

11902

SENATE

LABOR

&

COMMERCE

5072

CS SENATE BILL No. 124

"An Act relating to requirements to obtain and maintain a fisheries business license; relating to security required of fish processors and primary fish buyers; and providing for an effective date."

SECTIONAL ANALYSIS
OFFICE OF THE ATTORNEY GENERAL

Section 1: Amends 43.75.020(a) to require a fisheries business license applicant to agree to pay, as a condition of their license, all title 43 taxes, seafood marketing assessments under AS 16.51, employment security contributions imposed under AS 23.20, administrative penalties assessed for a State occupational safety and health standards violation, and local fishery sales taxes. Current law requires payment of taxes under title 43 only.

Amends 43.75.020(b) to require the Department of Revenue (department) to deny an applicant a license if the applicant has failed to pay any of the obligations they agreed to pay in 43.75.020(a).

Section 2: Amends 43.75.055 to allow an applicant for a fisheries business license to secure payment of estimated tax for the year of application using security already provided to the department to secure payment of unpaid tax for the prior year as long as the department approves of the security previously posted and the applicant has timely paid their title 43 taxes in the preceding three years.

Section 3: This section repeals and reenacts AS 44.25.040 as follows:

44.25.040(a) requires a fish processor or primary fish buyer to file a performance bond with the department, promising to pay: 1) wages and contractual benefits to their employees, 2) fisherman for fish purchased from them, and 3)

employment security contributions required by AS 23.230. This subsection restates existing law.

44.25.040(b) sets the presumptive amount of the bond at \$10,000 for all primary fish buyers and processors who process at least 30,000 pounds of fish per year. This restates existing law. This subsection also describes three events which trigger an increase in the bond amount, if this event took place within five years of the current licensing year.

(1) **Final Judgment:** A final judgment against the bond can increase the amount of the bond. If the final judgment is more than \$10,000 but less than \$50,000, the bond requirement is increased to \$50,000. If the final judgment is \$50,000 or more, the bond requirement is increased to \$100,000. This makes a change to existing law. Existing law requires the bond to actually be used to satisfy the judgment before the bond amount can be increased. The \$10,000, \$50,000, and \$100,000 bond levels are unchanged.

(2) **Department finding of non-compliance:** if the department discovers the licensee is operating without a bond or with a bond that is less than the required amount, and also has an unsatisfied judgment to an employee or fisherman, the bond requirement is increased to \$100,000. This restates existing law.

(3) **Delinquent Employment Security Contributions:** the bond amount can also increase if the department has allowed the Department of Labor to collect against the bond for delinquent employment security contributions. If the amount of the delinquency is more than \$10,000, but less than \$50,000, the bond requirement is increased to \$50,000. If the amount of the delinquency is \$50,000 or more, the bond requirement is increased to \$100,000. There is a 45 day wait period before these bond increases go in effect after Department of Labor has given the department notice of the licensee's delinquency.

Current law required a final judgment to collect against the bond for delinquent employment security contributions and does not provide a wait period.

44.25.040(c) sets the presumptive amount of the bond at \$2,000 for processors who process 30,000 pounds of fish per year or less. This subsection also describes the same three events which trigger an increase in the bond amount in (b), if this event took place within five years of the current licensing year. The amounts of the bond, and bond increases are unchanged.

(1) **Final Judgment:** a final judgment against the bond can increase the amount of the bond. If the final judgment is more than \$2,000 but less than \$10,000, the bond requirement is increased to \$10,000. If the final judgment is \$10,000 or more, the bond requirement is increased to \$20,000. This restates existing law with the minor modification noted in (b)(1).

(2) **Department finding of non-compliance:** If the department discovers the licensee is operating without a bond or with a bond that is less than the required amount, and also has an unsatisfied judgment to an employee or fisherman, the bond requirement is increased to \$20,000. This restates existing law.

(3) **Delinquent Employment Security Contributions:** The bond amount can also increase if the department has allowed the Department of Labor to collect against the bond for delinquent employment security contributions. If the amount of the delinquency is more than \$2,000 but less than \$10,000, the bond requirement is increased to \$10,000. If the amount of the delinquency is \$10,000 or more, the bond requirement is increased to \$20,000. There is a 45 day wait period before these bond increases go in effect after Department of Labor has given the department notice of the licensee's delinquency. Current law required a final judgment to collect

against the bond for delinquent employment security contributions and does not provide a wait period.

44.25.040(d) requires a processor who posted a \$2,000 bond under subsection (c) to notify and post with the department a \$10,000 bond within a week of exceeding the 30,000 pounds a fish per year threshold, or cease operations. This subsection restates existing law.

44.25.040(e) describes the different forms of performance bonds that are acceptable: surety bond, cash deposit, or other negotiable security. This subsection also requires the department to waive the posting of a bond if the licensee demonstrates to the department they have sufficient equity in the real property to cover their required bond amount and they are not required to post an increased bond amount due to one of the three events set out in (b) or (c). Current law allows the use of real property in lieu of bond for amounts in excess of \$10,000 irrespective of the processor or primary fish buyer's record of paying fishermen, wages, or employment security contributions.

44.25.040(f) provides that the department may issue a license upon a showing the licensee has posted the bond required by this section. This subsection restates existing law.

44.25.040(g) describes the process for an employee, fisherman, or fish tender to file a civil action to collect against the bond posted under this section. This subsection also describes the department's obligation to inform the surety of the existence of a civil action and keep a record of these actions. This section restates current law except that the existing authority for the commissioner to accept assignment of a claim against the bond, and to bring suit on behalf of the assignor is repealed.

44.25.040(h) describes the requirements the Department of Labor must follow to file an administrative claim against the bond for delinquent employment security contributions. These requirements are designed to assure the licensee has been afforded due process at the administrative level before the licensee's bond can be used to satisfy Department of Labor's administrative claim. This subsection is new law.

44.25.040(i) describes the process the department is to follow after deciding to accept or deny the Department of Labor's request to collect their administrative claim from the bond under (h). This subsection is new law.

44.25.040(j) preserves the priority for using the bond to satisfy the claims of fisherman and employees over the Department of Labor's administrative claims under (h). This is achieved by requiring the Department of Labor to 'kick back' to the department money they received from the bond if a fisherman or employee subsequently gets a judgment against the bond under (g) and the: 1) licensee has not replenished the bond after it was used to satisfy Department of Labor's claim, or 2) amount of the fisherman or employee's judgment exceeds the amount of the bond currently posted. This section is new law.

44.25.040(k) provides for the bond's expiration two years after the processor or buyer is no longer licensed. However, if during this two year waiting period, a claim is filed against the bond, the bond will not expire until five years after the processor or buyer is no longer licensed. This subsection also provides for a 30 day notice by the surety to cancel a bond posted under this section. This section restates existing law.

Section 4: **Amends 44.25.042** to require the department to suspend the processor or buyer's license if the

Department of Labor has been allowed to collect against the bond using their administrative claim under AS 44.25.040(i) and the licensee does not immediately replenish the bond. This is new law.

Section 5: The section provides an immediate effective date.

STATE OF ALASKA

Department Of Labor and Workforce Development

FRANK H. MURKOWSKI, GOVERNOR

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

OFFICE OF THE COMMISSIONER

March 7, 2005

The Honorable Con Bunde
Alaska State Senate
State Capitol, Room 506
Juneau, AK 99801-1182

Dear Senator Bunde,

The Alaska Department of Labor and Workforce Development strongly supports Senate Bill 124 relating to Fish Processing Bonds.

SB 124 is beneficial to the department because fish processing companies that have unpaid occupational safety and health fines or unemployment insurance taxes will not be allowed to renew their license without paying the amounts due to the state. In addition, the bill provides a streamlined process for collecting unemployment insurance taxes from the bond proceeds.


In a recent case in Egegik, Alaska, Woodbine Fish Company did not pay wages, had unpaid occupational, safety and health fines, and had unpaid unemployment insurance taxes in 2003, but was allowed to renew its license and operate in 2004. The company continued to violate various labor laws in 2004, failed to voluntarily pay the previous penalties, and reneged on promises to timely satisfy unemployment insurance obligations. In addition, the company violated numerous agreements with Alaska fishermen by failing to pay for fish delivered to Woodbine.

Had this law been in effect last year, this company and others would have been refused a license until the penalties were resolved, and it is likely the violations in 2004 could have been reduced or eliminated.

Passing this legislation will help the department collect unpaid taxes and wages and provide meaningful incentives to businesses that have previously

demonstrated an unwillingness to operate lawfully. Further, this legislation will not impose extra burdens on those companies that do comply with Alaska law.

Sincerely,



Greg O'Claray
Commissioner

24-GS1013\G

Utermohle

3/8/05

CS FOR SENATE BILL NO. 124(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered:

Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL**FOR AN ACT ENTITLED**

1 "An Act relating to requirements to obtain and maintain a fisheries business license;
2 relating to security required of fish processors and primary fish buyers; and providing
3 for an effective date."

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

5 * **Section 1.** AS 43.75.020 is amended to read:

6 **Sec. 43.75.020. Application for license.** (a) Application for a license shall
7 be filed with the department and accompanied by an annual fee of \$25. A separate
8 annual fee is required for each plant specified in the application covered by the
9 license. The application must contain the name of the applicant, the line of business to
10 be licensed, place of business, and other facts that the department prescribes. The
11 applicant shall state that the applicant, as a condition of obtaining and maintaining
12 the license, agrees to pay

13 (1) the taxes levied under this title [TAX IMPOSED BY
14 AS 43.75.015 OR 43.75.100], and that the applicant will make a return and pay

1 the taxes [TAX] at the time provided by law;

2 (2) any seafood marketing assessment levied under AS 16.51;

3 (3) contributions imposed under AS 23.20 (Alaska Employment
4 Security Act); and

5 (4) any administrative penalties assessed under AS 18.60.093 for a
6 violation of a provision of AS 18.60.010 - 18.60.105.

7 (b) Upon receipt of an [THE] application in proper form under (a) or (c) of
8 this section, accompanied by the annual fee, the department shall issue the license if
9 the

10 (1) applicant has paid in full, including interest and penalties, the
11 following:

12 (A) taxes levied under this title; and

13 (B) any assessments under AS 16.51; and

14 (2) department has not received notification from the Department
15 of Labor and Workforce Development that the applicant has failed to pay in full

16 (A) an assessment of delinquent contributions that is final
17 under AS 23.20.205(c) or 23.20.220(c); or

18 (B) an administrative penalty that is final under
19 AS 18.60.093 or 18.60.097.

20 (c) Instead of a license issued under (a) of this section, the department may
21 issue a direct marketing fisheries business license to a licensed commercial fisherman
22 who processes fishery resources caught using a vessel that does not exceed 65 feet in
23 overall length and is owned or leased by the commercial fisherman. The licensee may
24 place into commerce in the state and outside of the state processed or unprocessed
25 fishery resources caught using the vessel described in the license. Fishery resources
26 that are caught using the vessel and owned by the licensee from the time of harvest
27 through sale, as defined by the department by regulation, may be processed by the
28 licensee on the vessel, at a shore-based facility, or by means of custom processing
29 services obtained by the licensee. An application for a direct marketing fisheries
30 business license shall be filed with the department and accompanied by an annual fee
31 of \$25. A separate direct marketing fisheries business license and annual license fee

1 are required for each vessel on which processing is performed. The application must
2 state the name and address of the applicant, the fishery resources for which the
3 applicant holds a commercial fishing entry permit or interim-use permit or quota
4 share, a description of the vessel and each shore-based facility where the applicant will
5 process fishery resources, and other information that the department prescribes by
6 regulation. The application must state that the applicant, as a condition of obtaining
7 and maintaining the license, agrees to pay the taxes, assessment, employment
8 security contribu^{tions}, and penalties as set out in (a)(1) - (4) of this section [TAX
9 IMPOSED BY AS 43.75.015(d) OR 43.75.100, AND THAT THE APPLICANT
10 WILL MAKE A RETURN AND PAY THE TAX AT THE TIME PROVIDED BY
11 LAW]. A person who holds a direct marketing fisheries business license may not
12 under that license (1) purchase fishery resources for resale or processing for sale; or
13 (2) process fishery resources for another licensed commercial fisherman or for a
14 fisheries business licensed under this chapter. In this subsection, "licensed
15 commercial fisherman" means a natural person who holds a commercial fishing entry
16 permit or interim-use permit issued under AS 16.43 or a quota share issued under
17 federal law.

18 * **Sec. 2.** AS 44.25.040 is repealed and reenacted to read:

19 **Sec. 44.25.040. Security for certain obligations.** (a) A person applying for a
20 license as a fish processor or primary fish buyer shall file with the commissioner of
21 revenue a performance bond, conditioned upon the promise to pay the following:

22 (1) wages owing to all persons employed by the fish processor or
23 primary fish buyer, including contractual employee benefits;

24 (2) independent registered commercial fishermen for the price of the
25 raw fishery resource purchased from them;

26 (3) contributions imposed under AS 23.20 (Alaska Employment
27 Security Act).

28 (b) A fish processor that processes more than 30,000 pounds of fish a year and
29 a primary fish buyer shall file a performance bond with the commissioner in the
30 amount specified in this subsection. The amount of the bond is \$10,000 unless, during
31 the five years preceding the application, one of the following has occurred:

1 (1) a final judgment in excess of \$10,000 was awarded against the
2 bond required under this section; if the final judgment against the bond was in excess
3 of \$10,000 but less than \$50,000, the amount of the bond is increased to a total of
4 \$50,000; if the final judgment against the bond was \$50,000 or more, the amount of
5 the bond is increased to a total of \$100,000;

6 (2) the commissioner has determined that a fish processor or primary
7 fish buyer has engaged in the business of fish processor or primary fish buyer in the
8 state while not in compliance with this section and has not yet satisfied a final
9 judgment entered against the processor or fish buyer for payment for labor furnished
10 to, or raw fishery resources purchased by, the processor or fish buyer; if the fish
11 processor or primary fish buyer has engaged in the business of a fish processor or
12 primary fish buyer while not in compliance with this section and has not yet satisfied a
13 final judgment for payment for labor furnished to, or raw fishery resources purchased
14 by the processor or fish buyer, the amount of the bond is increased to a total of
15 \$100,000; or

16 (3) the commissioner has determined under (i) of this section that a
17 claim against the bond filed by the Department of Labor and Workforce Development
18 under (h) of this section met the requirements in (h) of this section; if the amount of
19 the claim was in excess of \$10,000 but was less than \$50,000, the amount of the bond
20 is increased to a total of \$50,000; if the amount of the claim was \$50,000 or more, the
21 amount of the bond is increased to a total of \$100,000; an increase in bond amount
22 under this paragraph may not be imposed until 45 days after the commissioner
23 determined under (i) of this section that the claim of the Department of Labor and
24 Workforce Development met the requirements in (h) of this section.

25 (c) A fish processor that processes 30,000 pounds or less of fish a year shall
26 file a performance bond with the commissioner in the amount specified in this
27 subsection. The amount of the bond is \$2,000 unless, during the preceding five years,
28 one of the following has occurred:

29 (1) a final judgment in excess of \$2,000 was awarded against the bond
30 required under this section; if the final judgment against the bond was in excess of
31 \$2,000 but less than \$10,000, the amount of the bond is increased to a total of

CORRECTION

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



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

1 (1) a final judgment in excess of \$10,000 was awarded against the
2 bond required under this section; if the final judgment against the bond was in excess
3 of \$10,000 but less than \$50,000, the amount of the bond is increased to a total of
4 \$50,000; if the final judgment against the bond was \$50,000 or more, the amount of
5 the bond is increased to a total of \$100,000;

6 (2) the commissioner has determined that a fish processor or primary
7 fish buyer has engaged in the business of fish processor or primary fish buyer in the
8 state while not in compliance with this section and has not yet satisfied a final
9 judgment entered against the processor or fish buyer for payment for labor furnished
10 to, or raw fishery resources purchased by, the processor or fish buyer; if the fish
11 processor or primary fish buyer has engaged in the business of a fish processor or
12 primary fish buyer while not in compliance with this section and has not yet satisfied a
13 final judgment for payment for labor furnished to, or raw fishery resources purchased
14 by the processor or fish buyer, the amount of the bond is increased to a total of
15 \$100,000; or

16 (3) the commissioner has determined under (i) of this section that a
17 claim against the bond filed by the Department of Labor and Workforce Development
18 under (h) of this section met the requirements in (h) of this section; if the amount of
19 the claim was in excess of \$10,000 but was less than \$50,000, the amount of the bond
20 is increased to a total of \$50,000; if the amount of the claim was \$50,000 or more, the
21 amount of the bond is increased to a total of \$100,000; an increase in bond amount
22 under this paragraph may not be imposed until 45 days after the commissioner
23 determined under (i) of this section that the claim of the Department of Labor and
24 Workforce Development met the requirements in (h) of this section.

25 (c) A fish processor that processes 30,000 pounds or less of fish a year shall
26 file a performance bond with the commissioner in the amount specified in this
27 subsection. The amount of the bond is \$2,000 unless, during the preceding five years,
28 one of the following has occurred:

29 (1) a final judgment in excess of \$2,000 was awarded against the bond
30 required under this section; if the final judgment against the bond was in excess of
31 \$2,000 but less than \$10,000, the amount of the bond is increased to a total of

1 \$10,000; if the final judgment against the bond was \$10,000 or more, the amount of
2 the bond is increased to a total of \$20,000;

3 (2) the commissioner has determined that a fish processor has engaged
4 in the business of fish processor in the state while not in compliance with this section
5 and has not yet satisfied a final judgment entered against the processor for payment for
6 labor furnished to, or raw fishery resources purchased by, the processor; if the fish
7 processor has engaged in the business of a fish processor while not in compliance with
8 this section and has not yet satisfied a final judgment for payment of labor furnished
9 to, or raw fishery resources purchased by the processor, the amount of the bond is
10 increased to a total of \$20,000; or

11 (3) the commissioner has determined under (i) of this section that a
12 claim against the bond filed by the Department of Labor and Workforce Development
13 under (h) of this section met the requirements in (h) of this section; if the amount of
14 the claim was in excess of \$2,000 but was less than \$10,000, the amount of the bond is
15 increased to a total of \$10,000; if the amount of the claim was \$10,000 or more, the
16 amount of the bond is increased to a total of \$20,000; an increase in bond amount
17 under this paragraph may not be imposed until 45 days after the commissioner
18 determined under (i) of this section that the claim of the Department of Labor and
19 Workforce Development met the requirements in (h) of this section.

20 (d) If a fish processor who has filed a performance bond under (c) of this
21 section processes more than 30,000 pounds of fish in a year, the processor shall,
22 within seven days after the day on which the 30,000 pound threshold is exceeded,
23 notify the commissioner and comply with (b) of this section. If a processor who has
24 filed a performance bond under (c) of this section processes more than 30,000 pounds
25 of fish in a year, and does not comply with (b) of this section within seven days after
26 the date on which the 30,000 pound threshold is exceeded, the processor shall suspend
27 processing fish until a bond has been filed under (b) of this section.

28 (e) A fish processor or primary fish buyer may use only a surety bond, cash
29 deposit, or other negotiable security as a performance bond under this section. The
30 surety must be satisfactory in the determination of the commissioner. The use of other
31 negotiable security as a performance bond must be in a form acceptable to the

1 commissioner. The commissioner may waive the filing of a performance bond under
2 this section if the fish processor or primary fish buyer

3 (1) has more than \$10,000 in lienable real property located in the state;

4 (2) provides proof of this property in a form satisfactory to the
5 commissioner;

6 (3) is not required under (b) or (c) of this section to post a bond in
7 excess of \$10,000; and

8 (4) within the five years preceding the application under AS 43.75.020,
9 an employee or fisherman has not obtained a final judgment against the fish
10 processor's or fish buyer's bond under this section.

11 (f) If an applicant for a license as a fish processor or primary fish buyer has
12 complied with this section, the Department of Revenue may issue that applicant a
13 license to engage in the business of fish processor or primary fish buyer.

14 (g) A claim against a fish processor or primary fish buyer for failing to pay an
15 employee for wages or contractual benefits owed or for failing to pay an independent
16 registered fisherman for the price of raw fishery resource purchased from the
17 fisherman may be brought upon the bond filed under this section in the superior court
18 of the judicial district in which the work was done or in any judicial district in the state
19 in which jurisdiction may be obtained. If an action is brought upon the bond, a copy
20 of the complaint shall be served by registered or certified mail upon the commissioner
21 at the time the suit is filed. The commissioner shall transmit a copy of the complaint
22 and any judgment to the surety or holder of the negotiable security. If a judgment is
23 entered against cash deposited with the commissioner, the commissioner, upon receipt
24 of a certified copy of a final judgment, shall pay the judgment from the amount of the
25 deposit. The commissioner shall maintain a record, available for public inspection, of
26 all suits commenced under this subsection.

27 (h) A claim against a fish processor or primary fish buyer for failing to pay
28 contributions imposed under AS 23.20 may be brought by the Department of Labor
29 and Workforce Development against the bond filed under this section by filing a claim
30 against the bond with the commissioner, along with proof, satisfactory to the
31 commissioner, that the fish processor or primary fish buyer

1 (1) received a notice of assessment under AS 23.20.205;

2 (2) did not pay the amount specified in the notice of assessment within
3 30 days after receiving the notice of assessment or, if the assessment was contested
4 under AS 23.20.220, within 30 days after receiving the department's final decision
5 under AS 23.20.220(c); and

6 (3) did not file an appeal of the assessment under AS 23.20.220 or
7 filed an appeal but did not initiate a proceeding for judicial review under
8 AS 23.20.445 within 30 days after the department's final decision under
9 AS 23.20.220(c).

10 (i) If the commissioner determines that the Department of Labor and
11 Workforce Development has met the claim requirements in (h) of this section, the
12 commissioner shall forward the claim and supporting documents to the surety or
13 holder of the negotiable security. If the fish processor or primary fish buyer has
14 deposited cash with the commissioner, the commissioner shall pay the claim of the
15 Department of Labor and Workforce Development from the amount of the deposit. If
16 the commissioner determines that the Department of Labor and Workforce
17 Development has not met the claim requirements in (h) of this section, the
18 commissioner shall provide the Department of Labor and Workforce Development
19 with written notice of the deficiency of its claim.

20 (j) If a performance bond is insufficient to satisfy all claims filed against it
21 under this section, claims brought against the bond under (g) of this section have
22 priority over a claim filed against the bond under (h) of this section. The Department
23 of Labor and Workforce Development shall return to the commissioner money
24 received from a claim filed against a fish processor's or primary fish buyer's
25 performance bond under (h) of this section if an employee or fisherman obtains a final
26 judgment under (g) of this section against that processor's or fish buyer's bond and the

27 (1) processor or fish buyer has not replenished the bond after it was
28 used to cover the claim filed under (h) of this section; or

29 (2) final judgment obtained by the employee or fisherman is more than
30 the amount of the bond available under (b) or (c) of this section.

31 (k) The term of a performance bond expires two years after the fish processor

1 or fish buyer is no longer licensed in this state, except that if, during that two-year
2 period, a claim has been asserted against the bond, the term of the bond is five years.
3 If the surety on the bond wishes to cancel the bond, the surety may do so by giving the
4 commissioner written notice of intention to cancel. The cancellation is effective 30
5 days after the notice is delivered to the commissioner.

6 * Sec. 3. AS 44.25.042 is amended by adding a new subsection to read:

7 (h) If the commissioner determines under AS 44.25.040(i) that a claim filed
8 under AS 44.25.040(h) is sufficient to allow collection against the performance bond
9 filed under AS 44.25.040, the fish processor's or primary fish buyer's license shall be
10 suspended until the amount of the claim under AS 44.25.040(h) is paid in full and the
11 performance bond is replenished.

12 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

SB 124 / HB 192

Overview

The bill adds Employment Security Contributions, OSHA fines, and the Seafood Marketing Assessment to the list of obligations that a processor must be current with to hold a fisheries business license. Current law requires processors to be current with their taxes under Title 43, principally fish taxes and the corporate net income tax. The change will significantly improve collections of the added obligations and reduce the degree to which employers and employees subsidize non-paying employers. The provisions are contained in Section 1 of the bill.

The bill streamlines the process under which the Department of Labor and Workforce Development collects unpaid Employment Security Contributions from a processor's labor bond. Existing law requires a court ordered judgment - an expensive and sometimes ineffective process. Priority for claims is given to employees and fishermen. The provisions are contained in Section 2 of the bill.

The bill modifies bond requirements to increase bond levels and restrict the form of the bond in response to processor behavior. These provisions are contained in Section 2 of the bill.

- Bond level made more responsive to processor behavior. Existing law increases the bond requirement if the bond is insufficient to satisfy a claim actually paid from the bond. Processors who have failed to pay ESC, employees or fishermen can avoid higher bond requirements by simply paying the judgment directly. The bill specifies that bond levels are adjusted upward in response to a judgment without regard for the source of payment under this bill.
- Restriction on use of real property in lieu of bond. Under current law, processors with real property in Alaska are not required to post bond if their equity is at least equal to their bond requirement. It is normally not economically feasible to pursue claims against the processors real property, particularly for small claims. The bill prohibits the use of real property in lieu of bond by processors' who incur a judgment for unpaid wages or fish. The use of real property is also denied any processor that fails to pay ESC of \$10,000 or more.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 5
 Bill Version: SB 124
 (S) Publish Date: 3/2/05

Revision Date/Time (Note if correction): _____ Department: Labor and Workforce Development
 Title: "An Act relating to requirements to obtain RDU: Labor Standards and Safety
and maintain a fisheries business license..." Component: Wage and Hour
 Sponsor: Rules
 Requester: Governor Component Number: 345

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

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 (FY2005) cost: None
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation changes bonding requirements for fish processors and primary fish buyers. There is no anticipated financial impact to the department as a result of this legislation.

Prepared by: Grey Mitchell, Director Phone: 465-4855
 Division: Labor Standards and Safety Date/Time: 2/24/05 10:47 AM
 Approved by: Greg O'Claray, Commissioner Date: 2/24/2005
 Agency: Department of Labor and Workforce Development

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 4
 Bill Version: SB 124
 (S) Publish Date: 3/2/05

Revision Date/Time (Note if correction): _____ Department: Labor and Workforce Development
 Title: "An Act relating to requirements to obtain RDU: Employment Security
and maintain a fisheries business license..." Component: Unemployment Insurance
 Sponsor: Rules
 Requester: Governor Component Number: 2276

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

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 (FY2005) cost: None
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation changes bonding requirements for fish processors and primary fish buyers. There is no anticipated financial impact to the department as a result of this legislation.

Prepared by: Tom W. Nelson, Director Phone: 465-5933
 Division: Employment Security Division Date/Time: 2/24/05 10:47 AM
 Approved by: Greg O'Claray, Commissioner Date: 2/24/2005
 Agency: Department of Labor and Workforce Development

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: SB 124
 (S) Publish Date: 3/2/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Fish and Game
 Title: Relating to requirements to obtain and RDU _____
maintain a fisheries business license Component _____
 Sponsor: Rules Committee
 Requester: Governor Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

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 (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Passage of this legislation would have no fiscal impact.

Prepared by: Sarah Gilbertson
 Division: Legislative Liaison
 Approved by: Commissioner Kevin Duffy
 Agency: Alaska Department of Fish & Game

Phone 465-6137
 Date/Time 12/16/04 3:01 PM
 Date 12/16/2004

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: SB 124
 (S) Publish Date: 3/2/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Commerce
 Title: Fisheries Business License and RDU: Investments (122)
Fish Processor/Primary Buyer Bonds Component: Investments
 Sponsor: Rules
 Requester: By Request of the Governor Component No: 383

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

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 (FY2005) cost: 00

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation changes requirements to obtain and maintain a fisheries business license, and to the bonding requirements for fish processors and primary fish buyers. It does not impact the operations of the division.

Prepared by: Greg Winegar, Director Phone: 907.465.2510
 Division: Investments Date/Time: 2/4/05 6:25 PM
 Approved by: Edgar Blatchford, Commissioner Date: 2/4/2005
 Agency: Department of Commerce, Community & Economic Development

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 124
 (S) Publish Date: 3/2/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
 Title: Bonds & Accountability: Processors/UI RDU: Revenue Programs & Services
/UI/OSHA Component: Tax Division
 Sponsor: Governor
 Requester: House Rules Committee Component No.: 2476

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

CHANGE IN REVENUES ()	25.0	15.0	15.0	15.0	15.0	15.0
-------------------------------	-------------	-------------	-------------	-------------	-------------	-------------

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The bill represents three modifications to existing fisheries business tax licensing and surety bond requirements: 1) it adds the Seafood Marketing Assessment, UI tax, and OSHA fines to the list of state liabilities that must be paid in full to obtain and hold a fisheries business license; 2) lowers the requirements for payment of UI tax from a processors surety bond while retaining priority for employees and fishermen; and 3) increases protections in place for employees and fishermen by modifying the rules under which bonding requirements are raised for processors that fail to pay employees, fishermen, or UI tax.

We do not expect to incur additional costs as a result of the legislation. We expect to collect additional Seafood Marketing Assessments under this legislation.

Prepared by: Chuck Hamert Phone 465-2320
 Division: Tax Division Date/Time 2/3/05 1:19 PM
 Approved by: Tomas Boutin Date 2/3/2005
 Agency: Department of Revenue

SB124



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

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

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 1, 2005

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

Dear President Stevens:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill recommending changes to the requirements to obtain and maintain a fisheries business license and to the bonding requirements for fish processors and primary fish buyers.

This bill proposes to require, as a condition of obtaining and maintaining a fisheries business license under AS 43.75.020, an acknowledgment of the obligation to pay the taxes levied under AS 43, Alaska Seafood Marketing Institute (ASMI) assessments under AS 16.51, employment security contributions under AS 23.20, and Alaska Occupational, Safety, and Health Administration (OSHA) fines under AS 18.60. The bill proposes denying an applicant a fisheries business license until the applicant has paid in full all of those same taxes, assessments, contributions, and fines that are outstanding.

The bill also would repeal and reenact AS 44.25.040, which requires the filing of a performance bond by fish processors and primary fish buyers. Under the bill, the performance bond would be more accessible for collection of claims by the Department of Labor and Workforce Development (DLWD) for unpaid employment security contributions. The bill would achieve this by providing a process for the DLWD to file directly with the commissioner of revenue a claim against the bond instead of obtaining a court judgment against the bond. However, this bill would preserve the existing statutory priority for use of the bond to pay fishermen and employees first. To achieve this, the DLWD would be obligated to return money collected from the bond if the processor or buyer does not replenish the bond and a fisherman or employee has obtained a final judgment against the bond.

The Honorable Ben Stevens
March 1, 2005
Page 2

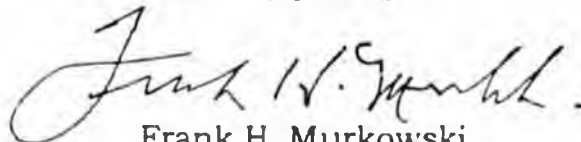
Additionally, the bill would provide that if a bond is depleted by the DLWD's claim, the fish processor or fish buyer would be subjected to an increased bonding requirement (the bill would preserve the existing increased bonding requirement in the case of a final court judgment against the bond).

Last, the bill proposes to prevent the use of real property as a bond substitute if the fish processor or fish buyer has been subjected to an increased bonding requirement or if a final judgment has been obtained against the bond in the preceding five years.

My purpose in introducing changes to the licensing requirements is to prevent the licensure of a fisheries business that has demonstrated that it is, and remains, unwilling to pay its taxes, ASMI assessments, employment security contributions, or OSHA fines. My purpose in introducing changes to the bonding requirements is to expedite the collection of unpaid unemployment insurance contributions by the DLWD and to make the bonding amount more representative of the risk of nonpayment posed to fishermen and employees who work for these bonded fish processors and buyers.

I urge your prompt and favorable action on this measure.

Sincerely yours,

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

Frank H. Murkowski
Governor

Enclosure

SB

130

(FILE 1)

2. Indeterminate, Dept. of Administration
3. Fiscal, Dept. of Law
4. Fiscal, Dept. of Labor & Workforce Development

The Governor's transmittal letter dated February 24, 2005, follows:

*Dear Speaker Harris:

Under the authority of article III, section 18, of the Alaska Constitution, I am transmitting a bill related to the workers'

02-25-2005

House Journal

0431

compensation system. This bill proposes discrete improvements to the current system. The goal of these changes is to increase the efficiency and flexibility of the current system, and significantly reduce some of its costs, in order to ensure that benefits will continue to be available in substantially the same form they are today without stifling employment opportunities.

The Legislature has consistently striven to have our workers' compensation system quickly and efficiently deliver fair and predictable benefits to injured workers at a reasonable cost to their employers. Despite those efforts, the current system has not kept pace with the pressures caused by a growing, ever-changing workforce and rising medical costs. In response to complaints regarding delays in resolution of claims and the increasing costs of maintaining the current system, the enclosed bill proposes improvements to several areas.

A significant change proposed in this bill is the creation of a workers' compensation appeals commission. Currently, appeals from Alaska Workers' Compensation Board decisions are heard on a rotating basis by individual superior court judges. The bill proposes to have appeals heard by a five-member commission. This commission, like the board itself, would consist of both lay member representing workers and employers as well as a chair with legal training and workers' compensation experience. Appeals would be heard by a panel both knowledgeable in workers' compensation matters and available to produce consistent, legally precedential decisions in an expeditious manner.

The bill also places increased responsibility for oversight of the system in the hands of the workers' compensation division. The bill would increase the division's ability to investigate fraudulent claims, pursue employers who fail to provide coverage for their employees, and oversee medical costs. Under the current system the division must refer suspected fraudulent claims to other state agencies for investigation. Under this bill, the division would be able to investigate fraudulent claims on its own. The bill would also allow the division to investigate and quickly close down employers who attempt to operate without workers' compensation coverage. The board is then empowered to assess fines for failing to insure and the bill creates a

02-25-2005 **House Journal** **0432**

fund to receive those fines and use them to pay benefits to injured workers whose employers failed to insure.

In addition, the bill gives the division additional authority to address medical costs that are now approaching 60 percent of every workers' compensation benefit dollar paid in Alaska. Under this bill, the Commissioner of the Department of Labor and Workforce Development is authorized to empanel a medical services committee.

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 3/3/05

FURTHER: Finance

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

DATE TURNED IN TO OFFICE: _____

Jane

For and Commerce Committee considered SENATE BILL NO. 130

SB 130 WORKERS' COMPENSATION

Act relating to a special deposit for workers' compensation and employers' liability insurers; relating to assigned risk pools; relating to workers' compensation insurers, including the intent of the legislature, and setting out limitations, concerning the interpretation, construction, and implementation of workers' compensation laws; relating to the Alaska Workers' Compensation Board; assigning certain Alaska Workers' Compensation Board functions to the division of workers' compensation in the Department of Labor and Workforce Development and to that department, and authorizing the board to delegate administrative and enforcement duties to the division; establishing a Workers' Compensation Appeals Commission; providing for workers' compensation hearing officers in workers' compensation proceedings; relating to workers' compensation liability; relating to workers' compensation medical benefits and to charges for and payment of fees for the medical benefits; relating to agreements that discharge workers' compensation liability; relating to workers' compensation awards; relating to reemployment benefits and job dislocation benefits; relating to coordination of workers' compensation and certain disability benefits; relating to division of workers' compensation records; relating to release of treatment records; relating to an employer's failure to insure and keep insured records accurate; providing for appeals from compensation orders; relating to workers' compensation proceedings; providing for supreme court jurisdiction of appeals from Workers' Compensation Appeals Commission; providing for a maximum amount for the cost-of-living adjustment for workers' compensation benefits; relating to attorney fees; providing for the department to enter into contracts with nonprofit organizations to provide information services and legal representation to injured employees; providing for administrative penalties for employers uninsured or without adequate security for workers' compensation; relating to fraudulent acts or false or misleading statements in workers' compensation and penalties for the acts or statements; providing for members of a limited liability company to be included as an employee for purposes of workers' compensation; establishing a workers' compensation benefits guaranty fund; relating to the second injury fund; making conforming amendments; and providing for a study and report by the medical services review committee; and providing for an effective date.

The committee recommends:

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

Senate Bill:
 Same Title
 New Title

House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

NEW FISCAL NOTE(S):

PREVIOUS FISCAL NOTE

Department	Date	Fiscal Year	Indet.	Zero	FNF#

Department	Date	Fiscal Year	Indet.	Zero	FNF#

SIGNATURES AND RECOMMENDATIONS	DO PASS	DO NOT PASS	NO REC.	ABSENT
	<i>Bettye Davis</i>			
<i>[Signature]</i>				X
<i>[Signature]</i>				
<i>[Signature]</i>				
<i>[Signature]</i>				
CHAIR: <i>[Signature]</i>				

Suzanne Mullen

From: jerry flock [jerry_flock@hotmail.com]
Sent: Sunday, March 27, 2005 10:52 PM
To: Sen. Con Bunde

My name is Jerry Flock any questions or replies fill free to contact me at jerry_flock@hotmail.com or message phone 907-929-3599. You all have my permission to send this anywere or tell anybody in hopes for help thankyou.

General Roofing System has been in non-compliance with the law for many years and yet the State of Alaska still gives them a lice ne to operate in my State. First of all this Employer was found to have let there insurance elapses or expire 18 times in short period of time Alaska Workers Compensation Decision and Order AWCB Case No. 14763 AWCB Decision No. 99-0063 IN THE MATTER OF THE ACCUSATION OF THE FAILURE TO INSURE WORKERS COMPENSATION LIABILITY. Filed March 22 1999

Second of all as reported in all Workers comp Decision and orders this employer is non-paying and non-complying through workers comp this employer was found responsible the employer was ordered to pay medical this employer choose not to.

This employer was ordered to file an annual report (all compensation paid to employee pervious year). I was injured in may 1997 no annual report 1998 annual report was found edit error this report was never corrected nor was ever a 1999,2000,2001,2002,2003,2004,now this employer has paid every year a form of medical. By Alaska law if an Employer dot fulfill this obligation then there is a penalty totaling up to 1,000 dollars a year for not complying to AS 23.30.155(m). This is a total of 7,700 dollars that this employer owes the State of Alaska for noncompliance Question has the employer been charged the answer is no. The division of Workers Compensation Department of labor wrote a statement dated July 8 1999 from Michael P Monagle Workers Compensation Officer II Stating: 1998 Annual Report edit Error Report

This Employer never paid any medical bill on time there is reported evidence in workers comp file that This employer was ordered through workers comp even workers comp employees faxed prescription and had conversations with medical providers still without employers compliance.

All of this non compliance with me receiving medical attention escalated into me needing a life saving surgery one that was found to be work related because of employers noncompliance and lack of responsibility toward her obligation to produce medical to an employee injured on the job.

I was forced to either receive this surgery or die Employer refused to do any thing but deny responsibility. This left me with only one avenue that was to ask the state for help. A person would think that if a business was operating in this state and the employer was not going to follow the law at some point and time a person would think that the state that keeps given this employer a business license to operate in this state and is allowed to be in non-compliance with the law. Back to needing surgery here I am at a point of throwing up blood two three times a week not knowing if the next will be the last. See in this state a person without a child in order to receive any kind of medical you must fill out for social security. So here I am I cant receive medical attention from the persons responsible so I go to State public assistance filled all papers the reason that I am here is because of workers comp failure to make employer comply filled out social security all papers were filled out because of state agency and employers lack of enforcing and or following the laws of Alaska state. A head of Alaska Medicaid system is sylvan mulchler after the state teasing me on weather they were going to pay or not after being flown back and forth two different times first Alaska state was going to pay then not then they were going to pay my DR. in Seattle calls

and asked are you or are you not going to help Mr. flock and I quote from DR. notes and Sylvan explains "that pt falls between the cracks of the Alaska workers compensation Public Assistance and social security. Pt will not qualify for a more complete medical program until the social security assessment is complete he thinks pts disability claim is based on the back , leg injuries-the acceleration of his old esophageal problem". This is a man that was put in his position to stop people like me from fallen into these cracks.

Since 1998 Workers comp has turned this Employer over two the Office of Special Prosecution at least twice again with the failure of my due process.

First time

AWCB Case No. 14763

AWCB Decision No. 99-0063

IN THE MATTER OF THE ACCUSATION OF THE FAILURE TO INSURE WORKERS COMPENSATION LIABILITY.
Filed March 22 1999.

I bring your attention to a letter from State of Alaska letter head Department of law little box checked Office of special prosecution to Workers comp Joireen Cohen " I am writing to you regarding workers compensation file on the above named case. When I spoke with you on August 29th I indicated that our office has been trying to obtain your case file since March of last year and that we are unable to proceed without the full case file. I understand that you are extremely busy and if I remember correctly, you indicated that this was a large file and would take time to copy, however, for the sake of the injured party, I would like to ask again that you promptly send over a copy of your case file for our office to review".

This was dated for September 10th 2001

Second Document recorded of or in file was dated for March 12th 2002 this is from me to Office of special prosecutors office they called me stated that they have finally received my file but they needed a copy of the Compromise and Release as well as Setting Aside of the same Compromise and Release.

First, of all question if the Office of special prosecution didn't receive the two most important documents I wonder what else that the Office of special prosecution didn't receive.

Second, Workers comp passed this employer to Office of special prosecution for criminal charges on March 22 1999.

Third, during this time the Employers Dad tried to pay someone to kill me States Complaint against Employer Solicitation to murder NO. 3 AN -soo-1440 CR During all of this I am fighting to stay alive and asking State for help all parties involved is aware of the other and yet this continues.

The second time was AWCB Case No. 199713636, AWCB Decision No. 01-0068, Filed with AWCB Anchorage, Alaska on April 13, 2001 in this Decision and Order Workers Comp Orderd Employer to file a bond again employer would nor

obey so Workerscompn under AS 44.62.590 filed a contemp order against her

This again shows the Employers wanton disregard for authority. Judge Eric T. Sanders due process as he took it was to ask employer if she was able to afford the bond or not regardless of evidence put in front of him example reason why Compromise and Release was set aside(reason #1 being employer lyed about assets) second according to AS 44.62.590 if an agency holds someone in contemp the only discussion in front of the judge is why should the person being held in contemp not be held in contemp. Not if the employer can afford it or not. Case No. 3AN-00-3649CI.

Again Remember during this time the State of Alaska paid 10,000 dollars for a sugery that is clearly the employers responsibility Since 1998 I have recorded every workers comp PH.hearings as well as hearings all court cases brought infront of state of Alaska all Telephone conversations regarding all of my case as well as the people incharge of state Agencycs of Workerscompensation, Public Assistance , as well as judicial system (Office of special prosecutions, division of law ect.

As well in this State in order to pass laws legaslature as well as the governor mut give the pubic a metting regarding these laws the state records these for sake of informati - integrity as do I, I have been tending all house bills as well as senate bills that h anything to do with the situation I am in for atleast three years at all metting I voie my recorded opion .

Still today I am fighting to receive medical attention not only has this almost costed me my life on severall occasions But continues to be life threatening . As I wait for Social

Security Assisment for what oh ya employers responsibility.

But yet again State of Alaska will give this employer business a license to operate in my State.

I will send this to all House members as well as senators in state as well as out of state untill I get some Action instead of lack of . Also to include All Departments to be listed Now people it seams to me that some of you are responsible for creating this system in whitch I have been allowed to fall through the crack's for the same people that have been put into inforcing these laws that you have created have allowed this to be what it is.

State Senate

House of Representatives

Senator_Ben_Stevens@legis.state.ak.us

Senator_Gary_Stevens@legis.state.ak.us

Senator_Johnny_Ellis@legis.state.ak.us

Senator_Con_Bunde@legis.state.ak.us

Senator_John_Cowdery@legis.state.ak.us

Senator_Bettye_Davis@legis.state.ak.us

Senator_Fred_Dyson@legis.state.ak.us

Senator_Kim_Elton@legis.state.ak.us

Senator_Hollis_French@legis.state.ak.us

Senator_Lyda_Green@legis.state.ak.us

Senator_Gretchen_Guess@legis.state.ak.us

Senator_Lyman_Hoffman@legis.state.ak.us

Senator_Charlie_Huggins@legis.state.ak.us

Senator_Albert_Kookesh@legis.state.ak.us

Senator_Donny_Olson@legis.state.ak.us

Senator_Ralph_Seekins@legis.state.ak.us

Senator_Bert_Stedman@legis.state.ak.us

Senator_Gene_Therriault@legis.state.ak.us

Senator_Thomas_Wagoner@legis.state.ak.us

Senator_Gary_Wilke@legis.state.ak.us

House of Representatives

Representative_John_Harris@legis.state.ak.us

Representative_John_Coghill@legis.state.ak.us

Representative_Ethan_Berkowitz@legis.state.ak.us

Representative_Tom_Anderson@legis.state.ak.us

Representative_Mike_Chenault@legis.state.ak.us

Representative_Sharon_Cissna@legis.state.ak.us

Representative_Harry_Crawford@legis.state.ak.us

Representative_Eric_Croft@legis.state.ak.us

Representative_Nancy_Dahlstrom@legis.state.ak.us

Don't just search. Find. Check out the new MSN Search!

<http://search.msn.click-url.com/go/onm00200636ave/direct/01/>

To: Senate Labor and Commerce Committee

From: Dale R. Walaszek, PA-C

Re: SB130

Dear Senators,

I apologize I am unable to attend public testimony on this important bill for Alaska. Please review my written comments, and attached RAND study regarding the use of the ACOEM treatment guidelines.

Summary:

Nov 2004 RAND study "Evaluating Medical Treatment Guideline Sets for Injured Workers in California"

Results: After review of 73 relevant national treatment guidelines, the 11 physician panelists (from national specialty societies) preferred the ACOEM guideline set to the alternatives. "...there is no reason to switch to a different comprehensive guideline set at this time."

California will continue to work on improving the implementation of the ACOEM guidelines.

I find that many of SB130's medical cost containment solutions are similar in approach to California's. I also find that SB130 needs some refinement on the medical fee schedule. I recommend reduction from the 90th percentile to the 75th percentile of the current fee schedule, until we can obtain the data to focus further potential fee-reductions in a fair and consistent method.

Today's News:

CA WCIRB to Propose 10.4% Decrease: 03/24/05
The California Workers Compensation Insurance Rating Bureau's governing committee late yesterday decided to file an advisory filing advocating a 10.4 percent decrease in the state's workers' comp "pure premium rates" for policies renewing or incepting July 1.

Please read my previous written testimony for further details.

Regards,



Dale R. Walaszek, PA-C

P.O. Box 522 Kenai AK 99610

Thank you for the opportunity to comment on this very important issue. My name is Dale Walaszek; I am a physician assistant specializing in Occupational Medicine. I currently work at an on-site medical clinic for Agrium, a large industrial plant in Kenai. I have practiced medicine in Alaska for the past seven years. I have also served on the Alaska Workers Compensation Board for the last two years, and I have recently submitted my resignation to the Board because I am potentially moving out of State to seek future employment. I am also a Board member of the WCCA, where I have attempted to bring a health provider's perspective to discussions regarding these issues. I mention this because my comments should be taken in this context:

1. The business I work for is closing for reasons other than WC costs, and I have no current economic business interests of whether this bill passes or not.
2. I have specialized in Occupational Medicine over the last 5 years of my practice, and I have received training in this field from both Duke University and the American College of Occupational and Environmental Medicine.
3. While on the WC Board, I have assisted the Alaska system with adjudicating disputed claims. During this time I have read through numerous volumes of case medical records, which I find reveals some of the major systemic problems in our system today.
4. I have analyzed and written research regarding Alaska's workers compensation problems, and compared them with solutions found in other State systems. I did this in my free time.
5. I have contacted and discussed my findings with the Medical Directors from other State workers' compensation systems.
6. I have been very involved, and thankfully not as an injured worker, in today's highly adversarial and misguided system.

You will hear testimony regarding this bill from my fellow health care providers who do not support this bill. Over the past year, I have been personally encouraging the state medical organizations to develop solutions to those problems, but most of what I often hear in return is that they are skeptical we have a medical expenditure problem. The most frequent comments I hear are that they want more detailed data before supporting any changes. I have shared with them the hard data and statistics that I have collected from various resources, and many of them still believe the problem must be with "a few rogue providers," and not a systemic problem at all.

I am here to tell you that we do have a significant medical expenditure problem, and this bill contains sound methods for change. By voicing this opinion I have no doubts this will be in direct conflict with most of my fellow medical provider's views.

Comments on the proposed bill:

Sec. 23 AS23.30.095 (j) Utilization Review Organization

This is a vital change because the system needs the assistance of a professional provider-based Utilization Review organization to effectively assist the Board in determining appropriateness, necessity, and the reasonable cost of medical and related services. I have participated in hearings where these issues are the focus of much lengthy dispute.

The Board does not currently possess the necessary knowledge or expertise to make sound decisions regarding the appropriateness, necessity, or reasonable cost of medical treatment. As reflected in numerous Decisions and Orders (D&Os), just about any medical treatment is permitted as long as the treating provider orders it. (I can attach a few examples.) In rare, but not uncommon instances, the treatment is absurd by any measure for standard of care. This has resulted in a number of questionable diagnostic tests, physical treatments, and repeating procedures to continue un-checked despite the fact that most other health care systems would not allow for it.

Sec. 24 AS23.30.095 (n) Generic drug products

Prescription drug expenditures have steadily been driving up the cost of care in all health systems. This proposed change, while not having an immediate impact on cost or over-utilization (particularly with the ongoing narcotic prescription problems), would at least encourage a more thoughtful approach to the selection of prescription drug treatment. Almost every other health care system I am aware of has made such necessary changes to encourage cost-effective approaches when the provider prescribes medications. According to the NCCI national prescription drug study, requiring the use of the generic drug equivalent will only potentially decrease the costs for 10% of the drugs prescribed. (that does not equate to a 10% in savings) Further work on the prescription drug issues are clearly warranted by the suggested Medical Policy Unit contained in this bill, which I suggest include input from a pharmacist.

(o) ACOEM Guidelines

I could write pages on my opinions regarding both the benefits and drawbacks of instituting these evidence-based guidelines into our system. I have attended lectures from the ACOEM authors, I have listened to them debate specific sections, and I have utilized the ACOEM guidelines in my own daily practice. Without going into multiple pages of testimony on this single issue, I believe they work very well as a foundation for the treatment of the majority of work-related injuries. The intent of these guidelines was to provide health care providers with a highly scrutinized evidence-based approach to the treatment of the most common industrial injuries. You may hear some call it "cookbook medicine"; while in reality it is a foundation of scientific knowledge to support thoughtful medical decisions. It contains a focus on return to work and maximum improvement in function, something that all of us should be working for together to benefit injured workers.

While I realize these guidelines were not written with the intent to save costs, the results of utilizing such guidelines reduces unnecessary medical treatments, and promotes a rapid return to physical and emotional wellbeing for the patient. Whenever you reduce the number of unnecessary treatments, you also improve patient safety and reduce the associated costs of medical complications and poor outcomes. While I only provide medical care for those injured Agrium employees who have so chosen my care, (as required under the current law), I have experienced great success at significantly reducing

costs while promoting a safe and rapid return to work. I agree the data I have on this example is a small sample size, and without independent analysis, but Agrum's direct costs for workers compensation are about 1/2 of the State reported average per case. As encouraged in the ACOEM guideline, I have also successfully implemented a Return to Work process involving both the workers and managers that improves employee outcomes and reduces associated costs of lost wage replacement.

Included in this bill is also the reasonable ability to deviate from the guidelines when necessary. I estimate that less than 10% of patients should require care other than what is provided for in the guides. If the type of injury or illness is not covered in the ACOEM guides, this bill also provides for following other nationally accepted evidence-based approaches to care. Contrary to other opinions, this is a very reasonable approach.

I would like to provide brief comment on the position of my fellow medical providers in the Chiropractic field. I do believe they have significant role in providing quality care with good outcomes to injured workers (within their scope of practice, just as I do). I would find it to be a reasonable and balanced approach for them to utilize the National Chiropractic treatment Guidelines, so long as the suggested Medical Policy unit fairly and fully evaluates the scientific literature to support continued usage after one year of this bill's passage. (I also support having Chiropractors involved in both the Medical Policy unit and the Utilization Review process.) I have long felt that the dispute between Physician and Chiropractic medical providers to be polarizing at the expense of patient care. The truth is, if the evidence-based literature (yes, Chiropractors have come a long way on quality evidence-based studies) suggests good outcomes with minimal medical complications at a reasonable cost, then that is the best care for our injured workers! End of argument.

Sec. 25 23.30.097 Medical Payment Fee Schedule

I find it difficult to provide logical testimony on this issue without first having a few answers from the Administration regarding this suggested change. These are my questions:

1. What is an approximate percentage reduction/change from the 2005 fee schedule to the 1999 fee schedule?
2. What is the estimated system savings if this fee schedule was applied to the 2004 medical charges received?
3. Where does the 1999 WC fee schedule compare in rank among the 2005 Medicare, Medicaid, and average Private Health fee schedules?

My thoughts are that if the 1999 WC fee schedule is somewhere between the 2005 Medicare/Medicaid and average Private Health fee schedules, then I find it a fair approach to reduce costs. With that said, not a physician would want to hire me to stay in this State. (Although I doubt anyone in the medical profession will support cutting into his or her budgets, my next suggestion would provide pay based upon quality.)

THE SINGLE MOST IMPORTANT CHANGE to this Bill is to allow for employers to negotiate a higher fee schedule as an aid to encourage physicians to provide quality care and good outcomes for Return to Work. As an employer, wouldn't you want to pay more for good service? There are actually States where some medical providers complete the necessary reports/paperwork on-time, end patient visits with a discussion about the plan to return to work, actually talk with industry safety professionals or insurance adjusters regarding plans for recovery, twist a few management arms to make reasonable workplace accommodations, and even visit the work-place to gain a better understanding of the work involved! This is called Occupational Medicine, and if we give employers the ability to negotiate a reimbursement higher than the "middle of the road" fee schedule, there could bloom a new market of health care providers willing to make this system actually work. Providers that continue to over-utilize, over-prescribe, over-inject, over-bone adjust, and just don't have the time to be a good "coach" to encourage recovery, should be paid less and have the Utilization Review organization on the telephone each and every day.

Medical Policy Unit

I have already briefly mentioned the Medical Policy Unit, and this is also another necessary change that needs to occur for our system to efficiently evolve. A Medical Policy Unit, comprised of individuals who actually understand how health benefit systems work, will play a vital role in policy research and future recommendations regarding changes to the system.

Conclusion

This bill worries many of my fellow health care providers, for they fear the over-involvement of the system in the delivery of care. Providers also fear the negotiating power of the people who pay the bills. My response to them is that there needs to be a balance between providing quality care, at a fair price, with higher pay for those who provide good outcomes and services. This bill, along with my suggested changes, would move the Alaska Workers Compensation system closer to that balance.

This bill is not the final grand solution to end all problems in our system, it will need further work, but it is a big step in the right direction. Before believing any testimony that this bill is "the worst" for Alaska, I suggest you look at States like New Mexico, Washington, Ohio, Oregon, Colorado, and others where the comp systems are actually in some reasonable balance.

Thank You,


Dale R. Walaszek, PA-C

TO: Senator Con Bunde, Chairman of the Senate Labor & Commerce Committee
FROM: Marjorie T. Linder, M.A., CRC, MTL Services, PO Box 230029,
Anchorage, AK 99523-0029, (907) 346-2474
DATE: March 30, 2005
RE: OTHER AMENDMENTS PROPOSED TO THE ALASKA WORKERS'
COMPENSATION ACT FOR SB130:

As a vocational rehabilitation counselor in the workers' compensation system, in addition to changes previously proposed for Sections 14, 15, and 16 of this bill, I propose two other VERY IMPORTANT changes to Title 23, Chapter 30 of the Alaska Statutes, the Alaska Workers' Compensation Act. However, it is important that the two following changes be tied to each other to assure fairness, cost savings, and preservation of earning power for those most seriously disabled by their injuries. Also, the job dislocation benefit proposed in SB130 must be removed as a disqualifier for eligibility for the re-employment benefit.

1. Add to Sec. 23.30.190 (a), the following: "However, in the case of a worker who does not qualify for the re-employment benefit under AS 23.30.041 or who receives a full release to return to the worker's job at the time of injury, the PPI compensation owed in a lump sum will be reduced by 20%."

Under current law, an injured worker who can return to work receives his impairment money in a lump sum and can earn income at the same time. In contrast, an injured worker whose injury permanently bars him from work receives his impairment money parceled out at his workers' comp rate during retraining and has no ability to earn income. Thus, our current law penalizes more severely those who need the help the most. This change proposes to award less money to those who can work and the same amount as is currently provided to those who need retraining.

According to 2003 figures reported by the carriers, there are at least 1292 out of 2042 workers who received PPI awards but had no costs reported in any rehab cost fields. A large percentage of the 750 claimants who had rehab costs reported were not eligible for the re-employment benefit.

This provision would save at minimum \$2.8 million and probably significantly more. PPI composes almost 11% of claims costs. Thus, impacting this claims expense, which represents the third largest cost category of over \$24 million, could represent a significant savings.

2. Replace 23.36.041(4)(7) to read: "Remunerative employability" means having the skills that allow a worker to be compensated with wages or other earnings equivalent to at least 85% of the workers' gross hourly wages at the time of injury; if the employment is outside the state, the stated 85% shall be adjusted to account for the difference between the applicable state average weekly wage and the Alaska average weekly wage.

Changing the wage goal for a vocational plan from 60% to 85% of the workers' gross hourly wages at the time of injury will help preserve the earning and buying power of those most seriously disabled from work injuries. We believe helping people with adequate plans to earn a living again is good public policy. This change should be coupled with savings realized by a 20% reduction in PPI rates for those who are not eligible for the re-employment benefit. Again, previously accepting the job dislocation benefit should not disqualify employees from the re-employment benefit in future workers' compensation claims.

TO: Senator Con Bunde, Chairman of the Senate Labor & Commerce Committee
FROM: Marjorie T. Linder, M.A., CRC, MTL Services, PO Box 230029,
Anchorage, AK 99523-0029, (907) 346-2474
DATE: March 30, 2005
RE: OTHER AMENDMENTS PROPOSED TO THE ALASKA WORKERS'
COMPENSATION ACT FOR SB130:

As a vocational rehabilitation counselor in the workers' compensation system, in addition to changes previously proposed for Sections 14, 15, and 16 of this bill, I propose two other VERY IMPORTANT changes to Title 23, Chapter 30 of the Alaska Statutes, the Alaska Workers' Compensation Act. However, it is important that the two following changes be tied to each other to assure fairness, cost savings, and preservation of earning power for those most seriously disabled by their injuries. Also, the job dislocation benefit proposed in SB130 must be removed as a disqualifier for eligibility for the re-employment benefit.

1. Add to Sec. 23.30.190 (a), the following: "However, in the case of a worker who does not qualify for the re-employment benefit under AS 23.30.041 or who receives a full release to return to the worker's job at the time of injury, the PPI compensation owed in a lump sum will be reduced by 20%."

Under current law, an injured worker who can return to work receives his impairment money in a lump sum and can earn income at the same time. In contrast, an injured worker whose injury permanently bars him from work receives his impairment money parceled out at his workers' comp rate during retraining and has no ability to earn income. Thus, our current law penalizes more severely those who need the help the most. This change proposes to award less money to those who can work and the same amount as is currently provided to those who need retraining.

According to 2003 figures reported by the carriers, there are at least 1292 out of 2042 workers who received PPI awards but had no costs reported in any rehab cost fields. A large percentage of the 750 claimants who had rehab costs reported were not eligible for the re-employment benefit.

This provision would save at minimum \$2.8 million and probably significantly more. PPI composes almost 11% of claims costs. Thus, impacting this claims expense, which represents the third largest cost category of over \$24 million, could represent a significant savings.

2. Replace 23.30.041(4)(7) to read: "Remunerative employability" means having the skills that allow a worker to be compensated with wages or other earnings equivalent to at least 85% of the workers' gross hourly wages at the time of injury; if the employment is outside the state, the stated 85% shall be adjusted to account for the difference between the applicable state average weekly wage and the Alaska average weekly wage.

Changing the wage goal for a vocational plan from 60% to 85% of the workers' gross hourly wages at the time of injury will help preserve the earning and buying power of those most seriously disabled from work injuries. We believe helping people with adequate plans to earn a living again is good public policy. This change should be coupled with savings realized by a 20% reduction in PPI rates for those who are not eligible for the re-employment benefit. Again, previously accepting the job dislocation benefit should not disqualify employees from the re-employment benefit in future workers' compensation claims.



March 28, 2005

6441 South Ardark Place
Anchorage, Alaska 99502 1800
(907) 245-1544
Fax: (907) 246-1744

Honorable Con Bunde
Alaska Sta: Senate
State Capitol, Rm 506
Juneau, Alaska 99801-1182

Re: Alaska Workers' Compensation Reform Act

Dear Senator Bunde,

The Lynden family of companies is proud to employ approximately 560 Alaskans and we strongly support the 2005 Workers' Compensation Reform Act. We value our employees at Lynden. We pay excellent wages, provide among the best benefits in our industry, and strive to create the safest possible workplace. Unfortunately, accidents and injuries do occasionally occur. When they do, we want our employees to receive the best medical care and rehabilitation services available. Sadly, however, Alaska's current workers' compensation system is broken. It is driving expenses to unmanageable levels, which thwarts our ability to grow and is costing our economy jobs.

It was noted in the February 23, 2005 Alaska Department of Labor and Workforce Development News Release that Alaska's rates are the second highest in the nation and have increased 36% over the last two years. There are other telling statistics. According to the National Council on Compensation Insurance, since 1990, countrywide workers' compensation benefit levels have risen a mere 3.2%. Alaska's corresponding increase has been 12.2% - nearly four times the national average. Also, while the countrywide change in premium level has *dropped* 22.2% since 1993, Alaska's premium level has *increased* 5.2% in the voluntary market and a whopping 30.1% in the assigned risk market.

This disparity is due, in part, to the fact that workers' compensation reform has already been instituted by many states. Clearly the time has arrived for Alaska to adopt proven reforms that do not harm injured workers.

Although benefit levels may be partly to blame, the inability to prudently control medical costs and generally manage a claim is the real problem. In Alaska the employee and his or her lawyer decide on appropriate medical treatment. The employer cannot even require preferred providers with negotiated fee rates. This impacts self-insured employers as much or more than those with traditional insurance policies.

Typically, treatments called for in the American Medical Association guides are blindly followed by the Alaska system. No discretion is used. As a result, the maximum treatments for chiropractic care, massage and physical therapy available under the required guidelines are viewed as entitlements and have become the minimum. Nearly every injured worker takes advantage of the full benefit, driving costs up. Doctors, fearing malpractice

Honorable Con Bunde
March 28, 2005
Page 2



liability, readily agree that the maximum scheduled benefit may have some medical indication. And, with small effort even the liberal AMA guidelines can be exceeded allowing long-term, purely palliative care at the employer's expense.

Alaska Supreme Court decisions in cases like *Egenio v. Egenio Construction Co.* 998 P.2d 434, 2000; *Phillip Weidner & Associates, Inc. v. Hibdon* 989 P.2d 727, 1999; and *Municipality of Anchorage v. Carter* 818 P.2d 661, 1991 have turned the statutes on their heads, and tied the hands of the Alaska Workers' Compensation Board (AWCB) from making common sense decisions. For all practical purposes, *Hibdon* extended workers' compensation benefits to cover any pre-existing injury if it is aggravated in the slightest by a person's work activities. If, for example, work contributes at all to accelerating a degenerative condition, a presumption requires the employer to pay for full treatment – even if the injury is an old athletic injury mostly exacerbated by shoveling snow, moose hunting, or simply aging. *Egenio* effectively eliminated the two year statute of limitations on claims. *Carter* opened the door widely to purely palliative care by requiring the AWCB to presume that any continuing care requested by an employee is medically indicated and must be paid by the employer unless the employer can prove otherwise – an impossible standard.

Using constructive tools such as return to work programs and vocational rehabilitation are too often unreasonably challenged by the AWCB following these precedents. Ironically, the injured worker pays the price and can be effectively placed on involuntary welfare.

Only the legislature has the power to restore legislative intent and common sense to the law.

Looking at Lynden's workers' compensation losses, you can understand our frustration. In 2000, our workers' compensation losses (i.e., paid and reserved for future payments) totaled \$573,669 six months after the policy term expired. Today, with no new claims, those same cases have escalated to \$863,881. 2001 was even worse. Six months after that policy term expired, the losses were \$569,775. Today we expect to pay at least \$1,526,969. Again, this is with no new losses. How costs continue to escalate so dramatically? It happens because there are no controls on medical costs, the AWCB cannot apply common sense, vocational rehabilitation is underutilized, and more. The worker's compensation reform bill will go a long way toward solving these problems.

We strongly urge passage of the 2005 Workers' Compensation Reform Act.

Sincerely,

A handwritten signature in black ink, appearing to read 'David W. Haugen', is written over a printed name and title.

David W. Haugen
Vice President

cc: Hon. Ben Stevens
Hon. Ralph Seekins

Senate Bill & House Bill 130 and 180

My testimony is that the Alaska Injured Workers Alliance does not support these bills for a number of reasons.

Medical Costs:

Asking for a roll back of rates will only lead to a bigger shortage of physicians available to treat injured workers. We are also not addressing the problems with the fee schedule. According to Engenix (the fee schedule holder) they have only sold approximately 2,000 fee schedules for the state of Alaska. Some of the health care providers that we surveyed a. hold a fee schedule and b. regularly have their bills reduced below the rates set out in the fee schedule. This would mean that globally if insurance review audit companies are reducing the payments, there is no clear idea of how much each company is saving on medical costs. What it does reveal to us is that medical costs are already being cut. It also tells us that not only are insurance companies saving money, but they are providing little information on what those savings may be. We also have no enforcement of the current fee schedule. It would appear that there is more cost shifting here than enforcement of the current fee schedule. We need reliable data and information to address the medical costs.

Medical Benefits:

We do not believe that a preferred provider list or a drug list would be appropriate for workers compensation. This further limits care and drugs injured workers could potentially receive. Insurance companies now have control over what they are willing to pay for. The current law does not provide for pre-authorization of services, and pushing list of providers and drugs would further complicate an already complex process. Equally, injured employees would like to suggest that employers be held to a IME provider list. Injured Workers would like to see only one doctor at a time unless a referral is provided. Right now injured workers are subjected to doctor panels paid for by employers.

Adjudication:

We do not feel that the proposed legislation would better serve injured workers or employers. There is currently no education process to explain how they should participate in the adjudication process. Complex changes as proposed will in our view increase appeals, and the time delay appears to be about the same. Additionally we do not feel that an over-panel should have authority to set precedence over the superior and supreme courts. The balance must be restored to the impartial process to create a fair chance for all parties. We feel that giving a lot of power to an unbalanced board or division is wrong.

Retraining Benefits:

We believe that a clear re-training process that provides results for injured workers would be of greater benefit than that of the proposed bill. Injured workers know little or nothing about retraining and this will add more red tape and confusion to a complex part of benefits available to injured workers. Workers need to understand and not guess about the benefits that they need.

Overall:

We know that all personnel in the division have little or no training on the complex hearings process, the Workers Compensation Act, and little or no medical training. Yet, they must make complex decisions based on information that is available to them. We need to encourage training for all staff, make benefits more clear and base rate increases on tangible, factual data. We do not need to make sacrifices for the sake of expediency, but need to make informed changes based on facts. We have little or no information on the complex mess on medical costs, rehabilitation retraining benefits and know that the hearings process is far from impartial. We don't want to jump in to a series of changes that make the process more complex and harder than the last time.

Legal council will not become more available until defense cost is fully reported. Plaintiff attorneys are making approximately .50 on the dollar while defense attorneys get dollar for dollar what they bill for. Why not drop defense costs to match that of injured workers to contain costs?

Insurance Premiums should be frozen until we can figure the mess out so that employers are not overcharged for insurance products.

Hiring advocates in theory is a good thing but who would want the job. Legal Services is a non-profit and the Alaska Pro-Bono programs are not geared for workers' compensation. At minimum, it could potentially take up to two years for them to get the nuances of the program as well as procedures and practices. We urge you to not pass this bill. The bill could create an even bigger mess than we currently have.

Thank you

Barbara Williams

Alaska Injured Workers Alliance

P. O. Box 101093

Anchorage, Alaska 99510

278-3661

Research Contributions

Alaska Legislative Audit 07-4601-00

Alaska Hearing Officers Manual for Administrative Hearings

Richard Fineburg Report 1-21-1980

Survey Anchorage, Mat-Su Healthcare providers

Survey: Engenix

Survey: Concerta, Bunch and Associates, Corvell, AIG Claims Services

Suzanne Mullen

From: jeanann [jkusel@gci.net]
Sent: Thursday, March 31, 2005 6:44 AM
To: Sen. Con Bunde
Subject: title 23, chapter 30

Dear Law Maker,

I have been working as a vocational Counselor in the states workers' compensation system for over 8 years now. I am a certified rehabilitation counselor certified to perform the work by a national certification board. I had to have a master's degree and work 3 years under a working rehabilitation counselor and take a very extensive test to be allowed to perform this work. There ARE many certified rehabilitation counselors that do not take the responsibility of helping injured and disabled persons seriously and they are known to do dubious and dishonest acts to deceive and CHEAT the injured worker.

Injured workers' already battle an unfair and unjust system. They are thrown into a cold money generated system with no understanding of there rights. Oh sure they get a copy of the law, sometimes. However, most of the folks are average citizens and can not READ between the lines of the law and decipher what the law means to them.

I implore you to consider not making the life of injured workers' in Alaska any more difficult than it already is. After all what if it was one of your family members who were injured and really hurt and not able to return to work, how would they support there family and self in the future without re injuring themselves. It is imperative for injured workers' to be afforded the opportunity for re training in an occupation that they can perform and make a living.

There are so many problems with this system. I could go on and on. However, this is not the appropriate forum for that type of discussion. If you would like more information from me on any of the problems or issues please do not hesitate to contact me.

Sincerely,

Jean Ann Kusel, MS, CRC
Aurora Consultants
PO Box 870627
Wasilla, AK 99687
Tel: 907-376-5211 cell: 907-232-7139 and fax 907-352-3500

**RE: OTHER AMENDMENTS PROPOSED TO THE ALASKA WORKERS
COMPENSATION ACT FOR HB 180 AND SB130:**

In addition to changes previously proposed for Sections 14, 15, and 16 of these bills, I propose two other VERY IMPORTANT changes to Title 23, Chapter 30 of the Alaska Statutes, the Alaska Workers' Compensation Act. However, it is important that the two following changes be tied to each other to assure fairness, cost savings, and preservation of earning power for those most seriously disabled by their injuries. Also, the job dislocation benefit proposed in HB180 and SB130 must be removed as a disqualifier for eligibility for the re-

employment benefit.

1. Add to Sec. 23.30.190 (a), the following: **“However, in the case of a worker who does not qualify for the re-employment benefit under AS 23.30.041 or who receives a full release to return to the worker’s job at the time of injury, the PPI compensation owed in a lump sum will be reduced by 20%.”**

Under current law, an injured worker who can return to work receives his impairment money in a lump sum and can earn income at the same time. In contrast, an injured worker whose injury permanently bars him from work receives his impairment money parceled out at his workers’ comp rate during retraining and has no ability to earn income. **Thus, our current law penalizes more severely those who need the help the most and is in opposition with the Americans with Disabilities Act.** This change proposes to award less money to those who can work and the same amount as is currently provided to those who need retraining.

According to 2003 figures reported by the carriers, there are at least 1292 out of 2042 workers who received PPI awards but had no costs reported in any rehab cost fields. A large percentage of the 750 claimants who had rehab costs reported were not eligible for the re-employment benefit.

This provision would save at minimum \$2.8 million and probably significantly more. PPI composes almost 11% of claims costs. Thus, impacting this claims expense, which represents the third largest cost category of over \$24 million, could represent a significant savings.

2. Replace 23.30.041(4)(7) to read: **“Remunerative employability” means having the skills that allow a worker to be compensated with wages or other earnings equivalent to at least 85% of the workers’ gross hourly wages at the time of injury; if the employment is outside the state, the stated 85% shall be adjusted to account for the difference between the applicable state average weekly wage and the Alaska average weekly wage.**

Changing the wage goal for a vocational plan from 60% to 85% of the workers’ gross hourly wages at the time of injury will help preserve the earning buying power and **dignity** of those most seriously disabled from work injuries. We believe helping people with adequate plans to earn a living again is good public policy and is in agreement with the Americans with Disabilities Act. This change should be coupled with savings realized by a 20% reduction in PPI rates for those who are not eligible for the re-employment benefit. Again, previously accepting the job dislocation benefit should not disqualify employees from the re-employment benefit in future workers’ compensation claims.

Suzanne Mullen

From: Mark Thomas [mthomas@crctag.com]
Sent: Tuesday, March 22, 2005 10:41 AM
To: Sen. Con Bunde
Subject: HB 180 & SB 130

FROM: Mark Thomas
Compensation Risk Consultants
748 Gaffney Suit 206
Fairbanks, AK 99701
907-452-2275
907-452-4374 fax
mthomas@crctag.com <mailto:mthomas@crctag.com>

RE: HB 180 and SB 130

I am a vocational rehabilitation specialist in the Alaska Workers Compensation system. I endorse the following modifications to HB 180 and SB 130:

SECTION 14: Remove from AS 23.30.041(c) the language: "An employee and an employer may stipulate to the employee's eligibility for reemployment benefits at any time."

Rationale for change: Stipulating to the re-employment benefit will prevent employees from being educated about the retraining process and from learning information from anyone other than the adjuster. We are concerned that some (not all) adjusters will stipulate to the retraining benefit and convince the employee to either waive the benefit or opt for the so-called "job dislocation benefit" without communicating to the claimant the value of the benefit he is waiving or the risks of accepting the job dislocation benefit.

SECTION 15: Remove AS 23.30.041(f)(2) from the bill. This provision adds as another disqualifier the job dislocation benefit.

Rationale for change: Accepting the job dislocation benefit in a former workers' compensation claim should not permanently disqualify a worker with a new and even more disabling injury from the re-employment benefit. This is a permanent settlement of retraining masquerading as a benefit. It is tricky, disingenuous and exploitive of young workers, workers with learning disabilities, non-English speaking claimants, and those desperate for money. Moreover, there is no oversight by the Division of Workers' Compensation on accepting the job dislocation benefit as there is on settlements, and there is no legal representation required in this bill.

TO: Senator Con Bunde, Chairman of the Senate Labor & Commerce Committee
FROM: Marjorie T. Linder, M.A., CRC, MTL Services, PO Box 230029,
Anchorage, AK 99523-0029, (907) 346-2474
DATE: March 23, 2005
RE: Proposed Amendments SB130

I am a vocational rehabilitation specialist in the Alaska Workers Compensation system. I want to thank you for being so receptive to my testimony about the poor data being utilized for raising premium rates for employers and reducing benefits to injured workers. I question the oversight of the Division of Insurance and Workers' Compensation on these matters.

I began working as a vocational rehabilitation counselor with Virginia Collins back in 1978. I served as a consultant for the WCCA (the employer group) in 1988 for the massive overhaul of the workers' compensation system that resulted in reducing and containing costs for employers for many, many years. My heart goes out to employers saddled with premium increases, some of which are in the range of 200% to 400% this year, when overall costs have risen only 7%. Something is awry with this picture and it won't be fixed by reducing benefits to injured workers.

Although I am generally opposed to SB 130, if it must pass out of your committee, I propose the following amendments to the rehab sections:

SECTION 14: Remove from AS 23.30.041(c) the language: "An employee and an employer may stipulate to the employee's eligibility for reemployment benefits at any time."

Rationale for change: Stipulating to the re-employment benefit will prevent employees from being educated about the retraining process and from learning information from anyone other than the adjuster. We are concerned that some (not all) adjusters will stipulate to the retraining benefit and convince the employee to either waive the benefit or opt for the so-called "job dislocation benefit" without communicating to the claimant the value of the benefit he is waiving or the risks of accepting the job dislocation benefit.

SECTION 15: Remove AS 23.30.041(f)(2) from the bill. This provision adds as another disqualifier the job dislocation benefit.

Rationale for change: Accepting the job dislocation benefit in a former workers' compensation claim should not permanently disqualify a worker with a new and even more disabling injury from the re-employment benefit. This is a permanent settlement of retraining masquerading as a benefit. It is tricky, disingenuous and exploitive of young workers, workers with learning disabilities, non-English speaking claimants, and those desperate for money. Moreover, there is no oversight by the Division of Workers' Compensation on accepting the job dislocation benefit as there is on settlements, and there is no legal representation required in this bill.

SECTION 16: Please add to AS 23.30.041(g)(1) the language: "Any rehabilitation specialist who works for a company that has accepted work on the claim from the insurance company and/or employer must be recused from being selected or assigned as the re-employment plan writer."

Rationale for change: This will prevent conflicts of interest with rehabilitation specialists who have been working on behalf of the insurance company on a particular claim from being either selected or assigned to write the vocational plan for the same claimant.

Memo from Virginia M. Collins
(907) 229-6912

DATE: March 10, 2005

TO: Senator Con Bunde
Chair Labor & Commerce Committee
Alaska State Legislature

RE: SB130

Although I am no longer providing consulting services relevant to Alaska's workers compensation law, after almost thirty years of interacting with this law on a professional basis, I remain interested in issues affecting workers compensation.

The governor's workers compensation bill, SB 130 raises some strong concerns regarding what appears to be a rewrite of Alaska's workers compensation law. SB 130 raises so many concerns, that it is hard to know where to start. Of particular concern are Section 14, Section 15 and Section 25. Section 14 and 15 revise AS23.30.041 to the detriment of the injured worker. These two sections need to be completely revised. Section 25 revises AS 23.30.097 by rolling medical and other service fees back to the December 15, 1999 published schedule. This is unrealistic and would limit the injured workers access to medical care.

Although I would agree that some changes to the current law are required, it is important not to throw the baby out with the bath water. It is also important to base any significant rewrite of the law on facts rather than myths. The insolvencies that occurred were not due to the high cost of Alaska's workers compensation law. These insolvencies resulted from poor management decisions resulting in a fiscal crisis for the involved insurance carriers and shoddy oversight by the agencies charged with keeping the insurers on track. The second myth that needs to be dispelled is that the insurance companies are reluctant to write workers compensation coverage in Alaska because the costs are too high. The reality is that the risk is too high. While the national private sector injury and illness rate in 2001 was of 5.7 cases per 100 workers, Alaska's rate was 8.5 cases per 100 workers. University of Alaska economist Gunnar Knapp has been reported in the national media as stating that the fishing industry in Alaska is particularly perilous.

It is true that during the 2001 calendar year a total of \$192.7 million was paid in workers' compensation benefits which include payments for medical, disability and rehabilitation. However, the manner in which the expenditures were reported makes it impossible to accurately determine costs associated with each service.

Memo from Virginia M. Collins

(907) 229-6912

March 08, 2005

RE: SB130

Page 2

The point that I am trying to make is that there are many factors that contribute to the cost of workers' compensation. Any meaningful reform must take all of them into consideration and requires thinking out of the box. It must be kept in mind that with the passage of worker's compensation laws, workers gave up the right to sue their employer for benefits.

I urge you not to pass SB 130 as submitted by the governor's office. I would encourage you to consider the recommendations of the ad hoc committee comprised of labor and management and input from others who interact with the worker's compensation system. I would also suggest that you not allow the short time remaining in this legislative session to deter you from taking the time required to thoughtfully consider any revisions to the worker's compensation system. The worker's compensation system is important enough that perhaps a special session will allow the legislature to give changes to the workers' compensation law the time and effort it deserves.

I thank you for your consideration.

Suzanne Mullen

From: Linda Senn [hr@telalaska.com]
Sent: Tuesday, March 08, 2005 12:40 PM
To: Sen. Con Bunde
Subject: Workers Compensation Legislation Hearings This Week

Linda Senn
201 E 56th Ave #100
Anchorage, AK 99518

March 8, 2005

Con Bunde
Senator
State Capitol, Room 506
Juneau, AK 99801

Dear Senator Bunde:

Dear Representative Tom Anderson and Senator Con Bunde,

I'm writing as a concerned HR professional on the impact of the exorbitant increases in worker's compensation rates over the past five years. In the year 2000, TelAlaska paid \$38,846 for worker's compensation. This year our provider has estimated our premiums to be \$165,000. The staggering disappointment in such increases is that a company such as TelAlaska that has been awarded two VPPs from OSHA in recognition of our outstanding commitment to safety has had absolutely no affect on our worker's compensation rates. So what's our reward for having a safe work place? Apparently very little.

Such an increase in premiums generally occurs when there is growth in a company. TelAlaska has actually decreased our staff to 110, yet our rates are outrageous. Each year it costs us more and more to operate our organization without an increase in revenue. As a result, we have adopted a strict mantra of not spending unless it is absolutely necessary. With such tight reigns on the purse strings, it allows very little room for those extras that make a good company, a great company. All of our employees have felt the pinch of increased costs and it apparert in the lower morale.

Just think for a moment, if your homeowners insurance or auto insurance premiums increased by 400% and yet your family income did not, what cut backs would you be facing in your home life right now?

Cut backs are a serious reality and it is affecting everyone. Please support legislation to fix the ever increasing premium rates before it too late.

Sincerely,

Linda Senn, Ph.D.
907-563-2003

Suzanne Mullen

From: dotw@gci.net
Sent: Tuesday, March 08, 2005 12:13 PM
To: Sen. Con Bunde
Subject: SB 130 - Workers Comp

Email For: Senator Con Bunde
From: dotw@gci.net
Name: Dorothy S. Wilson
Street: 2355 Ka-See-Ar. Drive
City: Juneau
Zip Code: 99801

Subject: SB 130 - Workers Comp

Support of reform of State Workers Compensation SB 130

This is a request that the Legislature seriously look at and consider reforming the State's Workers Compensation laws. There are many reasons for reform, not the least of which is the exorbitant insurance rates paid by independent businesses.

Helicopter businesses in Alaska are all covered as Assigned Risks. Our company has had very minor workers comp claims over the years, but our rates are 25% higher than non-Assigned Risk businesses.

Our Workers Comp rates were recently increased dramatically. I question the logic behind the classification of some of our positions and the reasons for such large increases in clerical positions and salespersons. Our WC increases by percentage were as follows:

Class Code 7422 - Aircraft or helicopter operation: Sales or Service Agency, Taxi or Sightseeing; Flying crew - Increased 22%

Class Code 8003- Aircraft or helicopter operation: Air Carrier-ticket sellers and Information clerks at Airports or Heliports Increased 11%

Class Code 8810 -Clerical Office Employees NOC Increased 32%

Class Code 8742-Salespersons, Collectors or Messengers - Outside - Increased 47%

We are requesting some legislation that will offer financial relief from the onerous burden placed on small businesses in providing adequate WC coverage to employees.

Sincerely,
COASTAL HELICOPTERS, 8995 Landukin Drive, Juneau AK 99801

Dorothy S. Wilson, Vice President

Please Add My Email Address to your distribution list. Thank You.



Southeast Rehabilitation Services

2219 Jordan Avenue • Juneau, Alaska 99801 • (907) 586-6462 • (800) 478-6462 • Fax: (907) 463-5454 • e-mail: srs@pci.net

March 17, 2005

Senate Labor & Commerce Committee
Attention: Senator Con Bunde
State Capital, Room 506
Juneau, AK 99801

Sent Via Fax

RE: Request to Submit Following Remarks as Testimony in Response to Senate Bill 130

Dear Senate Labor & Commerce Committee Members:

I am a vocational rehabilitation counselor with 28 years of experience working within the workers' compensation (WC) systems in Alaska and Michigan. I am self-employed, believe in and strongly support conservative political values and stand in strong opposition to Senate Bill 130.

The workers' compensation system is mandated to provide vocational rehabilitation services to Alaskans injured through the course of their employment and are unable to resume gainful employment in their former jobs. By and large, the WC system in Alaska works quite well insofar as rehabilitating injured workers. Unfortunately, its success is not accurately portrayed by Mr. O'Claray. Similarly, Mr. O'Claray does a disservice to the people of Alaska when he presents data in support of the proposed legislation that is derived solely from reports provided by the insurance carriers in Alaska and contradictory to the information provided by a division within his department (reference the annual report by the Reemployment Benefit Administrator, Division of Workers' Compensation). With this in mind, how can any sane person attribute any credence in to his testimony concerning the distribution of costs within the WC system?! This kind of logic is further manifested by the proposal to revert to 1999 guidelines for payment of medical expenses in WC claims.

I have a better idea, not nearly as far fetched, based upon my experience in observing how insurance carriers mismanage injury claims and contribute to the rising costs of the WC system (although they are mysteriously left out of the pie chart of representative costs presented by Mr. O'Claray): **roll back insurance rates to 1999 levels.** This would be a straight forward means to lessen the burden on employers and put some onus on the carriers to improve efficiency, a goal that seems over looked and not a priority of the Division of Insurance which, one could debate, is absence from its role of watch dog as they rubber stamp repeated insurance rate increases.

Suggestion: Obtain recommendations for revision of the Alaska Workers' Compensation system from a variety of sources, including labor, injured workers, Division of Workers' Compensation, employers, rehabilitation counselors, etc., as opposed to insurance carriers solely.

Letter to Senate Labor & Commerce Committee
Re: Testimony on SB130


March 17, 2005
Page 2

Section 14 of S23.30.041 (c) as presently proposed introduces the option for an injured employee and employer to stipulate for "reemployment benefits at any time." This concept is a red herring for injured workers because the insurance companies, by choosing to stipulate, would bypass the eligibility evaluation process and push the injured worker directly to the job dislocation benefit process as described in the proposed amendment to Section 16 of AS 23.30.041 (g) (2). In my experience, there is a pattern among some of the insurance carriers where injured workers are cajoled and bullied in to taking settlements rather than pursue vocational training as a means to restore them to gainful employment. They are typically not apprised of their rights, their benefits are arbitrarily terminated and their ability to obtain what is in the best interests of our State economy and their future well-being is aborted. They become disenfranchised from what the law was intended to provide.

The concept of "stipulate" in this instance is not worthy of being characterized as a progressive idea or catchy new "buzz word;" a more appropriate response would be "buzz off" to the insurance companies and their lobbyists. We did not elect them; they are not our representatives. And they do not have the interests of Alaskans in mind, not only injured workers but the employers who are saddled with the costs of the carriers' mismanagement and exorbitant costs. We urge you and your colleagues to reject this legislation.

I am very appreciative of this opportunity to express my concerns regarding SB 130.

Respectfully,



Larry Knickerbocker, MA CRC LPC
Certified Rehabilitation Counselor

Address: 3754 Mitchell A
Fairbanks AK 99709
phone: 451-6822

MARK L. KLING

3/17/05

RE: SB 130/ testimonial

The reduced fees mentioned in section 25 may quite possibly reduce the quality of healthcare available through the already existing law. When studies were done during the Clinton administration, it was found government regulation of healthcare in order to control cost decreased the quality of it. If the incentive of capitalism is lessened, the quality goes downhill. If you allow the employer to regulate cost by controlling fee amounts with their preferred providers, the amount mutually agreed upon will be passed to whoever the employee chooses as a physician. As a result of this action, employees won't have access to certain doctors unwilling to reduce their rates to the predetermined amount set by the employer's preferred provider. In addition to quality reduction, I contend the majority of the cost problem employers are having is because of the lack of appropriate pursuance of safety, causing a rather significant quantity of injuries and illnesses. The estimated rate nationally is 5 injuries per 100 employees. However, Alaska is 7 injuries per 100 employees, making us 40% higher than the national average, according to the Bureau of Labor Statistics. This higher incidence could likely cause increased prices of insurance premiums, not to mention possible safety inadequacies decreasing the quality of the work environment. Thus, the problem is not just the high cost of insurance premiums, but rather lack of safety boosting worker compensation costs with high premium prices following.

When I spoke of appropriate pursuance of safety, I'm speaking specifically of increasing involvement by OSHA, employers, and employees. Employers for example would be required to have OSHA mandated safety programs. Meetings would be held with both employees and employers attending. These meetings would address unique and current safety problems pertaining to injuries and illnesses sustained by employees. The employer would also be required to take necessary action relative to these problems. Their actions would be monitored by OSHA. Ultimately, this could reduce cost to a degree, dependant on the risk level of any given employer. By reducing cost through being proactive, insurance premiums would become more affordable.

I personally was employed by a company who provided jobs for roughly 35 individuals in Fairbanks. Over the course of one year's time in 2003 and 2004, the company generated close to 400,000 dollars in worker's compensation. In the following year, cost dropped a significantly large amount by starting a pilot safety program, studying safety hazards and recent accidents, and taking necessary steps to correct existing safety problems. Because of this action, employees had a safer work environment, and employers decreased their loss relative to worker compensation. Their ballooning cost was primarily because of the large quantity of injuries, leading to paying higher premiums, not just because of the high cost of healthcare. This company's name is Lynden Transport Inc., a business known for their excellent service in transportation here in Alaska. They now diligently pursue safety at all times.

They however, are not the only company taking the necessary action to ensure safety and keep cost down. The oil industry as a whole, has the lowest incidence of injuries here in Alaska, demonstrating a genuine concern for safety.

Along with the quantitative injury problem increasing cost, section 16 of the bill reduces the amount of permanent impairment capitol an employee is entitled. Not only does it reduce this amount, it could encourage some employers who have little or no interest in safety to reduce their efforts even further in preservation of the working environment. They could afford to take more chances because of the lessened amount of penalty they would be subjected to.

SIGNED: Mark L. Kline

The following is the link to the Incidence Rate Comparison Table (Alaska – U.S.) that I discussed with you this morning. As a reminder, these are estimates of total recordable cases of injury/illness per 100 workers. We also can provide data for the more serious injuries/illnesses which involve days away from work.

<http://almis.labor.state.ak.us/?PAGEID=67&SUBID=215>

The following table are the incidence rate data used for the chart.

	Alaska	United States
Other services	5.1	3.4
Leisure & hospitality	6.0	5.1
Educ & health svcs	8.8	6.0
Prof & business svcs	3.6	2.5
Financial activities	4.2	1.7
Information	4.8	2.2
Trade, trans, utilities	8.3	5.5
Service providing	6.9	4.4
Manufacturing	7.9	6.8
Construction	10.1	6.8
Nat resour & mining	4.2	5.1
Goods producing	7.5	6.7
Private Industry	7.0	5.0

Overall, with the exception of oil, natural resources, Alaska is higher for all industry

Oil is top 3 for state for lowest average per 100 employees

Source: Survey of Occupational Injuries and Illnesses, U.S. Department of Labor, Bureau of Labor Statistics, in cooperation with Alaska Department of Labor and Workforce Development, Research and Analysis Section.

-dean

2003

3/15/2005

- In 2003, Alaska's Injury rate was 7.0 cases per 100 full-time workers; the U.S. rate equivalent was 5.0 cases. (Below is the past eight years of data comparing the overall incidence rate of work-related injuries/illnesses for Alaska to the U.S. The second sub-table shows the incidence rate of the more serious injuries; those resulting in days away from work, job transfer, or work restriction)

	1995	1996	1997	1998	1999	2000	2001
U.S. Private Sector	8.1	7.4	7.1	6.7	6.3	6.1	5.0
Alaska Private Sector	8.5	8.5	8.4	7.8	8.1	7.6	7.0
U.S. Private Sector	3.6	3.4	3.3	3.1	3.0	3.0	2.8
Alaska Private Sector	n/a	4.1	4.2	3.9	3.8	3.7	3.7

- The estimated number of recordable* injury cases for Alaska in 2003 was 13,200 of which 6,300 could be considered the more serious injuries that resulted in days away from work, job transfer, or work restriction. (Below is the past eight years of data for the estimated number of work-related injuries/illnesses for Alaska.)

3/17/2005

Page 2 of 2

Alaska	1996	1997	1998	1999	2000	2001	2002
PRIVATE SECTOR							
Recordable Cases	13,400	13,800	13,200	13,700	13,200	15,500	13,100
DAFW, JT, or R	6,500	6,800	6,600	6,600	6,300	7,500	6,500
Avg Annual Emp	188,800	193,600	198,800	200,900	207,000	211,000	213,500

 *Recordable work-related injuries and illnesses are those that result in:

- Death,
- Loss of consciousness,
- Days away from work,
- Restricted work activity or job transfer, or
- Medical treatment beyond first aid.

Source: Survey of Occupational Injuries and Illnesses, U.S. Department of Labor, Bureau of Labor Statistics, in cooperation with Alaska Department of Labor and Workforce Development, Research and Analysis Section.

Richard Briggs
Alaska Construction Education & Research
PO Box 877804
Wasilla, AK 99687
(907) 727-0570 (cell)

March 17, 2005

Dear Legislators:

RE: HB180 and SB130

I oppose HB180 and SB130. I am an instructor for a non-union apprenticeship program sponsored by the National Center for Construction Education & Research. A few years back, I was very seriously injured and qualified for retraining when I could no longer perform the heavy labor I did as an electrician and finish carpenter. Because of this needed assistance, I now teach young people construction skills that are much needed in our state.

I am concerned that a young worker, in particular, will be convinced to stipulate to the retraining benefit (whether he needs it or not) and then be offered and accept the "job dislocation benefit" just to get the additional \$5000. This worker will return to work and many years later re-injure the same body part or an entirely new body part. Then, when he really needs retraining, he will find that he has forfeited his ability to be retrained by electing the job dislocation benefit in his youth.

Without the ability to be retrained and a work injury that prevents him from working at any of his past jobs, will he then be considered permanently and totally disabled? Will this mean he is entitled to receive benefits forever when retraining would get him back to work? This job dislocation benefit could have unwanted repercussions down the line when workers are unable to work and employers have to support them. This is bad public policy.

Yours truly,


Richard Briggs

Law Offices of
Michael J. Jensen

12350 Industry Way, Suite 208
Anchorage, Alaska 99515

Tel (907) 277-8000

Fax (907) 522-8173

March 16, 2005

www.alaskaworkerscomp.com
jensenlaw@eagle.ptialaska.net

Senator Con Bunde
State Capitol Room 506
Juneau, Alaska 99801-1182

Re: Workers' Compensation Amendments SB 130 and HB 180

Dear Senator Bunde:

The Governor's proposed legislation contains 60 sections. It will adversely effect Alaska's workers, doctors, hospitals, judges, lawyers and employers. Only the insurers are left unscathed. Such sweeping legislation deserves careful and considered review.

Over many years of practice before the Alaska Workers' Compensation Board we have collectively represented thousands of Alaska's injured workers. It is our feeling that the Board as it is presently constituted with representation of industry and labor has worked and need not be "fixed".

We do however recognize that the increase in workers compensation insurance premiums is causing problems which need to be addressed. The governor's bill does nothing to solve this problem. It is a million dollar band-aid that allows outside insurance companies to prey on Alaska businesses.

Overall the Governor's bill will not solve the real problems. It will add delay where efficiency is needed and will produce confusion where clarity would help. The few beneficial provisions would not in any way offset the detrimental effects of the remaining portions. However, there are a few provisions, which by themselves and without the other provisions of the Governor's bill, are worth considering.

Specifically those sections dealing with new penalties and other enforcement measures to rid Alaska of its uninsured employers. Sections 20-22. We applaud the Ad Hoc committee for initiating these necessary changes and for the Governor's support of the Ad Hoc Committee in this regard. These amendments will discourage future uninsured employers from flaunting the worker's compensation system to the detriment of Alaska workers' and those employers that do comply with our compensation laws. These amendments seek to establish from the proceeds of civil penalties, a workers' compensation benefits guarantee fund which will assist Alaska workers who, often unknowingly, work for these uninsured employers and otherwise would receive nothing once injured or even killed. These are necessary changes to the Act in which we join in common purpose with the Administration to encourage their passage. Other sections are far more troubling.

Without supporting facts false promises are made to Alaska employers of dramatic premium reductions by 1) creating a new bureaucracy at great government expense; 2) adopting a cookbook style guide to medical treatment; 3) expecting medical providers to treat their injured workers at 1999 price schedules. These promises, which Alaska employers are expected to buy into, are made without mandating premium reductions from the insurers who will surely benefit the most.

This bill guides Alaska's legislators into the same trap in which California legislators now find themselves. Based on promises without statistics and facts California legislature was assured by its Commissioner of Insurance that premiums would fall by 25% once the proposed compensation changes were passed. As with this bill the California legislature made the mistake of not mandating premium reductions. Instead it relied upon the false promises made for dramatic premium reductions. Not surprisingly California employers have seen only a fractional reduction in their premiums. In fact the insurance industry recently requested another increase. Without mandating premium reductions the promise to Alaska's employers and workers that dramatic premium reductions will follow will lead to great disappointment. Merely a promise by this Administration of rate reductions will do little to protect Alaska's employers and workers from rate increases.

The following is a look at the most troubling sections of this proposed bill:

Sec. 2 and 3. are intended to prevent another debacle such as the insolvency in 2004 of Fremont Insurance. Fremont's insolvency nearly bankrupted the Alaska Insurance Guaranty Association. As a result of Fremont's insolvency the Association has faced a \$60,000,000.00 liability. Much of the premium increases in 2004 and 2005 are attributable to this insolvency, an insolvency which resulted from inadequate supervision by insurance regulators from another state which Alaska's regulators state they have no authority to criticize. The \$100,000.00 deposit, although a good start, is simply insufficient in light of the disastrous potential for harm created by any future insolvency. A much more realistic requirement would be imposition of a minimum deposit of \$1,000,000.00 and the further requirement that Alaska's regulators be made to serve Alaska's employers and workers and not defer to misguided decisions of another state's regulators. Alaska regulators should be permitted to carry out their regulatory duties in order to prevent any such future insolvency.

Sec. 6. creates a new section of the Act which codifies the intent of the legislature. The intent language without clear explanation may have the effect of weakening or eliminating the presumption of compensability which is at the heart of the workers compensation system.

Sec. 9. allows the Board in its discretion to contract with a non profit organization to provide services and legal representation. A provision for payment is not made.

Funding is not provided. The fiscal note does not reflect any costs. Without funds this is a meaningless gesture.

Sec. 10. creates a workers' compensation appeals commission consisting of five members all appointed by the Governor. Only a three member panel of the commission will hear appeals.

It creates a court without calling it a court. It creates judges without calling them judges. For the first time in Alaska's history judges will be mere political appointees not subject to the standards of judicial conduct. Preemption would not be allowed. The commission will not be subject to the present standards of judicial review. It will decide cases denovo and the judges will never be evaluated for their ability or fairness. Allowing this Governor to appoint anyone he wishes is a terrible idea.

Although this section provides for two members who due to their employment or affiliation may be classified as representative of employees or employers, it does not define the meaning of representative or what is "classified as". Payment to these representative members is limited to a pro rata portion of \$200.00 per day spent in actual hearing. Since there were only 36 appeals of Board decisions in 2003 it is probable that these commission members will hear only one case a month which for a half hour oral argument would amount to \$12.50.

This section bars employee representatives who are members of unions or were less than seven years earlier from hearing any claim by a union member even if not in the same union. It also prohibits an employee representative who was a member of the union in the past seven years from hearing any claim involving any employer who had a contractual relationship with the union or employee association. Since employee association is not defined this could include anybody with a similar trade or craft.

For the first time an award of attorney's fees may be ordered against an unrepresented worker for an appeal that is determined to be unreasonable, frivolous or taken in bad faith. No similar sanction is taken against insurers who pursue unreasonable, frivolous or bad faith appeals.

Members of the commission are precluded from being fair or impartial since sec. 23.30.009 instructs the chair of the commission to advise the representatives on matters of law and questions of procedure.

Sec. 11 provides for automatic approval of settlement agreements where the worker is represented by an attorney licensed to practice in the state. The attorney does not need to have any prior workers' compensation experience. Settlements by non represented workers may not be approved without Board review unless vocational rehabilitation is being forfeited or waived.

Paradoxically, claims involving forfeiture of vocational rehabilitation benefits even if the worker is unrepresented do not require Board review. Even if the worker is incompetent or a minor reemployment benefits may be waived or forfeited without Board review.

Sec. 16 and 19 permit employees to waive important vocational reemployment benefits. These benefits may be waived or forfeited without advice of an attorney licensed to practice in the state, without Board review and approval, and apparently, even if the worker is incompetent or a minor.

Sec. 15 permits the employer to offer a disabled employee a job paying only 75% of the workers' prior wages at the time of injury. This section potentially exposes the employer, not his insurer, to sanctions under the American's with Disabilities Act. It also permits denial of vocational reemployment benefits to an employee who previously received a job dislocation benefit and returned to the same or similar job in terms of physical demands required of the worker at the time of the previous injury.

Sec. 16 permits an employee to waive vocational reemployment in exchange for job dislocation benefits depending on the level of permanent partial impairment. Up to a 15% permanent rating qualifies the employee for only \$5,000.00 in job dislocation benefits. Up to 30% entitles him to \$8,000.00 and in excess of 30% entitles the employee to \$15,500.00. Those familiar with the AMA Guidelines know that a 15% impairment is a significant impairment. It may mean the employee is incapable of performing any type of full time gainful employment. To allow a job dislocation benefit of only \$5,000.00 without requiring competent representation or Board review and approval results in a significant forfeiture of benefits.

Sec. 19 permits an employee to waive vocational rehabilitation benefits without benefit of counsel or Board review. Again this section is contrary to the Act and sec. 23.30.012 which requires that any lump sum settlement for unrepresented employees, minors and those deemed incompetent must be approved by the Board after a determination that a settlement is "in the best interest of the employee".

Sec. 24. seeks use of a preferred drug list and generic drugs in lieu of brand name drugs.

This section seeks the use of cookbook type treatments for medical conditions set out in the American College of Occupational Environmental Medicines Occupational Medicine Practice Guidelines. As verified by Dr. Jordan, the executive director of the Alaska Medical Association, these guidelines have been adopted by California and been determined by the California AMA as only covering 20% of the practice of medicine. Use of such guidelines raises serious standard of care issues.

This section is designed to limit employees' ability to obtain treatment. Currently very few physicians are even familiar with the AMA Guides to the Evaluation of Permanent Impairment. There are no Alaska doctors familiar with these proposed new guidelines. It is unlikely that doctors would take the time and effort to learn and adopt these guidelines in their practices when only 20% of the practice of medicine is covered by them. Such a cookie cutter approach to medical treatment will greatly hinder injured workers' ability to obtain competent care. It will surely mean that treatments not covered will be paid by employers and union health insurance or when not available by our government or absorbed by the medical provider.

Sec. 25 limits medical treatment costs to 1999 prices. This will have a significant chilling effect on worker's ability to obtain medical care.

It also establishes a list of preferred physicians hand picked by insurers. In effect the insurers will have two choices of doctors when an injured worker will only be entitled to have one choice. Employees fearful of losing their jobs will be hesitate to not select a physician from the insurer's "preferred list". Physicians on this list will have difficulty remaining objective and impartial.

Sec. 29 takes away the current power of the Board to determine the credibility of medical reports. A Board finding concerning the weight to be accorded a witness testimony including medical testimony and reports will no longer be conclusive. The Board's determination of credibility will be exclusively limited to testimony presented by a witness at hearing. This will increase the costs of litigation to employers and employees alike since medical reports will no longer have the weight currently accorded by the Act. The Board will lose its power to determine credibility of medical reports or other evidence not presented by testimony of a witness.

Sec. 30 will permit stays to be granted of prior Board awards without a posting of a bond. This will greatly increase the costs of litigation to employers since it will encourage appeals by all parties.

Sec. 31 adds additional costs to employees and employers by requiring them to pay the costs of preparation of the record on appeal. Currently such costs are not borne by the parties.

Sec. 23.30.128 does not define what qualifies a commission member as 'classified' as representing employees or 'classified' as representing employers. This section makes clear that the commission will review denovo all prior Board decisions. It permits parties to present new or additional evidence. It permits a easier granting of stays without the surety of bonds. It makes certain that all adverse Board decisions will be appealed by the party who lost at the Board level. All of this will greatly increase

litigation costs. Every party who lost at the Board will be compelled to appeal for a chance at two bites of the apple. Unlike the Board the credibility of medical reports may be determined by the commission. Any finding by the commission concerning the weight to the accorded medical testimony and reports is conclusive unlike the weight accorded to the Board's finding.

Sec. 23.30.129 the commission proceedings permit the commission to take 90 days to reach a decision following the oral argument on appeal. In addition opportunity is afforded to the parties to present new or additional evidence to the commission. As a result a savings in time will not be realized.

Sec. 32 does not correct the current disparity suffered by workers' called out of union halls or those working on the slope or in the timber industry when calculating their compensation rate.

Sec. 34 rids the Act of the Second Injury Fund. Alaska employers will be even more hesitant to hire the disabled. Employers, not their insurers, will be more readily exposed to sanctions under the American's with Disabilities Act.

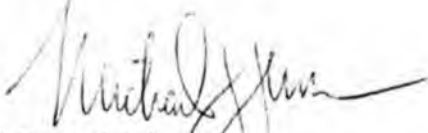
Sec. 36 permits workers' compensation benefits to be reduced by receipt of union or group retirement, pension plan or trust benefits. A lump sum distribution of disability, pension or medical retirement benefits will also be used to reduce compensation benefits. This will effect all employees with retirement or pension plans.

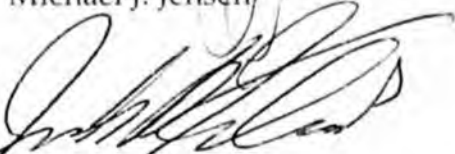
Sec. 39 permits prospective employers to inquire regarding an employee's prior mental or physical capacity and health or disability history. This would include revealing any prior workers' compensation claims. This section potentially exposes employers, not insurers, to the sanctions of the American with Disabilities Act.

Sec. 40 codifies the preponderance of the evidence standard as sufficient to prove fraudulent act or false or misleading statement or representation. This provision also permits employers to seek default orders. This also protects persons from civil liability for filing or furnishing false information accusing a worker of fraudulent acts or false or misleading statements, unless it was reckless, willful or intentional misconduct. The information received under this section or in an investigation arising from such information is confidential and not subject to subpoena. This section also defines what is meant by fraudulent act. This provision does not extend to fraudulent acts of employers or insurers.

Sec. 42 further limits the circumstances in which a employee may retain the services of an attorney. It does not permit the attorney to make an appearance on the employee's behalf. Unlike the 8AAC 45.180 fees paid under a union-prepaid legal trust or an insurance plan are not permitted.

Respectfully yours,


Michael J. Jensen

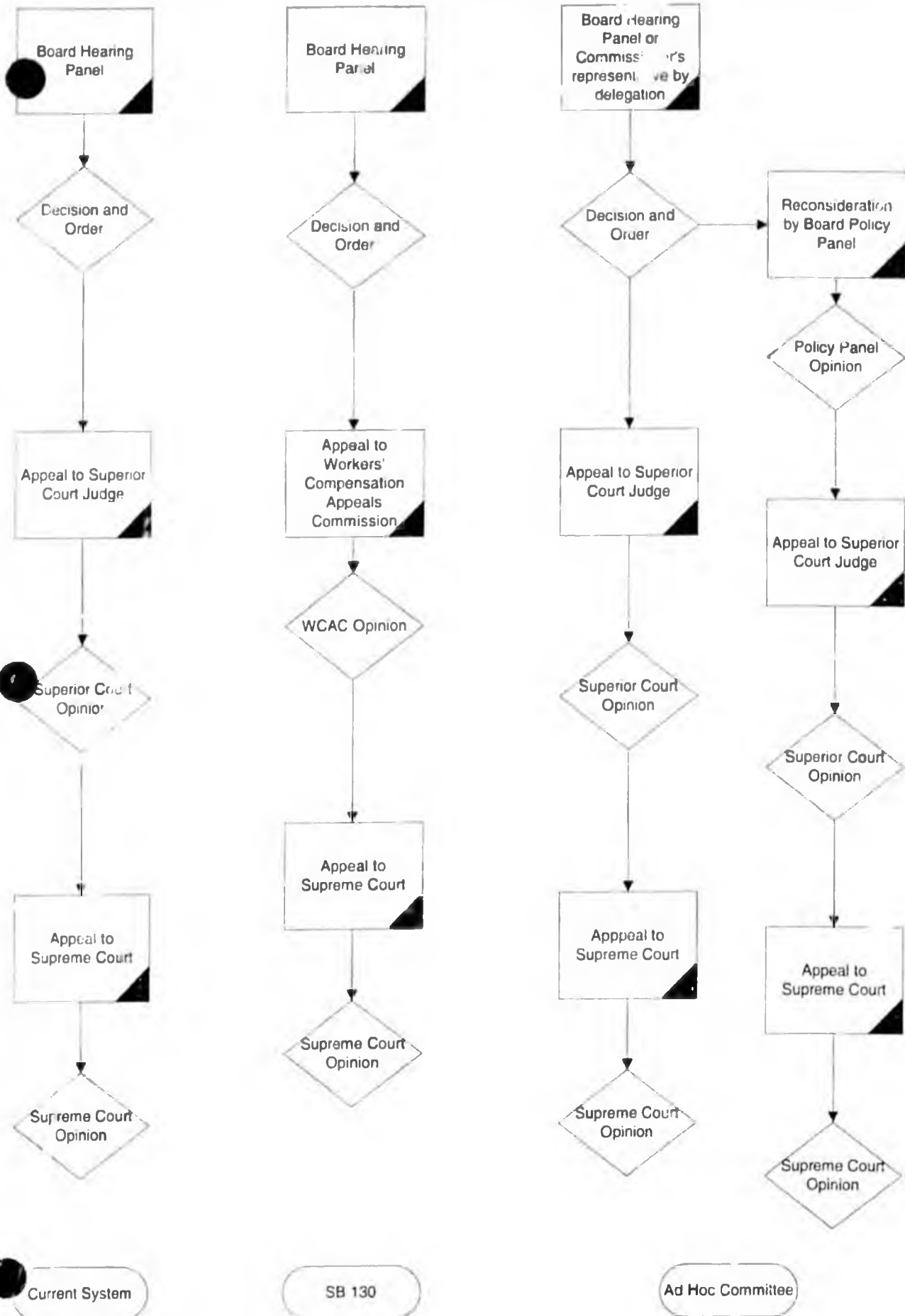

Joseph Kalamarides


Chancy Croft


Steve Constantino


William Soule

Comparison of AWCA, SB 130, Ad Hoc Committee recommendations



CS for Senate Bill 130 Workers Compensation

The basic elements of this CS are as follows:

- 1) Set the rate/fee schedule in accordance with 2004 rates (established in December of 2003) to prevail through 2007. This is in Section 25 of the bill page 16, line 15.
The Medical Services Review Committee Study report (page 28, lines 8-13 of the CS) should be completed and useful as hard data upon which to base the rates for the following year.
- 2) Inserted language that provides for better tracking and oversight of the vocational rehab system, now found on page 8 of the CS.
- 3) Removal of the language that establishes a new Appeals Commission and any language that refers to it and revert back to our current hearing process system and use of the Superior Court. (mostly Sections 10 (pages 6-11 of original bill) and Sections 30 and 31 (on pages 22 – 26 of the original bill and any other referenced language) have been removed.
- 4) Provided new language for clarification regarding the use of the ACOEM Guidelines and a “waiver component” option for the doctors to use when the best treatment for a workers comp injury that falls outside the purview of the guidelines. This change removes the original language *“The presumption may be rebutted by a preponderance of scientific evidence...”*
This new language is found on line 18, page 15 and goes to line 7 of page 16.
- 5) Insertion of new language for Section 41 regarding fraud.
This language was suggested by the ad hoc committee. This can be found on page 25-26 of the CS, in Sections 39 and 40.

ALASKA
LABOR-MANAGEMENT
AD HOC COMMITTEE
ON WORKERS' COMPENSATION

VIA FAX 907.465.3871

March 15, 2005

Senator Con Bunde
Chairperson
Senate Labor and Commerce Committee
State Capital, Room 506
Juneau, AK 99801

Re: SB 130

Dear Chairman Bunde and Members of the Committee:

The Workers Compensation Ad Hoc Committee is comprised of management and labor representatives that believe that the current system in Alaska can be more cost efficient for employers and better serve injured workers. Originally created in 1981 and involved in all substantial workers compensation reform since that time, the current Ad Hoc Committee has been meeting regularly since October 2004. The goal of the Committee is to develop modifications to the existing statute that would result in cost reductions to the system without reducing benefits to injured workers.

SB 130 reflects many of the suggestions that the Ad Hoc Committee developed. However, the bill as proposed has serious problems that would not serve the best long term interests of Alaska employers or employees.

1. SB 130 desires to reduce medical costs by rolling back rate medical rates to 1999 levels. Philosophically this approach is anti-business and at best would only offer lower costs for the short period of time the price controls are in place. Medical costs are the largest cost driver in the workers comp system and deserve a more serious analysis of options for cost control. Suggestions that constraints on medical prices should be utilized may be appropriate, but should only be imposed after careful consideration of the potential consequences such increases might have on the delivery of medical services to injured workers.
2. SB 130, Section 24 introduces the concept for controlling the type, frequency and duration of treatments. The suggested method is the adoption of the ACOEM. Its impact has not been studied, yet is adopted without analysis or consideration of the

Alaska State Medical Association concerns. The ACOEM was considered by the Ad Hoc committee but adoption was deferred subject to consultations with the medical community and an examination of its effectiveness in other states.

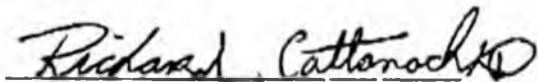
3. SB 130 desires to reduce vocational rehabilitation costs by allowing qualified workers to receive a lump sum payment in lieu of receiving rehabilitation. The purpose of vocational rehabilitation is to allow training for injured workers that are precluded from returning to their former occupations. This proposal would put the entire burden for retraining on the injured worker, who has neither the aptitude nor the training to develop a vocational retraining program. The net result of this provision is that many of these workers will become wards of the state in other programs after the lump sum payment is depleted.
4. SB 130 fails to propose any return to work provisions. Other than medical costs, this item may represent one of the greatest potential cost savings. The sooner a worker can be returned to productive employment the quicker his indemnity and medical costs can be ended. A comprehensive bill must consider a return to work provision.
5. SB 130 has a provision that would spend State funds to furnish an attorney to injured workers pursuing a claim. In a bill that is described as an attempt to reduce costs it is difficult to defend a provision that can only increase costs and delays to the system. This provision should be eliminated.
6. SB 130 desires to remedy the problem with the court system by creating a new appeals process that requires appeals from the division of Workers Compensation to by-pass the Superior Court and proceed directly to the Supreme Court. They also want the appeals board to have the authority to hear cases on a trial de novo basis. The provision would add more government, more attorneys and is far more bureaucratic than the Ad Hoc Committee concept.
7. SB 130 provides remedies to the fraud statutes that do not go far enough. We suggest that the Ad Hoc Committee language be substituted. (Attached, pgs 4,5)
8. SB 130 does not offer remedies to the temporary or seasonal worker determination of the average weekly wage problem. We suggest that the Ad Hoc Committee language be added. (Attached, pgs 6-9)
9. SB 130, Section 12 deals with the second injury fund. Current participants will continue to receive benefits under the second injury fund and employers therefore will have future liabilities to the fund until all such obligations are extinguished. Changes to this section should clarify that there are no additional fees imposed on the employer based on second injury fund payments and that recovery from third parties for payments made is not precluded.
10. SB 130 expands cuts to benefits of workers who have a private sector disability or pension plan. Employees who have earned and paid for disability benefits should not be penalized. Currently Section .225 of the Act already has an equitable offset for pensions.
11. SB 130 does not include the Ad Hoc revisions to 041K which redefines rehabilitation plan as rehabilitation process to allow employers to appropriately take credit for

money earned while the employee is involved in entire rehabilitation process. We suggest that the Ad Hoc Committee language be added. (Attached, pgs 10,11)

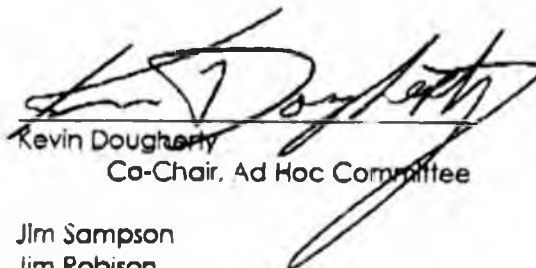
12. In numerous sections the Ad Hoc bill changed wording from Board to Division/Director to more accurately reflect the current decision making process.
13. Other sections still under review.

The workers compensation crisis was created by events that occurred over a period of time. It should only be addressed in a careful, deliberate manner that considers the causes of the problems and selects the best of the various alternative solutions. Alaska employers desire a long term solution to the problem. SB 130 does not deal with the systemic problems of the system and will provide little if any long term solutions and may, in fact, exacerbate the problems. In the alternative to SB 130, the Ad Hoc Committee draft contains carefully balanced reforms.

Respectfully,



Richard Cattanach
Co-Chair, Ad Hoc Committee



Kevin Dougherty
Co-Chair, Ad Hoc Committee

Judy Peterson
Laura Jackson
Dave Kester
April Rellly

Jim Sampson
Jim Robison
Dave Ford
John Guichi
Barbara Huff-Tuckness

* Sec. 57. AS 23.30.250 is amended to read:

(a) A person, including but not limited to an employee, employer, a representative of a person, physician, medical provider, or any entity, who (1) knowingly makes a false or misleading statement, representation, or submission related to a benefit under this chapter; (2) knowingly assists, abets, solicits, or conspires in making a false or misleading submission affecting the payment, coverage, or other benefit under this chapter; (3) knowingly misclassifies employees or engages in deceptive leasing practices for the purpose of evading full payment of workers' compensation insurance premiums; or (4) employs or contracts with a person or firm to coerce or encourage an individual to file a fraudulent compensation claim is civilly liable to a person adversely affected by the conduct, is guilty of theft by deception as defined as AS 11.46.180, and may be punished as provided by AS 11.46.120-11.46.150.

(b) If the board, after a hearing, finds that a person has obtained compensation, medical treatment, or another benefit provided under this chapter, or a provider has received a payment, by knowingly making a false or misleading statement or representation for the purpose of obtaining that benefit, the board shall order that person to make full reimbursement of the cost of all benefits obtained. Upon entry of an order authorized under this subsection, the board shall also order that person to pay all reasonable costs and attorney fees incurred by the employer and the employer's carrier in obtaining an order under this section and in defending any claim made for benefits under this chapter. If a person fails to comply with an order of the board requiring reimbursement of compensation and payment of costs and attorney fees, the employer

may declare the person in default and proceed to collect any sum due as provided under AS 23.30.170(b) and (c).

(c) Civil liability under subpart (a) or a board order under subpart (b) may provide for compensatory damages, punitive damages, and attorney fees to the adversely affected party.

- Sec. 55. AS 23.30.220(a) is amended to read:

Sec. 23.30.220. Determination of Spendable Weekly Wage. (a) Computation of compensation under this chapter shall be on the basis of an employee's spendable weekly wage at the time of injury. An employee's spendable weekly wage is the employee's gross weekly earnings minus payroll tax deductions. An employee's gross weekly earnings shall be calculated as follows:

(1) if at the time of injury the employee's earnings are calculated by the week, the weekly amount is the employee's gross weekly earnings;

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

the employee's gross weekly earnings are the monthly earnings multiplied by 12 and divided by 52,

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

(4) if at time of injury the [(A)] employee's earnings are calculated by the day, hour, or by the output of the employee, then, [THE EMPLOYEES'S GROSS WEEKLY EARNINGS ARE] the employee's gross weekly earnings are 1/50 of the total wages that the employee earned from all occupations during either of the two calendar years immediately preceding the injury, whichever is [EARNINGS] most favorable to the employee; [COMPUTED BY DIVIDING BY 13 THE EMPLOYEE'S EARNINGS, INCLUDING OVERTIME OR PREMIUM PAY, EARNED DURING ANY PERIOD OF 13 CONSECUTIVE CALENDAR WEEKS WITHIN THE 52 WEEKS IMMEDIATELY PRECEDING THE INJURY;]

[(B) EMPLOYEE HAS BEEN EMPLOYED FOR LESS THAN 13 CALENDAR WEEKS IMMEDIATELY PRECEDING THE INJURY, THEN, NOTWITHSTANDING (1) - (3) OF THIS SUBSECTION AND (A) OF THIS PARAGRAPH, THE EMPLOYEE'S GROSS WEEKLY EARNINGS ARE COMPUTED BY DETERMINING THE AMOUNT THAT THE EMPLOYEE WOULD HAVE EARNED, INCLUDING OVERTIME OR PREMIUM PAY, HAD THE EMPLOYEE BEEN EMPLOYED BY THE EMPLOYER FOR 13 CALENDAR WEEKS IMMEDIATELY PRECEDING THE INJURY AND DIVIDING THIS SUM BY 13;]

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

(6) if at the time of injury the employee's earnings are calculated by the week under (a)(1) or by the month under (a)(2) and the employment is exclusively seasonal or temporary, then, [NOTWITHSTANDING (1) - (5) OF THIS SUBSECTION,] the gross weekly earnings are 1/50 of the total wages that the employee has earned from all occupations during the 12 calendar months immediately preceding the injury;

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