

ALASKA STATE LEGISLATURE
SENATE JUDICIARY COMMITTEE

June 26, 2002
9:24 a.m.

MEMBERS PRESENT

Senator Robin Taylor, Chair
Senator Dave Donley, Vice Chair
Senator John Cowdery
Senator Gene Therriault
Senator Johnny Ellis

MEMBERS ABSENT

All Members Present

COMMITTEE CALENDAR

CS FOR HOUSE BILL NO. 3001(FIN) am
"An Act setting timelines for issuance of final orders by the
Regulatory Commission of Alaska, amending the authority of the
commission to enter compromise settlement orders, extending the
commission's termination date to June 30, 2004, requiring the
commission to hold monthly meetings to allow discussion of the
commission's process and procedures; and directing the
establishment of an advisory committee; and providing for an
effective date."

MOVED SCS CSHB 3001(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

See Judiciary minutes dated 6/25/02.

WITNESS REGISTER

Barbara Craver
Legal Counsel
Legislative Affairs Agency
Alaska State Capitol
Juneau, AK 99801-1182

Nanette Thompson
Chair
Regulatory Commission of Alaska
701 W Eighth Ave Ste 300
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ACTION NARRATIVE

TAPE 02-50, SIDE A

#SB 3001

#HB 3001

CHAIRMAN ROBIN TAYLOR called the Senate Judiciary Committee meeting to order at 9:24 a.m.

SB 3001-REGULATORY COM. OF ALASKA: SUNSET & MISC
HB 3001-REGULATORY COM. OF ALASKA: SUNSET & MISC

[THE FOLLOWING IS A VERBATUM TRANSCRIPT]

CHAIRMAN TAYLOR: ...Donley and Chair Taylor. And the secretary has copies of the bill back there for distribution. The matter before us is House Bill number 3001 Judiciary. There is a committee substitute. Chair to entertain a motion to adopt the committee substitute for purposes of discussion. Senator Cowdery.

SENATOR JOHN COWDERY: I make a motion that we adopt the committee substitute, Committee Substitute for House Bill 3001 Judiciary for discussion purposes.

CHAIRMAN TAYLOR: Is there objection? There being no objection, it is so adopted. Let me walk you through first the provisions. First off, we have a, we have created a Telecommunications Commission of Alaska, that's a three-member panel that will, effective January 1st take over the regulation of telecommunications in Alaska. That will leave the Regulatory Commission, as they have been facing a 20 percent/80 percent balance on telecommunications work versus electrical work, this will leave them with the remainder of the 20 percent, which will be all of water and sewer, refuse to the extent they regulate it, and the electrical matters, most of which have been some of their biggest cases and some of the cases that have been languishing for the longest period of time.

SENATOR DAVE DONLEY: Mr. Chairman?

CHAIRMAN TAYLOR: Yes?

SENATOR DONLEY: Would the, where would cable television fall?

CHAIRMAN TAYLOR: Unfortunately, we have not yet drafted anything on cable television.

SENATOR DONLEY: But...

CHAIRMAN TAYLOR: We didn't have time last night. We can, if anyone is interested, have an amendment prepared for that effect.

SENATOR DONLEY: Well, if the committee's going to propose to create a separate thing, it needs to be one or the other. And I would suggest that it's closer to telecommunications than garbage and...

CHAIRMAN TAYLOR: Oh, no, tele...

SENATOR DONLEY: Sewer and water.

CHAIRMAN TAYLOR: Cable would be included within.

SENATOR DONLEY: The telecommunications...

CHAIRMAN TAYLOR: The Telecommunications Commission.

SENATOR DONLEY: Okay, good.

CHAIRMAN TAYLOR: But we haven't prepared any specific amendment changing in any way the cable television industry.

SENATOR DONLEY: No, I'm just wondering who has jurisdiction on it.

CHAIRMAN TAYLOR: Is that correct, Barbara?

MS. BARBARA CRAVER: I think so. I mean telecommunications is pretty broadly defined [indisc.] I think it involves cable.

CHAIRMAN TAYLOR: Okay. I'd just note for the record that's Barbara Craver, who's with, who's a drafter.

SENATOR COWDERY: And the date of the...

CHAIRMAN TAYLOR: The transition would occur January 1, 2003. The next major provision you come to is the Regulatory Commission itself and that it shall annually, that's on Section 8, page 3, it shall annually elect for the following fiscal year, and that election shall occur within the membership, raising one of their members to the title of chair. The chair would serve one-year terms and could serve up to three successive terms. After a year, then they would have to step down as chair, and after a year of not serving as the chair, the commissioner would be

eligible for election as chair again. This was to provide an alternative for the question of, 'should the chair be rotated?' as three of the Commissioners have suggested just prior to our hearings. The next provision goes into extensive discussion of ex parte communication, impartial decision making. These are standards that are applicable in other sections of the law to hearing officers and judges in Alaska. And that's basically what these people are when they sit in the quasi-judicial aspect of their jobs.

SENATOR JOHNNY ELLIS: Mr. Chairman, that's section 9 through...

CHAIRMAN TAYLOR: 11. I think that's right, John, I may have spoken too quickly. Yes.

SENATOR ELLIS: Could you just cite the sections as you go through the issues?

CHAIRMAN TAYLOR: Yeah, I'm sorry, I should have. That next section 12 basically defines who has control over telecommunications and who has control over the other public utilities. Section 13, timelines for issuance of final orders, is basically the same provision as was provided for in the House. There is one difference and that is the provision providing for a good cause delay has been eliminated. So, in essence, unless the, let me see if I can find it, unless the parties themselves have consented, both parties, I'm assuming only two, but unless all parties have consented to the extension, the extension is granted as of that date. This puts some teeth into that provision. And actually with the division of work contemplated by creating the new commission to take care of telecommunications, there is, there should be more than adequate both staffing and time because they would then be handling 20 percent of the workload. 80 percent, according to the testimony, would move off to the new commissioners as of the 1st of January. This next provision was, I believe, part of the House bill and I'm not certain what it actually does, but it's the contents and service of orders. It talks about every formal order of the commission should be based on facts of record, then it says, however, the commission may issue orders approving any settlement supported by all the parties of record in a proceeding, including a compromise. I'm assuming that's some clean up language that was needed within the House Bill by the Commission for the types of orders they found themselves necessary to issue. Do you have further comment on that, Barbara?

MS. CRAVER: That's section 14. That's been in there since the second session...

CHAIRMAN TAYLOR: You need to come over and sit down there. Yeah.

MS. CRAVER: This is Barbara Craver, I'm with Leg Legal. Let's see, Section 14 of version L has been with the bill, it was requested I think during the second session and maybe even during the original session because there was no authority for the Commission to approve settlement, settlements between the parties as an order.

CHAIRMAN TAYLOR: And that was in the House Bill?

MS. CRAVER: Yes.

CHAIRMAN TAYLOR: The next one, section 15 is again, 15, 16, 17 and 18, let's see...

SENATOR GENE THERRIAULT: They all just conform.

CHAIRMAN TAYLOR: Those are just conforming and putting the word 'telecommunication' in there, creating the new commission for that purpose. And so is 19 also. The Telecommunications Commission is created in Section 20, the definition of the duties of the three commissioners. And, by the way, the standards for qualification are the same as the standards for qualifications for APUC, excuse me, RCA right now. And the standards for removal by cause, which is the Governor that only can do that, for cause. They're confirmed by the Legislature. They serve for five-year terms. They are a range 26 up to a range, with the chair at a range 27. All this is same as the RCA is right now.

SENATOR THERRIAULT: So that's identical, you've just...

CHAIRMAN TAYLOR: Yeah.

SENATOR THERRIAULT: Sort of pulled those sections of statutes, changed the...

CHAIRMAN TAYLOR: Changed the name, that's all, Gene, yeah. They have an office, a seal, a legal counsel. They're allowed to employ, of course, personnel to assist them. And then there's the restriction on the members that they cannot hold stock in a utility that they would regulate and other qualifications. I thought that one had a section number, but I guess it doesn't.

MS. CRAVER: It's...

CHAIRMAN TAYLOR: Section 42 includes both the restrictions on

members and the powers and duties of the commission chair. And those are also the same, aren't they Barbara?

MS. CRAVER: Yes.

CHAIRMAN TAYLOR: As what the RCA is today? Okay.

MS. CRAVER: This is identical to the Regulatory Commission.

CHAIRMAN TAYLOR: And these decision making procedures and impartial decision-making, is that the same, too?

MS. CRAVER: Oh, no, that's a new section.

CHAIRMAN TAYLOR: That's what I thought.

MS. CRAVER: 42.08.090, which is on page 13, is a new section that also appears in, appears as an amendment to the Regulatory Commission in the first part of this bill. Yes.

CHAIRMAN TAYLOR: And that provides for the higher standard of, we were talking about only commissioners, too.

MS. CRAVER: This is an ex parte, ex parte model that's based on the judicial model.

CHAIRMAN TAYLOR: When...

MS. CRAVER: To prohibit ex parte communications.

CHAIRMAN TAYLOR: When the members, refreshing your recollection, you actually prepared a memorandum to the Committee on that subject.

MS. CRAVER: Uh-hmm.

CHAIRMAN TAYLOR: Before we even started with these hearings and you provided three different options and this is the higher of the three options. Is that right?

MS. CRAVER: I think the judicial standard is taken from the canons and it's the most elaborate as to what an ex parte contact is and in what situations an ex parte contact might be allowed, mostly for procedural matters and communications with staff.

CHAIRMAN TAYLOR: And we also have a public advocacy section within this Commission, just as we do within the RCA. And then when you get to, Section 21 is probably, though it's one of the

smallest, it's probably one of the meatiest around here because what it does, it provides for the extension of this Commission for one full year plus it's wind-down year, which actually gives it a two-year extension. 22 is just a nominal change again to include, yes, go ahead Senator Cowdery, the Telecommunications Act.

SENATOR COWDERY: I don't know if we've got it in here, but there was some question on the word 'wind-down,' I mean, in the, what's the...

CHAIRMAN TAYLOR: Terminate?

SENATOR COWDERY: Termination, is that...

CHAIRMAN TAYLOR: I haven't attempted to take that definitional thing on.

SENATOR COWDERY: Because you know that gives some confusion when it says that it's terminated but then it gives a one year.

CHAIRMAN TAYLOR: We actually had a section drawn up, Senator Cowdery. In fact we've got a couple of different alternatives there. I chose to go with the simpler one because it's basically what the House did. And if these other provisions are adopted, I certainly feel that we can extend and move on from here. We're going to have a panel that's coming up here too towards the end.

SENATOR COWDERY: Okay.

CHAIRMAN TAYLOR: But I didn't get into that definitional stuff, although I do have a section drawn up if the Committee is interested that would provide for definition of what activities take place within a sunset year so that there's no question about worrying about interpreting an attorney general's opinion or having someone just speculate what they might or might not be able to do. It would specifically tell them.

SENATOR DONLEY: I agree with Senator Cowdery. I think the word 'terminate' as it appears now is really misleading. I don't even think it's good English. I mean, 'terminate' means the end. And that's not what happens.

CHAIRMAN TAYLOR: Right.

SENATOR DONLEY: I think...

SENATOR THERRIAULT: But when you mean to shut something down, you

terminate it and it goes into its wind-down year. Now it might not fit perfectly with this function because we have to have a regulatory commission of some kind.

SENATOR DONLEY: Right.

SENATOR THERRIAULT: You have to have that oversight. But if the language applies to other sections of the statute, which at any time the Legislature could say, 'You're not needed any more, we're going to give, you're therefore terminated, wrap up your business.' I mean, it does fit. So...

SENATOR COWDERY: Well...

SENATOR DONLEY: I...

SENATOR COWDERY: Well, it seems to me, you know, having been in the business world, when I terminated an employee, that was terminated.

CHAIRMAN TAYLOR: Didn't have a wind-down year?

SENATOR COWDERY: No, I paid them until the end of the week, and that was it, you know, or the job was completed or whatever, it was terminated. And I think there's confusion. I think we should clarify that.

CHAIRMAN TAYLOR: I just wanted to highlight for you as I went through it quickly the sections and this is the section, number 22, excuse me, number 21, where we would probably want to put in that definition if we wished to make that definitional change. And I, as I said, I do have a paragraph already drafted that Barb has available that talks about what happens during a wind-down year. I didn't try to take on the issue of what the word 'terminate' meant or whether or not it should remain there. We removed it in the paragraph and just said you would have a full year of authority and be authorized to continue to work. But...

SENATOR DONLEY: I think it's a pretty simple matter. If people are concerned that it may be appropriate in other areas, which I don't, I'm leaning towards thinking it's not in anywhere because it's just not, when you terminate something, it's supposed to end. But to do a 'notwithstanding' provision for at least this type of regulatory function, which seems to be an essential function, we could, you know, have a special terminology that applies when it's the RCA or whatever commission is regulating these functions and then deal with the broad picture in some other piece of legislation.

CHAIRMAN TAYLOR: Okay, I just wanted you to note that so that when we go back through it and we want, anybody has an amendment prepared, submit one even procedural, or I mean even conceptual. That's why Barbara's here to assist us. Section 23, again, just changes the title from 'Regulatory' to 'Telecommunications.' So does section 24, 25, 26, 27. Section 28 brings in a little different concept, but it's a concept that I think is very germane to this subject and needs to be addressed. In essence, that's Senate Bill 280 that failed passage in the regular session and it does provide much needed assistance to water and sewer projects through grants. And, by the way, we do need to have an amendment on section 28 because the word 'company' was inserted and we need to have the words 'public utility' put in the place of 'company' each place that it appears within section 28 and 29.

SENATOR THERRIAULT: I've got a couple of questions.

CHAIRMAN TAYLOR: Yes.

SENATOR THERRIAULT: Barbara, when, I'm sure this has been a long process. When were you instructed to include this language in the bill? Yesterday or the day before?

MS. CRAVER: The 29th.

SENATOR THERRIAULT: When did you start drafting this section into the bill?

CHAIRMAN TAYLOR: I think I gave her instructions Mr. Therriault, Senator Therriault, yesterday on everything at about, what time, Barb, 9:00 in the morning?

MS. CRAVER: Yeah.

CHAIRMAN TAYLOR: 9:30, something like that.

SENATOR THERRIAULT: We had a lengthy discussion yesterday, Mr. Chairman, about the contents of the bill. Since this was my bill during the session, why didn't you tell me that you were incorporating it in the bill?

CHAIRMAN TAYLOR: I wanted to add that and some other, because at one point the Committee had actually discussed deregulating all water and sewer utilities. And, in fact, first draft last night, Barbara had worked a long time trying to figure out how to do that. And when we came back with that at about 3:00 a.m. or so,

we also had this within it because as we were going to deregulate I wanted to make certain that those provisions that had been lost, because I had supported you also on that concept, were still available for those communities. And that's the main reason I did it. We actually had about seven or eight other alternatives too that I haven't gone through because I just kind of decided they're too complex and there really wasn't a consensus within the committee.

SENATOR THERRIAULT: Well I guess the dereg...

CHAIRMAN TAYLOR: I didn't mean to offend you in the process.

SENATOR THERRIAULT: More complete deregulation, too, is a substantive matter and...

CHAIRMAN TAYLOR: That's why I didn't do it.

SENATOR THERRIAULT: That never came up in conversation yesterday either.

CHAIRMAN TAYLOR: No, but that had come up. Senator Cowdery had raised it. It had been raised by a couple of different people testifying. So I wanted to have as many alternatives available as we could. And basically those things have been drafted. It's just I thought it was too big a bite to be taking and expect this committee to deregulate all water and sewer in the state. Your auditors had suggested to us that we make a policy call on that one way or the other and that's why I felt it was certainly germane and something we should take up. But I did not include it in this draft. It is available if you want to take that up. Another issue that was raised was the deregulation of cooperative electric associations. And Chugach had specifically asked for that so I had provisions drafted for that also. Part of the complexity there was that many witnesses had stated that if in fact something like that were contemplated, that we really needed to maintain a level of regulation on Chugach's wholesale transactions with other utilities but that maybe maintaining a strict regulatory approach over a cooperative really didn't have much, much impact. So we also drafted a provision on that. But since I didn't feel we had a great deal of consensus yet on that, that wasn't an issue that I was going to, going to push. We did have it drafted, though, last night, and I'm prepared to provide the Committee with that work and move forward with it if people want. As I said, I tried to take every option that was provided in testimony and consolidate it and then put it into some form. And then I tried as best I could to come up with something that would work. The last section, let me, first on that repealer,

can you explain that one Barb?

MS. CRAVER: Yes.

CHAIRMAN TAYLOR: Because there was, it's a little glitch in there.

MS. CRAVER: Well, 42.04.100 created a telecommunications or communication carriers section within the Regulatory Commission. And since that seems to be very applicable to telecommunications, we've taken it out of 04 and put it into 08. So now that exact same section about communication carriers section is found in 45.08 under the auspices of the Telecommunications Commission.

SENATOR THERRIAULT: Could you go over that again?

MS. CRAVER: Yes, okay. Okay, 42.04.100.

CHAIRMAN TAYLOR: Which we would repeal.

MS. CRAVER: You can see what it looks like, let's see, if we can find where it got, got moved to. Let's see. If you'll look on page 14, on line 10, we have communications carrier section. This had formerly been 42.04.100, because this was part of the Regulatory Commission's, under their jurisdiction. So since it's a communication carrier system that will 'administer policies and programs with respect to the regulation of rates, services, accounting, and facilities of communications common carriers within the state involving the use of wire, cable, radio, and space satellites,' it seemed more appropriate to put this under the telecommunications section and just take it completely out of the Regulatory Commission. So 42.04.100 is being repealed and it's actually been just moved and renamed, renumbered and put under the Telecommunications Commission in 42.08.100.

CHAIRMAN TAYLOR: The next section, number 31, provides exactly the same language that the House had in their timelines. Remember we, we, I can't remember for sure, I think it was Eric Yould yesterday was telling us that it wasn't everything that they wanted. They wanted some tighter definitions on the 400 cases that are somewhat stale. And I believe he suggested he had some language but didn't provide it to the Committee yesterday. In the first draft, I had left out that second sentence where it says, 'For dockets commended before July 1, 2002, the date of July 1, 2002, shall be used as the date of filing' for timeline purposes. Basically what that second sentence does is it brings all of those old stale cases up and gives them a new starting line, which is the same starting line as any new case that's

filed. So everybody kind of starts off together in that concept. I'm not sure what ARECA had for additional language that they wanted but the first draft we'd left that out and that was in the hopes that we would come up with some language. And believe me, I cannot, I don't have the sophistication to do that. If anyone else has a recommendation, I'd be happy to entertain it. And since I couldn't, I couldn't seem to figure out how you would age those cases and define which one would have priority over the other in any kind of meaningful fashion just based on time of filing, what I did there, was I just put the second sentence of the House's provision back in so the House's provision is exactly as we received it right now. But I just wanted to remind the Committee of what the debate was on that, or I should say, the testimony was on that should anybody want to work with somebody to come up with an amendment on that. And the last one is the task force that is to inquire into the Regulatory Commission. And rather than go along with the allocation of individual membership within that based upon which organization or profession you belong to, we just deleted those and took it back to the generic, where the members of the task force would be appointed, three people by the President of the Senate, three people by the Speaker of the House, one by the Governor - that they would work for the next six months, that they would render their report to the next legislature on January 30th, 2003, which should coordinate with the study that's going on that Administrative Director Duncan has now let. And the next legislature should have both of those available. Hopefully this task force would not interfere with RCA to the extent that we had testimony yesterday, because 80 percent of RCA's work would now be done by the other commission beginning January 1.

SENATOR DONLEY: Is it really 80 percent?

CHAIRMAN TAYLOR: That's what the testimony was, is, by the electric people, is that 80 percent of the activity of the Commission is taken up with telecommunications. It used to be, remember, they said it used to be the other way around, that electrical used to take more time in the Commission. And with, I guess it's the advent of technology or deregulation or something, I guess deregulation they said from the FCC.

SENATOR DONLEY: Can I...

CHAIRMAN TAYLOR: Yeah.

SENATOR DONLEY: ...ask a question? Do the, the reforms such as the election of the chair, the ex parte communication provisions; do those apply to both the new entity that's being created and

the existing entity?

MS. CRAVER: Let's see, I know for sure that the ex parte things do. I don't believe that we carried the election of the chair into telecommunications.

CHAIRMAN TAYLOR: Telecommunications only has three members. I'm not sure how they...

MS. CRAVER: There is a chair in the telecommunications section. It's on page 12, line 17, which the exact, you know, it's a mirror of what the RCA, powers of the, powers and duties of the commission chair is.

SENATOR THERRIAULT: But how is that chair selected?

MS. CRAVER: Let's see.

SENATOR THERRIAULT: Currently RCA of course is appointed. They offer...

MS. CRAVER: Yeah, let's see. Let's see, how was it done under 42.04.010? I can't answer that question, but I can look and see if I can find the answer here.

CHAIRMAN TAYLOR: Senator Cowdery?

SENATOR COWDERY: Yeah, while she's looking for that, you know we discussed a different review process, you know, by, into the actions and the Commission. Is that included any - you know, we talked about monthly, we talked about quarterly, yearly, that type of thing. Is that, any of that in here? Do you remember?

CHAIRMAN TAYLOR: I didn't see anything.

SENATOR DONLEY: Oh, you don't mean review, you mean like an open bar, I mean, discussion...

SENATOR COWDERY: Yeah, you know...

SENATOR DONLEY: That was in the House bill, that once a month discussion thing?

SENATOR COWDERY: Yes.

CHAIRMAN TAYLOR: Yeah, the Commission was concerned, and others were concerned that that was going to be kind of burdensome with the workload that they had to meet every month with the panel so

I didn't put that in.

SENATOR COWDERY: Okay.

CHAIRMAN TAYLOR: I just assumed that if there's going to be a task force that is going to look into their affairs, which both the House and we have here. I'm certain they're going to have to meet with and talk to them on occasion but to set up mandated times at which they have to get together seemed to me awfully arbitrary.

SENATOR DONLEY: Mr. Chairman, this is what I'm interested in doing at this point is having a letter of intent that deals with some of the more complex issues that specifically asks or defines as the intent of the Legislature that this task force make a specific recommendation back whether or not the use of this 'baseball' or 'last best interest' arbitration for setting the UNE rates for tariffs is an appropriate way to set those, those issues. And also that the, this task force would also make a specific regulation regarding the request of this Committee for the deregulation of co-ops and muni-owned utilities.

CHAIRMAN TAYLOR: And how that might occur?

SENATOR DONLEY: Yeah, and how that might occur. So that we have this task force of hopefully a lot of expertise coming back and making specific recommendations on those two very complex issues, I think. So that the next legislature will have a better sense from hopefully a group of, a panel of experts, on which way to go on those issues because I, we, we heard a lot of testimony on both those things. I think both those things need to be, have a much more extensive public debate and amount of research and work done on them than we're going to ever have in this forum. But I would like to have some recommendations come back [indisc.] on those issues.

CHAIRMAN TAYLOR: And that was both on water and sewer and electric co-ops?

SENATOR DONLEY: Yeah.

CHAIRMAN TAYLOR: Okay. Okay, I'd sure appreciate that because trying to wade your way through these statutes and trying to figure out how to do that...

SENATOR DONLEY: So you could put it specifically in this, the charge to the task force or we could do it by letter of intent saying, 'task force, this is what we want you to come back and

give us some advice on.' Either way.

CHAIRMAN TAYLOR: Yeah, well, Barbara and myself and staff will be happy to work with you on either one

SENATOR DONLEY: Maybe I... I guess it'd be better if it was right in here.

CHAIRMAN TAYLOR: If it's right in there, I think...

SENATOR DONLEY: Yeah.

CHAIRMAN TAYLOR: ...it's clearer. Do you understand that, Barb?

MS. CRAVER: Actually, I wasn't listening. I was looking for the other stuff. But I'm sure you can fill me in. Or you want to reiterate it?

SENATOR DONLEY: We would like it clear that one other thing that we're asking...

CHAIRMAN TAYLOR: Senator Donley, why don't you make that as a motion to amend?

SENATOR DONLEY: I would move that the drafters come up with some language that make it clear in the charge to the task force in Section 32 that we want a specific, the Legislature would like a specific recommendation on the, on the use of this 'baseball' or last best interest, 'last best offer' arbitration for setting the UNE rate or at least the variables, I guess, in that rate and tariff issues and, and I guess I don't mean, you know, I, more than just say whether they like that or not but make a specific recommendation on how they think that should be handled.

CHAIRMAN TAYLOR: What type of arbitration.

SENATOR DONLEY: Yeah, if you're going to use arbitration, what type of arbitration.

MS. CRAVER: Okay.

SENATOR DONLEY: And second, that also we'd like a specific recommendation regarding the issue of deregulation of cooperatives and city owned utilities.

MS. CRAVER: Okay, of electric cooperatives, you mean?

SENATOR DONLEY: And water and sewer.

MS. CRAVER: Okay, well, there's electric and telephone cooperatives under 10.25.

CHAIRMAN TAYLOR: Oh yeah. I think you...

MS. CRAVER: You just mean electrical cooperatives?

SENATOR DONLEY: I mean both.

MS. CRAVER: You want both. Okay, electric and telephone.

CHAIRMAN TAYLOR: The concept of the co-op...

MS. CRAVER: Co-ops is 10.25.

CHAIRMAN TAYLOR: Or you could deregulate as far as rates and other things?

MS. CRAVER: Uh-hmm.

CHAIRMAN TAYLOR: But you would probably not be able to deregulate as far, or wouldn't want to deregulate as far as certification. In fact that's one of the problems we ran into on the deregulation drafting - [what] we were trying to do on that is that if you deregulate them, you change them, they're no longer defined as a public utility because they're not regulated. And if they're not a public utility, they don't have the rights of right-of-way or condemnation, which is for the ability to put a pole in the right-of-way. And all of a sudden these companies, these co-ops and other things would be left with no way of putting in a new line, say, in a city street without having to go purchase it. I don't think...

SENATOR DONLEY: I don't think this would intend that to happen.

MS. CRAVER: Let's see.

SENATOR DONLEY: The intent is just to get a specific recommendation from this task force.

MS. CRAVER: Okay, you wanted deregulation of these co-ops, and then what were the other ones, municipally owned utilities?

SENATOR DONLEY: Yea.

MS. CRAVER: Okay.

SENATOR DONLEY: Because I think those are the two big issues that we just, you know, don't necessarily have time to develop the expertise and the actual time to handle them.

MS. CRAVER: Got it.

CHAIRMAN TAYLOR: Let me tell you, I sure thought it was a lot simpler than it is. When you get in and start trying to change those statutes, each one of them has a ramification or an impact on another one and you start chasing one statute after another through the books. Okay, with that, we're scheduled to - Barbara, go ahead.

MS. CRAVER: If I could respond to Senator Therriault's question.

CHAIRMAN TAYLOR: Yes, please.

MS. CRAVER: Under 42.04.010 and the Regulatory Commission under 010(b) is where this, the provisions regarding the Governor designates a chair of the Commission either by selecting the member nominated by the Commission or another member. We dropped that section out. I don't know why. So it does not appear in, that in the new chapter 08 that there is any comparable provision that specifies how the chair of the telecommunications commission...

CHAIRMAN TAYLOR: We'll need to have that.

MS. CRAVER: So we can stick that back in.

SENATOR THERRIAULT: So, we have a commission with a chair and no mechanism telling us how we get the chair at this point?

MS. CRAVER: Right. So, if you wanted to, you could take 42.04.010(b) and put it into Chapter 8, 42.08.010 and conform it.

SENATOR THERRIAULT: And what's left of the RCA here, what's the change in their selection of chair? Is it a rotating basis?

MS. CRAVER: Right, they themselves elect a chair from within their membership every year. They can elect the same person for three consecutive years. Then that person, if they wanted, has to take a year off before they can be elected again.

CHAIRMAN TAYLOR: You ought to make that as a conceptual amendment.

SENATOR DONLEY: Yeah, I move that as a conceptual amendment.

CHAIRMAN TAYLOR: Number two, and that's to take care of the chair situation where we've left out how the Governor or who was going to designate it for the new Telecommunications Commission. Is there objection? There being no objection, that conceptual amendment passes.

SENATOR DONLEY: And I have a third conceptual amendment.

CHAIRMAN TAYLOR: Go right ahead, Senator Donley.

SENATOR DONLEY: And I would move that, notwithstanding how other boards and commissions are treated under the sunset law, that these two commissions, if they, the terminology that would be used when then went into their sunset year would not be that they were terminated until the end of their sunset year and that, that we specifically give the name to the last year as the..

CHAIRMAN TAYLOR: How about review year?

SENATOR DONLEY: Well, everybody calls it the wind-down year. I mean, maybe there's a better terminology, but I would like, I would like the termination to occur when they're gone. You know, that being the definition of 'termination,' when they cease to actually exist rather than they terminate and then they're around for a whole 'nother year fully doing business.

MS. CRAVER: That could...

SENATOR COWDERY: ...and that they carry on business..

SENATOR DONLEY: Yeah.

SENATOR COWDERY: Until they're, you know...

SENATOR DONLEY: Yeah. Because I think that's really important with these regulatory commissions, that they have full authority to continue their business and we ought to say that right in statute because they perform some [indisc.] functions.

10:00 a.m.

CHAIRMAN TAYLOR: We actually drafted a - Senator Donley, we actually drafted a provision specifically on that subject providing for that portion of the definition, that they would be fully authorized and would be required to do all functions during that period of time. So that would remove any [indisc.] Attorney General's opinion or whether something else was out there.

SENATOR DONLEY: I would move that that be part of my conceptual amendment also.

CHAIRMAN TAYLOR: Okay.

SENATOR DONLEY: And, Mr. Chairman, before we get interrupted here. I would suggest that since this is a big chunk of legislation here and it's, a lot of people are just, I don't know when this got shoved under my door last night.

CHAIRMAN TAYLOR: It was after 5:00 a.m.

SENATOR DONLEY: Okay, because I was asleep. But when it, that we take a break and let people...

CHAIRMAN TAYLOR: Oh, I was intending to.

SENATOR DONLEY: Good. To take a look at this...

CHAIRMAN TAYLOR: We're going to caucus at 10:00...

SENATOR DONLEY: ...so people could give reasonable, have a reasonable opportunity to prepare any testimony they have on this one.

CHAIRMAN TAYLOR: Oh yeah, and there's bound to be other amendments.

SENATOR DONLEY: And in the meantime, have drafting go off and do these changes that the Committee's recommended so we can have...

CHAIRMAN TAYLOR: We haven't voted yet on the third one.

SENATOR DONLEY: Yeah.

CHAIRMAN TAYLOR: Does the committee have questions concerning Senator Donley's third conceptual amendment? Senator Ellis?

SENATOR JOHNNY ELLIS: So the terminology for this existing RCA and the new telecommunications group would be different from every other group in statute.

SENATOR DONLEY: Yeah, if that's what it takes. I just, I really think that 'terminate' is not appropriate when everybody agrees the last time they went through this, they continued to fully function. I mean, they weren't terminated, they kept going. And it just scares people needlessly I think to say well they're

terminated.

SENATOR ELLIS: Mr. Chairman, I understand exactly what is to occur. I think the terminology has been used by both sides in this debate to achieve certain ends. I understand exactly what 'termination' means and what the situation is. And anybody else who's trying to keep an objective view understands it as well. I don't think it's necessary and I think - I won't go any further. I don't think it's necessary to have different terminology for this than we do in every other statute. If you want to change it for every other board and commission, go right ahead. The stakes are definitely higher in this situation for both sides, but...

CHAIRMAN TAYLOR: I'm going to strongly recommend getting rid of sunset altogether on this Commission or just setting a finite date, there is no wind-down, there is no nothing, that's the date at which they end if they've not been extended.

SENATOR COWDERY: I think that...

CHAIRMAN TAYLOR: So there's been a lot of debate on it. I personally did not feel there was enough consensus within here to make that definition. That's why I said I tried to draft one last night, kind of left it out because I just felt that it was another bite that might be a step too far. But I'm more than happy to entertain it and I think we ought to have something drafted so that it appears in front of us and I can support that, Senator Donley, and believe we should discuss it. Senator Therriault, you, I think, were trying to...

SENATOR THERRIAULT: Well, the whole idea of revisiting sunsets or looking at that and seeing if there's a different way, looking at what the federal government does instead with regards to reauthorization. I think that's a better way to go. I think I agree with Senator Ellis. The existing terminology doesn't bother me at all. I understand it. I think it's pretty simple.

SENATOR ELLIS: It's consistent throughout statute. If we're going to change it for this, we should change it for everything or...

CHAIRMAN TAYLOR: Have...

SENATOR ELLIS: It would bother me to have special language for this situation.

CHAIRMAN TAYLOR: Have one commission be using one language for sunset or termination and another...

SENATOR ELLIS: Yeah, exactly. Change it for everything or not.

CHAIRMAN TAYLOR: Senator Donley.

SENATOR DONLEY: I don't disagree with that. The trouble is that all we have before us right now is these specific areas of jurisdiction. I think that would be...

SENATOR COWDERY: A thing that should be addressed.

SENATOR DONLEY: Something totally separate that would be addressed separately, you know, on how you'd do the whole sunset provision. And I would support it there, too.

CHAIRMAN TAYLOR: Let me ask...

SENATOR DONLEY: Because I just don't think this language is accurate.

CHAIRMAN TAYLOR: Let me just ask one question.

SENATOR DONLEY: I mean somebody can say, this board terminates, you know, on the 30th of June. And the average citizen would think, oh, it's gone on the 30th of June, and it's not. It's still there, fully functioning for another year. That's just not right. I mean you ought to be able to read the statutes and as much as possible understand it from the simple English point of view.

SENATOR THERRIAULT: But you can. You just say, 'It shall terminate,' section (b), upon termination, they have one year to wrap up.

SENATOR DONLEY: That's not. That's simply not what English means, the English word 'terminate' means. You're terminated, but you're still going to be there. I mean it's inconsistent.

SENATOR THERRIAULT: Well, that's Senator Cowdery's example earlier. I'm laying you off, but you have two weeks to clean out your desk and...

SENATOR DONLEY: That's right. You're terminated as of the date you're gone.

SENATOR COWDERY: No, I think that, that this, I don't know if we've ever had any challenges, but we have lawyers setting here. But in the event a decision is made that somebody don't like in

that wind-down year, has there ever been a challenge or could there be a challenge?

SENATOR DONLEY: I don't know, as long as the statute specifically said...

SENATOR COWDERY: You know, they say that it was terminated and this and that. So I think it's an area that needs to be cleaned up.

CHAIRMAN TAYLOR: At least we could have the drafter come back to us with some language that we can then debate and have something in front of us. It's my understanding...

SENATOR THERRIAULT: Mr. Chairman, right now we have a motion.

CHAIRMAN TAYLOR: Just a motion at this point.

SENATOR THERRIAULT: We have to deal with that motion.

CHAIRMAN TAYLOR: That's what I'm trying to do. I've got a question though for the drafter. And that is: aren't each one of these sunsets on these commissions individually stated in statute? I know there's kind of a catchall sunset that I think takes in the barbers and hairdressers and a whole series of commissions. And I think there's, isn't there specific language on individual commissions?

MS. CRAVER: Well, there are two separate subset sections. And generally the occupational boards, I think they're in 08, I'm not sure, they have their own section. And 44.66.010 is a termination of State boards and commissions. And it uses the same language and lists the boards to which that applies. The language actually is, 'Boards and commissions listed in this subsection expire on the date set out after each,' and then you have the list and the dates they expire. Then (b) is the one that says, 'Upon termination,' i.e. termination being similar to being expired, 'the commission listed in (a) shall continue in existence until June 30 of the next succeeding year for the purpose of concluding it's affairs.' And...

SENATOR DONLEY: Mr. Chairman, remember the testimony of people saying, 'I have to go back to Wall Street and explain why termination doesn't mean termination?' Remember that testimony? So if it's so bloody clear, why is it that people have this big problem being scared that Wall Street is freaking out because the Commission was terminated?

CHAIRMAN TAYLOR: I just wanted that definition [indisc.].

MS. CRAVER: Senator, I just need to be clear that the amendment that you want applies to both the Regulatory Commission and the Telecommunications.

SENATOR DONLEY: Yes.

MS. CRAVER: Okay, all right.

CHAIRMAN TAYLOR: That's what your intent was, isn't it, Senator Donley?

SENATOR DONLEY: Yeah.

CHAIRMAN TAYLOR: And do you feel you have enough information to draft something that is consistent with Senator Donley's intent?

MS. CRAVER: Yes, I think the idea would be to draft an amendment that would make it clear that the Legislature wants the Telecommunications Commission and the Regulatory Commission in its year after termination to exercise its full powers and duties under the statute. Yes.

CHAIRMAN TAYLOR: That motion is before us. Is there objection? There being no objection, you'll also take care of that, that's the third amendment. Are there, I'm sure there are other matters that people wish to discuss but it was the intent of the Chair that we take a break at this point. We have to go to caucus anyhow on other matters and that we would then return after to take up individual amendments and testimony on the committee substitute of those who wish to testify. I don't intend to take a great deal of testimony but...

SENATOR COWDERY: Five minutes?

CHAIRMAN TAYLOR: I do want to give people an opportunity to react because these are serious matters that may impact people and I want them to have an opportunity to [indisc.].

SENATOR ELLIS: And your goal is to move the bill by when? Do you have a general idea?

CHAIRMAN TAYLOR: My goal is to move this bill, yes.

SENATOR ELLIS: By?

SENATOR COWDERY: After testimony.

SENATOR ELLIS: As soon as possible?

CHAIRMAN TAYLOR: I want to give people an opportunity to react to it because it's better to do it in here than have it all show up on the floor. Okay, we will stand in recess, subject to a call of the Chair. [10:10 a.m.]

TAPE 02-51, SIDE A

1:20 p.m.

CHAIRMAN TAYLOR: ...present, all five members, Senators Ellis, Cowdery, Therriault, Donley, Chair Taylor. Barbara would you come forward please and explain the changes that you have made to the new CS? First, before that, Senator Donley, motion to adopt that CS for purposes of discussion?

SENATOR DONLEY: I move to adopt the O Version.

CHAIRMAN TAYLOR: Is there objection? There being no objection, for purposes of discussion, it is adopted by the Committee, the O Version. Barbara, would you begin with your explanation of the changes you have made in the last couple of hours?

MS. CRAVER: All right. I'm Barbara Craver, I'm with Legislative Legal Affairs. Let's see, there was a small change in the title on line 5, which reflects that we're calling these water utilities 'regulated public utilities.' The next change, I believe, is on page 3 in Section 9 and we just added a phrase regarding what an ex parte communication is. It's 'an ex parte communication on a substantive matter that is pending or likely to come before the panel.' Just a little bit more discussion. That same phrase is used in subsection (e), also, that's on line 24 of page 3. And then a more - a change was made on line 27 of page 3 which says that 'a communication occurring more than two years before the filing of' a matter does not qualify a person. It had formerly said it looked back five years to see if there were any conflicting sort of ex parte communications, now it's two. I guess I'd like to add that all of these changes are mirrored later on for the Telecommunications Commission also and I'll get to that.

SENATOR THERRIAULT: Mr. Chairman, just a...

CHAIRMAN TAYLOR: Yes, Senator Therriault, go right ahead.

1:24 p.m.

SENATOR THERRIAULT: 'Or likely to come before the panel with a party to the proceeding.' I'm just wondering in practical terms, how that would work? And I understand the desire to say well you can't go talk to them two days before you put your thing in, you don't get your spin in there. But I'm not sure with this wording, 'or likely to come before them...'

MS. CRAVER: Well...

SENATOR THERRIAULT: ...is pretty broad. It seems like it would just about incorporate discussion of anything to do with telecommunications.

MS. CRAVER: Well, I think...

SENATOR THERRIAULT: Or whatever is to be regulated.

MS. CRAVER: Through the chair, I think that the idea is that substantive matters are very specific. And I didn't, I didn't come up with this language, but I don't have a problem with it. You know, if you are a person who sets tariff rates, don't get into the nitty gritty of tariff rates because it's likely to come before you. If you just want to talk about some general matter, I don't think that it would disqualify you. Is that your intention Senator Taylor?

SENATOR THERRIAULT: Okay.

MS. CRAVER: And you know, in the event that you err and you know, you'll be disqualified, it's no horrible, you just won't be on that panel.

SENATOR THERRIAULT: Okay, but then the two-year look-back from the point that you made an error...

MS. CRAVER: Yes.

SENATOR THERRIAULT: ...and you're disqualified from the - would you be disqualified?

MS. CRAVER: No, I think that they're saying, if you have had something that might be considered an ex parte communication within the previous two years. You spoke very specifically about a tariff rate for a certain type of service with someone two years ago would disqualify you from being on a similar case, certainly with that party or where that issue was involved.

SENATOR THERRIAULT: And so much of this, the discussions taking place in the context of the big telecommunications battles that we've had. But I know from hearing from smaller utilities, and that's why I kept asking questions about the diversion process, they want something that is less than the judicial process. They want the ability to talk to the Commissioner and say, 'What's the - where's the problem? Oh, that's, well, we'll get that information together.' And I'm just concerned that this would just cut off that desire from the smaller players to have something that's much streamlined and less costly.

CHAIRMAN TAYLOR: There's nothing in here...

MS. CRAVER: Senator Taylor would have to speak to that.

CHAIRMAN TAYLOR: Well, there's nothing in here that would prevent them from, RCA, from going forward with and creating their own diversionary system. Not a thing. And with different standards of procedural due process, a more informal process, there's nothing that prevents them from doing that and they have rule making authority. They could do that. In fact, I think they said they tried to get it started and then kind of ran into some problems and felt they'd have to make some rules on that. In fact, I think that was part of the discussion that was in February over at the ATA meeting in Sitka, was how do we get to a less formal process than that? I don't believe though that it takes statutory, additional statutory authorization. I think the RCA already has that inherent within it. And I'm mentioning just the RCA because it's my intent, if there's consensus on this, to withdraw those amendments that provide for the new commission.

SENATOR THERRIAULT: Okay, so the way that this is worded, if they have a diversion process of some kind, should this be worded so that it's specific to only those items that are in that quasi-judicial category?

MS. CRAVER: Well, if you would look at the next section, Section 10, 42.04.090 goes really into detail about what an ex parte communication is considered and this is adapted from the judicial canon of ethics. And certain matters, which are factually an ex parte contact, would not necessarily be considered a violation, i.e. each member they can stipulate to it they can agree ahead of time what type of communications are not going to be considered ex parte contacts. So I think there's ways that the Commission could, if it was clear that no one had an objection to a commissioner speaking to someone who was or was going to be a party in the future on an issue and it was all out in the open, you would be able to avoid violating the law. And the idea here

is to, you know, over-regulate and really, really protect even the appearance of impartiality. So it is intended to put up some barriers to communication between, you know, between commissioners and parties. It does not apply to staff, however. So, you know, parties could still speak to staff, I believe.

SENATOR THERRIAULT: And is there the language in here that is very specific, that it says even something that...

MS. CRAVER: The appearance?

SENATOR THERRIAULT: The appearance. Even if the third party thinks that there might have been, then the, I guess that was in a different section, wasn't it?

MS. CRAVER: That's at the, on the bottom of page 3, line 28 through 31, 'Circumstances that might reasonably suggest to a third party that an ex parte contact had occurred, even if none was made, shall be considered an ex parte contact.'

SENATOR THERRIAULT: That's seems problematic to me.

MS. CRAVER: It's...

SENATOR THERRIAULT: Anyway, I'll just flag that. Thank you.

MS. CRAVER: Let's see...

CHAIRMAN TAYLOR: Any other changes?

MS. CRAVER: Let's see. On page 4 in Section 10 on line 6 we have the repeat of the phrase on, about ex parte communications, that they're 'concerning a matter that is pending or likely to come before the panel.' Let's see, oh, and I'd just like to point out for Senator Therriault's benefit, down here on page 4 at section (d), it says 'If the parties agree to this procedure beforehand,' a hearing panel may engage in ex parte communications. So there are procedures to get around the general ban on ex parte.

CHAIRMAN TAYLOR: I'm glad you mentioned that. In reading it, I'd gone through that. I think if anything, that throws the door wide open for the Commission itself to come up with a diversionary process that says if you parties wish to go into this diversionary process and you stipulate to these rules, you can have very informal discussions with the Commissioners. And hopefully they will use that. I think it's a good tool for them. I'd like to encourage them to do that.

MS. CRAVER: Okay, let's see. Section 11 does not have any changes, nor does Section 12 from this morning, nor does Section 13. 14 I think had a very minor change, the end of a phrase was dropped off of the second sentence in Section, which is on line 13 of page 7. I can't remember the language, but basically continues to allow the judge to adopt a compromise settlement agreement as an order. 15, 16, 17, 18, 19. Okay, and then in 20, we have the establishment of the Telecommunications Commission, and the changes here, if any, were intended just to mirror the changes that were done to the RCA. So I think for example we found that we had forgotten to put in how the chair was appointed. And so, on page 10, line 14 in (b) is where we added the section, the comparable section that's found with RCA saying that the Governor appoints the chair of the Commission. We also in section (c) of that same section, which is on line 19 of page 10 states that, 'Members of the commission are appointed for staggered terms of five years.' The temporary law deals with how those initial appoints are made to establish a staggering. Let's see. Let's see, on page 14, Section 42.08.090...

UNIDENTIFIABLE SENATOR: What page?

MS. CRAVER: Page 14, and excuse me, I should also say page 13. Those two sections on decision-making procedures and impartial decision-making reflect the changes that were done to the RCA sections. So these should pretty much mirror the changes. They have that language about pending or likely to, you know, occur. Let's see, the next change is, let's see, on page 16, Section 28, the language was changed from 'water or sewer companies' to the specific a public utility allowed under section (i), which is actually the language taken from the original Senate bill, SB 280. And the reason that we had changed it was because at one point it was contemplated that water and sewer were not going to be public utilities. But they are public utilities and so we just changed this back to the original language. So that original language is found in 28, 29. And then 30 was a section that was in 280 so we had to add that in to define the type of eligible public water utility. There are a couple of changes further up on line 8 and line 11 of page 17 that just specified exactly how big these utilities were supposed to be to get which percentage of certain eligible costs.

SENATOR DONLEY: Barbara?

MS. CRAVER: Yes.

SENATOR DONLEY: Section 31, what is that repealing?

MS. CRAVER: That's the one that established in the Regulatory Commission - a communications carriers section. So if you're going to have a separate Telecommunications Commission, you don't need that in the RCA. If you do, if you're not going to have a separate telecommunications section, you're going to want to put that back into the RCA.

CHAIRMAN TAYLOR: Delete it?

MS. CRAVER: Yeah. Let's see 32 is there...

SENATOR DONLEY: And that applied, that applies to phasing in the new timelines. That is not necessary specific to creating a new Telecommunications Commission.

MS. CRAVER: No. You mean Section 31?

SENATOR DONLEY: 32.

MS. CRAVER: Oh, 32. Right.

CHAIRMAN TAYLOR: 32's identical to the House.

SENATOR DONLEY: Okay.

MS. CRAVER: Yes. Let's see, Section 33 on page 18, lines 10 through 15, include the specific recommendations that you wanted to see for the task force, 'The task force shall make specific recommendations in its report advising the legislature [(1)] regarding the type of arbitration best suited to rate and tariff issues; [(2)] the extent of deregulation of the electric and telephone cooperatives organized under [AS] 10.25 and the extent of deregulation of municipally owned utilities.' Those were the changes made there.

SENATOR THERRIAULT: I'm sorry, what lines are you on now?

MS. CRAVER: Let's see, page 18, in line 10...

SENATOR THERRIAULT: Okay.

MS. CRAVER: ...through 14. Just to very specifically require the task force to make some recommendations to the Legislature. And let's see, 34 I think is new, I think so. That's the one that, yes, it is, it specifies that both the Regulatory Commission and the Telecommunications Commission in the year after termination have, continue to have their full powers and duties under the title and they shall continue to exercise their powers and

perform their duties during the year following their termination. Let's see, and then Section 35 at the very bottom of page 18 continuing through the top of 19 is a temporary law to deal with appointing the initial members of the Telecommunications Commission so that they start the staggered terms. One person will be appointed for one year, one person for three years, one person for five years, and thereafter they'd go on the five-year staggered rotation. And then Section 36 is the same. The numbers might have changed, but the intent was to make the sections that applied to the Telecommunications Commission take effect January 1st of 2003. Otherwise, 37 is the immediate effective date.

CHAIRMAN TAYLOR: Senator Therriault.

SENATOR THERRIAULT: Back on page 18, the direction of what this task force is supposed to be looking at. The sentence starting on line 10 there, 'The task force shall make specific recommendations in its report advising the legislature regarding,' number, '(1) the type of arbitration.' Okay, so that's very specific. They want - we want information back on which type of arbitration [that] should be used. Number two, the extent of deregulation. I don't know...

MS. CRAVER: Okay.

SENATOR THERRIAULT: ...the extent. They're supposed to what, just tell us what extent of deregulation we have in the State right now? Or should it say...

MS. CRAVER: Yes.

SENATOR THERRIAULT: ...the impact of deregulation?

SENATOR DONLEY: What about the appropriate level of deregulation? That's what we want them to recommend.

CHAIRMAN TAYLOR: You're looking for recommendations.

SENATOR THERRIAULT: Okay, well, extent just doesn't...

MS. CRAVER: Or recommend...

SENATOR THERRIAULT: ...work for me.

MS. CRAVER: I agree.

SENATOR DONLEY: Yeah, I understand what you're saying. I thought

the same thing when I read it the first time, Gene.

CHAIRMAN TAYLOR: Good point.

MS. CRAVER: We could certainly change it to the recommended...

CHAIRMAN TAYLOR: Well, what language would you suggest?

SENATOR THERRIAULT: I guess I wasn't quite sure. I wanted to go back to Dave's comments yesterday. What exactly are we looking for and then we figure out the wording we're looking for.

SENATOR DONLEY: Well, we heard people wanting...

CHAIRMAN TAYLOR: Appropriate level, is that what you want?

SENATOR DONLEY: Co-ops wanting to be deregulated, right? So I'm looking for a recommendation from the task force for the appropriate level of regulation or level of deregulation of electrical and telephone and municipally owned utilities, I mean, cooperatives, cooperatives and government owned utilities, just a recommendation. So I mean, it can, it's just the appropriate level of regulation.

CHAIRMAN TAYLOR: Of regulation or deregulation?

SENATOR DONLEY: Yeah.

SENATOR THERRIAULT: Well, regulation is neutral. Deregulation presumes that you want to start down that path and what matter of degree is appropriate, so regulation would be the neutral one.

SENATOR DONLEY: That's why I said regulation.

CHAIRMAN TAYLOR: Okay, so that would, in the, Senator Donley, in the form of a motion, you are moving to amend line 13, page 18, deleting the word 'extent' and inserting the words 'appropriate level of' and deleting the D-E off of regulation so it would make the word read 'regulation' instead of 'deregulation.'

SENATOR DONLEY: Right.

CHAIRMAN TAYLOR: Is there objection to that amendment? There being no objection, Amendment Number One passes.

MS. CRAVER: I'd like to draw your attention, the same language is used on line 14 regarding regulation of municipally owned utilities.

SENATOR DONLEY: Yeah, okay. Same motion.

CHAIRMAN TAYLOR: Same motion. Is there objection? There being no objection, we put in the words 'appropriate level' on line 14, too.

SENATOR DONLEY: Mr. Chairman, are we, well, I had one quick question. I appreciate the work that you did here in Section 34. I think it continues to point out the misnomer of the word 'termination.' Did you get a chance, you just ran out of time probably, to come up with something...

MS. CRAVER: Well...

SENATOR DONLEY: ...along the lines of what I was looking for? I mean this is helpful. This goes in the right direction and it's a good step. I support it.

MS. CRAVER: It's - I would suggest that when you think about changing the language, it's used also in the boards and commissions section, it's used here and it might in fact have been used other places in their deregulation and sunseting things that happened when it was sort of the rage to do this. And to the extent that we change those words that have specific meanings...

SENATOR DONLEY: What about? You know we were looking at the statute earlier today. It, the first section of the statute didn't use the word 'termination,' it used the word 'expired.'

MS. CRAVER: 'Expired?'

SENATOR THERRIAULT: 'Expired.'

MS. CRAVER: Yes, 'expired.'

SENATOR DONLEY: I'd rather say in the year after a commission expires than say in the year after it, you know...

MS. CRAVER: I'd say that had the same legal effect because...

SENATOR DONLEY: Yeah.

MS. CRAVER: ...expire is the term used in section (a).

SENATOR DONLEY: Because it's the term used in the first section applying to what happens in a sunset, right?

CHAIRMAN TAYLOR: I think a rose by any other name smells as sweet.

SENATOR DONLEY: Well, maybe, but then again, the Daily News wouldn't be calling liberals progressives, so...

CHAIRMAN TAYLOR: I'm not going there.

SENATOR THERRIAULT: Mr. Chairman, it seems like whatever you do here though, you've got, you've got in the first section of the statute (a) section, it's 'expire.' The (b) section is 'upon termination.' Maybe that should say 'upon expiration.' And then the (c) section, the 'commission scheduled for termination' should be the 'commission scheduled for expiration.' So, I mean if you're going to clean it up and make it consistent.

SENATOR DONLEY: Yeah, even that looks inconsistent. Because it's scheduled for termination, it seems like the termination doesn't happen until after the year, right? I mean, even the fundamental statute seems to be inconsistent, mixing up terminology. But clearly it says, uses expire in the first section, right?

SENATOR THERRIAULT: Yes.

SENATOR DONLEY: Well, Mr. Chairman, I just move that the word 'termination' be replaced with the word 'expire' so it's consistent with at least the...

SENATOR ELLIS: It comports more with my term of 'death-spiral.'

CHAIRMAN TAYLOR: The word is 'expiration' that you're looking for?

SENATOR DONLEY: Either expire or expiration, whatever the drafter thinks is more appropriate. That's my motion.

MS. CRAVER: I think we'll use expiration.

CHAIRMAN TAYLOR: That's a motion to amend to insert on line 23, page 18 the word 'expiration' and...

SENATOR DONLEY: 25.

CHAIRMAN TAYLOR: ...and on line 26. And line 25, excuse me, line 25 and line 26 and line 28.

SENATOR DONLEY: Yeah.

CHAIRMAN TAYLOR: Inserting the word 'expiration' in each of those places in place of 'termination.' Is there objection to that motion? There being no objection, Amendment Number Two passes.

SENATOR DONLEY: Mr. Chairman?

CHAIRMAN TAYLOR: Yes, Senator Donley.

SENATOR DONLEY: I'm concerned with Sections 28, 29 and 30 for several reasons. One, this issue was addressed in the Senate this year already. Two, while I'm really looking at the other things that the CS is proposing, and they seem very consistent with the call, but I don't know if this is necessarily consistent with the call. It seems like this is not really an RCA issue, it's a grant, a fiscal issue. So I would move to delete Sections 28, 29 and 30 from the Committee Substitute.

SENATOR THERRIAULT: Sure, you offer an inducement and then you snatch it back. That's fine, that's fine.

CHAIRMAN TAYLOR: The Lord giveth and he taketh away.

SENATOR ELLIS: Who's the Lord, Mr. Chairman?

CHAIRMAN TAYLOR: I have no idea. Everybody understand the substance of the motion, to delete 28, 29 and 30 Sections? Is there objection? There being no objection, Amendment Number Three passes.

SENATOR DONLEY: Mr. Chairman?

SENATOR COWDERY: 28, 29 and 30?

CHAIRMAN TAYLOR: Yep.

SENATOR DONLEY: And you understand the intent there, Barbara? If there's any...

MS. CRAVER: Yes.

SENATOR DONLEY: There's going to need to...

MS. CRAVER: Title change, yes.

SENATOR DONLEY: Mr. Chairman?

CHAIRMAN TAYLOR: Do you want to know how to do that one?

SENATOR DONLEY: Do you already have it charted out?

CHAIRMAN TAYLOR: Yep.

SENATOR DONLEY: Okay, well...

SENATOR THERRIAULT: Let's do it conceptually.

SENATOR DONLEY: I would do it conceptually first, yeah. But Mr. Chairman, I, I think that in these hearings, I am persuaded that it may be a good idea to separate, you know to have a separate Telecommunications Commission. I mean, thinking all the way back to the years I served as Labor and Commerce chair where we created a special committee on telecommunications in the House. I mean, these issues have been very, very challenging and very labor-intensive. But I just am not totally convinced this is the, the special session is the time to attempt this big step and I am, you know, I would look forward to, I really appreciate the task force being included in the CS, and to look forward to some sort of recommendation back from the task force, whether this would be, you know, I would support any specific thing to make the task force specifically give a recommendation too about this. But I don't think that, I think that this is just a little bit too big a step to take right at this time. And I would move a conceptual amendment, if you have the specific sections, I would appreciate that, to, and there's going to have to be a conforming amendment, I think in Section 34, too.

CHAIRMAN TAYLOR: Right.

SENATOR DONLEY: To take out the sections that create a new Telecommunications Commission.

CHAIRMAN TAYLOR: Okay, the substance of the motion then would be to delete Sections 1, 2, 3, 4, 5, 6, 7, 11, 12, 15, 16, 17, 18, 20, which is a lethal one. 31 also is necessary to be taken out because that was the repealer of that whole section within it. And then a conforming amendment would be to delete the words 'and Telecommunications Commission' on Section 34.

SENATOR THERRIAULT: Mr. Chairman, you didn't say section 22.

CHAIRMAN TAYLOR: Did I? Let me find it.

SENATOR DONLEY: That's why we...

CHAIRMAN TAYLOR: What page is that one on?

SENATOR DOLEY: That's why we like...

MS. CRAVER: 15.

SENATOR DONLEY: ...conceptual amendments.

SENATOR THERRIAULT: 22, 23, 24, you didn't say any of those.

CHAIRMAN TAYLOR: Oh, I'm sorry. Yep, 22, 23, 24.

SENATOR DONLEY: Well, Mr. Chairman, I appreciate...

CHAIRMAN TAYLOR: 25.

SENATOR DONLEY: ...you pointing this out but I really would like the amendment to be conceptual so the drafter has the flexibility to do what needs to be done.

CHAIRMAN TAYLOR: No, I have no problem with that. And I withdraw my comments. I'm just trying to walk us through here to show us graphically each one that would be removed.

SENATOR DONLEY: Okay.

CHAIRMAN TAYLOR: And 27 also, 26 and 27. But you have an understanding, Ms. Craver...

MS. CRAVER: Yes.

CHAIRMAN TAYLOR: ...of what the motion and the substance of it, are - or is, I should say?

MS. CRAVER: Yes, and then we take out 35 also, initial appointments, obviously, and 36 because there would be nothing to take effect.

SENATOR DONLEY: But we don't want to lose all of 34, just the...

CHAIRMAN TAYLOR: The phrase 'Telecommunications Commission,' which appears both in the title and then in the substance of that paragraph.

MS. CRAVER: I think I've got it.

CHAIRMAN TAYLOR: You should be able to just go through your computer and hit delete on each of those.

SENATOR THERRIAULT: No, it's never...

SENATOR DONLEY: But keep it around.

SENATOR THERRIAULT: ...it's never that easy.

SENATOR DONLEY: Don't lose that work.

MS. CRAVER: Oh, it's forever enshrined in our database.

SENATOR DONLEY: Maybe that's something someone wants to do next year. And, okay, so that motion's before the committee?

CHAIRMAN TAYLOR: Yeah. I'm going to take a brief recess because I need to go to the bathroom.

[THE COMMITTEE TOOK A BRIEF RECESS.]

1:57 p.m.

SENATOR DONLEY: Okay, we'll call the meeting back to order. There is a motion before us at this time to delete, I believe that's where we were at, conceptual motion to delete the sections of the committee substitute that created a separate commission. Is there any objection to the motion? Hearing no objection, the motion carries. And that brings the CS back before us.

SENATOR THERRIAULT: Doesn't that just make you want to cry, Barb?

SENATOR DONLEY: We really thank you for your work, Barb, by the way. Don't lose that computer file. I would like to, I would propose an amendment to line, after line 13 on page 18, to add to the list of specific inquiries that the task force would make - Mr. Chairman, I'm in the process of making a motion to add on line, on page 18 after line 13 a new item (3) is requesting the task force to make a specific recommendation as to whether or not a separate commission to regulate telephone, telecommunication matters should be created.

CHAIRMAN TAYLOR: And that's to page 18, line 13, you said?

SENATOR DONLEY: Right after 13, in between 13...

CHAIRMAN TAYLOR: It'd be the third item.

SENATOR DONLEY: Yeah, I guess that's after 14. Yeah, it'd be a new item number 3.

CHAIRMAN TAYLOR: Okay.

SENATOR DONLEY: Just to ask that the commission, the task force make a specific recommendation on that.

CHAIRMAN TAYLOR: Is there objection to the amendment? You made that in the form of an amendment?

SENATOR DONLEY: Yes, I did.

CHAIRMAN TAYLOR: Is there objection to that amendment? You have a, you understand what he wants to do?

MS. CRAVER: Yes, I have it.

CHAIRMAN TAYLOR: There being no objection, that amendment also passes. I assume that the other amendment you went ahead and passed in my absence.

SENATOR DONLEY: Yes, Mr. Chairman.

CHAIRMAN TAYLOR: I appreciate you taking that up. I had a phone call I had to take before I came back. And I wanted this thing expedited. So, let's go.

SENATOR DONLEY: Okay. Mr. Chairman.

CHAIRMAN TAYLOR: Yes.

SENATOR DONLEY: I guess we need to go through, unless there's other proposed amendments?

CHAIRMAN TAYLOR: I think Senator Therriault had some questions on a couple other items. Didn't you, Senator?

SENATOR THERRIAULT: Primarily questions for somebody from the Commission. So, I don't know if we have it...

CHAIRMAN TAYLOR: There's a Chair. Senator Therriault has a question for you.

CHAIRWOMAN NAN THOMPSON: Okay.

CHAIRMAN TAYLOR: You're under oath, Senator Therriault, go right ahead.

SENATOR THERRIAULT: With regards to the Commission electing, the

language here about the Commission electing its chair...

CHAIRWOMAN THOMPSON: Which page are you on?

SENATOR THERRIAULT: It's on page 3, Section 8.

SENATOR COWDERY: Page 3, where?

CHAIRMAN TAYLOR: Section 8.

SENATOR THERRIAULT: Section 8. I'm just wondering if you'd make comment on the workability of that. And the position that you fill on the federal board or federal commission, is it, does it stem from your position as Chairman?

CHAIRWOMAN THOMPSON: No.

SENATOR THERRIAULT: ...or you as an individual?

CHAIRWOMAN THOMPSON: Me as an individual. So that wouldn't be impacted.

SENATOR THERRIAULT: Okay, no impact there. I was just wondering if you could make a comment on the change from the Governor either selecting the board's designee or appointing and going to this mechanism, if you have comments on that.

CHAIRWOMAN THOMPSON: I don't think the change to election, from election to Governor's appointment would make as significant a difference as the change to a one-year term. As a practical matter now, I was elected by the members when we started and then the Governor chose the same person that the membership elected. I think more problematic in my mind is shifting it to a one-year term because it will make the chairmanship be more political. And a lot of what you have to do when you're managing an agency's workflow or responsible for an agency's workflow is sometimes be unpopular and suggest to people that they need to do things faster or reprioritize things. And if you're put in the position of, if it's someone who's concerned about being reelected, then you're not going to want to make those unpopular decisions. It's going to be harder. It's also, in terms of, the agency itself may take different directions or have different emphasis under different chairmanships and you're going to keep people, you're going to make the staff potentially dizzy by, you know, a shift every year or so. You'll spend a lot more time within the agency worrying about process and who the chairman is. And last, you'll have an effect that we now see amongst staff amplified. And that is, they know, some of those have been, well like Jeanne

McPherron that testified, worked at the agency for 30 years. We all have terms. And so, some staff may feel the need to not be responsive to a particular commissioner because they figure, 'gee, I'm going to outlast them. They're going to be gone.' And I can see the same thing happening even more with a shorter term for chair. Folks are going to be like, 'Well, you know, I can just misbehave here for six months and there'll be another chair so it won't matter.' It basically is going to politicize the position within the agency a lot more. And if the overall goal is making us more efficient and better able to operate, I think it's inconsistent with that goal to have a shorter term for chair.

SENATOR THERRIAULT: Okay. And, let's see, could you talk a little bit about what we've got here for ex parte?

CHAIRWOMAN THOMPSON: There's a couple of things I noted when I was reading through it. Most significantly, it's going to be very difficult to implement. If, as the drafter, Ms. Craver, noted, it's not applicable to staff, it can be easily circumvented by the companies. They'll just talk to staff and have staff talk to us because it's not an ex parte contact under this change to have staff talk to us. And I think if, under the recusal provisions, or the disqualification provisions, if even the appearance of impropriety is how it's written in the judicial ethics code, and I think it's here likely to - I don't remember the exact language in here, and I'm not looking at a specific section, but even if somebody thinks that...

SENATOR THERRIAULT: 'Reasonably suggest to a third party that an ex parte contact.' 'Reasonably suggest to a third party.'

CHAIRWOMAN THOMPSON: Right. That's pretty broad. Does that mean that if Commissioner X passes Utility Representative Y in the frozen food aisle at Fred Meyer and somebody else sees them that, 'gee, they could have been having an ex parte contact, I'm going to suggest that, that it happened?' Does that mean that commissioner is disqualified from working on a panel? How broadly are you going to construe that? In a community the size of Alaska, that's going to be difficult because we all live in the community and have kids that play soccer and kids that are in Boy Scouts and these utility representatives are members of the same community. I think it's problematic. There's also, I noted an inconsistency in a later provision, there was the allowance for or the acknowledgement that you may want to have some kind of contact to allow for scheduling issues. So that seems to apply then, in that particular case, there's trust in the Commissioner that that's all that they're going to talk about. And I don't

know why, if you trust them to just talk about scheduling there, you don't trust them when they pass each other in the aisle in Fred Meyer. I don't know how you draw the distinction. How can you, it seems like you either say, you don't talk to anybody at all about anything or you do it. Or you do it the way it is now. You have the rules that we have amongst ourselves that are not written down that say, you know, it's okay to talk about process. This seems to try and embody those rules, the same things that we were talking about, but in a way that's going to be really difficult to implement and it seems a little inconsistent internally between the two sections. I guess I just don't understand how this is going to work.

SENATOR THERRIAULT: Okay, and let me just flip here.

CHAIRMAN TAYLOR: Senator Cowdery, if you'd...

SENATOR THERRIAULT: Yeah, go ahead while I'm flipping.

2:08 p.m.

SENATOR COWDERY: Well, you know, you said earlier, or someone, in earlier testimony that whenever something happens, [indisc.] you just say that like a judge would say, 'We cannot discuss anything.' But to say my kid is playing in your team I don't think has anything to do it, if in the soccer mom thing or this and that. I think I had a situation [indisc.] Fred Meyer, a court case pending and I ran into the judge at Fred Meyer. We said 'hello' and everything and it was pending. And I'm sure if I'd have said, 'Hey, about this case,' he would...

CHAIRWOMAN THOMPSON: The judge would have said no.

SENATOR COWDERY: ...you know, that's his duty to do that.

CHAIRWOMAN THOMPSON: No, I agree with you absolutely. But what if, under this language that's in the last sentence of (e) on the bottom of page 3, somebody else sees you saying hello, and that reasonably suggests to a third party that they were having an ex parte contact because somebody else that just sees you talking isn't going to know what you were talking about.

SENATOR DONLEY: That's the standard the judges live under now all the time.

CHAIRMAN TYALOR: Every day.

SENATOR DONLEY: And it's, you know, I mean, obviously two people

on the aisle, you know, in a grocery store, you know unless you hear them discussing the case, it's probably not reasonable to suppose that they scheduled a meeting there with shopping carts.

CHAIRWOMAN THOMPSON: No, I agree, but who's going to decide?

SENATOR DONLEY: Now, if you see them in a bar together, you know, back in a dark room, I mean, I could reasonably have a suspicion that something's not kosher.

CHAIRWOMAN THOMPSON: Who decides whether it's a reasonable suggestion or not?

CHAIRMAN TAYLOR: The judge does.

CHAIRWOMAN THOMPSON: So...

CHAIRMAN TAYLOR: Because that's where it ends up.

CHAIRWOMAN THOMPSON: Okay, so how does this get implemented?

CHAIRMAN TAYLOR: The very same people that have to live by that standard every day.

CHAIRWOMAN THOMPSON: But how does it get implemented? Does that suggestion go directly to court so you have to file a lawsuit if you want to say a commissioner is having improper contact? Or do you file something with the Commission saying I saw, you know, this is what I'm suggesting? I just don't understand how this works, you know, as a practical matter.

CHAIRMAN TAYLOR: You have the right to create those regulations and are authorized to do so.

SENATOR DONLEY: Yeah.

CHAIRMAN TAYLOR: And I would think that you would provide for some type of notice provision where a plaintiff before you could notice the Commission that they had concerns about that. And then the Commission itself, absent that member, would take that issue up and determine it. Their determination would then be subject to court review in the Superior Court, just like any other decision they make, yes.

CHAIRWOMAN THOMPSON: So what happens, go ahead.

SENATOR THERRIAULT: Mr. Chairman, but maybe there's an explanation, But it says that a third party, even if none was

made, even if no ex parte was made...

CHAIRMAN TAYLOR: Let me give you an example. Second day of the hearings held in Anchorage, the Commissioner invited up to her office Ron Duncan and Dana Tindall, closed the door and was in there for an hour and a half. Now, would that give you the suspicion that maybe she was talking with them about something? It might me. Especially when I asked the question about who'd you talk to and what had been going on the next day and we didn't discuss any of that, did we? I think that would cause me as a third person to be concerned. Would that be reasonable? I don't know. That would be determined by some third-party objective, I would hope, involved in that matter.

SENATOR THERRIAULT: So, through the regulatory process you would imagine that they'd put together something where somebody could express their concern. The Commissioner would have an opportunity to explain, 'Yes, I spent the weekend with them. I'm the den leader of the Cub Scouts and they were one of the volunteer parents. Their kid's in Cub Scouts. We didn't talk about the issue.' And so they've explained that even, that no ex parte communication has taken place, they've explained that. And they'd be able then to dismiss that concern.

SENATOR DONLEY: Well, the other members, hopefully they would, the other members of the panel would vote on whether or not they though it was reasonable concern or not. If they felt it was reasonable concern, they should recuse that commissioner from that decision-making. And if it wasn't reasonable, then they would so find and their finding in not being reasonable would be subject to appeal, I suppose.

CHAIRMAN TAYLOR: We do this every day in the court system. I really don't...

SENATOR COWDERY: We do it on the floor.

SENATOR THERRIAULT: But okay...

CHAIRMAN TAYLOR: We do it on the floor as far as our own fellow members are concerned. If, in fact, although I have not seen it, but if in fact one of our members were sufficiently close to an issue that it was going to have significant financial impact on them and they made a good explanation of that to us, I think most of us would vote to excuse them. I think that's an untenable position to put them in.

SENATOR THERRIAULT: But the members stand up quite often and say

'I have a conflict,' and we object and that's it, there's no explanation, there's no vote. But that's, I don't think that's subject to appeal to the courts. And the courts then would look at the statute and say even if you've explained that there was none there, if it's appealable only to the courts then the courts are going to look at this law.

SENATOR DONLEY: Well, that's different though because you're dealing with a quasi-judicial fact-finder here versus the legislative process. It's just two separate types of governmental functions.

SENATOR THERRIAULT: Well, this comes from the court system.

SENATOR DONLEY: Right.

SENATOR THERRIAULT: And if somebody makes an allegation in the court system, the judge can say, 'I disagree.'

SENATOR DONLEY: Well, the first thing you do is you go and you ask the judge, you say, 'Your Honor, I move that you excuse yourself from this case because I saw you at the grocery store with so-and-so.' And the judge goes, 'Well, you know what, we were both shopping there, we walked down the same aisle, we didn't say a word about this. You know, and I don't think that's a reasonable motion, to excuse me just because I ran into them at the grocery store.'

SENATOR THERRIAULT: Where does it go from there? That's what I don't know.

SENATOR DONLEY: Well, then you can appeal.

CHAIRMAN TAYLOR: Right. And what you appeal to is you go to an independent judge.

SENATOR DONLEY: Yep.

CHAIRMAN TAYLOR: And that judge holds that issue to a reasonable man's standard. And literally, if the perception is such that a reasonable person would conclude that there was a perception of conflict, that's all it takes. And they do recuse themselves and excuse...

SENATOR DONLEY: Barbara seems to be anxious to say something.

CHAIRMAN TAYLOR: Yeah, Barbara?

MS. CRAVER: I just want to point out that 080, which is Section 9 on page 3, is not taken from the code of judicial, the cannon, the one that is on page 4, Section 10, that one. Not that they're necessarily inconsistent but just to the extent that you're assuming that the language in, it's 090 is the one that is taken from the judicial ethics.

CHAIRMAN TAYLOR: Right.

MS. CRAVER: Okay, I just wanted to make sure you hadn't misunderstood that.

SENATOR THERRIAULT: Okay, so the...

CHAIRMAN TAYLOR: That provides significant additional definition if you want to look, page 4, paragraph (c).

SENATOR THERRIAULT: So, we don't know if the judicial standards actually have this wording that says, even if no ex parte took place?

MS. CRAVER: I'm sorry, did you ask a...

[CONVERSATION ABOUT CHAIRS]

SENATOR DONLEY: Gene, what specific sentence are you, where are you at exactly?

SENATOR THERRIAULT: Page 3, line 29.

SENATOR DONLEY: 29, okay.

SENATOR THERRIAULT: The end of the sentence.

SENATOR DONLEY: 'Circumstances might reasonably suggest to a third party.' That language there?

SENATOR THERRIAULT: No, that's okay, but then...

SENATOR DONLEY: Even if none...

SENATOR THERRIAULT: ...even if you explain no communication took place, I kind of read that that then you're out. Even if you have an absolutely, we just passed in the frozen food aisle.

SENATOR DONLEY: No, because that's not reasonable, Gene. I mean, what's reasonable is more like the scenario I gave. If you find them, you know, one-on-one in a conversation, you know. I mean,

that's, that's, I mean, and it's still going to be some impartial, you know, well, hopefully, I mean, the other commissioners are going to be able to make that decision, you know. I mean...

SENATOR THERRIAULT: I need to think about it a little bit more. But food for thought there.

CHAIRMAN TAYLOR: The question is literally one of a reasonable man interpretation of what the events may be perceived to reflect in a reasonable person's mind. And that is a higher standard, but it's a standard to which we're actually holding hearing officers to right now.

MS. CRAVER: Senator Taylor, we had in our office discussed it basically as a paraphrasing of the appearance of impropriety. You don't need to prove that impropriety occurred but the appearance is so compelling that it impairs the reputation of the people involved and it appears as if they could have indulged in ex parte or improper conduct. And you need to avoid even the appearance of it.

CHAIRMAN TAYLOR: I don't know of any other way to do it.

SENATOR THERRIAULT: And I'm not saying that I have the answer either. Nan, I'm not sure if I cut you off then.

CHAIRWOMAN THOMPSON: Well, there are two other things that I noticed which are more in the nature of questions, which is, and actually one of them was highlighted by what you just described as, you know, it comes to the Commission, there's some kind of process and then it goes on to court if you don't agree. What happens to the timeline if there's some kind of recusal issue pending? And what happens if you have so many complaints about it that you don't have a panel anymore? I mean, under the, and I understand that you're considering amending it to get rid of this Telecommunications Commission as a separate body so that'd give you a few more. But how are you going to empanel a decision-making group if you've got, you know, a couple, with a group this small, if a couple of them are eliminated because there's some allegation that they might have had ex parte contact even if none was made? And if you're, you can't move forward and be actively making a decision on a case if you're in the process of deciding whether one of your panel is eligible to participate or not. So, and at the same time the bill has very strict timelines. What you're going to do is freeze, you're going to put a window of time in there when they're not going to be able to act.

SENATOR DONLEY: How do you think your timelines are more restrictive than the constitutional timelines for a speedy trial? I mean you've got the same problem there. I mean, you know, if you have five members on a panel, you're currently appointing three to make decisions. That gives you two free bites, right, before you run into a problem. And...

TAPE 02-51, SIDE B

SENATOR DONLEY: ...reasonably adopt some regulations on how to deal with a problem if all three, you know, if there was three people that, you know, ran into this. The odds of that are going to be pretty de minimis to start with. But I think it'd be reasonable to adopt some regulations, if this happens, then this. You could bring in a, you might, you know, suggest something even next year, you know, bring in some sort of temporary...

CHAIRMAN TAYLOR: Hearing officer or temporary...

SENATOR DONLEY: Yeah, have the hearing officer serve as your third person or something. But this wouldn't be that hard to craft between now and the next legislative session.

CHAIRWOMAN THOMPSON: How is that on ex parte?

CHAIRMAN TAYLOR: Well, the other choice, you know, is to go forward and make a decision with a panel that is impugned. What a dandy thing that is for the public and for the people sitting before you.

SENATOR THERRIAULT: Could, unless you've got any other comments on that, I want to move to the timelines section.

CHAIRWOMAN THOMPSON: Okay.

SENATOR THERRIAULT: And I have to find it myself here.

CHAIRMAN TAYLOR: It's page 6.

CHAIRWOMAN THOMPSON: It's on page 6.

CHAIRMAN TAYLOR: Section 13.

SENATOR THERRIAULT: Just to hear your comments. Now we've got, the due cause has been, has been pulled out. And I understand the potential for abuse, you know, and things just moving ahead and using due cause to extend things indefinitely. But I want to understand how this might work.

CHAIRWOMAN THOMPSON: I think the potential problem I see with eliminating good cause is what you have here is something that allows either all the parties, allows all the parties to agree to make an extension so it puts one party, any of the parties, in the position of holding the others hostage and just saying, 'No.' And there are reasons, the example of a big case where additional information gets filed shortly before the hearing goes and the parties need a chance to analyze it in order to present the case. That one party that waited until the last minute to file something is just going to say, 'No,' when everybody asks for an extension. So everybody else is put in the position of saying 'Well, we either have to let this go into effect by default or go to trial with the ability not to develop a complete record.' And the Commission's put in a position, because the parties haven't been able to develop a complete record, of making a decision on less than a complete record. I think that there are circumstances that are good cause and that if you completely eliminate that and have as the only option all parties agreeing, you're empowering one recalcitrant - creating the opportunity for gamesmanship that would not benefit a good decision-making process. I think that the version which required us to report good cause and then the Legislative Budget and Audit Committee or the Legislature can scold us and say 'Gee, that's not good cause, you shouldn't have done that,' was better. There was adequate incentive, with that additional burden of reporting, if cause, if a case is ever extended for good cause. I thought that was more workable in a practical sense.

2:12 p.m.

SENATOR THERRIAULT: Okay, but there was some concern that that [indisc.] report to the Legislature, you know, from two years to two years, maybe the Chairman pays attention maybe he doesn't on LBA. If you had information that was filed, you're getting close to the decision date, what length of time would you need under a due cause mechanism, do you think, to incorporate that and make sure you have a good record and the ability? Because I, one of my concerns is if it's a tremendous rate increase request, and you get right up there and maybe the person making the request files that last-minute information, nobody else, you know, they're saying, 'Wait a minute, we haven't had time to digest this.' You get to the deadline, that rate increase just, boom, goes into effect, which is impacting the ratepayers, consumers.

CHAIRMAN TAYLOR: They've got, they've got every opportunity to turn it down, too. Nothing precluding you from making a decision that says, 'No, you're not entitled to that...'

SENATOR THERRIAULT: But they would turn it down. Do we want them to make a policy call, 'We're just saying no because we don't know?' Or should we give them the ability...

CHAIRMAN TAYLOR: We've had a lot of testimony of them saying, 'Yes' without knowing so.

SENATOR THERRIAULT: Or should we give them the ability to make sure the record's complete and then make a good decision?

CHAIRWOMAN THOMPSON: It's tough to say without the circumstances of a particular case how much time you'd need. I think what you want as a policy matter is for us to be able to make good decisions, for us to be able to have an adequate record in front of us before we make decisions. And I can't tell you that that's an additional month or it may be a week, it may be six months. I don't know. It depends on the case and what the circumstances are. Which is why I thought, you may not want to call it 'good cause,' but some way to allow an extension when it [indisc.] merit seems like a better way to deal with that issue.

SENATOR THERRIAULT: Mr. Chairman, it's just the abrupt...

CHAIRMAN TAYLOR: I've been concerned about it, also.

SENATOR THERRIAULT: ...seems problematic.

CHAIRMAN TAYLOR: I move to amend page 6, line, between 27, 28, insert the same provision that the House had, with the following exception: That good cause may only be extended once and only for a period of 90 days.

SENATOR DONLEY: I like that.

SENATOR THERRIAULT: And still have the reporting to...

SENATOR DONLEY: LBA or whoever.

SENATOR THERRIAULT: You said...

CHAIRMAN TAYLOR: I had left out the reporting here, but if anybody wants the reporting, I don't...

SENATOR THERRIAULT: I wasn't sure when you said the House language with 90 days. I wasn't sure.

SENATOR DONLEY: Right. I like the reporting.

CHAIRMAN TAYLOR: But I don't think we had the reporting in here, did we?

SENATOR DONLEY: We didn't need it with this.

CHAIRMAN TAYLOR: We didn't need it with this.

CHAIRWOMAN THOMPSON: There was nothing to report.

MS. CRAVER: ...Section...

CHAIRMAN TAYLOR: ...that you don't need if you're not going to have a good cause to be reported.

CHAIRMAN TAYLOR: Right.

SENATOR DONLEY: If we go back to 90 days with good cause, I'd still like to know how many times they're extending for 90 days. So, yeah, I would like the reporting back in there.

CHAIRMAN TAYLOR: Okay, I'll modify the amendment to suggest conceptually that you also utilize that same provision that report would have to be made to the Legislature and I think it's quarterly if I remember right.

MS. CRAVER: I can duplicate that.

CHAIRMAN TAYLOR: On how many of these good cause 90-day extensions occurred. Is there objection to that amendment? There being no objection, that amendment passes.

SENATOR DONLEY: And I would just, I know you guys got a really hard job. But, you know, if a defendant refuses to waive their speedy trial rights in the criminal justice system, the courts shift into hyper-drive and they get the evidence and they get ready and they go to trial. I mean it's just a matter of...

CHAIRMAN TAYLOR: It's 145 days.

SENATOR DONLEY: Yeah, you need to tighten up, you know, so that people don't, and if somebody comes in at the last minute, just like in those kind of, those situations and dumps a bunch of new evidence that wasn't available to the parties during the discovery, the judge makes a ruling, says, 'Look,' you know, if it's something really, you know, like here's an eyewitness that is very, you know, that's, you know, I mean, maybe the judge allows it in. But if it's just a bunch of new paperwork, the

judge goes, 'Hey, you didn't, you didn't meet your discovery guidelines and I'm not letting you put this into evidence.' I mean, that, you can adopt reasonable criteria like that for your, for your discovery process and for your evidentiary process. As long as you use due process principles in conforming to them, you can make it work.

CHAIRWOMAN THOMPSON: What if, and this is a circumstance that happened recently, that additional information would result in a rate decrease? So I, as a policy maker, am forced to say, 'Well, you filed that too late. I'm not going to consider that in this trial. You've got to file in a separate trial.' But if I do that, I know, you know, I'm potentially having consumers charged too much for a period of time. That's not consistent with my responsibility.

SENATOR DONLEY: When would it ever end then?

CHAIRWOMAN THOMPSON: Huh?

SENATOR DONLEY: I mean, you give this example, well, will it ever end? Will you ever make a decision? Maybe somebody will walk in here next week with some suggestion that maybe we could reduce some rates again. You know, it'll never end if you don't adopt some timelines and some criteria. And when that rate, when the issue comes back around, you're going to know that evidence and you're going to be able to conform, you know, I mean, and make that call. I mean - it's just kind of like what we've been going through for the last two weeks here. When was it ever going to end? We're just trying to bring this to a resolution.

CHAIRMAN TAYLOR: We've had 30 hours of testimony...

SENATOR DONLEY: Maybe it's not the most perfect bill and maybe it's not the bill that I wanted, but at some point, somebody's got to make a decision in government, right?

CHAIRMAN TAYLOR: After 30 hours of testimony, there was one thing that was consistent in the complaints that were raised. It was that you didn't have a handle on discovery and you didn't have a handle on how long it was going to take in the process. And every single one of these people talked about would you please implement some regulations; give us a level playing field so we have some timelines. The only reason these timelines are here from the House is because of that same angst being reported to them over there. So, please, try to find some way to incorporate some regulations that we don't have to impose on you. Because we'll do it wrong. I would hope that you would do it right

because you know what you need to do.

SENATOR THERRIAULT: Mr. Chairman, do we have, we have a pending motion now, I think.

SENATOR DONLEY: The motion was from the chair to...

CHAIRMAN TAYLOR: That motion was approved.

SENATOR THERRIAULT: Okay.

CHAIRMAN TAYLOR: And that was to add the reporting requirement and a 90-day extension under good cause from the Commission.

SENATOR THERRIAULT: Okay, and...

CHAIRMAN TAYLOR: Anything further?

CHAIRWOMAN THOMPSON: Any other further comments on the bill in any other specific section, or just generally?

SENATOR THERRIAULT: On the bill.

CHAIRWOMAN THOMPSON: The only other part that I think is quite problematic, there's a lot of little details that are problematic, but I focused, in the time I had to review it, on the big-picture items, and this is, again, assuming that the telecom commission is out, has to do with the provisions on the commission that's created, the task force as it's called in this bill. The task force...

SENATOR COWDERY: What page is that?

CHAIRWOMAN THOMPSON: It's on page 18, Senator Cowdery. It's Section 33. I don't, with all due respect, I don't - I thought that industry representatives who knew more about our work would be better qualified to provide useful suggestions. I also think that section (c) allowing them access to confidential information is quite problematic. We have a lot of confidential information that relates to utility finances, competitively sensitive information, trade secrets. And this suggests that the members of this commission have access to all that. It doesn't clearly tell me whether that task force is subject to the legislative ethics act, the executive branch ethics act. And I imagine that the utilities who file confidential information with us need some reasonable assurance that that confidentiality is going to be protected. That raised, that was a red flag in my mind.

SENATOR DONLEY: Barbara, do you think we could tie it to one of the specific provisions, probably it would be more appropriate - be in the administrative ethics act as far as confidentiality? What would be the penalties for violating confidentiality, you know?

MS. CRAVER: My goodness.

SENATOR DONLEY: I'm not asking what the penalties would be. But maybe we link it to whatever it is for, you know, the Department of Revenue handles confidential, you know, oil and gas information all the time. You know, there must be some sort of existing penalty in law for violation of that.

MS. CRAVER: I think the consequences for violating Legislative Ethics Acts, which I know more about, are they basically get to public censure. They're not significant civil or criminal penalties.

SENATOR DONLEY: Well, that's, I'm not even suggesting that this is the same as the legislative act...

CHAIRMAN TAYLOR: I can tell you that...

SENATOR DONLEY: [Indisc.].

CHAIRMAN TAYLOR: ...violating the, if you've signed a confidentiality agreement with the executive branch and you're going to go in and start looking at oil...

SENATOR DONLEY: Could be the executive branch...

CHAIRMAN TAYLOR: ...it's forever. You can never reveal any of it. And if you ever do reveal any of it, you can be subjected to civil suit by any party that assumes they've been damaged by it. Which means any oil, if you're in there looking for oil revenues, any oil company has the right to sue you forever. It's pretty heinous. Most people have a real hard time signing that one.

SENATOR DONLEY: They didn't get me to sign that one during the Exxon oil spill because I just wouldn't do it, I mean, yeah.

SENATOR THERRIAULT: Mr. Chairman, first of all, was this language included in the House suggestion on their...

CHAIRMAN TAYLOR: Yep.

SENATOR THERRIAULT: ...commission? Did they have this (c)

section? And is there, we've spelled out three different things here that we want them to look at. Do we believe that it's necessary that they have access to all that corporate profitability information to do what this commission, what we would like this commission to do?

SENATOR DONLEY: [Indisc. Sentence.] I mean, I think that they ought to have the discretion to act as they think they need. I mean, this doesn't say that they have to go get this stuff. It just says that they have access. I think, you know, people should be allowed, they should have access if they feel they need it, you know, as long as they make sure they keep it confidential.

SENATOR THERRIAULT: So if you have somebody who's appointed, somebody who's appointed to this body who is associated with one of the companies, and if we want company expertise, they'd be able to go and get information on their competitor, look at information, confidential, corporate information. Why...

SENATOR DONLEY: They would have the obligation under penalty of whatever the executive branch act is, if we incorporate that, not to use that and not to reveal it to their company. Second, you know...

CHAIRMAN TAYLOR: I think...

SENATOR DONLEY: ...a reasonable person wouldn't do that, first of all, you know, wouldn't abuse it that way.

CHAIRMAN TAYLOR: I don't know how they'd even accept the appointment.

SENATOR DONLEY: I mean one of the safeguards you could use is that...

SENATOR COWDERY: What about the same standards as the...

SENATOR DONLEY: ...the task force, you know, if they're going to be asking for confidential information, is the task force as a whole would have to, you know, agree to go ask for that. That would be one safeguard. So you wouldn't have one individual as in your scenario.

SENATOR THERRIAULT: That'd give me a little bit more comfort.

CHAIRMAN TAYLOR: What safeguards do we have right now with the Commissioners themselves who have access to all of this? What's

their penalty?

SENATOR DONLEY: Of course, there's a difference. They're not specifically working for any for-profit agency as in Gene's scenario, which I think is legitimate.

CHAIRMAN TAYLOR: I think is a good scenario and I appreciate that. What do we have for Commissioner right now? Why not give them the same standard of penalty?

MS. CRAVER: Commissioners are public officers under the executive branch ethics act. Whatever they, well, the conflict would be using it for private gain. It wouldn't necessarily be, you know, selling secrets to a competitor, you know, to an interested party, which is like criminal.

SENATOR DONLEY: Let me propose this.

MS. CRAVER: Beyond ethics.

SENATOR DONLEY: Let me try this. Barbara, I'm going to move a conceptual amendment that to access confidential information, it has to be a vote of the majority of the task force. First of all, that prevents the scenario where one individual in the task force goes and grabs information. I mean if they want to get confidential information, they as a group have got to agree that this is something they really want to see. So that's my first proposal.

MS. CRAVER: The task force requests confidential information from the Commission and the Commission has to decide by a majority to release that?

SENATOR DONLEY: Not the Commission, no.

MS. CRAVER: The task force?

SENATOR DONLEY: The task force by majority vote has to decide if they want it.

SENATOR THERRIAULT: Are you going to then also tie that to the executive ethics standards somehow, too?

SENATOR DONLEY: Yeah, I think they ought to be subject to whatever the executive act ethics standards are regarding access to confidential information. I would include that in my conceptual motion.

CHAIRMAN TAYLOR: Everybody understand the motion? Discussion on it? Is this the same standard or language that the House had concerning their task force?

CHAIRWOMAN THOMPSON: No, Senator Taylor, the task force was not in the House version.

UNIDENTIFIABLE SENATOR: Yeah, it was.

MS. CRAVER: Yeah, there's...

CHAIRWOMAN THOMPSON: It was an advisory committee.

MS. CRAVER: Well, it's the same.

CHAIRMAN TAYLOR: Okay, advisory committee.

SENATOR DONLEY: With all that long list and all.

CHAIRWOMAN THOMPSON: Yeah there are, Senator...

CHAIRMAN TAYLOR: Every token profession that we can find, I guess...

CHAIRWOMAN THOMPSON: The other ...

CHAIRMAN TAYLOR: ...wanted to be on it, so...

CHAIRWOMAN THOMPSON: The other big difference between the House version and this version is this task force is entitled, under section (a), 'to inquire into all aspects of the operation of the Regulatory Commission.' And under the House version, it was, the committee was supposed to investigate and propose reforms limited to the Committee's regulatory process. The authority of the task force is much broader. It arguably allows them to inquire into substantive results. And the policy concern there is what you're creating is a shadow commission. You're going to have someone, a group, which, if they want to, is empowered to second-guess the Commission on all of its decisions with authority that broad.

CHAIRMAN TAYLOR: After second-guessing they render a report and they give that to the Legislature.

SENATOR THERRIAULT: Well, was there a conscious decision to make their charge something more than looking at the process, making suggestions on the process of the Commission?

CHAIRMAN TAYLOR: It's to make it as broad as possible for them to

look at things like deregulation, which wouldn't be part of the regs, which your group's limited to, the House group. I don't know how they, they look at the questions like, 'What's the better form of arbitration?'

SENATOR THERRIAULT: Well, that's process. That's process.

SENATOR DONLEY: I understand the distinction. I appreciate, yeah, I, but don't have a big problem with it. I mean I don't know why that's bad. I mean if they choose to look at things, other things to help them reach a conclusion as to the process things, I'm okay with that. They don't have any authority to make any substantive changes. They come back and make a recommendation.

CHAIRMAN TAYLOR: That's the same information our auditors are entitled to, isn't it?

SENATOR THERRIAULT: I don't know, our auditors did the audit, would they have access to the corporate profitability information?

CHAIRWOMAN THOMPSON: The confidential information? They didn't ask. I don't know whether they had the legal authority to have access to that information or not. But I don't think when the, the legislative auditors were looking at our process and to see whether we were adequately performing what we were required to do under the statute. The confidential information of any utility's finances wouldn't have been relative, relevant, sorry.

SENATOR DONLEY: Is this still my conceptual pending?

CHAIRMAN TAYLOR: Yes, it's still on the floor. We're discussing it.

SENATOR THERRIAULT: Could you just repeat that?

SENATOR DONLEY: Yeah, it was to limit, to say that if the task force wanted access to any confidential information, it would have to be by a majority vote of the task force and that they would be subject to the executive ethics act as far as maintaining confidentiality of information they obtained.

CHAIRMAN TAYLOR: I share some of Senator Therriault's concerns about, especially on the appointment, if we end up with either the Speaker or the President appointing someone that is from a competing company. I think that really, even with a majority vote, even with the sanctions provided, I think it places that

person in an awful difficult position. And if you talk about a perception of conflict, I think that's pretty clear perception. And they could be as pure as driven snow in the way that they handle themselves. So I, I like having the penalty phase in there and it taking the majority of the committee to do that. But I'm thinking that you might want to have, I don't know how better to structure that and yet how to allow that task force to still do a meaningful job, is the question, too. That, I'm kind of divided on that issue, but it...

SENATOR THERRIAULT: And do you have a...

CHAIRMAN TAYLOR: I'd appreciate any other discussion myself.

SENATOR THERRIAULT: Go ahead.

CHAIRWOMAN THOMPSON: No, that was the last big...

SENATOR DONLEY: Senator Therriault, just, my motion's still pending.

SENATOR THERRIAULT: Yes, I'm sorry, I thought she had a last comment on that motion.

SENATOR DONLEY: Oh, okay, I'll just, okay, I'm sorry.

SENATOR THERRIAULT: Okay, then.

SENATOR DONLEY: I thought we were going on to something else.

CHAIRMAN TAYLOR: Question. Is there objection? There being no objection, the amendment passes. And you understand it, Barbara?

MS. CRAVER: I think I do.

CHAIRMAN TAYLOR: Okay. My concern is I have, I have agreed that we would make every effort to put this bill onto the floor at 4:00. And I'm very concerned about how much time is going to be available to Barb and the drafters to get an actual typed document in front of the members in that time.

SENATOR THERRIAULT: Okay, Mr. Chairman, one last thing. I think I'd like to make a conceptual motion on Section 8 of the bill, which deals with the election of the chair. I like the election of the chair process, but I do share a little bit of the concern expressed by the Chairman here from the Commission that, and we run into that all the time, you've got people in agencies that have been there a long time and you might have a new division

director or a new commissioner even and they'll just wait them out and they know they can do that. And if you've got this potential of, you know, the chair changing every year, I think you'll see that, you'll see some of that. So I would just like to conceptually move that the chair be elected and just leave it at that.

SENATOR DONLEY: Oh, I see, just remove the one-year...

SENATOR THERRIAULT: Yeah.

SENATOR DONLEY: ...term? So leave it up to...

SENATOR THERRIAULT: And Barbara, if we don't speak to the length of the term, would it just be until the membership of the Commission chose to change?

MS. CRAVER: You could revert back to the current, which says the term is four years. If you don't, and if you don't...

SENATOR DONLEY: That's not what we had in mind.

MS. CRAVER: Okay. I'm not...

SENATOR COWDERY: What happens if, Mr. Chairman, if somebody is elected and two years from now they decided to have another election, even though, you know, and they...

SENATOR THERRIAULT: Well, Barbara, under the current statute, how would that be handled? It says here the term is four years. What if the majority of the Commissioners said, 'You know, we think we need a change?'

MS. CRAVER: Well, it looks to me like, if the term is four years, the Governor designates that chair, the chair stays unless the Governor...

SENATOR DONLEY: Barbara, we're not...

MS. CRAVER: I guess, goes to the drastic step of removing the commissioner.

SENATOR DONLEY: We're not even talking about going there, where the status quo is. We're talking about a variable, or variation in an election process for the chair. Okay, so lets not [indisc.] go back to what the status quo is. What we're interested in, and you know it kind of cuts both ways. I mean, if you let them just elect any time they want, well then you're

falling into Nan's argument, one unpopular decision, they may just replace the chair. But if you make it so that it's, so it might cut actually against what the testimony was about that. So I'm trying, right now I'm just going through the pros and cons of it, you know, and I was, you know, there's other...

CHAIRMAN TAYLOR: Go ahead.

MS. CRAVER: It seems to me that the significant difference in (b) in the current draft is that it takes the appointment power away from the Governor. So you're still, it doesn't sound like you're debating whether or not that's good.

SENATOR DONLEY: No.

MS. CRAVER: Okay. So then you just want to make the term of the chair, who's elected by the Commission, longer. Whether or not you decide...

SENATOR DONLEY: Well, maybe.

MS. CRAVER: Whether or not to do so.

SENATOR THERRIAULT: I guess, then, rather than leave it...

CHAIRMAN TAYLOR: I like having the opportunity for the board itself to control its internal affairs. And I think that's very important to boards to be able to do that. And if they want to continue to reelect the same chair, they ought to be able to do so. I just put in a term limit of three and they would have to go off and another person come on, at least for one year, and then they could serve again if they're reappointed and everything's going fine. The idea of going along with a three-year term or a two-year term, in my opinion, locks them in. Because these people are staggered terms, they're rotating through out this period, all five of them are. And they're going to be coming up for...

SENATOR DONLEY: Why not let the, another middle ground, would be let the commissioners decide. You could have for up to, they can choose somebody for up to a certain period of time. If you want to make it two years, then they could, if they only want to make it for a year, they could make it for a year. Or they could make it for two years, you know. I mean, that would be another way kind of smack right in the middle of where you're trying to go.

SENATOR THERRIAULT: I've got a motion. Let me just amend my motion that, or amend my motion that would, so it would be that

they elect their chair for a term of three years.

CHAIRMAN TAYLOR: Everybody understand the motion? I object.

SENATOR DONLEY: Yeah, I think that's too long. I think I could be persuaded that giving them the discretion to go up to two years, I could probably support. I think three years is a little long. [Indisc.].

SENATOR THERRIAULT: Yep.

CHAIRMAN TAYLOR: Question? Roll call.

SENATE CLERK: Senator Donley?

SENATOR DONLEY: No.

SENATE CLERK: Senator Cowdery?

SENATOR COWDERY: No.

SENATE CLERK: Senator Therriault?

SENATOR THERRIAULT: Yes.

SENATE CLERK: Senator Ellis?

SENATOR ELLIS: Yes.

SENATE CLERK: Senator Taylor?

CHAIRMAN TAYLOR: No. Motion fails. Other items? Chair to entertain a motion on the bill.

SENATOR DONLEY: Mr. Chairman, I move the committee substitute as amended - ready for that motion?

CHAIRMAN TAYLOR: Yes.

SENATOR DONLEY: Okay, I move the committee substitute as amended from committee with individual recommendations.

CHAIRMAN TAYLOR: Is there objection? There being no objection, the bill as amended will move from committee, as soon as we've received the typed version. And I hope your people can get it back quickly to us this time, Barb. And I appreciate so much your help all night last night, too. Thank you very much and thank your staff for that. Anything further? I wanted to take

this time to thank the members of the Committee for over 30 hours of endurance and disruption of your personal lives and your schedules that none of us had hoped to go through. I think this product is a far superior product to that which was delivered to us. I think it provides for some levels of integrity within the system that we can be proud of. I think that it will be helpful, both to the Commission and to those who appear before it because the timelines now are definitive and have some teeth. I think that we also have an opportunity for a more cohesive working relationship within the Commission itself in that the members will decide who their chair is and when. And I think all of those are healthy and good aspects that would not have occurred but for the hard work of this Committee and the great patience and support that you have provided to me as the Chair. And I thank each of you for that and appreciate very much your attendance and your hard work. And I also want to thank again all those who appeared and who have stood by ready and willing to offer their support and advice and they have done so in a very professional fashion and the Chair appreciates that, also.

SENATOR ELLIS: Mr. Chairman, you mentioned the bill being on the floor of the Senate at 4:00. Does that mean the Senate Finance Committee waived its referral?

CHAIRMAN TAYLOR: It's my understanding they will, but I can't guarantee that because I don't control that committee.

SENATOR DONLEY: Yeah, I'm fine with the waiver. I can't speak for my co-chair or the members of the Committee, for that matter. And the waiver, of course is subject to the vote of the body, too.

CHAIRMAN TAYLOR: Here's a document to sign. Of course we don't have the final in front of us. But you'll...

MS. KELLY HUBER [staff To Senate President Rick Halford]: Once we get it, I'll make sure the Committee members have a copy.

CHAIRMAN TAYLOR: Each member will receive a copy before this thing does go on the floor so we can each, and hopefully you'll each read through it and take the time to verify that those amendments are correct and correct with your understanding of what they were. We are adjourned. [2:52 p.m.]

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