <p>Sec 30 amends AS 23.30.045(d)</p> <p>Sec 31 amends AS 23.30.045(e)</p> <p>Sec 32 amends AS 23.30.065</p> <p>Sec 33 amends AS 23.30.070(a)</p> <p>Sec 34 amends AS 23.30.070(b)</p>

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	<p>Sec 64 replaces superior court review of board decisions with commission review of hearing officer decisions. Gives commission power to issue stays.</p> <p>Sec 65 four new statutes setting up commission system of appeal. AS 23.30.126 – review of director decisions by board (eg revoking self ins.) AS 23.30.127 – establishes basic process of appeal to the commission. AS 23.30.128 – gives commission broad powers of review on appeal. AS 23.30.129 eliminates superior court jurisdiction of appeal from commission and provides direct supreme court review.</p> <p>Sec 100 defines commission, director, division and hearing officer</p> <p>Sec 102 places hearing officers in partially exempt service.</p> <p>Sec 105 repeals definition of Board</p>	<p>Sec 62 gives hearing officer sole power to determine credibility of a witness that appears before him, adds requirement to make findings if credibility disputed, in Sec 65 below commission has power to make conclusive findings re: weight of evidence, hearing officers findings re weight of evidence conclusive if not disturbed by commission.</p> <p>Sec 63 provides for reconsideration of hearing officer decision by hearing officer (New AS 23.30.124)</p> <p>Sec 65 four new statutes setting up commission system of appeal. AS 23.30.126 – review of director decisions by board (eg revoking self ins.) AS 23.30.127 – establishes basic process of appeal to the commission. AS 23.30.128 – gives commission broad powers of review on appeal. AS 23.30.129 eliminates superior court jurisdiction of appeal from commission and provides direct supreme court review.</p>	<p>Sec 41 amends AS 23.30.090 to allow a hearing before a hearing officer before revocation of self insurance certificate, director may adopt, reject or amend proposed decision. Sec 42 provides such hearings will be recorded and public.</p> <p>Sec 67 gives the director powers to investigate, inc. subpoena records, take testimony, etc.</p> <p>Sec 77 gives director power to order independent medical exams, initiate investigation, file petitions in disputed cases.</p> <p>Sec 78 gives director power to require employer to make deposits with state to secure payment of compensation</p> <p>Sec 86 amends AS 23.30.175(b)(5), caps compensation paid to out of state recipients at the rate they would receive in Alaska</p> <p>Sec 94 amends AS 23.30.215(d) to allow director to ask for commutation of payments to foreign residents.</p>	<p>Sec 35 amends AS23.30.070(d) Sec 36 amends AS23.30.070(f) Sec 37 amends AS23.30.075 Sec 40 amends AS 23.30.085(a) Sec 43 amends AS 23.30.095(a) Sec 44 amends AS 23.30.095(c) Sec 45 amends AS 23.30.095(d) Sec 46 amends AS 23.30.095(e) Sec 47 amends AS 23.30.095(f) Sec 48 amends AS 23.30.095(h) Sec 49 amends AS 23.30.095(j) Sec 50 amends AS 23.30.095(k) Sec 51 amends AS 23.30.100(a) Sec 52 amends AS 23.30.100(c) Sec 53 amends AS 23.30.100(d) Sec 54 amends AS 23.30.105(a) Sec 55 amends AS 23.30.107 Sec 61 amends AS 23.30.120(b) Sec 68 amends AS 23.30.140 Sec 69 amends AS 23.30.145(a) Sec 70 amends AS 23.30.145(b) Sec 71 amends AS 23.30.155(a) Sec 72 amends AS 23.30.155(b) Sec 73 amends AS 23.30.155(c) Sec 74 amends AS 23.30.155(d) Sec 75 amends AS 23.30.155(e) Sec 76 amends AS 23.30.155(f)</p>

Appendix

Changing insurance guaranty assoc.	Creating the commission system	Creating or changing legal process	New penalties or other changes	Essentially conforming amendments
		Sec 66 permits modification of compensation	Essentially conforming amendments (cont'd)	Sec 79 amends AS 23.30.155(j) Sec 80 amends AS 23.30.155(k) Sec 81 amends AS 23.30.155(m) Sec 82 amends AS 23.30.155(o) Sec 83 amends AS 23.30.170(a) Sec 84 amends AS 23.30.170(b) Sec 85 amends AS 23.30.175(a) Sec 87 amends AS 23.30.175(c) Sec 88 amends AS 23.30.180 Sec 89 amends AS 23.30.190(b) Sec 90 amends AS 23.30.190(d) Sec 91 amends AS 23.30.200(b) Sec 92 amends AS 23.30.205(e) Sec 93 amends AS 23.30.205(f) Sec 95 amends AS 220(a) Sec 96 amends AS 23.30.240 Sec 97 amends AS 23.30.250(b) Sec 98 amends AS 23.30.260
			Sec 99 amends AS 23.30.395(28) Sec 101 amends AS 39.25.120(c)(14) Sec 103 amends AS 39.50.200(b)(31) Sec 104 amends 44.62.330(a)(15) Sec 106 effective date for application of Sec 86 Sec 108 uncodified law staggers commission member terms Sec 109 uncodified law providing transition from board to commission Sec 110 uncodified law directing regulation adoption Sec 111 effective date for Sec 110 Sec 112 effective date for remaining sections	

SB

315

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 2/11/04

FURTHER: Finance

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

DATE TURNED
 IN TO OFFICE: _____

Labor and Commerce Committee considered SENATE BILL NO. 315

SB 315 ENTRY PERMIT BUY-BACK PROGRAM

"An Act relating to the administration of commercial fishing entry permit buy-back programs."

and recommends:

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

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

NEW FISCAL NOTE(S):

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	NO REC	AMEND
			X	
	✓			
	✓			
CHAIR:	✓			

Alaska State Legislature

SENATOR
BEN STEVENS
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FAX (907) 269-0204



Session:
STATE CAPITOL
JUNEAU, AK
99801-1182
(907) 465-4993
FAX (907) 465-3872

Senate District N

BILL ANALYSIS

Senate Bill 315

"An Act relating to the administration of commercial fishing entry permit buy-back programs."

Bill Title: Entry Permit Buyback Program

Sponsor: Senator Ben Stevens, by Request of the Joint Legislative Salmon Industry Task Force

Bill Achieves:

- Retains the language in statute for the current approach for a buyback option but ADDS language that would allow the possibility of using some other funding source to initially fund (or "front fund") a buyback and then assess the remaining fishermen in the fishery. This will provide funds to repay the money that was front-funded.
- Bill does not change any policies relative to the Commercial Fisheries Entry Commission. It merely sets up a mechanism for the state to fund and implement a buyback in an efficient manner.
- A front-fund source could be: a state or federal appropriation, private sector loan, a court settlement, or another funding source.

Current law would finance a potential buyback in this manner:

- The Commercial Fisheries Entry Commission conducts an optimum number study. The study confirms that there are too many permits in a particular fishery. A buy-back program is established to reduce the number of permits. The fishermen are assessed a fee (can be no more than 7% of the value) based on an individual's fish tickets. The assessment goes into the general fund and the legislature may appropriate the funds for the buyback.
- This method can take a long time to collect enough funds to reach the "optimum" number. The permit reduction would be so slow that benefits would not be realized for a very long time. There has, to this date, never been a buyback.

If we are fortunate enough to find a source of repayable funding to provide for a quick, effective buyback in a fishery for which an optimum number study determines a reduction is justified, the state could:

- Use the available funding to quickly buy permits down to the optimum number in one attempt;
- **Then** assess earnings of those who have chosen to remain in the now (presumably) more lucrative fishery to pay back the loan over time until the obligation is repaid.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: **SB315A**
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Fish and Game
Title Commercial Fishing Entry Permit Buy-Back RDU Comm. Fish Entry Commission
Program Component Commercial Fisheries Entry
Sponsor Senator Stevens by request Commission
Requester Salmon Industry Task Force Component No. 471

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

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

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Shirley Penrose, Administrative Officer Phone 907-790-6960
Division: Commercial Fisheries Entry Commission Date/Time 2/20/04 2:15 PM
Approved by: Frank M. Homan, Commissioner Date 2/20/2004
Agency: Commercial Fisheries Entry Commission

Alaska State Legislature

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Session:
STATE CAPITOL
JUNEAU, AK
99801-1182
(907) 465-4993
FAX (907) 465-3872

Senate District N

SPONSOR STATEMENT

Senate Bill 315

"An Act relating to the administration of commercial fishing entry permit buy-back programs."

Senate Bill 410 modifies existing law governing buy-back programs. It would allow the Commercial Fisheries Entry Commission to "front fund" a buy-back program if an appropriation were received. The commission would then continue to collect funds through the designated rate of assessment in the buy-back program to "pay back" the indebtedness.

When the optimum number of permits is reached in a buy-back *and* the reasonable costs of the program have been met, the Commission will terminate the assessment in the affected fishery. SB 315 will make the administration of a buy-back program more workable.

SPONSOR STATEMENT

SB

319

(FILE 1 OF 5)

STATE +

LOCAL

MATERIAL

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Why Medical Liability Reform is Important

- Alaska's medical liability system is breaking down, which will have a direct affect on patient access to physicians.
- During the last year, the Alaska marketplace for professional liability insurance for physicians shrank to 2 doctor owned and operated insurers – MIEC and Norcal.
- Both MIEC and Norcal have initiated changes in their rate structure in the last two years that have significantly increased physician professional liability insurance premiums in Alaska.
- Other professional liability insurance insurers have not shown interest in conducting business in Alaska.
- Why is this important to Alaskans?
 - Alaska relies on attracting physicians from the rest of the country. We have no medical school.
 - Alaska reportedly has one of the fewest numbers of physicians per capita in the country and arguably has the fewest.
 - Providence Hospital released a study in the fall of 2002 that showed Anchorage is short 200 full time equivalent physicians with critical shortages in specialties such as, general internal medicine, psychiatry and ENT.
 - The Alaska State Medical Society has indicated the physician workforce is rapidly aging with over half the physicians over the age of 50.
 - A huge and imminent recruiting effort is necessary to insure that Alaska has sufficient numbers of well-trained doctors.
 - A practice environment that is conducive to attracting well-trained physicians in sufficient numbers is essential to adequate health care for Alaskans.
 - The professional liability environment is key to a good practice environment.
 - Insurance availability
 - Insurance affordability
 - In other words, attracting and keeping adequate numbers of physicians in Alaska requires available and affordable malpractice coverage.
 - Costs for professional liability insurance premiums affect the cost of health care. Those costs directly impact the payment rates for both Medicare and Medicaid.

Alaska's 1997 Liability Reform addressed many of the problem areas, but did not sufficiently address caps on non-economic damages (e.g. pain and suffering).

Current caps allow for pain and suffering awards to reach almost \$2,000,000.

The standard that has been set in California (under MICRA) is \$250,000 and is the gold standard sought in numerous states and in the federal reform measures.

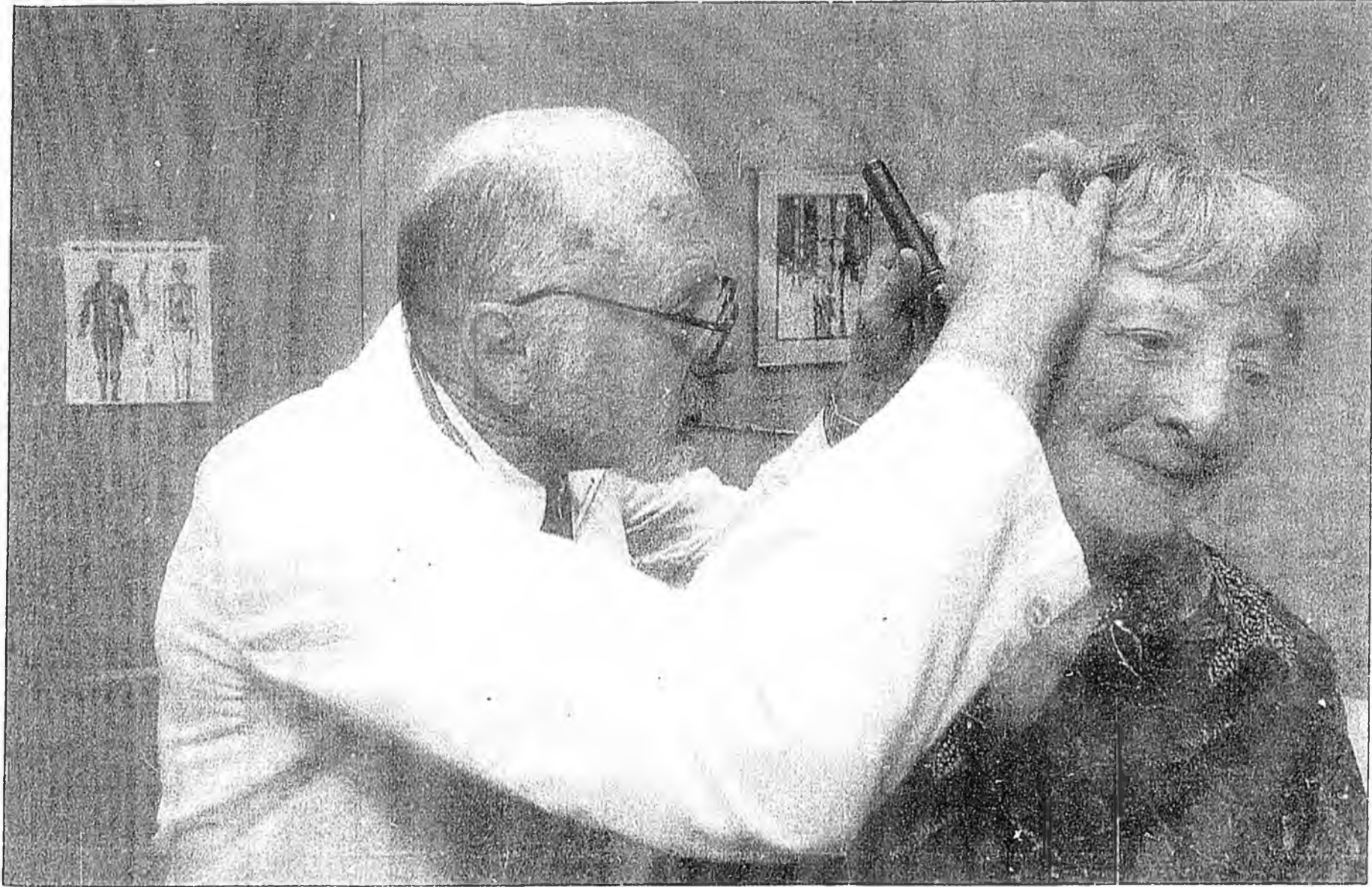
A \$250,000 cap on non-economic damages will have the most significant impact on professional liability rates and will help to attract other insurers into the Alaska market place.

Instituting a \$250,000 cap on non-economic damages will help stabilize professional liability rates.

Instituting a \$250,000 cap on non-economic damages will help create a practice environment that will help recruit the doctors that we need.

Instituting a \$250,000 cap on non-economic damages will help temper the increases in federal and state budgets for Medicare and Medicaid.

A CRISIS COULD BE COMING



JIM LAVRAKAS / Anchorage Daily News

Dr. Keith Brownsberger, 69, begins an annual physical with longtime patient Lois Kiehl. Brownsberger met Kiehl more than 30 years ago when they both worked in Sitka. Brownsberger is one of many older doctors in Alaska. Experts are concerned the state will face a doctor shortage in the near future.

Shingle Shortage?

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Shingle Shortage!

State statistics point to a coming medical crunch as aging doctors retire

By ANN POTEPIA
Anchorage Daily News

One of the youngest states in the nation has an aging problem: Its doctors are growing older. Jim Jordan, executive director of the Alaska State Medical Association, wanted to know just how old Alaska's doctors had become. His staff studied a list of physicians and guessed their ages from the dates they graduated from medical school. Based on his study, about half are older than 50.

His guess was right. Leslie Gallant, executive administrator of the state medical board, verified Jordan's research with her own database, complete with ages. Today, 48 percent of Alaska's licensed doctors have passed the half-century mark.

Gallant's data shows a sharp drop-off in practicing physicians as the decades mount up: Almost 650 retain their licenses in their 50s, but less than half that many remain licensed into their 60s. Slightly more than 100 of the state's 2,170 doctors are 70 or older.

That statistic foreshadows a pending crisis.

"Within the next 10 years, we could lose as many as half of Alaska's doctors," said Dr. Harold Johnston, a family practice physician who's older than 50.

When these doctors retire or cut back their practices, more doctors will have to move here and fill in. But that's not happening.

"They're not coming to Alaska," Johnston said.

At least not with the frequency they did in the past.

"There's going to be a problem, and we see it coming," said Dr. Tom Nighswander, who turns 60 this year. "And the time to be working on it is now."

Doctors used to come to Alaska for many reasons. Physicians came here to flee states that had health

MAINTENANCE ORGANIZATIONS

66

There's going to be a problem, and we see it coming. And the time to be working on it is now.

99

— Dr. Tom Nighswander

maintenance organizations.

"They were what I termed to be 'managed care refugees,'" Jordan said.

But Johnston said managed care is changing, and fewer doctors are moving here for that reason now.

Decades ago, the government signed up doctors to come north and work with the military and the U.S. Public Health Service. In the early 1970s, Nighswander came to Alaska to fulfill a two-year contract with the U.S. Public Health Service.

"That is where the Indian Health Service got all their manpower," he said.

Thirty years later, he's still here. Other physicians who came to Alaska through the health service finished their contracts and elected to stay, too.

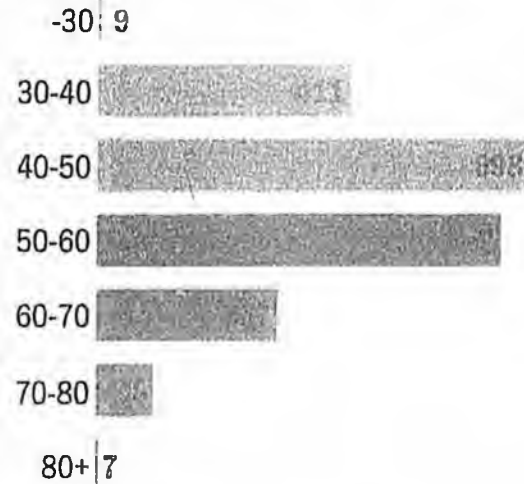
Nighswander said the public health service's role in Alaska has changed since those days. It no longer brings doctors to Alaska to serve the Native population. Instead, the tribes have taken over and directly recruit their own physicians to care for Alaska

See Page E-2, DOCTORS

ALASKA'S AGING PHYSICIANS

State officials are concerned about Alaska's ability to serve the medical needs of residents as the state's physicians get older. Records show a sharp drop in the state's number of physicians who continue to practice beyond the age of 60. Almost half the state's licensed physicians are more than 50 years old.

Age group Number of licensed physicians



Source: Alaska State Medical Board 2002

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Contact allows some blind to see

■ UNKNOWN: Few have "I was standing at the end of the . . . treated. Today, eight years . . . his

THE
FOLLOWING
DOCUMENT(S)
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DOCTORS: State may face shortage

Continued from E-1

Natives, he said. That means tribes recruit doctors just like any other private health care provider in town.

Some factors will always threaten Alaska's recruitment efforts. Some doctors don't like the weather here; others find the state too remote and far from family.

"We're a long way from anywhere," Jordan said. "Until people come up here and visit, they think that we're at the other end of the world."

Dr. Gerald Morris, a retired internist, said it's always been a little difficult to recruit doctors here unless they were people who enjoyed the outdoors.

Certain specialties are harder to recruit than others. The state medical association's records identifies only three rheumatologists in Alaska, doctors who specialize in treating arthritis and similar ailments. All of them are older than 60, according to Gallant's database.

"We badly need internists in town," said Dr. Keith Brownsberger, a long-time internist. "It's very, very slim right now."

Brownsberger is 69 years old and has been practicing medicine in Alaska for more than 30 years. He said he feels like he needs to stay in practice to take care of his patients.

"I will never abandon my patients, unless I get sick," he said.

Fellow internists say they struggle to find partners who'll help manage the workload. Morris and a former colleague, Dr. Michele O'Fallon, tried to recruit partners to augment their practice at Anchorage Community Internists, a clinic that dissolved last week.

"I tried for years to get somebody up here to practice rheumatology with me and to assist the community in that subspecialty," Morris said.

"I didn't even get a nibble."

She opened a new clinic today. She and Dr. Jeanne Bonar, an internist older than 60, have encountered legal problems when trying to recruit physicians. Both advertised for partners, but the few responses that came in were from foreign doctors with visas. The law allows doctors with visas to stay in the country so long as they work in medically underserved areas, the doctors said. Neither O'Fallon nor Bonar work in such an area, even though they said underserved areas aren't far away. O'Fallon finally found a new partner; the doctor grew up in Alaska and wanted to return, she said.

O'Fallon wrote to U.S. Sen. Ted Stevens this spring to explain the recruitment problems.

"This is the pattern for many medical practices in Anchorage," she wrote. "The physicians in this community have become overwhelmed and exhausted."

"Anchorage, and the state



Dr. Keith Brownsberger, 69, has been a general practitioner in Anchorage for more than 30 years.

as a whole, is on the verge of a medical crisis."

Recruitments become more difficult as primary care doctors, such as internists, are making less money than specialists, local internists say. In addition, doctors in general say they make less and less money on Medicare patients because the federal government is decreasing the Medicare reimbursement rate.

"More and more physicians are not going into primary care because it doesn't pay," O'Fallon said. "So the physician shortage is just getting worse and worse."

Doctors shared possible solutions, including trying to get the government to improve Medicare's reimbursement rates. Johnston said the number of Alaskans admitted every year to the WWAMI medical school program could be increased if the state approved more funding. WWAMI provides medical education to students from Washington, Wyoming, Alaska, Montana and Idaho.

He also talked about the possibility of increasing the number of medical residents in the state's only residency program for family practice doctors.

O'Fallon said she thought the state government should consider providing incentives to recruit physicians to Alaska

and possibly subsidize the new physicians' salaries until they become productive.

"We're going to have to be a net importer of physicians," Nighswander said.

Doctors might be enticed to move here if the state came up with different ways to practice medicine, he said.

"I work with a lot of young physicians, and they are not willing to work the hours that we did in the past," he said. "And they're probably smart."

One alternative might be for the state to allow doctors to work different shifts, such as working 40 hours in four days.

Fixing the problem won't happen quickly, Jordan said. Assuming that half of Alaska's doctors retire in 10 years, Jordan warned it could take at least that long to create a new crop of incoming physicians. To become a doctor, a high school graduate must finish four years of undergraduate study, then four years of medical school and finally a residency that could take three more years, he added.

"It's not like you can turn the switch and say, 'We need more doctors tomorrow' and it's going to happen," Jordan said. "There's a long head start that's needed."

Reporter Ann Potempa can be reached at apotempa@ada.com.

Study casts doubts

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Anchorage

November 6, 2003

Alaska policyholders update – renewal 2004

Rate increase

The Alaska Division of Insurance has approved recommendations from our consulting actuaries for the following rate changes, which will apply upon renewal of your coverage February 1, 2004:

- A 5% base rate increase for all physician and non-physician employee classes.
- Premium for separate medical corporation and partnership policies will increase from 7.5% to 10% of individual physician members and employed doctors premium.
- Neurologists and neonatologists will be reclassified into higher-rated categories, with increases of 20% and 8.7%, respectively.
- Policyholders who purchase \$2/4 million or higher limits of liability will experience higher charges for the excess portion of the rate, ranging from 10% to 22%, depending on specialty and rate classification.

Normal claims-made step rate increases will apply to policyholders insured for less than five years. New to practice discounts will continue to apply for the first three years of practice.

The rate increase is needed because claims severity (the *average* cost to defend malpractice claims reported by our Alaska policyholders and to settle a small percentage of them) has risen in the last few years. At the same time, the investment income MIEC earns, which is used to offset rates, is lower due to declining interest rates on bonds, which comprise the majority of MIEC's investment portfolio.

With this increase, MIEC's Alaska rates will be at about half their 1992 levels, while over the same period, the Consumer Price Index rose by 58%. MIEC also returned \$23.1 million in dividend credits to Alaska policyholders between 1991 and 2001.

What's driving up the costs of claims?

Almost 90% of claims reported by MIEC's policyholders result in no payment of indemnity to plaintiffs. That statistic hasn't changed much over the years and serves as the best evidence of just how dysfunctional the medical tort system has become. However, in the 10% of cases that are settled or tried to a plaintiff verdict, the average costs of indemnity and legal defense rose from \$138,676 on claims closed between 1991 and 1996, to \$289,153 for claims closed in the latest six years.

We think there are several causes:

- Juries are sympathetic to severely injured plaintiffs, regardless of whether the defendant(s) medical care caused or contributed to their injuries.
- Catastrophically injured plaintiffs require sophisticated, round-the-clock care – economic damages that are not limited by Alaska's cap on pain and suffering loss. Experts testify in court that such care will be prohibitively expensive in future decades. Even when future damages are reduced to present value and we pay them in installments by purchase of annuities, the present value can run into many millions of dollars.
- The complex technology of today's medicine, with stretched and diminishing resources of medical care, creates a dangerous environment for physicians, hospitals and other health care providers. Well-known capabilities of modern medicine create expectations of perfection, so that when a catastrophic outcome occurs, some people readily believe it is due to negligence. They want compensation for their injury and loss. The hugely expensive, adversarial lawsuit industry results.
- New theories of liability and new legal arguments intended to wrest settlements or larger verdicts have become common. Some arise from medical procedures or drugs alleged to be harmful. Some spring from exploitation of well-intended legislation to protect against elder abuse or prevent unwarranted transfer of patients from one hospital to another for financial reasons. These cases carry the threat of punitive damages or include allegations of fraud or intentional harm, which often are not covered by malpractice insurance if proven. The mere assertion of such claims places the defendant doctor at odds with the insurer which often leads to settlement of cases in which no actual liability exists. Medical liability has become a growth industry that hugely benefits a small number of opportunistic lawyers.

What can be done to slow this trend?

MIEC supports the Alaska State Medical Association's continuing efforts to maintain and strengthen Alaska tort reforms. Savings in claims costs that result from tort reforms or other factors belong to MIEC's policyholder-owners. MIEC will maintain its longstanding policy of returning monies not needed for claims or administrative expenses to policyholders as dividend credits. Future rate levels will reflect changes in claims frequency and severity.

As a policyholder-owned and governed company, MIEC seeks no profit from the insurance business. By law and by prudent fiscal practice, we establish rates sufficient to cover the expected costs of claims, legal defense and operating costs in the coming year. In past years, when MIEC made a profit, it was either returned to policyholders as credits against renewal premiums or used to strengthen the financial cushion for all policyholders. Results in more recent years have been unprofitable, meaning the additional dividend credits are unlikely in the next few years.

We support additional tort reforms to stabilize rates in the long term, and to remove the inequities from the litigation lottery system that now prevails. These include:

- A sliding scale limitation on plaintiff attorney contingent fees. This would ensure that the injured plaintiff gets the benefit of the award, not the attorney.
- Admission into evidence during trial of all collateral sources of payment for medical or other claimed expenses. This eliminates duplicate recovery for the same claimed economic loss. Third party payers must be prevented from asserting cross-claims for indemnification.

We also believe that more fundamental change in the current adversarial, fault-based litigation system will be required to bring a semblance of predictability and fairness back.

1. **Bifurcation of trials and limitation of contingent fees:** In cases involving permanent, severe injury, or when plaintiffs claim future economic damages in excess of \$1,000,000, change the law so that a jury determines liability but does not assess damages. If the jury finds liability, a panel of court-appointed experts would determine the amount and stream of indemnity payments required to compensate for injury and ensure maximum benefit to plaintiffs, consistent with preservation of scarce health care funds. The panel would be empowered to determine plaintiff attorney fees, based on actual hours of services performed instead of a percentage of the indemnity awarded. Contingent fees for damages less than \$1,000,000 would be limited on a sliding scale, under which fees would be capped at 10% of any indemnity in excess of \$500,000.
2. **Certificate of Merit:** Require that prior to filing a malpractice suit, a Certificate of Merit must be signed by one or more Board certified physicians who have reviewed the facts of the case. Physicians signing a Certificate of Merit must have current clinical or faculty practice in the same specialty as a defendant to be named in a malpractice suit. The law should provide sanctions against physicians and attorneys signing or filing false statements, or statements signed without conducting prior review of available medical records.
3. **Disclosure of structured settlement offers:** Require plaintiff attorneys to disclose to their client offers of structured settlements, including the amount of attorney fees involved in such offers. Require a copy of such disclosure be given to the defendant(s).
4. **Birth injury funding mechanism:** Establish a "modified no-fault" system for funding catastrophic birth injuries that require a lifetime of specialized care, including educational, occupational, mobility, as well as medical needs. This would involve establishment of a permanent trust fund with third party administration, as in the Virginia model, but with modifications. All obstetricians and others who deliver babies would fund it, as would hospitals, birthing centers and other facilities. Plaintiff attorneys would not be paid from funds in the birth injury trust fund. They would receive hourly compensation for services rendered as outlined in (1) above.

What else can be done?

Studies have shown that relatively simple changes in some procedures, clear communication among health care professionals, and prompt, accurate record entries, prevent misunderstandings that can lead to disastrous outcomes in care. Technology can help and resources are available. MIEC participates in the effort through its many loss prevention initiatives which we believe reduce litigation severity and frequency. We also vigorously support all organizations that join us in efforts to end the many abuses that a small number of lawyers have imposed on our legal system.

Every practitioner has an interest in accomplishing this for the benefit of patients. The public and the legislature rightly expect this commitment from medicine. The effort can and should come from medicine instead of being imposed by ever more intrusive regulation and bureaucracy.

MIEC appreciates your continued support and loyalty for our professional liability program. We will continue to work with the Alaska State Medical Association and with each of you to reverse the current trend in malpractice litigation costs.



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January 27, 2004

George S. Rhyneer, M.D., Director
Alaska Physicians and Surgeons
4120 Laurel, #206
Anchorage, Alaska 99508

RE: Regulatory and Legal Climate in Alaska

Dear Dr. Rhyneer:

In 2003, Northwest Physicians Mutual Insurance Company (NPM) discontinued insuring physicians in Alaska. The Company discontinued insuring physicians in Alaska because it could not get the Alaska Insurance Department to approve the actuarially supported and needed rate increases. It was with great reluctance that NPM discontinued insuring Alaska physicians. As a physician owned mutual insurance company, NPM must have the ability to charge the appropriate rates in order to continue in business.

As you know, there is a medical malpractice insurance crisis in this country. National insurance companies such as St. Paul and Farmers have discontinued providing malpractice insurance nationally. The crisis is driven by claims severity and the unpredictability of large settlements and verdicts. In recent years, companies have lost a great deal of money and have responded by withdrawing entirely from providing medical malpractice insurance or have concentrated in states that have a favorable environment including broad based tort reform.

NPM's claims experience in Alaska was sufficiently negative that it supported rate increases well over 100%. The experience in Alaska in general has deteriorated over the last several years. Alaska has in place several tort reform measures, which provide some relief, but in order to stabilize the Alaska market and attract additional insurance companies, I feel that a comprehensive tort reform package would be of major benefit. The states that have demonstrated the highest degree of market stability have a tort reform package, which includes a \$250,000 cap on non-economic damage. The model legislation is the MICRA legislation that has been in effect in California since 1975. This is also the same package of reforms, which were passed by the US House of Representatives in 2003 but failed to pass in the Senate.

Rather than waiting for help at the federal level, I would encourage you to work with the Alaska state legislature to pass reforms at the state level.

Please let me know if I can be of additional assistance or provide additional information.

Sincerely,

A handwritten signature in dark ink, appearing to read 'James T. Dorigan, Jr.', is written over a faint, ghosted version of the same signature.
James T. Dorigan, Jr.
Chief Executive Officer

Fall, 2002

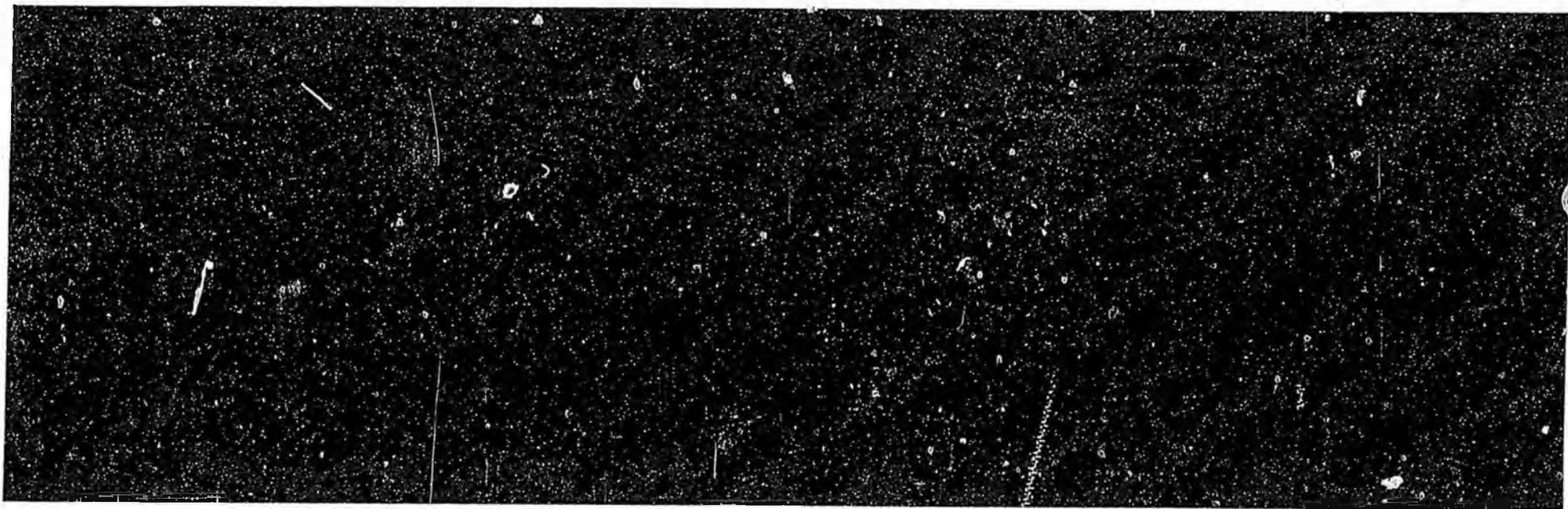


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Objective of Project and Presentation:

The Providence Health System Area Board has once again directed the Administration to conduct a physician needs assessment for the Anchorage community. The assessment is intended to be used for the following:

- Understand current and future physician needs for the Anchorage community
- Provide detailed information which may be utilized by medical staff in their recruiting efforts
- Aid in the Health System's assessment of the physician gaps in our provision of services
- Aid in the assessment of the need for additional office space on the Providence campus
- Considered in other strategic planning

Steering Committee Team Members:

The administrative team involved in the production of the data used in this report includes the following:

- Aron Wolf, M.D., MMM
Rural Administrator
- Barbara Symmes
Co-director of PHSA Planning
- Lisa Wolf
Co-director of PHSA Planning
- Susan Humphrey-Barnet
Assistant Administrator
- Del Bailey
Assistant Administrator

Sources used in the Analysis

Data from several sources was used in the analysis of physician needs for the Anchorage community. Those sources include:

- The 1998 and 2000 Physician Needs Assessment
- Practice Manager Survey
- 55 and Older Physicians Survey
- National physician/population ratios
- Local, historic physician/population ratios
- National population projections
- Local population projections
- Other national and local census statistics
- Medical Group Management Association (MGMA) production survey
- Merritt, Hawkins, & Associates (1999) "Excellence in Physician Search"
- Arthur Andersen Healthcare Consulting
Thomas W. Evert (Partner)
- University of Alaska Anchorage Institute for Circumpolar Health Studies
Brian Saylor, Ph.D, MPH (Director)
Sanna Doucette
Rebecca Nichols

Approach:

The Steering Committee decided to approach this project on the following three levels:

Internal Team Analysis: The involvement of the internal team consisted of the following data collection efforts and other analysis including:

- Accumulate demographic data about the Anchorage and Alaska market
- Amass physician availability data in Anchorage
- Amass physician availability data at Providence
- Compare data by specialty against national norm studies
- Compare this data with the 2 earlier studies

Local Market Survey: The Institute for Circumpolar Health Studies was retained to do two surveys of present physicians. One survey was for physicians ages 55 and older to determine their length of time to remain in practice. The other was to the office managers of physician practices in the Anchorage area. These surveys were geared at assessing both recruiting and perceptions of underserved specialties.

External Consulting Services: The Institute for Circumpolar Health Studies was retained to provide

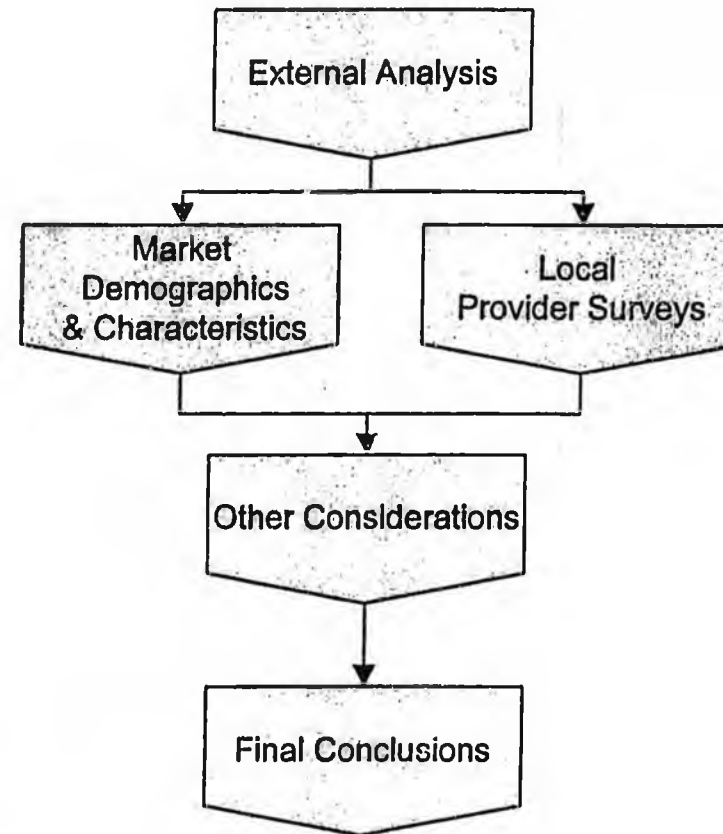
- Comparisons against national data
- Synthesis of overall project results
- Presentation support

Methodology:

Data made available was synthesized, analyzed, and included in the following:

- **External Analysis:** A provider comparison of the Anchorage medical community with US average.
- **Unique Market Demographic/Characteristics:** A demographic comparison of Alaska and the US as well as the exclusion of certain populations being served by various aspects of the Federal Government.
- **Results of Local Surveys:** A description of the results of the two surveys performed by the institute for Circumpolar Studies and Providence Hospital. Supplemental information from other surveyed providers and or comparative data has also been reported.
- **Other Considerations:** A list of other dynamics that may influence the need for provider services.
- **Final Conclusions:** Summary of findings and conclusions.

Methodology Model



Data Reviewed and Utilized:

There exist many sources that estimate the need for medical providers based on a community's population. We have reviewed the following:

- The Physician Executive Physician Need Rates article
- The Pew Health Care Professors Commission
- Intellimed Inc. National Data results
- Medical Economics Physician Need Rates
- American Medical Association (AMA) Physician Need Rates
- GMENAC Physician Need Rates
- Merritt, Hawkins, & Associates Excellence in Physician Search

After reviewing the above mentioned data we have determined to use as a baseline Merritt, Hawkins, & Associates (1999) "Excellence in Physician Search." This document projects the number of physician FTEs needed by specialty per 100,000 persons as a U.S. average. This data when compared to other data sources proves to be generally consistent, following the likely trends expected by physician needs in a community. Anchorage physicians/population relationships which are significantly different than national averages will be specifically addressed within the body of this presentation.