

**ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE**

January 28, 2020

1:30 p.m.

MEMBERS PRESENT

Senator Click Bishop, Chair
Senator Gary Stevens, Vice Chair
Senator Mia Costello
Senator Joshua Revak
Senator Elvi Gray-Jackson

MEMBERS ABSENT

All members present

OTHER LEGISLATORS PRESENT

Senator Lora Reinbold

COMMITTEE CALENDAR

SENATE BILL NO. 50

"An Act imposing an annual educational facilities maintenance and construction tax on net earnings from self-employment and wages; relating to the administration and enforcement of the educational facilities maintenance and construction tax; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 76

"An Act repealing the Workers' Compensation Appeals Commission; relating to decisions and orders of the Workers' Compensation Appeals Commission; relating to superior court jurisdiction over appeals from Alaska Workers' Compensation Board decisions; repealing Rules 201.1, 401.1, and 501.1, Alaska Rules of Appellate Procedure, and amending Rules 202(a), 204(a) - (c), 210(e), 601(b), 602(c) and (h), and 603(a), Alaska Rules of Appellate Procedure; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 50

SHORT TITLE: EMPLOYMENT TAX FOR EDUCATION FACILITIES

SPONSOR(s): SENATOR(s) BISHOP

02/11/19	(S)	READ THE FIRST TIME - REFERRALS
02/11/19	(S)	L&C, FIN
04/16/19	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)
04/16/19	(S)	Heard & Held
04/16/19	(S)	MINUTE(L&C)
01/28/20	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 76

SHORT TITLE: REPEAL WORKERS' COMP APPEALS COMMISSION

SPONSOR(s): SENATOR(s) WIELECHOWSKI

03/06/19	(S)	READ THE FIRST TIME - REFERRALS
03/06/19	(S)	L&C, JUD, FIN
01/28/20	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

DARWIN PETERSON, Staff
Senator Click Bishop
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Reviewed the changes in the committee substitute (CS) for SB 50, Version S, on behalf of the sponsor.

TOM KLAAMEYER, President
Anchorage Education Association
Anchorage, Alaska

POSITION STATEMENT: Testified on behalf of the 13,000 members of AEA in support of SB 50.

WILLIAM HARRINGTON, representing self
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to SB 50 because it disproportionately affects lower income workers.

BETH SHORT-RHOADS, representing self
Sitka, Alaska

POSITION STATEMENT: Testified in support of SB 50.

SCOTT MACMANUS, Superintendent
Alaska Gateway School District
Tok, Alaska

POSITION STATEMENT: Testified in support of SB 50.

LISA PARADY, Executive Director
Alaska Council of School Administrators (ACSA)
Juneau, Alaska

POSITION STATEMENT: Testified in support of SB 50.

CLAY WALKER, Mayor
Denali Borough
Healy, Alaska

POSITION STATEMENT: Testified in support of SB 50.

NILS ANDREASSEN, Executive Director
Alaska Municipal League (AML)
Juneau, Alaska

POSITION STATEMENT: Testified in support of SB 50.

SENATOR BILL WIELECHOWSKI
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As sponsor, introduced SB 76.

DAVID DUNSMORE, Staff
Senator Bill Wielechowski
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Reviewed changes in the committee substitute (CS) for SB 76, Version M.

CHANCY CROFT, representing self
Anchorage, Alaska

POSITION STATEMENT: Testified with concerns about the effectiveness of the commission during the discussion on SB 76.

ACTION NARRATIVE

[1:30:13 PM](#)

CHAIR CLICK BISHOP called the Senate Labor and Commerce Standing Committee meeting to order at 1:30 p.m. Present at the call to order were Senators Costello, Stevens, Gray-Jackson, Revak, and Chair Bishop.

SB 50-EMPLOYMENT TAX FOR EDUCATION FACILITIES

[1:32:20 PM](#)

CHAIR BISHOP announced the consideration of SENATE BILL NO. 50, "An Act imposing an annual educational facilities maintenance

and construction tax on net earnings from self-employment and wages; relating to the administration and enforcement of the educational facilities maintenance and construction tax; and providing for an effective date."

CHAIR BISHOP noted that the bill was heard last year and there was a new committee substitute.

[1:32:31 PM](#)

SENATOR STEVENS moved to adopt the work draft committee substitute (CS) for SB 50, work order 31-LS0383\S, as the working document.

CHAIR BISHOP objected for discussion purposes.

[1:33:33 PM](#)

DARWIN PETERSON, Staff, Senator Click Bishop, Alaska State Legislature, Juneau, Alaska, introduced himself.

CHAIR BISHOP, speaking as sponsor, provided context for the bill. He related that this was the third time he tried to get the bill passed, after many others worked to reinstate the school head tax. He reviewed the history of the school head tax, which was in effect from territorial days until 1980 when it was repealed. Initially the head tax was \$10, and adjusted for inflation it would be \$30 today, which would generate about \$13 million per year. He reviewed the backlog in deferred maintenance for facilities and reported that maintenance and capital maintenance costs have risen to \$149 million, and \$142 million, respectively, for facilities throughout the state. He offered his belief that it was time to address deferred maintenance in schools.

MR. PETERSON stated that the only change in Version S was the new effective date, which is now January 1, 2021.

[1:36:26 PM](#)

CHAIR BISHOP found no objection and Version S was adopted. [The Chair treated it as though he had removed his objection.]

MR. PETERSON paraphrased from the sponsor statement:

From 1919-1980, Alaska had an annual employment head tax for the purpose of collecting revenues to fund schools. The tax went through numerous transformations, but it always charged an equal amount to each employed individual. When it was repealed in

1980, the tax was \$10 per person which has the equivalent value of \$30 today.

SB 50 proposes to revive the repealed head tax on employed individuals, both resident and nonresident, with income from a source in Alaska. The "Alaska Education Facilities, Maintenance, and Construction Tax" would collect \$30 from each person employed in the state. The tax would be withheld from an employee's first paycheck each year while self-employed individuals would be required to remit payment to the Alaska Department of Revenue. The tax would be deductible on an individual's federal income tax return.

According to the most recent statistics from the Alaska Department of Labor and Workforce Development and the U.S. Census Bureau, there are approximately 441,596 employed individuals in Alaska. Roughly 20 [percent] of those workers who earn their living in Alaska do not reside here resulting in \$2.5 billion in nonresident income that leaves Alaska's economy each year and, in most cases, gets taxed by a nonresident's home state.

It is estimated that this tax would generate \$13 million each year. The revenue collected would be deposited into the state's general fund and accounted for separately to pay for the growing maintenance and construction needs of Alaska's schools.

MR. PETERSON added that self-employed individuals would have to self-report. Of the 441,596 individuals affected by the tax, 407,255 are firm figures, including 85,000 non-residents. The number of self-employed individuals is more difficult to determine, he said. The fiscal note estimated 28,000 self-employed individuals. The most recent U.S. Census Bureau, American Community Survey data shows 34,314 self-employed workers in 2017. If so, this would add an additional \$190,000 in additional revenues. The fiscal note reflects over \$13 million per year in revenue that would be deposited into the general fund, accounted for separately, to pay for the growing maintenance and construction needs in Alaska's schools. According to the Department of Education and Early Development (DEED), the state's share for the FY 2021 major school maintenance list totals \$149 million and the FY 2021 school construction totals \$142 million for an overall total of just

under \$300 million. He listed the supporting resolutions in members' packets from the Yukon-Koyukuk School District, the Denali Borough, the Denali Borough School District, Southeast Island School District, Fairbanks North Star Borough, the Alaska Board of Education, the City of Fairbanks, Tanana City School District, the Nenana City School District, and the Iditarod Area School District. He reported letters of support from the National Education Association of Alaska, the Alaska Superintendents Association, and the Alaska Municipal League in members' packets.

[1:40:07 PM](#)

SENATOR GRAY-JACKSON asked why there wasn't support from the Anchorage School District (ASD).

MR. PETERSON answered that he didn't know.

SENATOR GRAY-JACKSON said she would follow up and make a call to the ASD.

SENATOR STEVENS stated support for receiving help from out-of-state workers. He noted this means that nonresident self-employed fishermen will pay this tax. He asked how it would work since these individuals do not receive a salary.

MR. PETERSON replied the bill requires self-employed individuals who are nonresidents who earn income in Alaska to self-report the \$30 per year.

SENATOR STEVENS asked for confirmation that fishermen are included in the \$190,000 as well as North Slope workers or anyone who works in the state.

MR. PETERSON answered yes. He added that residents who earn income in Alaska or outside of Alaska would be required to pay the \$30 head tax.

[1:42:03 PM](#)

SENATOR COSTELLO asked how the maintenance list is prioritized.

MR. PETERSON replied DEED prepares the list annually according to specific criteria. He referred to the list in members' packets for FY 2021, which was just released yesterday. Each project is ranked, but the list is typically fairly static. It has not changed much from last year.

SENATOR COSTELLO asked if there is accommodation for regional equity.

MR. PETERSON asked if her question related to how the funds are spent.

SENATOR COSTELLO said her question relates to which communities receive the funds.

MR. PETERSON replied nothing in the bill provides for disbursement. The legislature will decide on appropriations.

[1:43:28 PM](#)

SENATOR STEVENS noted that first on the [FY 2021 Capital Improvement Projects (CIP)] list is a \$10 million request [by the Southeast Island School District] for "Hollis, [K-12 School Replacement.]" The second request [is from the Lower Kuskokwim School District] for \$60 million [for the "Anna Tobeluk Memorial K-12 School.]" He commented that putting \$13 million in won't solve the problem but it will help.

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At ease

[1:44:10 PM](#)

CHAIR BISHOP reconvened the meeting and opened public testimony on SB 50.

[1:44:25 PM](#)

TOM KLAAMEYER, President, Anchorage Education Association, Anchorage, Alaska, stated that he was asked to testify on behalf of the 13,000 members in support of SB 50. He related that the National Education Association (NEA) president, Tim Parker, also sends regrets that he was not able to attend today to speak in support of SB 50.

MR. KLAAMEYER said investing this revenue in maintenance and construction for public education facilities is a practical way of supporting education while maintaining structures. Hundreds of public school facilities were built prior to 1980 and many of them need maintenance and repairs to address public health and life safety issues. He concluded that the state faces many budget and fiscal challenges, but SB 50 is a simple, straightforward, and modest way to engage Alaskans and non-Alaskans who earn their living in the state to support a system of high quality public schools.

[1:46:16 PM](#)

WILLIAM HARRINGTON, representing self, Anchorage, Alaska, spoke in opposition to SB 50 because it will disproportionately affect those in the lower income class. He suggested a sliding scale that would charge higher income wage earners three times more than low-income individuals. He further suggested exemptions for seniors and the poor be included.

SENATOR STEVENS asked staff to respond to the question about whether retirees would pay.

MR. PETERSON said no; it would just apply to net income for the self-employed or those earning wages and salaries.

[1:48:51 PM](#)

BETH SHORT-RHOADS, representing self, Sitka, Alaska, spoke in support of SB 50 saying this is a modest amount for employed people to pay.

[1:49:30 PM](#)

SCOTT MACMANUS, Superintendent, Alaska Gateway School District, Tok, Alaska, spoke in support of SB 50. He noted that the school board passed a supporting resolution, which he read:

WHEREAS, the current budget deficit of the State of Alaska constrains the state's ability to address deferred maintenance and school construction needs; and

WHEREAS, from 1919 to 1980, Alaska, as a Territory and a State, imposed an annual employment head tax for the purpose of funding schools; and

WHEREAS, when repealed in 1980, the tax was \$10 per person, which has the equivalent value of \$30 today, when adjusted; and

WHEREAS, SB 50, support proposed by Senator Bishop revives the employment head tax imposed on both residents and nonresidents; and

WHEREAS, this tax is expected to raise \$13 million annually; and

WHEREAS, these new funds will be accounted for separately and used to pay for the growing maintenance, construction, and deferred maintenance needs of Alaska's schools.

THEREFORE, BE IT RESOLVED that the Board of the Alaska Gateway School District strongly supports Senator Bishop's efforts in promoting SB 50 to address the capital needs of Alaska's schools and encourages the legislature as a whole to also support SB 50.

The resolution was signed by board president Peter Talus and copies were in the bill packets.

MR. MCMANUS said he personally supports the legislation.

[1:51:46 PM](#)

LISA PARADY, Executive Director, Alaska Council of School Administrators (ACSA), Juneau, Alaska, spoke in support of SB 50. She explained that ACSA members work annually on joint position statements that prioritize important educational issues. One consistent issue is the critical importance of the state developing a long-term sustainable fiscal plan with a diversified revenue stream. The ACSA is pleased that the proposed head tax would increase revenue by about \$13 million. Importantly, it would capture a portion of the \$2.5 billion of nonresident income that currently leaves the state from the 20 percent of workers who work here, but do not reside in Alaska. She echoed the previous comments about aging infrastructure. The ACSA is working in partnership with the Alaska Municipal League to quantify the overarching needs and work with the legislature to prioritize how to address the state's aging infrastructure, she said.

[1:55:10 PM](#)

CLAY WALKER, Mayor, Denali Borough, Healy, Alaska, thanked the chair for his leadership in addressing this critical statewide issue. He said the Denali Borough has three schools that are over 40 years old with aging infrastructure and increasing major maintenance needs. He noted that the district works to address its needs, but the state is needed to partner with the district. He referred to supporting resolutions from the Denali Borough Assembly, Resolution 1908 and from the Denali Borough School District in the packets. He urged members to address this statewide need.

CHAIR BISHOP noted that Senator Reinbold had joined the meeting.

[1:56:33 PM](#)

NILS ANDREASSEN, Executive Director, Alaska Municipal League (AML), Juneau, Alaska, spoke in support of SB 50. He highlighted

that in November the AML members voted in support of SB 50 and anything that will address infrastructure needs, especially for school facilities statewide. Since 2001, the state has paid an average of 16 percent of the \$4 billion deficit for school construction and major maintenance grant funding, he said. He directed attention to DEED's six-year plan. He offered his belief that the \$1.6 billion deficit shown is probably closer to \$2.3 billion. Further, the FY 2021 proposed budget does not provide any funding for the \$400 million in projects identified by DEED.

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CHAIR BISHOP closed public testimony on SB 50.

SENATOR COSTELLO referred to page 4, line 21, and asked for the definition of "employee" since it reflects federal statutes. She also asked how part-time employees are affected.

[1:59:20 PM](#)

MR. PETERSON responded that the legislation references 26 U.S.C. 3401 and the definition of "employee" reads:

The term employee includes an officer, employee, or elected official of the United States, a state, or any political subdivision thereof, or the District of Columbia or any agency or instrumentality of any one or more of the foregoing. The term employee also includes an officer of a corporation.

He added that part-time employees also have the \$30 tax taken from their first paycheck.

SENATOR STEVENS said he would like an explanation of the fiscal note from the Department of Revenue regarding projected revenue and costs because the Department of Labor said collecting the taxes would be expensive.

CHAIR BISHOP said he would have someone from the Department of Revenue available at the next meeting.

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CHAIR BISHOP found no further question and held SB 50 in committee.

SB 76-REPEAL WORKERS' COMP APPEALS COMMISSION

[2:01:59 PM](#)

CHAIR BISHOP announced that the final order of business would be SENATE BILL NO. 76, "An Act repealing the Workers' Compensation Appeals Commission; relating to decisions and orders of the Workers' Compensation Appeals Commission; relating to superior court jurisdiction over appeals from Alaska Workers' Compensation Board decisions; repealing Rules 201.1, 401.1, and 501.1, Alaska Rules of Appellate Procedure, and amending Rules 202(a), 204(a) - (c), 210(e), 601(b), 602(c) and (h), and 603(a), Alaska Rules of Appellate Procedure; and providing for an effective date."

CHAIR BISHOP noted that this was the first hearing, there was a committee substitute to consider, and only invited testimony would be heard.

[2:02:29 PM](#)

SENATOR STEVENS moved to adopt the committee substitute (CS) for SB 76, work order 31-LS0493\M, as the working document.

CHAIR BISHOP objected for an explanation of changes. He asked the sponsor to give an overview of the bill before talking about the changes in the CS.

[2:02:57 PM](#)

SENATOR BILL WIELECHOWSKI, Alaska State Legislature, Juneau, Alaska, sponsor of SB 76, stated that this bill repeals the Workers' Compensation Appeals Commission, which would save the state more than \$425,000 a year. He explained that workers injured on the job in Alaska file workers' compensation claims. In 2018, 17,694 reports of injury or occupational illness were filed, which was a 3.8 percent decrease from 2017. When disputes arise, these claims are referred to the Alaska Workers' Compensation Board (WCB) that is composed of a hearing officer who is typically an attorney who works for the state, one representative from labor, and one from management.

Under existing law, appeals of the Alaska Workers' Compensation Board are referred to the Workers' Compensation Appeals Commission (WCAC). Of the 17,694 injury reports, the WCB held 213 hearings. The Workers' Compensation Appeals Commission issued 10 decisions in 2016, 10 decisions in 2017, and 14 decisions in 2018. Even though only a few cases are appealed to the WCAC, the annual cost of the commission is \$425,000. He said his position is that these appeals could be absorbed by the superior court. In fact, from statehood until 2005 when the commission was created, the superior court heard workers' compensation cases.

SENATOR WIELECHOWSKI offered his belief that this is the only instance of an agency in the executive branch where the final decision is not appealable to the superior court.

The argument for creating this commission was that the public would benefit from having a commission that had a particular expertise in workers' compensation. However, the workers' compensation system is not more complex than mental health issues, family legal issues, or other complex issues that the superior court handles on a regular basis.

SENATOR WIELECHOWSKI said based on the numbers, shortened timeframes have not materialized. Further, about 50 percent of the Workers' Compensation Appeals Commission decisions appealed to the Alaska Supreme Court (ASC) are reversed. In 2005, when the WCAC was established, 25 percent of the cases were appealed to the ASC. That has risen to 79 percent in recent years.

SENATOR WIELECHOWSKI said another argument in favor of creating a commission was to have cases decided more quickly. However, at the time the commission was established the superior court took from 7-18 months to issue its decisions. In 2018, the WCAC's Annual Report shows that it took an average of 12 months to issue final decisions. He said the concept of abolishing the commission has been around for a number of years. Five years ago the House Finance budget subcommittee for the Department of Labor and Workforce Development (DOLWD) recommended that the WCAC be eliminated. The subcommittee noted the cost savings and found that the closure rate was not demonstratively better than the process prior to the establishment of the commission. He noted that the report was in members' packets.

Subsequently, a bill was filed to abolish the WCAC and the House voted 40-0 to appeal it. He said SB 76 is virtually identical to the one that passed the House. He directed attention to the fiscal note and said the savings would be half the amount reflected in the fiscal note (FN) for 2020 due to the delay. He offered his belief that this bill, which would abolish the WCAC, would have very little impact on members' constituents.

2:09:55 PM

DAVID DUNSMORE, Staff, Senator Bill Wielechowski, Alaska State Legislature, Juneau, Alaska, on behalf of the sponsor, said the only change in the proposed committee substitute (CS) for SB 76 was to replace all instances of 2019 with 2020 since the bill did not pass the legislature last session.

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CHAIR BISHOP removed his objection.

SENATOR COSTELLO asked if there was any opposition to SB 76.

SENATOR WIELECHOWSKI said no. There were two letters submitted in the past expressing opposition. One was from an attorney who represents employers and the other was from a group of employers who had formed an organization.

SENATOR STEVENS asked for an explanation of appeals under both processes.

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SENATOR WIELECHOWSKI explained that currently an injured worker would file a claim with the Workers' Compensation Board (WCB). An overwhelming majority of these cases are resolved by the board, he said.

When cases are appealed, they are referred to the Workers' Compensation Appeals Commission (WCAC). The WCAC is an agency within the executive branch. Either party has the right to appeal to the Alaska Supreme Court (ASC). The WCAC has averaged 19 published decisions per year and 10-14 published decisions between 2016 and 2018.

SENATOR WIELECHOWSKI explained that under the bill, it would revert to the pre-2005 process. Appeals from the Workers' Compensation Board decisions would be referred to superior court. Parties could appeal the superior court's decisions to the Alaska Supreme Court. This bill would essentially substitute the superior court for the Workers' Compensation Appeals Commission.

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MR. DUNSMORE read the following sectional analysis of SB 76:

Section 1 establishes that the Workers' Compensation Board (Board) shall maintain records of the repealed Workers' Compensation Appeals Commission (Commission). It also establishes that Commission decisions remain as legal precedent unless overturned or modified by the courts.

Section 2 removes references to the Commission.

Section 3 removes a reference to the Commission.

Section 4 removes a reference to the Commission

Section 5 creates a new AS 23.30.126 governing appeals of Workers' Compensation Board decisions.

Subsection (a) establishes that Board decisions and orders become effective when filed, that these decisions and orders can be modified or reconsidered, and that a party may appeal a decision or order to the superior court.

Subsection (b) establishes that Board decisions and orders are not automatically stayed pending judicial review and establishes the criteria for when a court may issue a stay.

Subsection (c) establishes that factual findings made by the Board shall be conclusive if supported by substantial evidence and that AS 44.62.570 governing administrative appeals shall apply to the appeals of Board decisions.

Subsection (d) allows the director of the Division of Workers' Compensation to intervene in appeals and to file appeals if a party is not represented by an attorney and the case presents an unsettled question of law.

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Section 6 is a conforming amendment to reflect the changes made by Section 5.

Section 7 removes a reference to the Commission.

Section 8 repeals the court rules related to the Commission.

Section 9 repeals the statutes related to the Commission.

Section 10 contains indirect court rule amendments to reflect the changes made by Section 5.

Section 11 establishes which procedures apply to appeals pending before the Commission between June 1 and December 1, 2020.

Subsection (a) establishes that the Commission shall continue to handle cases through December 1, 2019 and that the Commission shall continue all cases pending on December 1, 2020.

Subsection (b) establishes that the new procedure in Section 5 does not apply to cases before December 1, 2020.

Subsection (c) establishes that the old statutes apply for appeals of final decisions made by the commission and issued by December 1st.

Section 12 establishes transitional provisions.

Subsection (a) establishes that starting June 1, 2020 all new appeals of Board decisions shall be filed with the Superior Court under Section 5.

Subsection (b) establishes that appeals of Commission rulings issued by December 1, 2020 shall be filed with the Supreme Court.

Subsection (c) ends the Commission's ability to order reconsideration of cases on December 2, 2020. All outstanding requests for reconsideration pending on that date would be automatically rejected, and any party whose request was denied may appeal their case to the Supreme Court.

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CHAIR BISHOP asked what recourse someone has if they want to appeal.

MR. DUNSMORE answered that any pending requests for reconsideration at the commission level would be automatically denied, and the person could file an appeal to the Alaska Supreme Court.

MR. DUNSMORE continued the sectional analysis.

Subsection (d) requires the Commission to transfer the files for all pending cases to the Superior Court on December 2, 2020 and to provide the parties 30 days'

notice of the transfer of jurisdiction. If the court finds that the records do not meet the requirements of the Rules of Appellate Procedure, it may order the Commission to make necessary changes and resubmit them.

Section 13 ends the terms of all Commission members on December 31, 2020.

Section 14 makes this act only take effect if the court rule changes in Sections 8 and 10 are adopted.

Section 15 provides a June 1, 2020 effective date.

[2:18:23 PM](#)

SENATOR STEVENS asked who serves on the compensation board.

SENATOR WIELECHOWSKI answered that the Workers' Compensation Board consists of hearing officers. He offered to provide the information but recalled that five hearing officers, who are typically attorneys, are designated by the commissioner. There are also appointees for labor and for management, appointed by the governor and approved by the legislature. He said the WCAC is similar, with an attorney serving as the chair and two members appointed by the governor from labor and two from management, approved by the legislature. He characterized these as "very good people." He said he knows them all. He previously served as a hearing officer. He said, "They are outstanding public servants."

One of the concerns is that the commission is acting as an appellate court and deciding issues of law, but some members have little legal training. In deciding Workers' Compensation Board decisions, that's a real benefit because it gives people a perspective in the workplace. However, in deciding appellate law issues like a superior court would, it is a little bit of a detriment, he said.

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SENATOR GRAY-JACKSON asked why the commission was established in 2005.

SENATOR WIELECHOWSKI answered that it was intended to create expertise in workers' compensation. He reiterated that since it is structured as an appellate court, the commission members must decide complex legal issues with very little legal training. Another argument was cases would be decided quicker, but that

has not been the case. The cost does not justify the results, he said.

SENATOR GRAY-JACKSON related her understanding that the WCAC has not been cost-effective.

SENATOR WIELECHOWSKI said that has been an argument.

[2:22:28 PM](#)

CHANCY CROFT, representing self, Anchorage, Alaska, said he is a retired attorney and retired legislator. He did not like the creation of the Workers' Compensation Appeals Commission from the beginning, he said. One issue that has not been discussed is that the three members of the "appellate court" aren't always available whereas a superior court judge can always make a decision on a case.

MR. CROFT said compensation must be paid when it is ordered and when it is not paid within 14 days of the order there is a penalty. This compensation includes time loss benefits and medical benefits. The commission often does not meet within 14 days, he said. The WCAC adopted a procedure, likely out of necessity but it is still a substantial defect. This procedure indicates the WCAC could later enter an order that said the case is stayed so no penalty would be due. Because that would be after the 14-day period, the penalty would already have been in effect. The commission adopted a technique that is called "nunc pro tunc" which means "now for then" The commission would grant the stay months after the case had been filed. In an overwhelming majority of cases, compensation wasn't paid, and neither was the penalty. He said that has harmed injured workers in terms of time loss benefits. He cited a 2019 case where time loss and medical benefits were ordered. Both were affected by that procedure, he said. He agreed with the sponsor that many appeals have been reversed by the Alaska Supreme Court. In 2019, six WCAC cases were appealed to the Supreme Court; two of those decisions were affirmed and four were unanimously reversed. He noted that the superior court heard a seventh workers' compensation case, which was a fluke. He emphasized that the appeals commission hasn't had as good a record as the superior court had previously.

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CHAIR BISHOP stated that he would hold SB 76 for further consideration.

[2:28:28 PM](#)

There being no further business to come before the committee, Chair Bishop adjourned the Senate Labor and Commerce Standing Committee meeting at 2:28 p.m.