

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

June 22, 2004

1:50 p.m.

TAPE(S) 04-72

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

None

**COMMITTEE CALENDAR**

SENATE BILL NO. 1002

"An Act providing for a special deposit for workers' compensation insurers; relating to assigned risk pools and workers' compensation insurers; relating to the board of governors of the Alaska Insurance Guaranty Association; stating the intent of the legislature, and setting out limitations, concerning the interpretation, construction, and implementation of workers' compensation laws; relating to restructuring the Alaska workers' compensation system; eliminating the Alaska Workers' Compensation Board; establishing a division of workers' compensation within the Department of Labor and Workforce Development and assigning certain Alaska Workers' Compensation Board functions to the division and the Department of Labor and Workforce Development; establishing a Workers' Compensation Appeals Commission; assigning certain functions of the Alaska Workers' Compensation Board to the Workers' Compensation Appeals Commission and the office of administrative hearings; relating to agreements that discharge workers' compensation liability; providing for administrative law judges in workers' compensation proceedings; relating to workers' compensation awards; relating to an employer's failure to insure and keep insured or provide security; providing for appeals from compensation orders; relating to workers' compensation proceedings; providing for supreme court jurisdiction of appeals from the Workers' Compensation Appeals Commission; providing for a maximum amount for the cost-of-living adjustment for workers' compensation

benefits; providing for administrative penalties for employers uninsured or without adequate security for workers' compensation; relating to fraudulent acts or false or misleading statements in worker's compensation; and providing for an effective date."

HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

SB 1002 - No previous action to record.

**WITNESS REGISTER**

Mr. Doug Wooliver  
Alaska Court System  
303 K St.  
Anchorage, AK 99501-2084

**POSITION STATEMENT:** Answered questions about workers' compensation cases in the Alaska Court System

Commissioner Greg O'Claray  
Department of Labor & Workforce  
Development  
PO Box 21149  
Juneau, AK 99802-1149

**POSITION STATEMENT:** Discussed the need for reform of the workers' compensation system

Ms. Linda Hall, Director  
Division of Insurance  
Department of Community & Economic Development  
PO Box 110800  
Juneau, AK 99811-0800

**POSITION STATEMENT:** Discussed the impact of the current system on workers' compensation rates

**ACTION NARRATIVE**

**TAPE 04-72, SIDE A**

**CHAIR RALPH SEEKINS** called the Senate Judiciary Standing Committee meeting to order at 1:50 p.m. Chair Seekins and Senator Ogan were present. Because a quorum was not present, Chair Seekins announced the committee would hold a work session until other members arrive. He asked Commissioner O'Claray to begin and, since Senator French arrived, he officially called the meeting to order.

**SB 1002-INSURANCE & WORKERS' COMPENSATION SYSTEM**

COMMISSIONER GREG O'CLARAY, Department of Labor and Workforce Development (DOLWD), asked to set the stage for why this legislation was before the committee. He reminded members that legislation [SB 311] was introduced during the regular session that went through several iterations. The Administration met with representatives of organized labor, business, defense attorneys and claimants' attorneys to get input on the changes made to that bill. He indicated that Mr. Nordstrand would detail the differences between SB 311 as passed by the Senate and SB 1002 later.

COMMISSIONER O'CLARAY said it is critical to deal with the workers' compensation system now. Workers' compensation law is very complex and has taken years to fine tune to where it is today. The last major fine-tuning took place in 1988, which immediately followed a 25 percent increase in premiums. In the last few years, rates have been escalating again. He said over the last three years, the average rate on a cumulative basis has increased 35 percent. During the last year, some businesses have experienced a 60 to 70 percent increase in their premium rates. Early last year, the Administration focused on dealing with ways to adjust the workers' compensation system to slow down the escalation of premium costs. The Administration looked at three alternatives. First, it looked at changing benefits, which amount to about 38 percent of the \$210 million paid out in 2002 to injured workers. He pointed out that a little over 50 percent of the \$210 million went to medical providers for care. The amount that was paid to lawyers equaled about \$11 million. That was the only area the Administration felt it could address without attacking reimbursement rates or benefits for injured workers, which the Governor was not willing to change at this time.

COMMISSIONER O'CLARAY said the major criticism of the representatives of organized labor of SB 311 was aimed at two areas: the cost of the commission created under SB 311; and the fact that organized labor and industry felt their decision making influence on the commission panel would be reduced regarding appeals. Since adjournment of the regular session and the call for the special session, the Administration worked to change the bill substantially.

CHAIR SEEKINS asked Senator Gary Stevens and Senator Bert Stedman to join members.

COMMISSIONER O'CLARAY said if the Legislature does not deal with this issue during this special session, he fears in future years the only solution will be to reduce medical reimbursement costs and benefits to reduce the rates.

MS. LINDA HALL, Director of the Division of Insurance, said making changes to the workers' compensation environment is necessary for the following reasons, the first being premium increases. She said as of January 1, 2004, the average rate increase in Alaska was 21.2 percent; 17 classifications increased more than 50 percent. She referred to a chart in members' packets that represents the NCCI's overview of rate increases in 39 states. Alaska rated at the bottom with the highest increase in premiums for workers' compensation. Alaska has experienced a gradual increase. In 2002, the rates increased an average of 10.2 percent; in 2003, the increase was 3.5 percent; in 2004, the increase was 21.2 percent. In addition, Alaska [insurance] carriers have experienced a decrease in profitability - Alaska carriers have lost 5 percent more on average compared to other states between 1997 and 2002. In the year 2000, an average of \$1.54 was paid out in claims for every \$1 in premiums taken in. The cost of medical benefits has increased; those benefits comprise 55 percent of workers' compensation premiums.

The fourth component of Alaska's unattractive insurance marketplace is its assigned risk pool. Alaska's assigned risk pool has placed the largest burden on insurance companies from losses in the assigned risk pool of any state.

MS. HALL told members she believes Alaska needs available and affordable workers' compensation insurance and it needs to make the marketplace more attractive. She indicated that SB 1002 contains a number of insurance provisions - some from SB 311 and some new provisions. She described those as follows:

- Section 3 is from SB 311 and adds a requirement for an increase in deposits from all insurers - a flat \$1 million special deposit.
- Section 4 is new. It requires a separate deposit by insurance companies for their share of the losses in Alaska's assigned risk pool. Today, when there are losses in the pool, insurance companies pay their prorated share of those. If insolvency occurs, those losses are

reallocated among the carriers left in the marketplace. If deposits are required, money would be available to draw from so that an additional burden is not placed on insurers.

- Section 5 creates an order of priority in insolvency proceedings.
- Section 6 is new and requires that the assigned risk pool operate on a self-funding basis on a three-year moving average.
- Section 7 is from SB 311. It changes the composition of the Guaranty Association Board of Governors to provide broader representation.
- Section 111 repeals the 25 percent statutory cap on the surcharge for assigned risk pool rates. In order to make the pool self-funding, the artificial cap must be removed.

MS. HALL said those are the six insurance provisions in SB 1002 and offered to answer questions.

CHAIR SEEKINS asked Ms. Hall about the industry's position on Section 4.

MS. HALL said the industry is desirous of Section 4 because although it will tie up their assets, the industry is already statutorily required to make deposits. She noted that she was encouraged by industry to include that provision.

CHAIR SEEKINS announced a brief at-ease at 2:00 p.m.

Upon reconvening at 2:05 p.m., CHAIR SEEKINS asked Mr. Nordstrand to address the committee.

MR. SCOTT NORDSTRAND, Deputy Attorney General, Civil Division, Department of Law (DOL), told members he would provide a summary of the differences between SB 311 and SB 1002. He began:

I've given you a two-page sheet here that I think will be of some help - a significant differences sheet and the second page is actually a simplified chart so that we can all sort of follow along.

Let me start at the beginning. I'll start where the commissioner left off with the two basic concerns that were identified by the critics of SB 311 [that] I think really fall into two categories. One was the de novo review question and the relationship between the appeals commission and the hearing panels or whoever

actually did the trial - what was the review relationship? Secondly was the cost of the commission, vis-a-vis the amount of cases that it would have to handle based upon an estimate of what Superior Court appeals are brought now because, of course, the commission would be replacing the Superior Court.

What we looked at is we took the old bill, which - let me just run through it quickly here. The old bill, SB 311, had hearings conducted by panels of three. A new and improved hearing officer would sit on that panel - a lawyer admitted to practice in the State of Alaska with some experience in workers' comp. This person would be joined by two hearing board members - one from industry, one from labor, a citizen panel member ... and, much like the current system, they would hear the cases. They would decide the cases. The only real distinction at that level had to do with what power each of them had. In the bill there was a provision that the hearing officer or hearing examiner as we called them would have the power to say what the law is and instruct the other members on the law to run the hearing, that sort of thing. But other than that, it was pretty much like the present system and, as you know, that was an accommodation from our first bill that began with just an administrative hearing officer - part of the process that we went through when negotiating with organized labor about this.

That was the first level. The second level was a commission of three attorneys appointed by the governor, confirmed by the legislature, again with experience in workers' compensation law. And, of course, the intent was to create - I guess the two watchwords that we had for the bill were consistency and efficiency and we thought that this new system would do that.

Now let's compare the criticisms to that structure and what we've done in the new structure. Criticism number one was the cost of the commission itself. Three fairly high paid attorneys - that was somewhat by design to attract attorneys to take those positions but we understood the criticism. So what we did first was we eliminated two of the lawyers from the commission in the new bill and replaced these two lawyers so that there'd be only one remaining. One

lawyer would act as chairman of the appeals commission under SB 1002. The other commissioners would be replaced by citizen representatives, much like the original hearing panel. So essentially we changed the place where citizen representation participated in the process and we created two employer and two employee positions for commissioners to sit on this commission. They would be a five-member commission at this point and they, too, would receive advice from the attorney on the panel as to what the law was but, frankly, we're not requiring that they have to follow that advice in this bill.

The members of this commission will sit in panels of three, just like the three attorney panels would have sat, but we didn't want to put too much of a burden on citizen members so we had two each so there could be some relief pitching, so to speak, and they wouldn't have to do all of the cases with two volunteers. They are provided to be paid fairly well as far as volunteer commissions go - \$200 a day per diem, which is designed to get people who are qualified and capable to want to take these positions. Even at that the cost associated with having one full-time commissioner - and, by the way, we reduced the cost of that commissioner significantly too in this bill. The old bill was about \$100,000 a [year] for the chair. The present bill is a range 27 A through F, which is comparable to the chief administrative law judge under SB 203, and that's between 76 and 91 thousand, depending on which step the person would come in at....

So, overall, we've cut the cost of two commissioners and used lay people on the commission and we think the savings there means that - and you know I'm not the fiscal note guy but it about cut the cost in half from the \$600 and some odd thousand dollars down to 300 or less. That's what I estimate that to be and the fiscal notes speak for themselves.

So that's how we addressed the cost. And the other way we addressed the cost, by the way, is at the hearing level. At the hearing level we eliminated lay participation altogether and just not having this hearing panel saved \$60,000 off the bat at that level because there is 7 and 7, as you recall. And rather

than have anyone in the Department of Labor do these hearings who might be beholden to the commission, and I think that was some of the criticism of the old hearing of the hearing examiner provisions in SB 311, to move all the hearings to the central panel in the Department of Administration that's to be created and I guess start up in July of '05.

So an administrative law judge from the central panel will be assigned to hear each case and they will be required to have certain workers' compensation experience that's consistent with what we had before the hearing examiners in our old bill, so we're not 'dumbing' down the position in terms of experience and capabilities. They'll have to have the same experience and so they'll do the hearings.

Now let's get to the second criticism, not just cost but de novo. And this is where I think this proposal is very, I think, innovative and answers the concerns that were raised, legitimate concerns. And that is, rather than having a commission of lawyers have de novo review of factual determinations of this three person panel below where the lay people participated, both for labor and industry, we're going to let an administrative law judge do the initial hearing and then let the lay people - a majority of lay people on the commission can have the de novo review. They will have the power to review de novo to create consistency and right wrongs that need to be righted or to affirm decisions that we assume most of them would be affirmed. And so, in that way, we've addressed, we think, both of the concerns about access to the system for lay people and those with experience with labor and management would increase the access. We've expanded the influence. And then we've addressed the cost as well.

CHAIR SEEKINS asked how this [new system] will establish a body of precedent.

MR. NORDSTRAND said the key in understanding the multiplicity of decision makers in the present system is:

... that right now we've got all these different panels, all kinds of different combinations. There could be 30; there could be 10, who knows? It depends

on how you take the 7-7 and 8 and mix them up. And they come to a decision collectively and then it goes to 30, 40 different Superior Court judges. None of these decision makers at each level have the power to tell the other set that they are wrong. One Superior Court judge, for example, deciding a legal question on the Workers' Compensation Act cannot say ... I've decided that this is the law so this Superior Court judge must agree with me and decide that way.

The same is true of these panels. One panel of three at the hearing level can't tell another panel of three that's the law you have to decide our way. Precedent is the sense of coming together of the law in a way that allows those below to understand what the law is and follow it. The only way to do that is to have a central place where decisions are made.

Now the one accommodation to consistency that we've made for practical reasons is we have five members on this panel and so there's two labor or two employer/employee so there could conceivably be a difference of opinion between one panel of an employer/employee and the chair and another one. We would hope that part of the role of the chair would be to avoid that and to encourage consistency and thought because that same attorney chairman will be there for all the decisions. But now we will be able to have precedent established by this commission that can be relied upon by the six administrative law judges who will be doing workers' comp and we'll just have that many less decision makers and that much more certainty and outcome. So that's the consistency issue.

CHAIR SEEKINS announced that Senator Therriault joined the committee some time ago. He then opened the meeting to questions from members.

SENATOR FRENCH asked where the de novo review section is located in the bill.

MR. NORDSTRAND referred Senator French to page 43, paragraph (b), and pointed out that the language is identical to the version of SB 311 that passed out of the Senate Judiciary Committee.

SENATOR FRENCH asked about the number of Superior Court judges.

MR. NORDSTRAND did not have the exact number but said that Anchorage alone has 13.

SENATOR FRENCH asked if DOL considered assigning these cases to one Superior Court judge for the sake of consistency.

MR. NORDSTRAND said that was considered and part of the answer to the question is that given the fact that Superior Court judges tend to remain on the bench for extended periods of time, the idea of creating that kind of single authority on all workers' compensation cases would centralize power and decision making and not be good public policy. He added that DOL is comfortable with having representatives of labor and management sit at the commission level, not just attorneys or a single judge.

SENATOR OGAN thanked Mr. Nordstrand for the work he has done on this legislation and noted he supported SB 311 but is more comfortable with the new version. He maintained that he has been a big supporter of the administrative law judge central panel idea for a long time. He believes the general public is unaware of the impact that the adjudication of administrative law has on them. He explained that he supported SB 311, even without the administrative panel, because businesses are being strangled by rising insurance costs. He asked Mr. Nordstrand to address the reasons for the huge increase in those costs and whether SB 1002 will create some relief.

MR. NORDSTRAND referred to Commissioner O'Claray's statement about the \$11 million cost of legal fees and said if one assumes that 20,000 claims are filed each year but only a few hundred go to a hearing and between 40 and 50 go to Superior Court, and perhaps 12 are appealed to the Supreme Court, one must realize that the money is being spent where attorneys are participating. He indicated, for the sake of argument, that attorneys' fees might be awarded in 500 cases per year so the \$11 million is being spent in a very few number of cases. He continued:

I understand, and you're welcome to have the director of the Division of Workers' Comp come here and talk to you a little bit about the scheduling issues that happen because of the citizen panels at the hearing level. That's not to say that folks don't do their best to participate and that they try to accommodate the schedule for hearings, but hearings can be long, drawn-out affairs. Often hearings have to proceed with

only two members - one hearing officer and a labor member or an industry member and there is not the benefit of that balance simply because there's no one available. That's what they do - they go forward.

And so it's difficult to accommodate scheduling at that level with that many different hearings because you're talking about hundreds. And so what we can do with the central panel situation is we have essentially six captive judges whose job will be to take care of these hearings day in, day out everyday. So, at the outset, I think scheduling will become easier. Time is money and law and I think that can help.

Even more important though is what happens at the commission level, the appeal level. We heard testimony in Senate Finance from defense practitioners who talked about the time it takes for a board decision record to be certified on appeal to Superior Court. It can be very long. I mean we had one, the attorney who spoke I think was Connie [Indisc.] from Holmes Weddell. She mentioned she had a case that had been more than a year in time to just get the record ready to start the process. And then the next step is briefing and briefing is conducted in the Superior Court in a very formal way that it should be, much like the Supreme Court. This bill will allow the commission some flexibility on how much briefing, how detailed it will have to be depending on the case. In other words it won't necessarily have to be at that same, I guess, Supreme Court level that is required now in Superior Court.

And then finally is the time for decision-making. In this bill, the commission has 90 days from the time the case is right, either because the briefing is done and there's no oral argument to be held or the oral argument is done. In the case of the Superior Court, the recommended time is up to 180 days. So the whole process will be shorter.

Now let me tell you why I think that saves money. The obvious way it saves money is just lawyers working on a case less time probably is going to save money. Anybody who has ever hired a lawyer probably knows that. But secondly, there's the effect on the

participants. If you're an employer and you're paying benefits either as a self-insured employer or your insurance company is paying him after a board decision and then you go on to go to the Superior Court, you think you've been wronged, this is an incorrect decision, I shouldn't have to pay some or all of these benefits - when you go forward with this case, you could have two years to wait, a year and a half to wait to find out - and let's say in this particular case you were right. The Superior Court judge says you were right - you shouldn't have paid. The result for you is basically a bad one. It's good news, bad news. You don't have to pay anymore but you likely will never get all the money you paid back so the longer the process takes, the more it could affect that employer in a bad way and that is a cost to the system but there's an even more important cost and that's the alternative.

If an employee is denied benefits at the board level now, and they want to appeal, they go through a superior court process that could take two years, a year and a half, a year. But all that time they're going to have no benefits, they're going to have no medical payments, they're going to have house payments to make and they're going to have all those troubles that could be alleviated in a more quick manner. What we're hoping is that this commission can do a case, start to finish, on average in six to eight months as opposed to a year or more and that will in and of itself save money.

Now how much money and what it will do to rates? I'm not the expert but we think that this efficiency element will reduce the cost of at least some portion of that \$11 million.

SENATOR OGAN interjected to say he feels the administrative law judge panel system creates a fair and impartial way to review the administrative law because the panel is not employed by the commissioner [who made the decision]. He pointed out that other states have found that having an independent panel provides accountability and improves efficiency and regulations. He then stated for the record that he does not have a financial interest in this legislation but he does have an active workers' compensation claim so he declared a potential conflict of interest.

CHAIR SEEKINS noted that in previous discussions about SB 311, many commented that any reform to the existing workers' compensation process would come at a cost to the injured employee. He asked Mr. Nordstrand if he sees any validity to that claim.

MR. NORDSTRAND said he would challenge anyone to look at the bill and find that problem in the system. He stated,

Frankly, we are starting now with an administrative law judge panel that was unanimously passed by both houses of the Legislature. It is a great idea and we are simply adopting that as the basis for making that initial decision so I can't imagine how that would not be fair to start with. And secondly ... we've dialed back the lawyers in the process here. We had three lawyers to do the commission and now we've said ... we'll only have one and we'll actually give over the majority of the commission to the lay panel member, to the citizens, representatives as they were on the workers' comp board and ... it's hard to see how that couldn't be viewed as at least fair and even-handed.

2:25 p.m.

CHAIR SEEKINS asked Mr. Nordstrand if he believes that SB 1002 will shorten the process between the claim and the final adjudication, thereby either addressing illegitimate claims and bringing that settlement earlier in the process and eliminating the long interim period for either party, and result in less expense.

MR. NORDSTRAND said that is true but added that there is another element of consistency that has nothing to do with the specific cases that go to the commission itself. That element involves the cases that people decide not to take to the commission. He explained that over time, the commission will hand down decisions that will outline details of the law that are presently unclear. Those details will provide greater certainty about what would happen if a particular case went before the commission. He suspected that once the workers' compensation attorneys learn that the law is consistent in certain areas, they will not appeal those cases again.

SENATOR FRENCH said he was no fan of the appeals commission but in SB 311, three lawyers would have been interpreting the law

for the hearing panel. In SB 1002, a lawyer and two lay people will be telling judges what the law is, which he sees as "topsy-turvy." He questioned how one can expect the workers' compensation system to gain respect for decisions made by lay people when judges underneath them have already done a good job at it.

MR. NORDSTRAND replied that in the present system, lay people tell claimants what the law is because most of the cases are not appealed. He countered:

All we're saying is that administrative law judges that are not judges in the traditional sense - I mean they are hearing officers, they are professional, they are going to be impartial but they're not constitutional judges, they're not Superior Court judges. We are simply letting the commission that is going to be the central authority with regard to the law and the factual conclusions that are reached in cases have the final say. If the law is wrong, there is a very simple remedy and that is the Supreme Court and I'm sure they'll correct the commission a time or two.

SENATOR OGAN noted that four of the five Senate Judiciary Committee members are lay people and they pass laws, thereby telling judges what the law is. He added that there are people who are not trained attorneys who have good judgment.

CHAIR SEEKINS referred to paragraph (b) on page 43, the de novo review provision, and noted the de novo review is restricted at the first level regarding the credibility of testimony of the witness. The review panel will not be deciding who is telling the truth; the panel of attorneys will make that decision.

MR. NORDSTRAND affirmed that is correct and said the same limitations that were imposed upon the trial level and the commission level apply [in that provision.] He reminded members that there are two kinds of de novo review. In de novo review of law, the judge interprets the law for those below. In SB 1002, the de novo review applies to factual conclusions. He explained:

But the difference between weighing the evidence and this substantial evidence test that now applies is what we're talking about here and what we're going to do is to let the commission weigh the evidence, like this. A substantial evidence test to review is sort of

like saying if a case comes before an administrative law judge or currently a panel and it may or may not be a workplace injury ... one idea is well, he hurt his back fishing on the Kenai, the other one says he was lifting a box at work. That's the issue. Well, at the end of the hearing there will be evidence on both sides. There will be testimony from all parties. There will be doctor's evidence. There will be all kinds of evidence. And a substantial evidence test simply means the board or the hearing panel picked occupational injury at work and there was a substantial pile of evidence to support that conclusion but we're not going to go look at the pile over here by 'went fishing and hurt his back' because we've got this pile here and it's substantial. All we're saying de novo review is is that you get to grab onto both bits of evidence and see if it makes sense in the judgment of this one attorney and two citizen members. That's the review that's allowed here but not on credibility as you say.

CHAIR SEEKINS said he just wanted to be clear that this bill does not require absolute de novo review. He then asked if, in conclusions of law, one member of the review panel is an attorney.

MR. NORDSTRAND said that is correct and explained that the new commission will have one attorney schooled in workers' compensation, who will serve as chair. That person is charged with advising the other lay members with what the law is. He noted the person is not charged with instructing the lay people intentionally because there might be an occasion where the other two panel members might want to overrule the attorney. If the matter comes down to a legal question, the case is likely to go before the Supreme Court.

CHAIR SEEKINS repeated, for the purpose of clarification, that the intent is not to reduce compensation for those people with legitimate injuries but rather to shorten the timeframe from the time those people appeal until a final decision is made.

MR. NORDSTRAND agreed and added the intent is also to encourage less litigation by consistency of decision making and creating a clear body of law.

SENATOR FRENCH asked for information about the decision rates by Superior Court judges and the degree to which the Supreme Court

overturns those decisions. He felt it necessary to see evidence that the Superior Court judges are making inconsistent decisions.

MR. NORDSTRAND said he does not have those numbers but numbers were presented in committee hearings in the past, although he did not know where they were generated.

CHAIR SEEKINS thought members had those numbers and said he believes the appeal numbers are very low and that the Superior Court judges have done a good job in coming up with decisions that have not been overturned on appeal.

MR. NORDSTRAND said knowing how many times a Superior Court judge reverses a panel says nothing about consistency because there is no consistency among the decisions made by Superior Court judges.

SENATOR FRENCH clarified that he was asking how many times Superior Court judges are overturned by the Supreme Court on workers' compensation decisions.

CHAIR SEEKINS believed the number was less than 2 percent.

SENATOR FRENCH said if he were trying to convince this body to change the law, he would have those numbers handy because that would provide strong evidence that the Superior Court judges are rendering inconsistent decisions.

CHAIR SEEKINS said he was not sure that is what the committee is trying to address. He continued by saying that Mr. Nordstrand is saying a body of law can be built so that a person can look at previous decisions when contemplating an appeal.

MR. NORDSTRAND agreed and noted that a defense practitioner testified before the Senate Finance Committee last month and said a board panel in Fairbanks recently rendered a decision on a legal question concerning workers' compensation law. The following week, a panel from Anchorage addressed the same legal question and reached the opposite conclusion. He said the Anchorage case is likely to be appealed to a Superior Court judge.

TAPE 04-72, SIDE B

MR. NORDSTRAND said an appeal will probably also be filed in the Fairbanks Superior Court and the results could flip. He said the

only way there can be a final resolution to that dispute is for one or both parties will have to ask the question before the Supreme Court. He said under SB 1002, that would not be allowed to go beyond the commission level and he believes that will be good for the whole system.

SENATOR THERRIAULT noted that according to information from a previous witness, 36 cases are appealed to the Superior Court and 25 percent of those cases are appealed to the Supreme Court. He maintained that the committee has no information on the number of cases that are overruled, but a lot of cases are not appealed so that inconsistency is left to stand.

MR. NORDSTRAND added that people stop litigating for a lot of reasons. He said two-thirds of those cases fall off because the claimants believe the Superior Court was correct or that their chances of prevailing in the Supreme Court are low. Therefore, the inconsistencies remain and that is what could be avoided with passage of SB 1002. He noted another thing that was added to the bill at the suggestion of Senator Bunde that allows the director of the Division of Workers' Compensation to investigate workers' compensation fraud and it gives people who want to provide information on potential fraud a certain level of immunity. That is patterned after the insurance code provisions. It will allow those with the expertise on workers' compensation to assist in investigating fraud.

SENATOR THERRIAULT asked Mr. Nordstrand to cite those sections. He also noted that he has heard complaints from constituents about the length of time workers' compensation claims take to resolve. Those people are also aware of others who are abusing the system so he supports the provision to stop the abuse.

SENATOR OGAN said his workers' compensation claim is the result of an injury he sustained while flying on state business. He has seen several doctors, one appointed by the workers' compensation system. He has found the doctors to have a wide difference in attitudes. He asked if most litigation is for disability claims.

MR. NORDSTRAND did not know but pointed out that the fraud provisions in Section 98 also apply to doctors and anyone else involved in the system.

SENATOR OGAN clarified that the doctors he referred to were not trying to defraud the system but merely had different positions.

MR. NORDSTRAND said instances of too much treatment for a particular injury that benefits the providers are reported all of the time.

CHAIR SEEKINS announced that members need to attend other meetings today so the committee would take public testimony tomorrow. He asked anyone who is interested in testifying to contact Brian Hove, committee aide.

SENATOR THERRIault asked Mr. Wooliver for information on the number of Superior Court judges in Alaska.

MR. WOOLIVER said the Alaska Court System has 34 Superior Court judges.

2:50 p.m.

CHAIR SEEKINS recessed the meeting to the call of the chair.  
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