

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

May 9, 2003

2:00 p.m.

MEMBERS PRESENT

Senator Ralph Seekins, Chair
Senator Scott Ogan, Vice Chair
Senator Gene Therriault
Senator Hollis French

MEMBERS ABSENT

Senator Johnny Ellis

COMMITTEE CALENDAR

CS FOR HOUSE BILL NO. 214(JUD)

"An Act relating to the recovery of punitive damages against an employer who is determined to be vicariously liable for the act or omission of an employee; and providing for an effective date."

MOVED SCS CSHB 214(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 224

"An Act relating to a tobacco product manufacturer's compliance with certain statutory requirements regarding cigarette sales; and providing for an effective date."

MOVED HB 224 OUT OF COMMITTEE

SENATE BILL NO. 203

"An Act relating to certain administrative hearings; and establishing the office of administrative hearings and relating to that office."

HEARD AND HELD

SENATE BILL NO. 2

"An Act relating to recovery of civil damages from the parents or legal guardian of a minor; and providing for an effective date."

MOVED CSSB 2(JUD) OUT OF COMMITTEE

SENATE JOINT RESOLUTION NO. 3

Proposing amendments to the Constitution of the State of Alaska relating to an appropriation limit and a spending limit.

HEARD AND HELD

PREVIOUS ACTION

HB 214 - See Labor and Commerce minutes dated 4/29/03 and 5/1/03. See Judiciary minutes dated 5/6/03 and 5/8/03.
HB 224 - See Judiciary minutes dated 5/6/03.
SB 203 - See State Affairs minutes dated 5/6/03.
SB 2 - See HESS minutes dated 2/24/03 and Judiciary minutes dated 3/17/03 and 3/19/03.
SJR 3 - See Judiciary minutes dated 3/19/03.

WITNESS REGISTER

Ms. Sara Nielson
Staff to Representative Samuels
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Comment on HB 214.

Mr. Ben Brown
Alaska State Chamber of Commerce
Juneau, AK 99801
POSITION STATEMENT: Supported HB 214.

Mr. Mike Barnhill
Assistant Attorney General
Commercial Section
Department of Law
PO Box 110300
Juneau, AK 99811-0300
POSITION STATEMENT: Supported HB 224.

Mr. Dave Stancliff
Regulation Review Committee
c/o Senator Therriault
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Commented on SB 203.

Mr. Andy Hemenway
Hearing Officer
Department of Administration
PO Box 110200
Juneau, AK 99811-0200
POSITION STATEMENT: Commented on SB 203.

Senator Fred Dyson

Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of SB 2.

Mr. Larry Wigit
Executive Director of Public Affairs
Anchorage School District
Anchorage, AK 99513
POSITION STATEMENT: Commented on SB 2.

ACTION NARRATIVE

TAPE 03-43, SIDE A

HB 214-PUNITIVE DAMAGES AGAINST EMPLOYERS

VICE CHAIR SCOTT OGAN called the Senate Judiciary Standing Committee meeting to order at 2:00 p.m. Present were Senators French and Therriault. The first order of business to come before the committee was HB 214, version Q.

MS. SARA NIELSON, staff to Representative Samuels, offered an proposed amendment that has language from the VECO case to define a managerial agent.

SENATOR FRENCH said he worked with the sponsor on this language and moved to adopt amendment 1. There were no objections and it was so ordered.

MR. BEN BROWN, Alaska State Chamber of Commerce, supported HB 214. "It's not fair for employers to be saddled with punitive damages for actions of their employees that are completely outside the scope of employment...."

2:04 - 2:05 p.m. - at ease

SENATOR THERRIAULT moved to pass SCSHB 214(JUD) from committee with individual recommendations and the two attached fiscal notes. There were no objections and it was so ordered.

2:06 - 2:07 p.m. - at ease

HB 224-CIGARETTE SALES REQUIREMENTS

VICE CHAIR OGAN announced HB 224 to be up for consideration.

MR. MIKE BARNHILL, Assistant Attorney General, said this is a bill that enhances the state's ability to enforce its non-participating manufacturer escrow requirements protecting the revenue stream the state gets under the Master Settlement Agreement.

SENATOR THERRIAULT moved to pass HB 224 from committee with attached fiscal notes with individual recommendations. There were no objections and it was so ordered.

2:10 - 2:11 p.m. - at ease

SB 203-OFFICE OF ADMINISTRATIVE HEARINGS

VICE CHAIR OGAN announced SB 203 to be up for consideration.

MR. DAVE STANCLIFF, Regulation Review Committee, said the basic goals of SB 203 are to set up a model that will grow and provide more efficient and fair hearings for those who require adjudications in the state administrative process.

Secondly, it sets up standards and protections for hearing officers statewide. Since the officers work for the agencies that promulgate and enforce the regulations, a more independent approach is in order and this bill provides protection to hearing officers from agency influence from both inside and outside the central model - and influence from the legislature. It also establishes a higher standard of conduct for the process.

In effect, a model is created and outside that model, people have a more independent status.

Last, the bill establishes a time limit for people who have been caught up in the adjudication process for years. He said they have worked extensively with administration, legislators and organizations.

VICE-CHAIR OGAN said that all three powers are under one branch of government - the power to carry forth the laws, investigate, prosecute and adjudicate.

MR. STANCLIFF commented that judges are sworn to uphold the administrative law until they are given the independent standards of conduct that due process calls for.

CHAIR SEEKINS arrived at 2:13 p.m.

SENATOR THERRIAULT asked Mr. Stancliff to go over the amendments.

MR. STANCLIFF passed the amendments out to the committee and stated that at every step of the way they worked with the administration in consideration of any changes in the amendments and that they had been extremely productive and cooperative.

The first amendment on page 3, line 15, is a housekeeping amendment; amendment 2 on page 8, line 1, is substantive. Currently, a hearing officer has 90 days after the date the case is assigned to prepare a proposed decision. However, they realized that if the agency didn't cooperate with the hearing officer, he might not get the material needed to even get the hearing going within 90 days so it was changed to 120 days. However, they deleted line 7 on page 8, which says:

If the proposed decision is not timely issued, the agency decision that is subject to the hearing is the final agency decision and a party requesting the hearing may appeal straight to Superior Court.

It sounds good in principal, but it doesn't work well in practice for two reasons. The first reason is, if the hearing isn't even conducted, all of a sudden the only record the petitioner has to build their case on is a bad record or none at all. The administration asked for the leeway to trust that the new model would work properly and to delete that type of hammer.

On page 8, line 21, it says the hearing officer will have 120 days and then submits the hearing to the commissioner or agency. The commissioner would have 30 days to decide whether to take action or not. That bar has been raised so that when the commissioner takes action, they have to very explicitly say why and make it a matter of the public record - something that isn't necessarily occurring now. Also, currently, if the commissioner remands the case back to the agency, it doesn't say how long it can stay there, which has been a problem. So, he fixed a time of 60 days starting from the time the hearing officer hears and proposes the decision. Within that 60 days, the commissioner has up to 30 of them to decide what to do or to do nothing; and if it's remanded back, there's an additional 30 days for the agency to complete and issue a final decision. That puts the total clock under this amendment at 182 days.

MR. STANCLIFF said he contacted Judge Belcher in Colorado, a nationally recognized expert, on what he felt was the outside time his central panel ever had to use and he answered 180 days. "So, we're in line with a model that is working very well nationally and the administration has every option and flexibility within this model to speed parts of it up..."

The new model has a requirement to keep good records, but they accidentally asked them to keep records of not only what they do, but records of whatever the agency does, too. This is not only duplicative, but it's going to make them into record keepers rather than processors and adjudicators. Amendment 3 clarifies that.

SENATOR THERRIAULT moved to adopt the three amendments, S.2, S.3 and S.4, as one amendment. There were no objections and it was so ordered.

23-LS0903\S.2
Cook
12/11/03

A M E N D M E N T 1

OFFERED IN THE SENATE
TO: CSSB 203(STA)

Page 3, line 15, following "year":
Insert "the results of the survey along with"

23-LS0903\S.3
Cook
12/11/03

A M E N D M E N T 2

OFFERED IN THE SENATE
TO: CSSB 203(STA)
Page 8, line 1:
Delete "immediately"
Insert ", within two working days,"

Page 8, lines 4 - 5:

Delete "within 90 days after the date a case is assigned for hearing"

Insert "within 120 days after the date the agency received the request for a hearing"

Page 8, lines 7 - 10:

Delete "If the proposed decision is not timely issued, the agency decision that is the subject of the hearing is the final agency decision and the party requesting the hearing may appeal from that decision to the superior court or as otherwise provided by law for appeals of final agency decisions."

Insert "The hearing officer shall immediately submit the proposed decision to the agency."

Page 8, line 21, following "proceedings;":

Insert "the hearing officer shall complete the additional work on the case and return it to the agency within 60 days after the date the original proposed decision of the hearing officer was submitted to the agency by the hearing officer;"

23-LS0903\S.4

Cook

12/11/03

A M E N D M E N T 3

OFFERED IN THE SENATE

TO: CSSB 203(STA)

Page 9, lines 24 and 25:

Delete all material.

Insert "acquire and organize records relating to administrative hearings of the office. The records must include information,"

Page 9, line 28, following "records.":

Insert "The records shall be made available to the public."

MR. STANCLIFF noted a letter from the Disability Law Center of Alaska that brought to their attention that federal law requires that a state educational agency or a local education agency conduct the hearings under their particular statutes having to do with children with disabilities as it applies to education. However, they said they would be willing to work with him to see

if by keeping them in this bill, they rub up against the federal statute. He said they would work with the AG's office to correct that if it is a problem.

SENATOR FRENCH asked what happens when the hearing officer doesn't return the decision within a specified time. Could they go to court?

MR. STANCLIFF responded that the amendment they just adopted removes the provision to go to court.

SENATOR FRENCH asked if there was any time frame for them to get through before being able to go to court.

MR. STANCLIFF answered there is not.

SENATOR FRENCH asked whether PFD disputes are in this act or whether they stand alone.

MR. ANDY HEMENWAY, Department of Administration Hearing Officer, answered the PFD hearings will not be under this act.

SENATOR FRENCH asked about fishery laws and regulations.

MR. STANCLIFF said they will not be in administrative hearings. The RCA is not included and neither are oil and gas taxation issues. The idea is if the model works well, it could eventually evolve to be the total clearing house.

Only one category of taxation relates to oil and gas, the oil and gas property tax on page 5, lines 12 & 13, of the CS, which are presently being heard by a hearing officer within the Department of Revenue.

There are two types of issues that arise under that statute. One type is whether or not the property in question is in fact taxable property for purposes of those statutes. Those questions would go to this central panel [by a hearing officer in the Department of Revenue].

The other question that arises under those provisions of law is how much is the property worth, what is the amount of the tax. Those issues under current practice are decided by the State Assessment Review Board, which is essentially a collection of...municipal assessors, basically....Those cases are now being

conducted by that board, not by hearing officers. They're not delegated out and under the current legislation...they would continue to be conducted by the State Assessment Review Board.

SENATOR FRENCH asked if he knew how long it takes to get through the system now.

MR. STANCLIFF replied they provided a full report that lists every hearing function and how long they have taken previously. He said that the new officers would not be classified employees, but they would be partially exempt and have the same guidance that Division of Election employees have under AS 39. However, they cannot be summarily removed.

SENATOR FRENCH asked if this sets a 90-day drop-dead period for resolving the hearings.

MR. STANCLIFF replied no longer and that the amendment they just adopted gives 120 days to the hearing officer to produce a product and 180 days total from the time someone requests a hearing that the agency has to provide a final decision.

SENATOR FRENCH asked if any hearing bodies were consistently exceeding that period of time.

MR. STANCLIFF said there is a list in excess of 50 - 100 cases that won't even get heard for a year or more. He said there are horror stories, but this bill is not targeting those.

SENATOR FRENCH asked if someone that has a grievance and goes into a hearing officer, but has nothing happen in 180 days is automatically shunted off to court.

MR. STANCLIFF replied there is no automatic shunt, but a case could be made with a competent attorney to the courts that the deadline was exceeded.

MR. HEMENWAY added that there is some concern about the consequence of having the ability to go straight into court with a "half baked" record.

The intent is that the chief hearing officer would create internal guidelines to govern how long will it take to process cases from each different agency so you can establish appropriate time frames for any type of case that might come along and that those will be

included in the performance evaluation for the hearing officers. The intent here is...to make the consequence appropriately considered in the personnel process for the hearing officer since they are the ones charged with getting the work done in a timely manner.

CHAIR SEEKINS said he would hold the bill for further testimony in future meetings.

SB 2-PARENT LIABILITY FOR DAMAGE BY CHILD

CHAIR SEEKINS announced SB 2 to be up for consideration.

2:40 p.m.

SENATOR DYSON, sponsor of SB 2, said his school district asked that the legislature remove the liability limit on parents - the present one is \$10,000 - to allow them to recover more damages.

SENATOR OGAN moved to adopt version W of SB 2, as the working document.

SENATOR FRENCH objected for purposes of discussion.

SENATOR DYSON said that SB 2 clears up the fact that legal guardians are not held liable if they accept the responsibility of being legal guardian for a child that is not their own. Adoptive parents of hard-to-place children are also not held liable. Foster parents are not held responsible currently for acts incurred by the kids.

SENATOR OGAN said the district could sue the student of the parent, but invariably they go after the parent because of the perception that they have deeper pockets. They have tried to get the child to reimburse the parents with use of his Permanent Fund Dividend, but couldn't find a good mechanism for attaching the present or future wealth of a child. Even good parents can have bad kids who could do enough damage to something that the parents could become impoverished for life. When the kid is 18, they get their record washed clean according to Alaska law, but the parent has possibly been ruined.

SENATOR DYSON said he thinks he is exaggerating, because no one gets ruined for life by incurring debt. That's what bankruptcy laws are set up for. If you don't let the parent reimburse to the extent that they are able, then you say to the rest of the

people in the community that they get the responsibility for paying for the damage a kid they had no control over did.

SENATOR OGAN said he understands what he is trying to do, but an unlimited amount is too much.

SENATOR DYSON responded the version coming over from the House has a limit of \$15,000.

CHAIR SEEKINS asked if he knows if any schools carried vandalism insurance and what deductible they have.

MR. LARRY WIGIT, Executive Director, Public Affairs, Anchorage School District, said they are self-insured which means that it would come out of their operating budget.

CHAIR SEEKINS asked if they have a reserve set aside for this type of thing.

MR. WIGIT replied that they are required by law to keep a minimum amount of money for maintenance. Depending on the issue, several million dollars would be available.

SENATOR OGAN asked if there was a reason they don't have insurance.

MR. WIGIT replied that even if they did have insurance, the premiums would come from monies that could be used for other purposes.

TAPE 03-43, SIDE B

SENATOR DYSON said he is willing to work with Senators Seekins and Ogan on their concerns, one of which is the lack of accountability for kids within the school system.

MR. WIGIT said that they have some insurance, but [indisc].

SENATOR FRENCH asked if there are legal steps a child can take to become emancipated.

SENATOR DYSON replied a child could go to court and apply to be emancipated.

CHAIR SEEKINS said he supports the concept in the bill, but at the same time, he worries about what we're doing as a state to

support parents who want to keep kids from doing those kinds of things.

SENATOR DYSON said he agrees with Senators Seekins and Ogan, but he hopes they will not hold up action on this bill while they await their solution.

CHAIR SEEKINS said he would not want to make liability limitless. He asked if it was improper under current law to put a dollar judgment on a minor and do they have the authority to change that. He thought that if a minor child could be held responsible for murder then they could be held responsible for paying back part of a debt they incur.

SENATOR FRENCH moved a conceptual amendment to reinsert language on page 1, line 14, and page 2, line 1 "not to exceed \$25,000". There was no objection and it was so ordered.

SENATOR OGAN moved to pass CSSB 2(JUD), version W, from committee with the fiscal note and asked for unanimous consent. There was no objection and it was so ordered.

SJR 3-CONST AM: APPROPRIATION/SPENDING LIMIT

CHAIR SEEKINS announced SJR 3 to be up for consideration.

SENATOR DYSON, sponsor of SJR 3, said he served six years on the Anchorage Assembly and saw a tax cap limit there work very effectively. It allowed the tax revenues to expand as the population and CPI expanded and allowed for voter approved projects. The bill before them doesn't limit taxes; it limits spending. It limits it to something like the same sort of thing - the growth, inflation and the things that are outside a general fund budget.

He received a proposed committee substitute from the administration, version D, that significantly expands the list of items that are not under the cap, but he wants the committee to confine itself to discussing the appropriateness of a constitutional cap and then send it on to Finance to hash out the items.

CHAIR SEEKINS said he finds that there are 16 other states, including Alaska, that already have an ineffectual constitutional spending limit.

SENATOR OGAN said one loophole to get around a vote of the people is through lease purchase options, which the Legislature did previously with courthouses. He thinks there should be a definition of a lease purchase, although he isn't sure this is where it should be.

He is also concerned that the four percent per year is a little high and wants some spreadsheets on what that would amount to every year.

SENATOR DYSON said the D version outlines (instead of four percent) an average of the CPI and population growth, which ends up being, with a 2.5 percent population growth and a four percent CPI, an expansion of 3.25 percent.

SENATOR FRENCH asked what effect it would have had on state spending if this had been in place at the time of the state constitution.

CHAIR SEEKINS said he is concerned about what they could do constitutionally.

SENATOR DYSON argued that we have had a constitutional spending limit in place since 1981 and it hasn't been challenged, but the question is whether it's appropriate. His preference is that they pass something like the A version and let the Finance Committee deal with suggestions from the administration in the D version.

SENATOR OGAN said he doesn't see language that repeals the other constitutional spending limit, which hasn't been challenged.

SENATOR FRENCH pointed out that it's in the A version.

SENATOR OGAN said the existing spending limit is ignored. He wonders whether future Legislatures will ignore it, if this is put into law.

CHAIR SEEKINS said he would hold the bill for further information and discussion. There being no further business to come before the committee, he adjourned the meeting at 3:20 p.m.