

SENATE JOURNAL
ALASKA STATE LEGISLATURE
THIRTIETH LEGISLATURE

FIRST SESSION

Juneau, Alaska Wednesday January 25, 2017
Ninth Day

Pursuant to adjournment the Senate was called to order by President Kelly at 11:04 a.m.

The roll showed nineteen members present. Senator Giessel was absent.

Senator Micciche moved and asked unanimous consent that Senator Giessel be excused from a call of the Senate today. Without objection, Senator Giessel was excused.

The prayer was offered by the Chaplain, Reverend Nancy Campbell, White Fields Church. Senator Hoffman moved and asked unanimous consent that the prayer be spread. Without objection, it was so ordered.

Dear Heavenly Father,

Oh, You who hear prayer; to You all flesh will come. You, who are the confidence of all the ends of the earth; You who still the noise of the seas, the noise of their waves, and the tumult of the people. You make the outgoings of the morning and evening rejoice. You crown the year with Your goodness.

It is to You I come on behalf of the Senate body and I ask You to bless them this day. Guide them and lead them in all their endeavors. Grant them wisdom to address the issues brought before them. Let Your presence abide here as they embark on a new journey

this session and let Your peace which passes all understanding guard their hearts and minds through Christ Jesus. I pray this in Jesus' name. Amen.

Senator Dunleavy led the Senate in the Pledge of Allegiance.

Certification

Senator Micciche moved and asked unanimous consent that the journals for the seventh and eighth legislative days be approved as certified by the Secretary. Without objection, it was so ordered.

Messages from the House

Message dated January 23 was read stating:

The Senate is invited to meet with the House for the purpose of a Joint Session on Wednesday, February 8 at 11:00 a.m. for the annual State of the Judiciary address from Alaska Supreme Court Chief Justice Craig Stowers.

Senator Micciche moved and asked unanimous consent that the Senate accept the House invitation to meet in Joint Session. Without objection, it was so ordered.

The Secretary was requested to notify the House.

Message dated January 23 was read stating:

The Senate is invited to meet with the House for the purpose of a Joint Session on Wednesday, February 22 at 11:00 a.m. for Senator Lisa Murkowski's annual address to the Legislature.

Senator Micciche moved and asked unanimous consent that the Senate accept the House invitation to meet in Joint Session. Without objection, it was so ordered.

The Secretary was requested to notify the House.

Message dated January 23 was read stating:

The Senate is invited to meet with the House for the purpose of a Joint Session on Friday, February 24 at 11:00 a.m. for Senator Dan Sullivan's annual address to the Legislature.

Senator Micciche moved and asked unanimous consent that the Senate accept the House invitation to meet in Joint Session. Without objection, it was so ordered.

The Secretary was requested to notify the House.

Communications

Letter dated January 19 was received from Craig Stowers, Chief Justice of the Alaska Supreme Court stating that pursuant to AS 24.60.130(b) he has nominated the following public member for appointment to the Select Committee on Legislative Ethics:

Joyce M. Anderson

President Kelly referred the nomination to the Judiciary Committee.

The following reports are on file in the Office of the Secretary of the Senate:

Department of Commerce, Community and Economic Development
Alaska Division of Insurance
2016 Annual Report
in accordance with AS 21.06.110

Department of Revenue
Alaska Municipal Bond Bank Authority
Reserve Fund Report
in accordance with AS 44.85.270

Department of Health and Social Services
Notification of Availability:
Operating Grants Fiscal Year 2017
in accordance with AS 18.25.110

Department of Law
Federal Laws and Litigation Report (with a summary of State and
Federal government issues)
January 23, 2017
in accordance with AS 44.23.020

Introduction and Reference of Senate Bills

SB 35

SENATE BILL NO. 35 BY SENATOR COSTELLO, entitled:

"An Act establishing a program for individuals to participate as owners in an Alaska liquefied natural gas project; and providing for an effective date."

was read the first time and referred to the Resources and Finance Committees.

SB 36

SENATE BILL NO. 36 BY SENATOR GIESSEL, entitled:

"An Act relating to the practice of optometry."

was read the first time and referred to the Health and Social Services and Finance Committees.

SB 37

SENATE BILL NO. 37 BY SENATOR GIESSEL BY REQUEST, entitled:

"An Act relating to the Board of Pharmacy; relating to the licensing and inspection of certain facilities located outside the state; relating to drug supply chain security; and creating a position of executive administrator for the Board of Pharmacy."

was read the first time and referred to the Labor and Commerce and Finance Committees.

SB 38

SENATE BILL NO. 38 BY SENATOR GIESSEL BY REQUEST, entitled:

"An Act relating to the registration and duties of pharmacy benefits managers; relating to procedures, guidelines, and enforcement mechanisms for pharmacy audits; relating to the cost of multi-source generic drugs and insurance reimbursement procedures; relating to the duties of the director of the division of insurance; and providing for an effective date."

was read the first time and referred to the Labor and Commerce and Finance Committees.

SB 39

SENATE BILL NO. 39 BY SENATOR COGHILL, entitled:

"An Act adopting the Municipal Property Assessed Clean Energy Act; authorizing municipalities to establish programs to impose assessments for energy improvements in regions designated by municipalities; imposing fees; and providing for an effective date."

was read the first time and referred to the Community and Regional Affairs Committee.

SB 40

SENATE BILL NO. 40 BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR, entitled:

"An Act relating to workers' compensation; repealing the second injury fund upon satisfaction of claims; relating to service fees and civil penalties for the workers' safety programs and the workers' compensation program; relating to the liability of specified officers and members of specified business entities for payment of workers' compensation

benefits and civil penalties; relating to civil penalties for underinsuring or failing to insure or provide security for workers' compensation liability; relating to preauthorization and timely payment for medical treatment and services provided to injured employees; relating to incorporation of reference materials in workers' compensation regulations; relating to proceedings before the Workers' Compensation Board; providing for methods of payment for workers' compensation benefits; relating to the workers' compensation benefits guaranty fund authority to claim a lien; excluding independent contractors from workers' compensation coverage; establishing the circumstances under which certain nonemployee executive corporate officers and members of limited liability companies may obtain workers' compensation coverage; relating to the duties of injured employees to report income or work; relating to misclassification of employees and deceptive leasing; defining 'employee'; relating to the Workers' Compensation Board's approval of attorney fees in a settlement agreement; and providing for an effective date."

was read the first time and referred to the Labor and Commerce and Finance Committees.

The following fiscal information was published today:

Fiscal Note No. 1, Department of Administration

Fiscal Note No. 2, Department of Labor and Workforce Development

Fiscal Note No. 3, Department of Labor and Workforce Development

Governor's transmittal letter dated January 24:

Dear President Kelly:

Under the authority of Article III, Section 18, of the Alaska Constitution, I am transmitting a bill relating to the workers' compensation system. The bill proposes improvements to increase the efficiency and flexibility of the current system for the benefit of

injured workers and employers, including improving the delivery of benefits to injured employees, deterring workers' compensation fraud, ensuring compliance with the requirement that employers insure for workers' compensation liability, and providing adequate funding for the administration of the system.

The Legislature has consistently endeavored to create a workers' compensation system that delivers benefits quickly, efficiently, fairly, and predictably to injured workers at a reasonable cost to employers. Yet the system has not been significantly reformed in more than 10 years. The improvements in this bill address rising costs, recent legal developments, and new approaches to improve the system's efficiency and fairness.

First, the bill would speed up dispute resolution before the Workers' Compensation Board (Board), providing closure for both injured workers and their employers. The bill simplifies the process by requiring a hearing shortly after a claim is filed, rather than waiting for an employee to request a hearing, and by ending the practice of permitting non-attorneys to represent parties before the Board. The bill also simplifies settlement agreements by eliminating a requirement that the Board approve attorney fees as part of a settlement when fees are the sole issue in the settlement that requires Board approval. Finally, the process of imposing civil penalties against uninsured employers is streamlined. The bill permits the Division of Workers' Compensation to assess the civil penalty directly, rather than petitioning the Board to set the penalty. An employer who disputes the assessed penalty may challenge the assessment before the Board.

Second, to speed up the delivery of medical care to injured workers and reduce confusion for employers as a result of the Supreme Court's decision in *M-K Rivers v. Harris*, 325 P.3d 510 (2014), the bill adds provisions requiring employers to authorize or deny medical treatment upon a medical provider's written request, and provides a reasonable timeframe for an employer to respond without incurring a penalty. The Alaska Supreme Court held in *M-K Rivers* that an employer could be subject to a penalty for unfairly controverting a prescribed medical treatment, even though no bill for the treatment had been presented to the employer for payment. This has resulted in questions over when medical treatment must be preauthorized.

Third, the bill strengthens provisions to prevent workers' compensation fraud by employers and employees. The bill defines when an employer's misclassification of employees or deceptive leasing practices amounts to fraud under the Alaska Workers' Compensation Act. In response to the Supreme Court's decision in *Shehata v. Salvation Army*, 225 P.3d 1106 (Alaska 2010), the bill also imposes an affirmative duty on employees receiving workers' compensation benefits to report work and receipt of other types of wage-loss replacement benefits. These provisions will deter fraudulent conduct by employees that results in the unlawful receipt of workers' compensation benefits, or conduct by employers that results in artificially low workers' compensation premiums.

Fourth, the bill makes a number of substantive changes to the assessment of civil penalties against employers who fail to insure for workers' compensation. Among other changes, the Division of Workers' Compensation's ability to assess a civil penalty is expanded to include employers who are underinsured because they have misclassified workers in a variety of ways as not subject to workers' compensation coverage, misrepresented the nature of their business, or engaged in deceptive leasing practices. Provisions in the bill would expand personal liability for workers' compensation benefits and civil penalties for failure to insure to owners of more types of employing business entities. Most significantly, the bill changes the calculation and maximum civil penalty for a failure to insure for workers' compensation liability. The current maximum penalty of \$1,000 for each uninsured employee workday has led to two unintended consequences. The calculation results in astronomically high penalties that do not withstand review on appeal and that increase litigation costs and employer defaults. In addition, uninsured employers that have not maintained required records frequently are penalized less severely than similar employers that have kept records because of the difficulty of establishing the number of uninsured employee workdays without records. To correct these issues, the bill sets a maximum penalty of three times the workers' compensation insurance premium that the employer would have paid if the employer had properly insured its employees. This calculation is easier because it requires only the employer's overall payroll data and the Division of Insurance's assigned risk rates for the nature of the employer's business. The new penalty will result in a reasonable deterrent that

takes into account the employer's size, the nature of the employer's business, and the financial gain the employer realized by operating without paying, in full or in part, for workers' compensation insurance.

Fifth, the bill reduces administrative costs. The bill allows employers to pay benefits electronically, both delivering benefits to workers faster and saving costs. The bill also allows the Division of Workers' Compensation to mandate electronic filing of certain reports from employers and insurers, and eliminates a requirement that corporate executive officers seek the division's approval before opting out of workers' compensation coverage for themselves. The bill adds medical publications to a list the Department of Labor and Workforce Development may incorporate, including future amended versions, into regulation. In addition, the bill provides a penalty for insurers and employers that fail to timely submit proof of coverage in order to reduce the Division's wasted efforts investigating insured employers that neglected to report insurance coverage. The bill also phases out the second injury fund, saving administrative costs for the Department and reducing costs for employers, which are required to contribute to the fund. The fund's purpose is to encourage employers to hire or retain disabled individuals, but the fund is no longer necessary with the passage of laws barring employment discrimination on the basis of disability. Under the bill, the fund would not accept new claims and would be phased out as current claims are paid. Employers' required contributions to the fund would gradually drop to zero as the claims are paid.

Finally, the bill would ensure adequate funding for the administration of the workers' compensation and workers' safety programs by allowing the Department of Labor and Workforce Development to receive a greater percentage of the annual service fees that insurers pay to the Division of Insurance. The bill does not increase the service fee for workers' compensation insurers or employers, but allocates more of the insurers' annual service fee to the Department.

In the spirit of streamlining government processes and protecting citizen rights, the bill would speed up resolution of disputes, improve delivery of benefits to injured employees, strengthen fraud prosecution and employers' compliance with the requirement to insure employees for workers' compensation liability, and reduce administrative costs.

I urge your prompt and favorable action on this measure.

Sincerely,
/s/
Bill Walker
Governor

Consideration of the Calendar

Citations

Senator Micciche moved and asked unanimous consent that the following citations be made a special order of business. Without objection, it was so ordered.

Special Order of Business

Honoring - Charlotte Fox 2017 Governor's Awards for Arts and Humanities Lifetime Achievement in the Arts
Senator(s) Meyer, Kelly, Begich, Bishop, Coghill, Costello, Dunleavy, Egan, Gardner, Giessel, Hoffman, Hughes, MacKinnon, Micciche, Olson, Stedman, Stevens, von Imhof, Wielechowski, Wilson

Honoring - Scott Allan Carrlee
Representative(s) Kito
Senator(s) Egan, Kelly, Begich, Bishop, Coghill, Costello, Dunleavy, Gardner, Giessel, Hoffman, Hughes, MacKinnon, Meyer, Micciche, Olson, Stedman, Stevens, von Imhof, Wielechowski, Wilson

Senator Micciche moved and asked unanimous consent that the citations be adopted. Without objection, the citations were adopted and referred to the Secretary for transmittal.

Unfinished Business**SB 27**

Senators Begich, Meyer moved and asked unanimous consent to be shown as cosponsors on SENATE BILL NO. 27 "An Act relating to the establishment of the Task Force on Reading Proficiency and Reading Instruction for All Students and on the Effects of Dyslexia on Some Students." Without objection, it was so ordered.

In accordance with AS 24.20.165, President Kelly changed the following appointment:

Legislative Budget and Audit Committee

Senator von Imhof replaces Senator Costello as alternate

Senator Gardner moved and asked unanimous consent to be excused from a call of the Senate on the following dates:

from 12:30 p.m., February 10 through evening plane time, February 12
from 12:30 p.m., February 24 through evening plane time, February 26
from 6:00 p.m., March 3 through evening plane time, March 5
from 11:30 a.m., March 17 through evening plane time, March 19

Without objection, Senator Gardner was excused.

Senator Costello moved and asked unanimous consent to be excused from a call of the Senate from afternoon plane time, January 26 through morning plane time, January 30. Without objection, Senator Costello was excused.

Announcements

Announcements are at the end of the journal.

Engrossment and Enrollment**SR 1**

SENATE RESOLUTION NO. 1 Establishing a Senate Special Committee on World Trade, was engrossed and enrolled, signed by the President and Secretary and the engrossed and enrolled copies transmitted to the Office of the Governor at 3:39 p.m., January 25, 2017.

Senate Resolve No. 1

SR 2

SENATE RESOLUTION NO. 2 Establishing a Senate Special Committee on the Arctic, was engrossed and enrolled, signed by the President and Secretary and the engrossed and enrolled copies transmitted to the Office of the Governor at 3:39 p.m., January 25, 2017.

Senate Resolve No. 2

Adjournment

Senator Micciche moved and asked unanimous consent that the Senate stand in adjournment until 10:00 a.m., January 27, 2017. Without objection, the Senate adjourned at 11:22 a.m.

Liz Clark
Secretary of the Senate

Announcements

Americans with Disabilities Act Notice - Persons with disabilities who require special accommodation or alternative communication formats to access committee meetings may contact the appropriate committee office or the Legislative Information Office in their community. Reasonable advance notice is needed to accommodate the request. For further information, call the ADA Coordinator at 465-3854 Voice/465-4980 TDD.

STANDING COMMITTEES

+ indicates teleconference
 = indicates bill previously heard/scheduled

COMMUNITY & REGIONAL AFFAIRS

Jan 26 Thursday Beltz 105 (tsbldg) 3:30 PM
 No Meeting Scheduled

EDUCATION

Jan 25 Wednesday Butrovich 205 8:00 AM
 -- Testimony <Invitation Only> --
 + Overview of the K-12 Foundation Formula

Jan 27 Friday Butrovich 205 8:00 AM
 -- Testimony <Invitation Only> --
 + Increasing Broadband Access and Capacity for Rural Schools

FINANCE

Jan 25 Wednesday Senate Finance 532 9:00 AM
 + Presentation: Intent Language Status Update
 Alaska Seafood Marketing Institute

Jan 26 Thursday Senate Finance 532 9:00 AM
 + Presentation: Overview FY18 Budget
 Alaska Mental Health Trust

Jan 27 Friday Senate Finance 532 9:00 AM
 No Meeting Scheduled

HEALTH & SOCIAL SERVICES

- Jan 25** **Wednesday** **Butrovich 205** **1:30 PM**
 -- Testimony <Invitation Only> --
 + Department Overview
 Commissioner Valerie Davidson
 Acting Assistant Commissioner Shawnda O'Brien
 Streamed live on AKL.tv
- Jan 27** **Friday** **Butrovich 205** **1:30 PM**
 -- Testimony <Invitation Only> --
 + Presentation: Update on Medicaid Reform
 Monique Martin, DHSS Health Care Policy Advisor
 Streamed live on AKL.tv

JUDICIARY

- Jan 25** **Wednesday** **Beltz 105 (tsbldg)** **1:30 PM**
 -- Testimony <Invitation Only> --
 + Presentation by the Alaska Criminal Justice
 Commission
 Susanne DiPietro, Executive Director, Alaska
 Judicial Council
 Kris Sell, Commissioner
 Brenda Stanfill, Commissioner
- Jan 27** **Friday** **Beltz 105 (tsbldg)** **1:30 PM**
 + Implementation Overview of Senate Bill 91
 (29th Legislature)

LABOR & COMMERCE

- Jan 26** **Thursday** **Beltz 105 (tsbldg)** **1:30 PM**
 + STRATEGY FOR ALASKA'S ECONOMY
 Alaska Regional Development Organizations
 Anchorage Economic Development Corporation
 Fairbanks Economic Development Corporation
 Southeast Conference
 Department of Commerce, Community, & Economic
 Development
 Presentation: Northern Opportunity: Alaska's
 Economic Strategy
 -- Testimony <Invitation Only> --

RESOURCES

Jan 25 Wednesday Butrovich 205 3:30 PM
 -- Testimony <Invitation Only> --
 + Update: Alaska Stand Alone Pipeline Project
 Frank Richards, Alaska Gasline Development
 Corporation
 + Overview on Alaska Affordable Energy Strategy
 Alaska Energy Authority:
 Cady Lister, Chief Economist
 Katie Conway, Government Relations Manager
 Neil McMahan, Energy Planning Manager

Jan 27 Friday Butrovich 205 3:30 PM
 No Meeting Scheduled

STATE AFFAIRS

Jan 26 Thursday Butrovich 205 3:30 PM
 Jared Walczak, Tax Foundation
 + Presentation on the Effects of Various Taxes on
 Alaska's Economy
 Bob Bartholomew, City & Borough of Juneau
 Finance Director
 Clinton Singletary, City & Borough of Juneau
 Sales Tax Administrator
 + Discussion on the Mechanics of Collecting Sales
 Tax

Jan 28 Saturday Butrovich 205 10:00 AM
 += SB 1 APPROP: 2016 PFD SUPPLEMENTAL PAYMENT
 -- Public Testimony <Time Limit 3 Minutes> --
 += SB 2 2016 PFD SUPPLEMENTAL PAYMENT
 -- Public Testimony <Time Limit 3 Minutes> --
 Invited Testimony on SB 1 and SB 2 From:
 Former Alaska State Senator, Rick Halford
 Dr. Jack Hickel
 Former Alaska State Senator & Representative
 Clem Tillion

TRANSPORTATION

Jan 26 **Thursday** **Butrovich 205** **1:30 PM**
 + Aviation Improvement Program
 Deputy Commissioner John Binder

JOINT COMMITTEES

LEGISLATIVE BUDGET & AUDIT

Jan 27 **Friday** **Senate Finance 532** **Time TBA**
 -- Teleconference <Listen Only> --
 Time: Immediately Following House Floor Session
 Election of Chairman and Vice Chairman
 Approval of January 13, 2017 Minutes
 David Teal, Legislative Finance Director
 - Interaction with LB&A - RPLs
 Kris Curtis, Legislative Auditor
 - Handbook and Duties
 - Procedure and Confidentiality
 - Status of Audits
 - Travel
 Consultant Contracts - Executive Session
 - enalytica, Inc.
 - Hart Energy Publishing LLLP
 - Roger Marks

TASK FORCE ON CIVICS EDUCATION

Feb 08 **Wednesday** **Capitol 106** **1:00 PM**
 + Sue Hull, AK State Board of Education and Early
 Development
 Review of Preliminary Report
 - Roundtable Discussion
 -- Public Testimony Begins at 3:00 pm --
 Streamed live on AKL.tv

Feb 09 **Thursday** **Capitol 106** **9:00 AM**
 + Continued Review of Preliminary Report
 - Roundtable Discussion
 -- Invited Testimony --
 -- Public Testimony --
 Streamed live on AKL.tv