

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

January 30, 2004
8:02 a.m.

TAPE(S) 04-1

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 244

"An Act relating to fines for offenses committed within school zones."

HEARD AND HELD

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

PREVIOUS ACTION

SB 244 - No previous action to record.

BILL: SB 203

SHORT TITLE: OFFICE OF ADMINISTRATIVE HEARINGS

SENATOR(s):

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| 04/29/03 | (S) | READ THE FIRST TIME - REFERRALS |
| 04/29/03 | (S) | STA, JUD, FIN |
| 05/06/03 | (S) | STA AT 3:30 PM BELTZ 211 |
| 05/06/03 | (S) | Moved CSSB 203(STA) Out of Committee |
| 05/06/03 | (S) | MINUTE(STA) |
| 05/07/03 | (S) | STA RPT CS 1DP 3NR SAME TITLE |
| 05/07/03 | (S) | DP: STEVENS G; NR: COWDERY, GUESS, DYSON |

05/09/03 (H) JUD AT 1:00 PM CAPITOL 120
05/09/03 (S) Heard & Held
05/09/03 (S) MINUTE(JUD)

WITNESS REGISTER

Senator Gary Wilken
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of SB 244

Mr. Bob Myers
2084 Lakeview Terrace
Fairbanks, AK
POSITION STATEMENT: Supports SB 244

Mr. Henry Springer
No address provided
POSITION STATEMENT: Supports SB 244

Mr. Al Storey
Division of Alaska State Troopers
Department of Public Safety
3700 East Tudor Road
Anchorage, Alaska 99507
POSITION STATEMENT: Supports SB 244

Mr. Dave Stancliff
Staff to Senator Therriault
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Testified for the sponsor of SB 203

Mr. Dan Houghton
Chief Financial Officer
Alaska Regional Hospital
POSITION STATEMENT: Supports SB 203

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

ACTION NARRATIVE

TAPE 04-1, SIDE A

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at 8:02 a.m. Senators Therriault, Ellis, French and Chair Seekins were present. Chair Seekins announced that Senator Ogan would be arriving shortly and asked Senator Wilken to present SB 244.

SB 244-INCREASE FINE FOR SCHOOL ZONE VIOLATIONS

SENATOR GARY WILKEN, sponsor of SB 244, informed members that in 1998, the Legislature enacted a law that doubled fines for traffic violations in construction zones, which was supported by the Alaska General Contractors (AGC) and others. During the interim, someone suggested to him that a law be passed to double traffic violation fines in school zones. After looking into the matter, he found other states have found that their construction zone laws changed people's attitudes so that they slow down in construction zones. SB 244 would allow a judge to impose a \$600 rather than \$300 fine for speeding in a school zone. The six-point assessment on one's license for that infraction would remain the same.

SENATOR WILKEN pointed out that members' packets contain two zero fiscal notes: one from the Alaska State Troopers (AST), the other from the Alaska Court System. In addition, Bob Myers and Ann Shortt, Superintendent of the Fairbanks North star Borough School District, submitted letters of support.

SENATOR ELLIS noted that former Senator Robin Taylor vociferously criticized increasing the penalties in the drug free school zone statute and asked if there is any interplay between that statute and this legislation.

SENATOR WILKEN said not that he is aware of.

SENATOR ELLIS asked him to look into how the two might fit together in relation to signage and penalties.

SENATOR WILKEN agreed to do so.

SENATOR ELLIS asked Senator Wilken if he anticipates any additional signage requirements for local school districts.

SENATOR WILKEN explained that on roads maintained by the Department of Transportation and Public Facilities (DOTPF), DOTPF will be responsible for the signs; school districts or the

local governments will be responsible for the signs on other roads.

SENATOR ELLIS questioned whether any of the fiscal notes reflect the cost to local school districts.

SENATOR WILKEN answered that cost would be part of the local school districts' normal operating budgets and DOTPF has indicated that the signage will have no impact on its budget.

SENATOR ELLIS asked if school districts have indicated the cost to them.

SENATOR WILKEN said he is relatively confident the cost will be minimal to attach a small double-fine sign to the school zone sign.

SENATOR ELLIS asked Senator Wilken if he envisions that a third sign would be attached under the school zone sign and the drug free school zone signs.

SENATOR WILKEN said he assumes there would be some signage somewhere that warns drivers of double fines for speeding in a school zone, much like the signs used for construction zones.

CHAIR SEEKINS announced that he expects members to converse freely with the witnesses without having to address the chair for each question. He prefers to allow the matter to be fully discussed while maintaining the same amount of decorum as committee members showed last year. He then noted that with no further questions from committee members, the committee would hear from Mr. Myers.

MR. BOB MYERS, testifying on his own behalf, stated support for SB 244 as a father, grandfather, foster parent, and elementary school employee. He told members he has been a crossing guard on Danby Street in the mornings for four years. Two intersections in that area feed students from military housing to an elementary and middle school. Speeding is a daily occurrence. The peak morning rush hour occurs at the same time children are heading to school. Twice since the winter break, cars have run his stop sign while children were in the crosswalk. He has made many attempts during his four years to increase community awareness of the danger to children but believes more needs to be done. He asked members if the Legislature is willing to protect construction workers, why not children? In October he contacted Senator Wilken and asked that he introduce

legislation. Just the day before, a student was killed in Juneau while riding a bike to school. He pointed out that the existing signage in Fairbanks is inadequate and not visible in the dark. He urged members to pass this legislation to better protect children.

8:15 a.m.

SENATOR HOLLIS FRENCH asked Senator Wilken if SB 244 would apply 24 hours per day or only during the actual hours that children travel to and from school. He noted in Anchorage, flashing lights at the school zone are turned on 45 minutes before school starts and drivers must slow down to 20 mph. Once school begins, the lights are turned off and normal highway speed applies. He questioned whether a person could get a double fine at 3:00 a.m. or only during times when children are present.

SENATOR WILKEN responded:

...subject to a statute there's a change in the speed as you've just spoken to and it lowers or raises the speed limit depending on time and that's already addressed in current statute so if you violated this speed at that time - the time of day that that particular speed was in effect, then that would be the double fine, so your example - 3 a.m. - no.

SENATOR FRENCH asked if this law would apply only during the lowered speed limit times.

SENATOR WILKEN said if a person breaks the speed limit when the speed is lowered because children are arriving at or leaving school, that person would be subject to SB 244. This bill would not apply at other times; the normal speed limit law would apply.

SENATOR FRENCH asked if the driver would violate normal speed violations during evening hours and double fine speed violations during heightened school hours.

SENATOR WILKEN affirmed that is correct.

CHAIR SEEKINS pointed out the language in the bill says "in a school zone" so that a literal reading of that language would mean the fine would be double if a person sped in a school zone any time of day. He said if Senator Wilken's intent is to apply

the double fine in a school zone during the time the reduced speed is in effect, the language should be clarified.

SENATOR ELLIS noted that was his question - he understands the sponsor's intent but read the bill to say differently.

SENATOR WILKEN said current law allows for a change to the speed limit in a school zone but he would find the citation to clarify it or suggest language to amend the bill.

CHAIR SEEKINS asked who would get the revenue from the fines.

SENATOR WILKEN thought it would go to the general fund like any criminal fine.

CHAIR SEEKINS recalled that many years ago, a line-up of Seattle motorcycle cops would stop drivers in school zones one minute after the restricted speed was in effect. Fines from those violations were a major source of revenue for the city.

SENATOR WILKEN said he recently spoke with a Washington State official to learn about Washington's program; the state splits the revenue with the municipalities. He was told the fines bring in millions of dollars. He then informed members he would work on the definition of "school zones."

8:21 a.m.

SENATOR THERRIAULT asked if the state has a surcharge on different traffic fines that goes to the police officers' training fund.

SENATOR WILKEN said he is not aware of that and does not believe this bill would have any effect on it.

CHAIR SEEKINS suggested that enforcement would be immediately heightened if the revenue goes to the municipalities.

SENATOR THERRIAULT said [if that were the case], those municipalities that want to provide services to their constituents could pay for the program.

SENATOR WILKEN informed members that in FY '03, there were 481 school zone violations so the bill could be a revenue generator.

CHAIR SEEKINS asked Mr. Springer to testify.

MR. HENRY SPRINGER, testifying on his own behalf from Anchorage, told members that he was the executive director of the Associated General Contractors (AGC) when the construction zone legislation was enacted. He worked closely with former Senator Donley on that bill at that time. That bill doubled traffic violation fines in construction zones and was modeled after similar legislation enacted in other states. Statistics have shown that legislation has been very successful for two reasons. First, it does not take a lot of effort to implement; the new signage can be coupled with other signs that identify school zones. Second, it is inexpensive from the standpoint of law enforcement. The goal is to increase safety for pedestrians. He said he is confident that what worked in construction zones will work in school zones.

[Senator Ogan arrived.]

LIEUTENANT AL STOREY, Alaska State Troopers, Department of Public Safety (DPS), told members that 481 citations were issued in school zones in FY '03. The Anchorage Police Department issued 410 of those. The Anchorage Police Department has enhanced its enforcement effort for several years; that effort has had a real impact on the driving habits of people in school zones. He believes that a statewide effort to slow drivers in school zones would modify driving behavior and make those areas safer for children.

LIEUTENANT STOREY said that while comparing SB 244 with the programs in Oregon and Washington, he discovered a few interesting points. Washington State has an aggregated penalty for school zone violations. The base fine amount for the slowest speeding violation is \$100. The penalty in Washington for passing a school bus when its flashing lights are activated is \$327. The State of Oregon's violation and infraction system differs from Alaska's. Oregon has class A through D violations. The lowest school zone violation is a class B violation, which costs \$123 for driving 1 to 10 miles over the speed limit in a school zone. A class A violation - driving 30 miles per hour or more in a school zone - costs \$672. The cost for a commercial vehicle is \$1,248. Oregon has taken a strong stand on school zone violations and has experienced great success in making those areas safer for children. He told members DPS supports this legislation. He also said, speaking of the issue of when the zone is activated for enforcement purposes, the area is only considered a school zone when the yellow lights are flashing or, in areas with no lights, during the hours posted on the signage.

SENATOR OGAN expressed concern about school zones without flashing lights. He said a school zone exists between 7:25 a.m. and 8:15 a.m. around a new charter school in his district. Drivers must stop before they get to the school zone and look at their watches, which he believes is hazardous. In addition, not all drivers have watches. He confessed that he has driven through those school zones without slowing down because he has been driving in that area for years before it was a school zone and forgot about the change. He said he would be more comfortable if the double fine penalty applied only in school zones with flashing lights and planned to talk to the sponsor about offering an amendment to that effect. He asked Lieutenant Storey if he is aware of a person using the defense that he or she was not wearing a watch.

LIEUTENANT STOREY said not that he is aware of.

SENATOR THERRIAULT asked how a construction zone is delineated and whether, when a school is constructed, the property owner must establish the school zone with signage.

LIEUTENANT STOREY said that construction zones, by statute, are clearly identified by signs. Typically, signs are placed that warn drivers they are approaching and leaving a construction zone and then another sign is posted that warns of double penalties for violations within that zone. He said it is his impression that the intent of the bill is to post an additional sign warning of double penalties on the established school zone signage.

SENATOR THERRIAULT asked if the double fine could be imposed around new or charter schools that have no signage.

LIEUTENANT STOREY said for enforcement purposes, the school zone would have to be marked with either flashing lights or an additional warning sign.

SENATOR THERRIAULT replied, "So no signs, no double fine."

LIEUTENANT STOREY said that is correct.

CHAIR SEEKINS asked if anything in statute or regulations requires a driver to be aware of the time.

LIEUTENANT STOREY said not that he is aware of.

CHAIR SEEKINS noted a driver could fall prey to a violation inadvertently.

LIEUTENANT STOREY said that is a possibility but many variables would alert a driver that children are traveling to school.

CHAIR SEEKINS asked if the double fine sign requirement for construction zones is in statute or regulation.

LIEUTENANT STOREY thought it was required by regulation.

SENATOR WILKEN thought Chair Seekins was asking whether double fines could not be imposed if no signs are posted.

LIEUTENANT STOREY said he believes the statute says the area must be an identified highway construction zone. He affirmed that the AST does not write citations for double fines unless the signs are posted.

SENATOR WILKEN added that 13 AAC 02.325 says to be a school zone, the area must be posted with an official school, school crossing, or speed control sign.

SENATOR ELLIS stated, "But it need not be posted as double fines in a school zone because before we talked about - you anticipate there being additional signage that says double fines so that would have to be in place to trigger the doubling of the fine."

SENATOR WILKEN asked Senator Ellis if he was asking if no double fines could be imposed if no double fine signs were posted.

SENATOR ELLIS asked if that is what SB 244 says.

SENATOR WILKEN said he does not believe so.

CHAIR SEEKINS agreed and noted that is why he asked if that requirement is in regulation or statute. He noted it appears to be in regulation.

SENATOR WILKEN replied:

That I don't know. I guess I just anticipated that it would be much like the construction zones - that if you really wanted the law to have some teeth, you would go to the minimal effort of just putting up a sign to complete the process of what we're trying to do here - get people to slow down.

SENATOR ELLIS asked if the fines would be doubled only in those school districts that choose to bear the cost of additional signage.

SENATOR WILKEN said he would get an answer to that question.

CHAIR SEEKINS said that is the situation with construction zones. He asked Senator Wilken if his intent is to get drivers to slow down to protect children.

SENATOR ELLIS said he appreciates Senator Wilken's intent but feels some of the details need to be worked out.

SENATOR WILKEN offered to get back to the committee with answers.

MR. MYERS said sometimes rules and regulations are imposed on schools with no funding and asked if some of the revenue from the fines could go to the school districts to cover the cost of the signage.

SENATOR THERRIAULT said part of the answer is linked to some of the information Senator Wilken will be providing because there may be no requirement to post that the fines are doubled so the existing school zone signs may suffice. He said once members get an answer to the first question, they will know whether the second question is a problem.

SENATOR WILKINS said he would also find out where the funds go.

CHAIR SEEKINS announced the committee would put SB 244 aside to await answers to members' questions and take up SB 203.

8:44 a.m.

SB 203-OFFICE OF ADMINISTRATIVE HEARINGS

SENATOR GENE THERRIAULT, sponsor, told members that the Senate Judiciary Committee held a few hearings on this subject last year. SB 203 is a complex piece of legislation. He has continued to discuss with the Murkowski Administration how to fashion and implement the legislation. He said his goal is to refresh members' memories on the legislation and to prepare members to consider another committee substitute (CS) in the next week.

SENATOR THERRIAULT explained that the concept of a panel of administrative law judges has been in the legislative process for a number of years. Senator Ogan worked on this issue for a number of years. The purpose of SB 203 is to separate the administrative adjudication process from the agencies that promulgate and enforce regulations. Currently, an agency writes regulations and that agency's in-house staff acts as the enforcer, judge and jury over the enforcement of the regulations. Quite often constituents have contacted legislators complaining that they are not getting a legitimate opportunity to question the fairness of regulations from the agency that wrote those regulations.

SENATOR THERRIAULT pointed out the concept of SB 203 is to form a centralized panel of hearing officers within the Department of Administration (DOA) to provide an arm's length between the agency and the person acting as judge and jury. The federal government and a number of states use this approach with good results. He said it is not his intent to create a centralized pool and lose expertise. However, the staff with adjudicatory functions in some agencies have extra time. His thought is to have two or three hearing officers specialize in certain issues and be assigned to a department. They would also be cross-trained so that if they have extra time they could help out with the caseload in another agency. He believes that will enable the state to better utilize the staff it has and increase confidence among Alaskans that they are getting a fair shake. In addition, it should lead to better regulations because agencies will know that the regulations they write will be adjudicated by a truly independent person who is not pressured to back the department.

SENATOR THERRIAULT informed members that their packets contain a CS that contains technical changes.

CHAIR SEEKINS clarified that version U was before the committee.

SENATOR THERRIAULT told members that a blank committee substitute was brought before the committee last year but, rather than propose one more [at this time], he is attempting to incorporate input from the departments into one document. He noted that the testimony the committee will hear today will provide members with an overview and will not address any particular version.

SENATOR OGAN told members that several years ago, he and staff worked to move a hearing officer out of what he recalled to be the Department of Revenue (DOR) because of the industry's

perception [of an unfair system]. He said the change worked well.

CHAIR SEEKINS said he totally supports the concept and that his questions are for the purpose of clarification. He then asked Mr. Stancliff to testify.

MR. DAVID STANCLIFF, staff to the Administrative Regulation Review Committee (ARRC), gave the following synopsis of the measure.

Just to bring committee members back up to speed a little bit and give you an idea of where we're at after work over the interim, the version you had before you was the State Affairs version. We had discussed some amendments to that version but, as Senator Therriault mentioned, it would probably be a better use of the committee's time to now put those together in a package of larger, more policy-oriented amendments that have been discussed with us by the administration.

As has happened in other states, this issue is really not a partisan... [END OF SIDE B]

TAPE 04-1, SIDE B

MR. STANCLIFF continued:

... of how to make government operate better, save money, and also deliver better adjudication to people who may want to challenge government regulations. The devil's in the details - you've heard that before and, in this case, we have a very fragmented adjudication system spread out all over the state. We have hearing officers of every size and level of expertise located in all sorts of places. We have many boards and commissions that do a lot of hearings and what the administration has asked us to do is to be sensitive to the diverse situation we have and to try to amend this legislation to have as seamless a transition as possible.

Underlying the basis for that request are two things. First of all, I know it's Senator Therriault's desire and I'm sure the committee's also, not to simply disrupt the interest of the state in such a major

piece of reform. Maybe, more importantly, costs are involved and so to keep costs minimal and this transition as seamless as possible, we're now going through approximately 25 suggestions that have been given to us by this administration - we're still discussing some of those.... We hope to have at your next meeting, Mr. Chairman, those in the form of a CS and we will go through each one for the committee members to consider.

I want to state for the record that we have worked with people both inside and outside the process. We've worked with hearing officers, we've worked with other ALJs and, on February 3rd ... there is an expert panel assembled by the state Association of Administrative Law Judges who are going to discuss this piece of legislation. There's quite a bit of interest in it, it's sort of a new model. And they're going to be available on-line in the Terry Miller building from noon to 2. It's not a legislatively convened meeting but we're going to be able to listen to what they have to say about, first of all, how their states implemented and constructed their model, how it compares to ours, and hopefully they'll warn us on some of the things to avoid and some of the things to try to do. So I want to make members and staff to members aware of that meeting.

So we've had a lot of input from a lot of places. You do have on-line this morning Mr. Dan Houghton who is a chief financial officer for Alaska Regional Hospital. His particular institution, I believe, has been kind of in the centrifuge of the regulation process for almost 10 years now and is still not out. He would like to, if he could, speak to the committee and unless there are questions you would want me to answer at this time, I would defer to Mr. Houghton if he's on-line.

CHAIR SEEKINS asked Mr. Houghton to proceed with his testimony.

MR. DAN HOUGHTON, Chief Financial Officer at Alaska Regional Hospital, provided the following timeline of events that correlate to the discussion on SB 203.

- During 1991 to 1993, the Alaska Regional Hospital felt the Medicaid rates it was given were inadequate for its costs.
- Alaska Regional Hospital filed a rate appeal in 1994.
- A series of events left the hearing officer position vacant for approximately a two-year period so a hearing officer did not hear the case until 1997. The hearing lasted approximately three weeks.
- On May 26, 2000, the hearing officer who heard the case issued her decision. The Alaska Regional Hospital was seeking reimbursement of an additional \$4 million in costs.
- In June of 2000, the hearing officer's decision was submitted to Commissioner Jay Livey.
- In April of 2001, Commissioner Livey issued a decision. Most of his ruling reversed the hearing officer's decision.
- The Alaska Regional Hospital filed an appeal in April of 2001 in the Alaska Superior Court.
- The Superior Court ruled on the case on January 9, 2003. The Alaska Regional Hospital felt that ruling was in its favor and the dollar impact at that time was about \$4.2 million.
- The Superior Court, as part of the administrative ruling process, sent that ruling to the commissioner for action on the ruling itself. In February or March of 2003, Commissioner Gilbertson remanded the ruling to the hearing officer for action.
- The current hearing officer set oral argument for October of 2003 however, due to a change in maternity leave plans, the hearing officer departed earlier than planned. The Alaska Regional Hospital now hopes its oral argument will be heard in March or April of 2004.

MR. HOUGHTON told members the Alaska Regional Hospital is anxiously supporting this bill. The hospital [board] believes had the new system been in place, the process the hospital went through would have been much faster.

SENATOR OGAN asked for clarification of the Superior Court's ruling and the remand to the hearing officer.

MR. HOUGHTON explained that his understanding is that when the Superior Court ruled, it actually sent the case back to the commissioner for action upon that ruling. The

commissioner has the ability to either make a decision upon that ruling or remand it to the hearing officer for review and a "ruling on the ruling." That was the process the current commissioner chose.

SENATOR OGAN asked, "Is it the same - the fox is watching the hen house that you had before?"

MR. HOUGHTON said his quick estimate is that four to five different hearing officers dealt with this particular case over the last 10 to 11 years.

SENATOR OGAN asked if he has calculated the time value of money and how much that will be.

MR. HOUGHTON said he has calculated about \$2 million to \$2.5 million in interest. He repeated his support of the legislation, as the hospital board believes it will aid the process that the Alaska Regional Hospital and other facilities have experienced. He maintained that a centralized hearing officer panel will provide efficiency found in a group. The larger body will allow the proceedings to continue regardless of personal issues that may arise with individual hearing officers.

MR. STANCLIFF asked members to consider the following matters. No matter how one sides in Alaska politics, it is never in the best interest of government to do something it ultimately fails in and is costly. Under today's system, it may be impossible to get out of the regulatory centrifuge, unless the agency wants to release that party. He told members that the Alaska Regional Hospital case is one of many that he has heard of in which a party petitions for relief and the decision goes to the commissioner, is remanded to the hearing officer, and back and forth, on and on. More importantly, a 2001 National Law Judge Foundation paper and an examination by a law professor at UCLA provide the genesis of why this issue is before the committee today. Those papers are premised on the fact that when the courts give deference to agency decisions, many people suppose that deference is given because of all of the work the hearing officer may or may not have done - collecting evidence and taking testimony. However, that simply is not the case. The courts actually give deference to the last decision and the highest power in that decision making process, the commissioner. The courts do not even have to look at what the hearing officer did. He also asked members

to keep in mind the rule of necessity, which has developed over the years within the judicial system. That rule allows a judge to hear a case even if the judge is biased when there is no other way to deal with the case. His research shows that more frequently, over time, the courts have allowed those decisions to stand. As a result, the states have said:

Look, if we're going to have this expertise argument constantly before us that the agencies put up, and we're going to have commissioners who have perhaps ex parte contact making our decisions, and we're going to have courts upholding those decisions based on the rule of necessity, the only avenue for our citizenry and the people who represent them to have a fair and impartial hearing, is through a more impartial adjudicator. That, as much as anything, has driven the reform in other states.

MR. STANCLIFF said he is not intimately familiar with the Alaska Regional Hospital case so he does not know if that case is tinged with that problem. He asked members to consider that those problems are being factored into the discussion to change to independent adjudicators and create time limits on the process for seeking additional relief.

CHAIR SEEKINS said his impression is that it should be the state's responsibility, or the responsibility of the hearing officers, to reach a fair and just decision. Many times the perception of the outside party, when that party is aware of a personal relationship between the hearing officer and the prosecutor, is that the party will not get a fair hearing. He applauded Senator Therriault's effort to address this issue. He asked if SB 203 contains a provision that allows the panel to contract with an outside source if it does not have anyone available with an appropriate level of expertise.

MR. STANCLIFF said one of the amendments he is working on would allow the chief hearing officer to provide expertise at the hearing or allow the agency to conduct the hearing. The beauty of this model is that the chief hearing officer will be monitoring what is going on so the agencies will be aware of that oversight. He believes the amendment will address the expertise issue but not tilt it so far as to be used as an excuse to do away with due processes.

CHAIR SEEKINS said his concern is to be able to expand the pool beyond the panel on a case-by-case basis when necessary.

SENATOR OGAN asked Mr. Stancliff to recount for committee members the meeting between a hearing officer and a constituent when Senator Ogan employed him.

9:08 a.m.

MR. STANCLIFF told members when a constituent first came to then Representative Ogan's office, as staff he would explain that if an issue is in some form of adjudication or under legal proceedings, it is not always best or proper for Senator Ogan to get involved. In this case, the constituent asked Mr. Stancliff to attend a meeting with agency staff to verify whether the horror stories he described are true.

MR. STANCLIFF said he attended the meeting and the constituent asked questions that he thought Mr. Stancliff should hear the answers to. At one point, an agency representative warned him to be careful or the agency would be looking into other matters. He was speechless. That demonstrated to him the agency's level of impunity. The constituent's goal was to get out of the regulation process and get to court. That did ultimately happen but it took years. The agency called the constituent's bonding agent and caused him to lose his bond. The constituent spent millions to get through the administrative process to get to court to get a decision.

SENATOR THERRIAULT told members that agencies reviewed this legislation over the interim. Some of their comments and concerns were unfounded. He and staff worked with agency personnel to sift through which concerns were valid and drafted amendments to address them. One example is that the agencies noted that the appeal process is actually dictated by federal law in some areas, particularly when an agency uses federal funds. Those suggestions are being incorporated into a new CS.

SENATOR FRENCH asked, regarding the Alaska Regional Hospital's case, if the appeal process involved the hearing officer first, then the commissioner, then the Superior Court.

MR. STANCLIFF said in that case he believes the case went back and forth between the hearing officer and the commissioner and then went to the Superior Court.

SENATOR FRENCH asked if SB 203 changes that process or whether the commissioner will still be involved. He then expressed concern about the interplay between a complex dispute and the time constraints.

MR. STANCLIFF replied at this point, the time limit is not flexible enough. He has been working with the administration to make them flexible enough to consider and integrate the Administrative Procedures Act, complex matters, and federal requirements. He noted that there has been discussion about whether or not the courts should give deference to decisions of commissioners versus decisions of hearing officers versus decisions of hearing officers within the central panel. He told committee members they may want to consider whether the way the courts give deference based on the record and expertise versus the commissioner's ability to summarily overturn a decision should be changed. He pointed out that some commissioners have petitioned to continue to have that authority. SB 203 splits the difference down the middle: the commissioners would still have the ability to overturn, but the decision must be based on the record, factual and evidential, not simply on opinion. He suggested the committee might want to look at changing the deference if that language is removed.

SENATOR FRENCH asked what standard of review the Superior Court uses when it gets a commissioner's decision.

MR. STANCLIFF deferred to Mr. Hemenway.

MR. ANDY HEMENWAY, Hearing Officer, Department of Administration (DOA), said he believes the standard of review for a decision that goes up to the Superior Court on factual matters is the same as that for a case on appeal from Superior Court to the Supreme Court: substantial evidence. On questions of law, the Superior Court defers to the agency on matters within the agency's expertise, depending on the nature of the statute.

SENATOR FRENCH asked if the standard of review is set out in statute.

MR. HEMENWAY said he does not believe it is. He said it could be in the Administrative Procedures Act but he believes the decisions on appeal are a matter of case law.

SENATOR FRENCH asked if SB 203 changes the standards.

MR. STANCLIFF replied:

From the standpoint of the commissioner's ability to overturn a decision, I guess there's a change in the overall look at things but it does not change specifically what you just spoke to Mr. Hemenway about.

SENATOR FRENCH questioned, "So there is nothing in the act that tells a Superior Court judge how to analyze decisions of hearing officers or commissioners? You would maintain the same standards as set now?"

MR. HEMENWAY said that is correct.

9:17 a.m.

SENATOR THERRIAULT said as a result of conversations with the Department of Law, he believes the CS will say the commissioner still has the power to overrule, but only on a certain basis, and the commissioner will have to produce a written finding. The Department of Law supports that approach because when the commissioner overturns a hearing officer and no written finding exists, the Department of Law has to support the commissioner's action in court with no paper trail.

CHAIR SEEKINS announced that the committee would hold SB 203 and await the new CS.

SENATOR THERRIAULT informed members that Mr. Stancliff would spend time with individual members as soon as the new CS is prepared. He pointed out that the bill is complex and dry but makes big changes and that he has been working with the administration on the successful implementation of this bill.

With no further testimony, CHAIR SEEKINS adjourned the meeting at 9:19 a.m.