

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

February 12, 2001

3:20 p.m.

MEMBERS PRESENT

Representative Lisa Murkowski, Chair
Representative Andrew Halcro, Vice Chair
Representative Kevin Meyer
Representative Pete Kott
Representative Norman Rokeberg
Representative Harry Crawford
Representative Joe Hayes

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 91

"An Act relating to the membership and quorum requirements of the State Medical Board."

- MOVED HB 91 OUT OF COMMITTEE

HOUSE BILL NO. 119

"An Act exempting joint action agencies from regulation by the state or municipalities; relating to the relationship between a joint action agency and the public utilities that form the joint action agency; relating to powers and immunities of a joint action agency; requiring filing of the joint action agency agreement; relating to the financial affairs of a joint action agency; declaring certain joint action agencies to be political subdivisions for certain purposes; relating to liability and indemnification of officers, employees, and agents of joint action agencies; and defining 'agency agreement' as used with reference to joint action agencies."

- HEARD AND HELD

HOUSE BILL NO. 27

"An Act relating to the licensure and registration of individuals who perform home inspections; relating to home

inspection requirements for residential loans purchased or approved by the Alaska Housing Finance Corporation; relating to civil actions by and against home inspectors; and providing for an effective date."

- MOVED CSHB 27(L&C) OUT OF COMMITTEE

PREVIOUS ACTION

BILL: HB 91

SHORT TITLE:ADD PHYSICIAN ASST TO STATE MEDICAL

SPONSOR(S): REPRESENTATIVE(S)FATE

Jrn-Date	Jrn-Page		Action
01/24/01	0158	(H)	READ THE FIRST TIME - REFERRALS
01/24/01	0158	(H)	L&C, HES, FIN
02/12/01		(H)	L&C AT 3:15 PM CAPITOL 17

BILL: HB 119

SHORT TITLE:PUBLIC UTILITY JOINT ACTION

SPONSOR(S): REPRESENTATIVE(S)WILSON

Jrn-Date	Jrn-Page		Action
02/09/01	0281	(H)	READ THE FIRST TIME - REFERRALS
02/09/01	0281	(H)	L&C, JUD
02/12/01		(H)	L&C AT 3:15 PM CAPITOL 17

BILL: HB 27

SHORT TITLE:LICENSE HOME INSPECTORS

SPONSOR(S): REPRESENTATIVE(S)ROKEBERG

Jrn-Date	Jrn-Page		Action
01/08/01	0031	(H)	PREFILE RELEASED 1/5/01
01/08/01	0031	(H)	READ THE FIRST TIME - REFERRALS
01/08/01	0031	(H)	L&C, JUD, FIN
01/31/01		(H)	L&C AT 3:15 PM CAPITOL 17
01/31/01		(H)	Heard & Held
02/02/01		(H)	L&C AT 3:15 PM CAPITOL 17
02/02/01		(H)	Heard & Held
02/02/01		(H)	MINUTE(L&C)
02/12/01		(H)	L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

REPRESENTATIVE HUGH FATE
Alaska State Legislature
Capitol Building, Room 416
Juneau, Alaska 99801
POSITION STATEMENT: Sponsor of HB 91.

TOM WILSON
Alaska Academy of Physician Assistants
(No address Listed)
POSITION STATEMENT: Testified in support of HB 91.

ED HALL, Physician Assistant
Alaska Academy of Physician Assistants
1360 Windward Circle
Anchorage, Alaska 99516
POSITION STATEMENT: Testified in favor of having a physician
assistant on the Alaska State Medical Board.

JOHN HALL, Emergency Physician
Providence Hospital
3600 Providence Drive
Anchorage, Alaska 99508
POSITION STATEMENT: Testified that it is time to have a
physician assistant on the Alaska State Medical Board.

CATHERINE REARDON, Director
Division of Occupational Licensing
Department of Community and Economic Development (DCED)
P.O. Box 110806
Juneau, AK 99811-0806
POSITION STATEMENT: Testified on HB 91 and HB 27 for the
division.

REPRESENTATIVE PEGGY WILSON
Alaska State Legislature
Capitol Building, Room 409
Juneau, Alaska 99801
POSITION STATEMENT: Testified in support of HB 91. Introduced
HB 119 as the sponsor.

MICHAEL SCHRADER, Legal Counsel
to the Four Dam Pool
AterWynne, Attorneys at Law
222 South West Columbia, Suite 1800
Portland, Oregon 97201-6618
POSITION STATEMENT: Spoke on HB 119 as counsel to the Four Dam
Pool Project Management Committee.

TOM FRIESEN, Ketchikan Representative
to the Four Dam Pool
Ketchikan Public Utilities (KPU)
2031 2nd Avenue
Ketchikan, Alaska 99901

POSITION STATEMENT: Testified on HB 119.

ERIC YOULD, Executive Director
Alaska Rural Electric Cooperative Association (ARECA)
703 West Tudor Road, Suite 200
Anchorage, Alaska 99503

POSITION STATEMENT: Testified on behalf of the ARECA in strong support of HB 119.

JANET SEITZ, Staff
to Representative Norman Rokeberg
Alaska State Legislature
Capitol Building, Room 118
Juneau, Alaska 99801

POSITION STATEMENT: Commented on language in HB 27.

GAYLE HORETSKI, Assistant Attorney General
Commercial Section
Civil Division (Juneau)
Department of Law
P.O. Box 110300
Juneau, Alaska 99811-0300

POSITION STATEMENT: Commented on language in HB 27.

ACTION NARRATIVE

TAPE 01-15, SIDE A
Number 0001

CHAIR LISA MURKOWSKI called the House Labor and Commerce Standing Committee meeting to order at 3:20 p.m. Representatives Murkowski, Crawford, Rokeberg, and Kott were present at the call to order. Representatives Hayes, Meyer, and Halcro joined the meeting as it was in progress.

HB 91-ADD PHYSICIAN ASST TO STATE MEDICAL BOARD

Number 0043

CHAIR LISA MURKOWSKI announced that the first order of business was HOUSE BILL NO. 91, "An Act relating to the membership and quorum requirements of the State Medical Board."

REPRESENTATIVE HUGH FATE, Alaska State Legislature, sponsor of HB 91, said the bill is based on a request from the Alaska Academy of Physician Assistants and noted that the Alaska State Medical Board (ASMB) supports the bill. The bill adds one licensed physician assistant ("PA") to the ASMB and changes the quorum for meetings from four to five [people].

REPRESENTATIVE FATE explained that there is currently no PA license representative on the board, even though consideration of PA licensure, regulation, and discipline are frequent topics [at ASMB meetings]. PAs are also an increasingly significant factor in providing medical care.

REPRESENTATIVE FATE stated that participation of a PA would strengthen and support the ASMB and contribute to its decision-making process by providing valuable opinions representing a wider spectrum of medical practitioners in Alaska.

Number 0199

TOM WILSON, Alaska Academy of Physician Assistants, via teleconference, said there are approximately 250 licensed PAs in Alaska, licensees of the ASMB for 20 years. He echoed Representative Fate's explanation of the need for a PA on the board.

MR. WILSON said PAs care for over 50,000 Alaskan each month in a wide number of institutions and locations, and, therefore, would provide a good representation of their patient population in matters before the ASMB. The PAs have proven an interest in and a willingness to accept the great responsibility and commitment required to be a member of the ASMB by attending all meetings over the past four years.

MR. WILSON said "we" feel that we would offer to the state, "our patients, our profession, and the ASMB a valuable opinion that will represent a wider spectrum of medical practitioners in Alaska." He said this was presented to the ASMB in Juneau on January 19 [2001], and they voted to accept a PA on the ASMB.

Number 0404

REPRESENTATIVE KOTT asked Mr. Wilson when PAs began to be recognized in Alaska, and what level of participation there has been in the past with PAs and the ASMB.

Number 0430

MR. WILSON replied that prior to 1980 there was not a statute or regulation for PAs. The original regulation for guiding the practice and licensing of PAs in Alaska happened in 1980. Physician assistants have been avidly attending ASMB meetings for the past four years.

Number 0516

ED HALL, Physician Assistant, Alaska Academy of Physician Assistants, via teleconference, said he supports the decision the ASMB made. He emphasized that it was a unanimous decision that PAs be granted a seat on the ASMB. He said it is very important that "we" have a representative. He thanked Representative Fate for sponsoring the bill, and mentioned that he has experience with people who are not medical doctors (MDs) participating on the board.

MR. HALL said when he and Mr. Wilson were in Juneau three weeks ago, a question was raised about what sort of opposition would there be to this bill. He said there has not been any opposition to the bill because PAs and the MDs that work with them think it is a good thing.

MR. HALL commented that he had sent a letter to the Alaska State Medical Association (ASMA) and has not heard from them. He said he presented the whole resolution to them in order to see that the bill passed through. He suggested that John Hall speak to that, since he has been active with ASMA.

Number 0661

CHAIR MURKOWSKI verified that Mr. Hall had not received a response from ASMA.

MR. HALL said he had not, but John Hall may be able to speak to that since he has been active with ASMA.

Number 0691

REPRESENTATIVE KOTT asked Mr. Hall to enlighten the committee as to whether there has been significant growth in the number of

PAs since 1980, and what the net effect has been of an increased number providing medical service in rural Alaska.

Number 0726

MR. HALL said there has been growth in PAs, with the concept being about 30 years old. Since the inception in Alaska, there has been increasing growth; there are now about 250 providers, with the predominance in the rural areas. He said rural Alaska has been better served because of the PAs.

Number 0756

REPRESENTATIVE KOTT asked if the 250 currently practicing PAs that Mr. Hall referred to include those in the military.

MR. HALL said he didn't think that it included military PAs.

REPRESENTATIVE KOTT said, then, he would think that the number of PAs would be larger, and he also suspects that as the military PAs move into the private sector, it is probably a plus for "you guys."

Number 0803

JOHN HALL, Emergency Physician, Providence Hospital, member of the Alaska Emergency Medicine Associates, via teleconference, stated [that he is part of] a group of 13 [physicians], who are board-certified in emergency medicine and provide emergency care at Providence Hospital in Alaska. He said in addition to covering the emergency department at Providence, "we" also serve as sponsors for multiple PAs around the state. He said he serves as primary collaborator for 12 PAs for British Petroleum ("BP"), and his partner serves as the alternate collaborator.

MR. HALL said "we" also serve as collaborators for Fairweather, and for a company called Remote Medical, who provide PAs for BP whenever their PAs are on vacation or continuing medical education. He said "they" also serve several other clinics that are just starting to open around the state. One is down in Port Anchorage (ph) for Veco and another one in Deadhorse. He understands that they want to open one in Nikiski and there are several other projects around the state. This demonstrates that PAs are rapidly growing throughout the state.

MR. HALL noted that both private hospitals in Anchorage, Providence and Regional, have granted privileges to PAs and

nurse practitioners within the last six months for them to work in the hospitals. He said "they" will be working under the supervision of a physician but will have responsibilities such as taking care of patients on their own under supervision, writing histories and conducting physicals, and doing transfer dictations as well as discharge summaries.

Number 0922

MR. HALL said the bottom line is that PAs are becoming more and more prevalent in the state. When he began doing this 13 to 15 years ago, there were not very many PAs working in Anchorage, and now it's difficult to find a large office that doesn't have at least one. Many physicians in private practice are employing PAs to help them with their workload. He said as a physician who has served as a collaborator for a long time, he thinks it is time to have a PA on the ASMB, and he speaks in support of that.

MR. HALL mentioned that he has worked on the grievance committee for the ASMA, and he figures that the reason a letter hasn't been received is because sometimes "the State Medical Association just works rather slowly, they don't have ... (indisc.) meetings." He said from his association with members on the ASMA, [he doesn't believe] there wouldn't been any opposition to having a PA on the ASMB.

Number 0987

REPRESENTATIVE MEYER asked whether the difference between a PA and an Emergency Medical Technician (EMT) is just a difference in education.

Number 1006

MR. HALL replied that [the difference] is in the amount of schooling and training. He said an EMT comes at different levels; an EMT 1, 2, 3, and EMT paramedic each has a certain amount of education. He said an EMT 1 has about 140 hours of training, and a paramedic would have anywhere from a year to two years of training. A PA usually has to have a college degree, and some medical, health, or health science background, and go on to at least two years that includes training in hospital (indisc.). For example, Mr. Ed Hall had gone to Emory University and received a master's degree as a PA.

Number 1056

REPRESENTATIVE PEGGY WILSON, Alaska State Legislature, commented that she lived in Tok for four years, and during that time "we" weren't able to get an MD to come and practice. There were advanced nurse practitioners or PAs under the purview of a doctor out of Delta Junction. She said PAs were an absolute necessity and she doesn't know what would have been done without them. She said the PAs had to make the decisions that a doctor would make. She spoke in support of the bill.

Number 1107

CATHERINE REARDON, Director, Division of Occupational Licensing, Department of Community and Economic Development (DCED), said her division supports the ASMB. She reiterated that the ASMB does support adding a PA to the board.

Number 1131

REPRESENTATIVE HALCRO said it looked like the vote was unanimously in support of adding a PA to the board. He asked if there is any reason that it has taken this long to get one on the board.

Number 1155

MS. REARDON replied that she believes this is the first time that bill has been introduced to do it, "a matter of waiting for the time to be ripe," in the opinion of the PAs and MDs.

REPRESENTATIVE KOTT said he was hoping that one of the PA members could validate what Ms. Reardon had said. He said the issue of putting a PA on the board has been around for a couple of years.

Number 1188

MR. ED HALL said it has just been in the past four years that PAs have dedicated time and funds to send representatives to the medical board meetings, although the interest hasn't just been inspired in the last four years. He explained that in the years of attending meetings, "we" have realized that PAs carry a lot of business with the ASMB. As [PA] numbers grew, "we" felt it was important to be a part of the board. Long ago there was some bad history, some attitudes were not really appreciated and tolerated by other members, which gave them a rocky footing with

the board. He said in the past four to five years the relationship has improved considerably.

Number 1260

MR. WILSON reiterated Mr. Ed Hall's comment that four years ago PAs decided not to make a commitment to be a member of the ASMB. He said serving an apprenticeship over four years, they would be able to prove to themselves and to the medical board that they were very ready for the commitment and responsibility. He said he thinks they have done that. He said to his knowledge, he doesn't believe there have been prior efforts to have a PA on the ASMB.

Number 1319

REPRESENTATIVE KOTT said adding a PA to the board brings the membership up to eight, an even number, which could be problematic unless the board tends to agree on things. He asked Ms. Reardon if there are other boards with an even-numbered membership.

Number 1346

MS. REARDON responded that the only other division board with an even number of voting members is the Board of Architects, Engineers, and Land Surveyors, with ten members. She said it doesn't present a problem because a tie loses under the division's system, so the outcome of any vote would be certain. And it is not unusual to have an even number of members because vacancies and seats can take several months to fill; at any time during the year, there may be several boards with an even number of people.

Number 1404

MS. REARDON mentioned that boards tend to operate in a fairly collaborative manner, not usually with a one-vote difference. There has to be a quorum, and the majority of the votes wins.

Number 1454

REPRESENTATIVE FATE mentioned that he spent five years on the Board of Dental Examiners, and was a presiding officer for two years. He was there when the dental hygienists applied and finally a bill "was put in for the hygienists." He said at first there might have been some resistance by the Board of

Dental Examiners, and perhaps, the dental society. "We" were pleased when the hygienists got on the board; the contribution they made was truly significant because they were part of the healing team. He said this was what made him want to help out. He had been through this "maneuver" before.

Number 1492

CHAIR MURKOWSKI stated that it is particularly telling when the ASMB unanimously endorses the addition to its board.

Number 1505

REPRESENTATIVE HAYES asked what the fund source "RSS" meant.

Number 1515

MS. REARDON replied that it means "receipt-supported services," a type of program receipts that mean license fees. The receipt-supported services aspect of that means that this is a program where fees cover the operation cost; there is a list of those programs in statute now. She explained that they are accounted for a bit separately [when compared to] other aspects of the general fund. The addition to the ASMB will be funded through license fees.

Number 1567

MS. REARDON said there are 2,200 licensees under the ASMB, so it should not be a huge thing.

Number 1570

REPRESENTATIVE KOTT revisited the issue of PAs in the military. He said he thinks the origin of PAs started with the military because he remembered getting service about 30 years ago. He said he appreciates all of the work that PAs have done over the years and knows that it did alleviate a lot of the physicians' workload.

Number 1597

REPRESENTATIVE KOTT made a motion to move HB 91 out of committee with individual recommendations and attached fiscal note. There being no objection, HB 91 was moved out of the House Labor and Commerce Standing Committee.

HB 119-PUBLIC UTILITY JOINT ACTION AGENCIES

Number 1663

CHAIR MURKOWSKI said the committee would take up HOUSE BILL NO. 119, "An Act exempting joint action agencies from regulation by the state or municipalities; relating to the relationship between a joint action agency and the public utilities that form the joint action agency; relating to powers and immunities of a joint action agency; requiring filing of the joint action agency agreement; relating to the financial affairs of a joint action agency; declaring certain joint action agencies to be political subdivisions for certain purposes; relating to liability and indemnification of officers, employees, and agents of joint action agencies; and defining 'agency agreement' as used with reference to joint action agencies."

REPRESENTATIVE PEGGY WILSON, Alaska State Legislature, sponsor of HB 119, said last year the legislature passed legislation that authorized the sale of the Four Dam Pool projects to the local utility communities. She said "they" have been working since that time to get it going. During the process it became apparent that there needed to be "some legal cleanup." She directed the committee to Mike Schrader, Legal Counsel to the Four Dam Pool, for any questions; any questions on the history of the project were directed to Dave Carlson, Divestiture/Project Coordinator.

Number 1735

MICHAEL SCHRADER, Legal Counsel to the Four Dam Pool, AterWynne LLP, stated that "we" represent the project management committee and the newly formed Four Dam Pool power agency, a joint action agency ("JAA") that was formed pursuant to the legislature. He said HB 119 is a technical bill, and the JAA is the vehicle that will be the owner of the Four Dam Pool projects when the projects are purchased from the state at the end of the year.

MR. SCHRADER relayed that during the formation of the JAA, a number of issues were worked through with the member utilities; a number of those dealt with the terms of the actual agreement that formed the agency. That agreement has been executed and approved by all of the member utilities. However, a handful of issues were raised in the process. They were technical in nature and essential to the JAA and the whole divestiture process in order to realize the business objectives.

Number 1794

MR. SCHRADER explained that there were three issues raised, which are addressed in HB 119. HB 119 has some language that clarifies that the member utilities are limited in their liability. He explained that the JAA is a limited liability entity. The member utilities [want to ensure] that a claim against the JAA, as the owner of the Four Dam Pool projects, could not also be made against the member utility, just as a shareholder in a corporation is insulated from the liability of the corporation.

MR. SCHRADER said the second issue is more technical. The JAA is currently granted the powers of a public utility, which includes the power of eminent domain - the power of condemnation. In order to carry out its business goals, the JAA needs flexibility to operate without being subject to federal taxation. It also would need flexibility down the road if one of the projects were to be sold to a community that purchases powers from one of the projects, which is contemplated in the divestiture and enabling legislation. He said it is key that all of that be done on a federally tax-exempt basis.

Number 1890

MR. SCHRADER mentioned that a private letter-ruling request is being put together for the Internal Revenue Service (IRS) to confirm the tax-exempt status of the JAA. He said part of this exercise is to demonstrate that the JAA is a governmental unit; a key factor is the scope of the entity's eminent domain or condemnation powers. The bill, therefore, clarifies that the JAA has the eminent domain or condemnation powers that its member utilities have. He reiterated that the clarification is to get a ruling request from the IRS stating that the entity is tax exempt or a governmental unit.

Number 1918

MR. SCHRADER explained that the third piece of the legislation confirms the exemption from regulation by the Regulatory Commission of Alaska (RCA). Four of the five member utilities are currently exempt. The power-sales "master" agreement defines the relationship of the communities to the project, and the price at which power is purchased - which under statute is specifically exempted from RCA regulation.

MR. SCHRADER emphasized that this confirms that the JAA is exempt from RCA regulation.

Number 1944

REPRESENTATIVE HALCRO asked Mr. Schrader what type of potential liability claims he sees arising against the JAA.

MR. SCHRADER said, "Any kind of claims that might arise in just the course of operations or ownership of a power project. It could be a catastrophe [and] could be a contract claim, or something like that." The key is to add language to the existing JAA statute to make sure that the JAA, as the owner, is a limited liability entity, similar to a port authority or other entities created by Alaska law.

Number 1984

REPRESENTATIVE MEYER asked Mr. Schrader if the RCA has taken a position.

MR. SCHRADER said the RCA has not taken a position yet, but his firm has been in contact with RCA staff and provided them with a draft of the bill, along with a summary of what it proposes to do.

REPRESENTATIVE MEYER asked whether the labor unions are supportive of this [legislation].

MR. SCHRADER said, "That is my understanding; I'd have to defer to Mr. Bob Evans for more information on that."

REPRESENTATIVE MEYER said normally the committee would hear from these groups if they were not in support of the legislation.

Number 2023

REPRESENTATIVE ROKEBERG said the IRS has a number of tests that are laid out by regulation in the tax court of rulings. He asked what other factors there are, besides the power of eminent domain. And, what elements does the JAA have to meet for the "safe harbor test?"

Number 2049

MR. SCHRADER explained that "safe harbors" are articulated in a number of private-letter rulings and in other authority. He

said the baseline test is articulated in the authority: "Does the entity exercise sovereign powers?" In the ruling request and the authority that is out there, the principal sovereign power that was looked at was the eminent domain or condemnation power.

MR. SCHRADER said there are also rule making authority and police powers. He said he thought eminent domain, the ability to promulgate rules, and the police powers were the three main ones. In this case, the only one that applies to the JAA is the condemnation power.

Number 2077

MR. SCHRADER stated that the JAA currently has condemnation powers because it has powers by statute of a public utility, which identifies the procedure it is subject to. He said right now it is ambiguous as to whether the JAA is subject to the procedures of its municipal member utilities, the declaration of taking procedure, or the other procedures of an investor-owned utility. This says it has the powers and procedural rights of its member municipal utilities.

Number 2109

REPRESENTATIVE ROKEBERG said, "Clearly, the municipal members would have their own powers of eminent domain, but refresh my memory, do RAs [regional authorities] or co-ops have that same power?"

MR. SCHRADER explained that cooperatives do not have the declaration of taking power; they have an eminent domain power, but it is different. The declaration of taking is streamlined and the process is short-circuited; cooperative utilities have a different procedural requirement that has to be gone through to exercise powers of eminent domain.

Number 2151

REPRESENTATIVE ROKEBERG clarified with Mr. Schrader that the way the statute was drafted was the way it was intended to be - for the actual agency to have the power of eminent domain.

MR. SCHRADER said it was ambiguous, and it was determined that the JAA was the appropriate vehicle. As "we" began to focus on the actual terms of the agreement and the ability to operate on a tax-exempt basis, the ability to not dictate the terms of a

subsequent breakup of the [Four Dam] Pool, 15 or 20 years down the road, became critical. He said when the tax analysis was done, it was determined that with some changes in federal law in recent years, some private-benefit rules could dictate what one does on an operating basis now, which would dictate some of the terms of a breakup down the road.

MR. SCHRADER said the reason for asking for the clarification on the condemnation powers is due to the issue of getting the tax-exempt status, which goes back to the sovereign powers issue.

Number 2208

REPRESENTATIVE ROKEBERG asked if the agency needs those powers for its own operations; if those powers are invested in the ownership, from an operational standpoint; or if those powers are rendered only for the tax requirement.

MR. SCHRADER said that is the only reason it is in the bill right now, because each of the member utilities has condemnation power.

REPRESENTATIVE ROKEBERG asked if Mr. Schrader conceives of the agency going out for financing for the entire entity, and asked if that is the concept here, that the gross assets of the whole pool would be the credit behind the bonding.

MR. SCHRADER said, "At some point, if there were debt incurred, yes, it's contemplated (indisc.)."

REPRESENTATIVE ROKEBERG said there would be an agency's debt backed by the assets of all of the membership.

Number 2244

MR. SCHRADER concurred and reiterated that the JAA is the vehicle, the separate legal entity that would own the project and would assume the state's obligations and liabilities. He said it would essentially be an Industrial Development Bond (IDB).

REPRESENTATIVE ROKEBERG asked how that would affect the state's allocation for IDBs.

MR. SCHRADER said it wouldn't be subject if it was done on a tax-exempt basis, and it would have to be volume-capped.

REPRESENTATIVE ROKEBERG asked if the state is limited in the amount of IDBs that can issue annually.

MR. SCHRADER said "certainly" but the only debt that is contemplated currently for the JAA is the indebtedness to the state to purchase the projects as part of the divestiture transaction. He said bonding authority is down the road, and there are a host of tax issues, such as: whether "you" can finance on the bonds themselves; whether the entity itself is a tax-exempt entity; and whether its obligations have interest that is tax-exempt.

MR. SCHRADER said that "we're" seeking clarification of condemnation powers to clarify that the entity is tax-exempt on an operating basis, at this point. He said down the road, if it issues bonds for repair or maintenance, and if it were possible to issue those bonds on a tax-exempt basis, those issues would be addressed at that point.

REPRESENTATIVE ROKEBERG asked, "Couldn't you go through the Alaska Municipal Bond Bank to qualify?"

MR. SCHRADER said, "If that were an appropriate mechanism of financing, yes." He said what "we" are concerned with, currently, is not debt issuance on a tax-exempt basis. Rather, it is the ability to operate on a tax-exempt basis and not be subject to taxation on income, allocations to member utilities, and the ability to not have the purchase price dictated by the federal tax (indisc.).

MR. SCHRADER said current operations and the future breakup of the pool are what are driving this provision, with respect to the eminent domain powers.

Number 2345

REPRESENTATIVE ROKEBERG asked about the exemption from the RCA. He said it is a very sensitive issue, and there is a "right of utilities" in Alaska to opt out of economic regulation. He asked if the original bill was organized to do that, since it had been mentioned that it has exemptions.

Number 2361

MR. SCHRADER said he is not sure that it completely filled the gap because it clearly contemplated the JAA in the power sales agreement. There is specific language added in Title 42 last

year to the existing exemption for the power-sales agreement, the master agreement that defines the power cost and other things; it extends the exemption of the power-sales agreement to the JAA. He said he thinks it is clearly contemplated that it would not be subject to economic regulation by the RCA. He said it was clear that the power-sales agreement would continue to be an exempt agreement.

Number 2402

REPRESENTATIVE ROKEBERG said he knew that Copper Valley Electric Association opted out for fear of deregulation. He asked if municipal utilities are handled differently.

MR. SCHRADER replied that they are exempt under [page 2, Section 2], AS 42.05.711(b), and later in that section are the provisions which allow the cooperatives to go through the procedure to opt out from regulation. He said in his understanding, Copper Valley [Electric Association] did that.

Number 2426

REPRESENTATIVE ROKEBERG said this provision allows the agency to opt out but allows the cooperative to remain in - but be separate.

Number 2438

MR. SCHRADER reiterated that the bill would not change who is and isn't regulated. He said four of the five [member utilities] aren't regulated. Kodiak is the one that is regulated and will continue to be. If that changes in the future, it will be because [a member utility] decided to opt out or there was some change in the law.

Number 2447

REPRESENTATIVE ROKEBERG asked who would pay for a claim against the JAA, and if it is just the assets that are under control.

Number 2466

MR. SCHRADER said the JAA would be the owner of the project, and it would be entitled to the revenues for power purchases. He said its liabilities will pay for its assets. He reiterated that it is characterized like a port authority, and is a limited-liability entity. He pointed out that the current

legislation says that the JAA has a separate and distinct legal existence, which means that it is a separate legal entity for liability purposes, so claims can't be made to the member utilities for claims against the JAA.

TAPE 01-15, SIDE B

Number 2491

REPRESENTATIVE HALCRO referred to the legislation passed last year, HB 446 and HB 447, and reconfirmed that the original intent was that the JAA would not be under RCA regulation and would be exempt from regulation. He verified that the intent of this new legislation is to clean up some of the language.

MR. SCHRADER said there is specific language in HB 446 and HB 447 that deals with the continued exemption of the power-sales agreement once it is assigned from the state to the JAA.

Number 2451

CHAIR MURKOWSKI referred to the information provided [from AterWynne] to the committee and said it talks about taxes that the state may impose on it, saying "that the joint action agency is subject to state and local taxes to the extent any of the public utilities forming the agency is subject to that particular tax." She expressed her understanding that the intent goes beyond that: "Don't confuse, don't cloud it, because there are different entities that may be subject to different taxation, so let's just give us a complete exemption." She asked if her interpretation was correct.

Number 2391

MR. SCHRADER said it was a fair characterization. He said it is not currently clear, since there are two types of entities - municipal member entities and cooperative member entities - which are subject to different kinds of taxation. He said the exempt status of the JAA under state law is another factor in that analysis for the federal tax-exempt status. He said the bill proposes to treat the JAA like a port authority, which is exempt.

Number 2370

CHAIR MURKOWSKI said there is not a fiscal note with the legislation but wondered what was being lost; she asked if there

are payments in lieu of taxes that the state would be losing out on if the legislature goes ahead and provides this exemption under the state tax exemption.

MR. SCHRADER said he didn't know because it would depend on whether the tax treatment of the JAA was that of its member utilities or that of the cooperative utilities, or some combination.

Number 2345

CHAIR MURKOWSKI said she has not spoken to anyone on the RCA but was handed a message from one of the commissioners that said the JAA is requesting that it be exempted from a certificate. She said she thought he was referring to the certificate of public convenience. She asked the sponsor why the JAA wanted an exemption from the certificate of public need.

Number 2295

MR. SCHRADER said the current exemption that the JAA is exempt under is an exemption from economic regulation, not from the certificate of need requirement. He said "we" believe that a complete exemption is appropriate because this transaction - the sale of the projects to the Four Dam Pool power agency, the new JAA - has already been approved by the legislature. He said in addition to all of the other administrative procedures that have to be complied with, in terms of the "lands issue" and transfer, the process and procedure that is already dictated by state law is a significant hurdle in completing this transaction by the end of the year. He said there is also the Federal Energy Regulatory Commission's (FERC's) transfer of licenses, which imposes a similar process of suitability and soundness of the licensee for the Four Dam Pool power agency.

MR. SCHRADER said it is appropriate to have the exemption from the certificate of need because of the administrative transaction costs, and because the Alaska State Legislature already approved the transaction.

Number 2241

CHAIR MURKOWSKI asked if this legislation would allow for other public utilities to form other joint action agencies that would also be exempt from RCA authority.

Number 2215

MR. SCHRADER said theoretically and potentially, "yes," but in reality, "no," because the language in AS 42.45.310, the new provisions added last year to allow the creation of the JAA, are specifically limited to the Four Dam Pool projects. He said there is some grandfathering language, which refers back to projects that were in existence. In his understanding, these are the only projects for which this type of JAA could be formed. He said it is legislation designed to facilitate this divestiture transaction, even though the language looks as if it is broad.

Number 2191

CHAIR MURKOWSKI said her concern is that it is theoretically possible. She understood the intent to be limited to the Four Dam Pool divestiture, and "this" is to facilitate that. She wanted to make sure that it was narrow enough in scope so it wouldn't have an unintended consequence, but she also recognized that it couldn't be too narrow either.

Number 2148

MR. SCHRADER stated that the language in AS 42.45.310 is carefully crafted to deal with this situation by referring specifically to projects from the energy program in Alaska, which ties in specifically to this project.

Number 2129

REPRESENTATIVE ROKEBERG referred to AS 42.45.310(c)(2) [page 3, Section 7, of the bill], which says that the agency has the power to sue and can be sued. He asked how the request to limit liability is justified with regard to the existing law.

MR. SCHRADER replied, "The power to sue and be sued, absolutely," but said if there is a judgment entered against the JAA, it means that the judgment can't be enforced against the member utility, just as a claim against a corporation can't be made against a shareholder unless the shareholder has done something to expose himself or herself to liability. He said liability is being limited.

TOM FRIESEN, Ketchikan Representative, Four Dam Pool, Ketchikan Public Utilities (KPU), said with the 12 budgets that he has participated in with KPU there were no payments in lieu of taxes made on any of the utility values to the state. He said he

didn't think that it would affect the state's collection in this venture.

MR. FRIESEN said with regard to union support, during the enactment of HB 446 and HB 447 legislation, "we" had letters from Gary Brooks (ph), International Brotherhood of Electrical Workers (IBEW), and from Vera Plumb, Business Representative for Wrangell, Petersburg, and Ketchikan. He said "they" were 100 percent behind this divestiture program.

CHAIR MURKOWSKI asked Mr. Schrader at what point the private federal ruling from the IRS has to be done.

Number 2011

MR. SCHRADER said he has a draft and wants to submit it immediately because of the time involved in going through the process. He said it was drafted based on existing law, and the intent is to attach a copy of this bill, explaining that it is pending legislation. He explained that the intent was that the member utilities would complete the process of approving the document and would begin forming the entity a few weeks ago. He said it is now a legal entity, which is a precondition to being able to file the letter-ruling request. He said there is now a tax identification number, and the documentation will be complete in the next week to ten days.

Number 1942

MR. SCHRADER said the timeframe for getting a letter of ruling depends on the section of the IRS that it goes to. He said "we" are cautiously optimistic and hope that the process is less than three months, but it could be four to six months. The key is to have as much done [as possible] so the process of the divestiture transaction can continue.

MR. SCHRADER said the divestiture transaction to purchase the Four Dam Pool projects from the state needs to be complete by the end of the year. There are a number of things that need to occur prior to December 31, 2001, including: confirming the tax-exempt status of the entity; transferring licenses; having FERC licenses for each of the projects; and negotiating the sale and purchase agreement with the state.

MR. SCHRADER said the firm and project management committee of the Four Dam Pool have made an effort to provide information to the Office of the Attorney General, Department of Law. The RCA

is reviewing it, but has not reviewed it sufficiently to take a position. He said "we" have provided the Office of the Attorney General with "our" detailed tax analysis and there have been concerns expressed about the condemnation powers. They were also given a detailed analysis of the letter-ruling request and its background. He said it is in process, and "they" have not indicated that they object to it, but continue to have questions on the objectives, specifically, the tax analysis and tax treatment of the entity. He said the general discussion about condemnation is about whether the entity has condemnation powers, and whether that is sufficient to cause it to have governmental status for tax purposes, since there would be private interests such as the cooperative utilities in that.

MR. SCHRADER said there aren't assurances when dealing with the IRS, but with this House bill amending what is currently in place, based on existing precedent, there is a substantial likelihood of getting favorable tax treatment. This is essential in order to move forward with the transaction. He assured the committee that "we" and other representatives of the project management committee have been in communication with people at the RCA, the Alaska Energy Authority (AEA), and the Office of the Attorney General.

Number 1752

REPRESENTATIVE ROKEBERG referred to Section 10, which repeals and reenacts AS 42.45.310(f). It read in part:

Bonds and other obligations issued by the agency and all interest and income from them and all fees, charges, funds, revenue, income, and other money pledged or available to pay or secure the payment of the bonds or obligations or interest on them are exempt from taxation. The real and personal property of an agency formed under AS 42.45.300 and this section and the assets, income, and receipts of the agency are exempt from all taxes and special assessments of the state or a political subdivision of the state, including the electric cooperative tax(AS 10.25.540 - 10.25.570).

He asked if that means that since the Kodiak utility is a member, it pays an electric cooperative tax to the state.

Number 1679

MR. SCHRADER said he is not sure if Kodiak does, but said this would not change.

REPRESENTATIVE ROKEBERG said that the intent of the language has changed from last year's legislation, and "you come in and completely deleted that section and replaced it with language to become a tax-exempt entity."

MR. SCHRADER said the JAA is a tax-exempt entity, and the member utilities' tax status is whatever it is under current law.

REPRESENTATIVE ROKEBERG said he reads it to mean that whatever portion is attributable to the JAA, to Kodiak utilities, is subject to state taxation. He said he isn't sure what the intent of the legislature had been.

MR. SCHRADER said he doesn't think the intent is clear because there is an entity with two types of member utilities, and how it is extrapolated from what the tax status of that entity is - based on the different tax status of its member entities - he isn't sure.

MR. SCHRADER reiterated that the language in the bill was lifted from the port authority statute, which is most analogous to the JAA statute; it says municipalities can form a limited corporate entity to do certain kinds of things.

Number 1576

CHAIR MURKOWSKI said with regard to tax-exempt status, an entity is better off if it meets a whole laundry list of criteria, such as the condemnation, eminent domain, and state tax status. She interprets the intent of last year's legislation to say that "you" are subject to state taxation to the extent that the entity is already subject to it and doesn't provide a wholesale state exemption. She asked if it jeopardizes the ability to get the federal tax exemption. She said it looks as if it is going contrary to what was provided for last year.

Number 1521

MR. SCHRADER stated that it is one of several factors, and for the IRS these are fact and circumstance tests. He said one goes through the authority and tries to figure out the consistent themes and precedents, and looks for what is more like the JAA. He said "we" have not been able to locate, in the various pronouncements from the IRS, a private-letter ruling, or other

authority that is on all four points with this; it is clearly a fact and circumstance test. The state tax treatment is one of these factors. He said it is an important factor, but probably not critical in the overall analysis based on the review of the federal tax authority as the condemnation and eminent domain powers. That seems to be the factor with the most weight, but the tax-exempt status under state law is also a factor.

Number 1416

ERIC YOULD, Executive Director, Alaska Rural Electric Cooperative Association (ARECA), via teleconference, said ARECA is the statewide trade association for the electric utility industry in Alaska. He said the members include many of those that would be affected by the JAA. He testified in support of HB 119 and said the bill provides a technical fix to legislation passed last year that is very important to the ultimate completion of the \$200 million endowment that provides power cost equalization for Alaska, primarily to communities throughout the state where the cost of electricity is significantly higher than in urban areas.

Number 1350

MR. YOULD said HB 119, if passed by the legislature, will go a long way toward ensuring that the divestiture can take place. House Bill 119 ensures that the JAA is not subject to RCA regulation, provides eminent domain powers to the JAA, clarifies the tax-exempt status of the JAA, and limits the liability of the communities that are recipients of power from the JAA. He added that all of the clarifications, as mentioned earlier by Mr. Schrader, comport with the port authority legislation.

Number 1333

MR. YOULD explained that it is the same type of information, legislation, and powers contained in the original Alaska Power Authority statutes used to develop the Four Dam Pool, the Anchorage-Fairbanks intertie, Bradley Lake, and all of the other power projects that now reside under the ownership of the AEA, the successor to the Alaska Power Authority. He further explained that there is precedence from prior legislation that these are necessary for financing and operating an entity such as the JAA.

MR. YOULD said "we" were made aware, shortly after passage of last year's legislation, that there were some technical

amendments that needed to take place in order to get a favorable ruling out of the IRS - to allow the divestiture to take place. Consequently, his board of directors at a December 14, 2000, board meeting adopted resolution 01-2 unanimously. He stated:

It is a resolution supporting legislation that would cure defects to the Four Dam Pool Divestiture Authorization Act, passed by the legislature in the year 2000. Its final conclusion, ... [is that], ARECA supports amendments to the authorizing legislation that would cure the present defects in the underlying legislation to facilitate divestiture of the projects as originally envisioned by the parties, the parties being the governor and the legislature.

Number 1200

MR. YOULD emphasized that ARECA strongly supports the legislation. There is a question about RCA jurisdiction, and the JAA would be a political subdivision with limited powers. It will be a wholesale entity, and can only sell its power to the communities that would be served. The communities would then resell that power, and there is not a problem with encroachment by the JAA within the certificated territories of the utilities that the entity serves. He said ARECA would like to see it moved through the legislature this year because the legislature imposed a date of December 31, 2001, for conclusion of the divestiture that will provide the balance of funds needed for the Power Cost Equalization Endowment fund that brings power [prices] down for the rest of the state.

Number 1136

CHAIR MURKOWSKI said she agrees that "we" should do what we can to facilitate this in a timely manner, and she would like to think that these are all technical, conforming amendments. She reiterated that she has a concern over the state taxation issue.

Number 1086

MR. YOULD said the JAA will provide power, for instance, to a cooperative, and the cooperative is the only entity that can sell that power, at least in its service territory. That cooperative is subject to the taxes that are on the books and pays taxes on any power that retails as a result of buying wholesale from the JAA.

Number 1058

REPRESENTATIVE ROKEBERG cautioned Mr. Yould to call it "technical" because the liability issue alone is a substantive issue. He asked Mr. Yould if he recalled the legislative history of the bill from last year.

Number 1035

MR. YOULD said last year HB 446 and HB 447 came late in the session and passed within a couple of months. He thought the bill had gone through the House Labor and Commerce Standing Committee but said it could have gone straight to the House Finance Committee.

Number 0977

CHAIR MURKOWSKI said it is somewhat distressing to not hear comments from the RCA or the state, because they obviously have a keen interest in it. She said she would like to think that they are participating. Noting that the House Judiciary Standing Committee is the next "stop" for the bill, she said she hoped that they would be present at that time.

Number 0940

REPRESENTATIVE KOTT agreed that the state should be active participants in this, but noted that other members of the public were certainly aware that this hearing was taking place. If there was an active interest, they should have showed up at the Legislative Information Offices (LIOs) or called from their own offices offline. He said Representative Rokeberg's concerns could be taken up by the House Judiciary Standing Committee.

Number 0907

REPRESENTATIVE ROKEBERG asked if there was supposed to be a fiscal note.

CHAIR MURKOWSKI said the person who was supposed to prepare the fiscal note had overlooked it.

Number 0872

REPRESENTATIVE KOTT suggested the committee could make a motion to move the bill to the House Judiciary Standing Committee pending receipt of the fiscal note.

REPRESENTATIVE ROKEBERG said Chair Murkowski had some concern about the taxation, and he is concerned about the authorization of IDBs. He said a substantial portion of the bill has to do with bonding and finance, so he is concerned about how it fits into the whole realm of things. He said taxation questions would be a more appropriate thing for this committee versus the House Judiciary Standing Committee.

Number 0789

REPRESENTATIVE KOTT said the taxation questions would be for the House Finance Standing Committee, and based on the committee's recommendation, [the bill] could receive a House Finance Committee referral from the Speaker of the House. This would require a letter signed by the committee addressed to the Speaker of the House requesting that it be done.

REPRESENTATIVE HALCRO said the committee has two options. If members have specific questions to be posed to the bill sponsor, then the sponsor can come back with the answers before moving the bill, and wait for the fiscal note. The other option is to express members' concerns about the issues and allow them to be provided to the committee of next referral, so the legislation can move forward.

Number 0704

CHAIR MURKOWSKI said she would like to talk to people on the RCA, and that the bill will be held over.

REPRESENTATIVE ROKEBERG asked if someone from the Department of Revenue could speak about the IDBs and bond allocation. [HB 119 was heard and held.]

HB 27-LICENSE HOME INSPECTORS

Number 0417

CHAIR MURKOWSKI announced that the final bill to be heard today would be HOUSE BILL NO. 27, "An Act relating to the licensure and registration of individuals who perform home inspections; relating to home inspection requirements for residential loans purchased or approved by the Alaska Housing Finance Corporation; relating to civil actions by and against home inspectors; and providing for an effective date."

REPRESENTATIVE ROKEBERG, sponsor of HB 27, stated that he believed public testimony was closed. He said committee members should have received proposed Version L of HB 27, and an explanation of the changes between Version F and Version L.

Number 0365

CHAIR MURKOWSKI asked if there was a motion to adopt Version L [22-LS0136\L, Lauterbach, 2/8/01] as a work draft. She then announced that Version L was adopted.

REPRESENTATIVE ROKEBERG thanked Representatives Hayes and Crawford for taking an interest in this legislation and working with his office in trying to overcome some of their concerns.

REPRESENTATIVE ROKEBERG said the liability issue still needs to be "tackled" but asked the committee to indulge him since the bill has two other committees of referral, the House Judiciary and House Finance Committees. He intends to resolve the liability issue, he added, and gave his word to Chair Murkowski that he would run it past her.

REPRESENTATIVE ROKEBERG directed the committee to the two-page memorandum with the changes. He said he had discussions with committee members about some of the changes, such as the "oral" [versus written inspection report]. He had worked with Ms. Reardon from the Division of Occupational Licensing, and said she had been very helpful.

Number 0244

REPRESENTATIVE ROKEBERG pointed out that the chief executive officer (CEO) of the Alaska Housing Finance Corporation had a change in the last version, from an ex officio member of the board to a voting member of the board for a two-year period, to help form the regulations. Subsequent to that, [Terri Lauterbach] of Legislative Legal and Research Services ("Legislative Legal"), Legislative Affairs Agency, had said:

By memorandum, [in the] Bradner v. Hammond case, Alaska 1976, ... because of the appointment of confirmation powers, et cetera, et cetera, Ms. Lauterbach thought it would be a potentially unconstitutional appointment of a confirmation to a board and commission without the confirmation of the legislature.

REPRESENTATIVE ROKEBERG further explained that these boards and commissions constitutionally need to be confirmed by the legislature. He went on to say that there is another minor technical amendment that was offered by the department.

Number 0125

CHAIR MURKOWSKI referred to page 4, [line 1], paragraph (6), Version L, Sec. 08.57.060, Qualifications. She said it was new language that was not included in Version F. She said she understands the rationale behind wanting to keep out those who have been involved in unresolved complaints or disciplinary actions. She noted that it is written in such a way that it doesn't appear that it has to be an unresolved complaint or disciplinary action related to home inspection. For example, if someone was a commercial fisherman on the side, and was involved in some kind of regulatory action or discipline, under this, even though it is not related to home inspection, it may be grounds for denial of licensure.

REPRESENTATIVE ROKEBERG said he thought it was true.

JANET SEITZ, Staff to Representative Norman Rokeberg, Alaska State Legislature, said she had asked the drafter, Ms. Lauterbach, who didn't see a problem with the way it was written.

TAPE 01-16, SIDE A
Number 0048

CHAIR MURKOWSKI stated, "With these qualification[s], ... the board shall authorize the department to issue them for these following things." She said the board doesn't have the discretion to look at [paragraph] (6) " and say, "Well it related to a fishing regulation." She said the way she sees it, one has to be "clean" on all of them. She asked Ms. Reardon if she was correct.

Number 0070

CATHERINE REARDON, Director, Division of Occupational Licensing, Department of Community and Economic Development (DCED), said she believed one needed to be "clean" on all of them, although, it may be that the courts and the Department of Law would expect the board to read [the statute] as it relates to home inspections. It could be that they would expect some connection

in how it is actually applied. For example, if a person's license was turned down because he or she was being investigated by the Alaska Public Offices Commission (APOC), that wouldn't be the kind of thing that would hold up during a hearing because "they" would expect some logical connection to the type of license.

Number 0136

REPRESENTATIVE ROKEBERG said:

Unless there was another licensed activity that they were doing, ... like [being] a real-estate appraiser, there wouldn't be any jurisdictional issue. Right now there is absolutely no jurisdiction over ... home inspection activity, so there is no way they could be involved in a disciplinary [action] for home inspection.

CHAIR MURKOWSKI commented that perhaps someone from the Department of Law could enlighten the committee.

Number 0203

GAYLE HORETSKI, Assistant Attorney General, Civil Division, Commercial Section, Department of Law, specified that she does occupational licensing. She said the way the language is drafted is broad enough to include complaints that are not, in the least bit, related to home inspections. She referred to paragraph (5) [page 3, Section 08.57.060, Qualifications], where it says, "has not had the authority to perform home inspections revoked in this state or in another jurisdiction". The legislature wants to tie a factor to performing home inspections, she said, which was done in paragraph (5).

MS. HORETSKI commented that the legal effect of that is that qualifications have been subject to constitutional challenge if a person can say that "that factor has absolutely nothing to do with being a good barber, or a good this or that." But if an argument can be made that there is a rational relationship between the factor and the ability to perform that task, then the Department of Law would attempt to defend against a challenge and enforce an actual practice of the statutory requirements.

MS. HORETSKI pointed out that there is a case right now where a person is charged with wrongdoing that has had no connection

with his duties - this person was not a home inspector. The requirement for individual qualifications and disciplinary action is "lack of good moral character," so "we" have said that it doesn't matter that it didn't have to do with his license activities because the theft conviction shows a lack of good moral character.

MS. HORETSKI said those issues are raised, that there is no connection with the profession, but obviously "we" would try to enforce such a limitation if it were included in the qualifications.

Number 0355

REPRESENTATIVE HALCRO questioned whether paragraphs (5) and (6) could be combined, since (5) outlines that a person can't receive a license if the authority to perform has been revoked in this state or other jurisdiction. It appears that (5) addresses those actions that have been completed against a person and (6) relates to those actions that are under review.

Number 0416

MS. HORETSKI said the two paragraphs could certainly be combined; the sponsor would have to decide if what is now paragraph (6) was intended to be restricted only to home inspection-type activity. She added, "Or if you have a barber's license and ... they say you have an unlicensed person in your barber shop, so you're under investigation as a barber, does that come under paragraph (6)? It would right now, yes."

Number 0439

REPRESENTATIVE ROKEBERG said the policy call [arises when] a barber, who being thrown out of his or her profession, wants to become a home inspector.

REPRESENTATIVE HALCRO said it certainly might speak to the person's capability of performing.

REPRESENTATIVE ROKEBERG commented that he believed that was why the drafter put it in there. He said he has no problem leaving it in the bill. The two paragraphs could be combined but are two separate things. He raised the point that this covers a pending action but asked: What if there was a regulatory determination in another state? He said he thought it was [referring to] an unresolved complaint or a disciplinary action.

If a person has been subject to any disciplinary action by a regulatory authority, he or she would be subject to non-approval of a license until the complaint is resolved. If it was resolved and the person wasn't found guilty, then there wouldn't be anything (indisc.). He commented that it is a pretty high standard.

Number 0551

CHAIR MURKOWSKI said she liked the change that had been made to Version L regarding the oral-versus-written reports, but asked the sponsor about the additional sentence which provides that "an oral inspection report may be given by the home inspector during or after the inspection." She said as she understands it, this lets the home inspector still tell the homeowner that he or she has a problem with the house. She asked if having this language in the bill is allowing (indisc.).

Number 0615

REPRESENTATIVE ROKEBERG referred to the proposed amendment, 22-LS0136/L.1, Lauterbach, 2/12/01, which read:

Page 3, line 11, following "**Qualifications.**":
Insert "(a)"

Page 3, line 26:
Delete "section"
Insert "subsection"

Page 4, following line 3:
Insert a new subsection to read:
"(b) A person may register with the board as an associate home inspector upon application, payment of the required fee, and determination by the board that the person
(1) within the seven years preceding the date of application, has not been under a sentence for an offense related to forgery, theft in the first or second degree, extortion, or defrauding creditors or for a felony involving dishonesty;
(2) has not had the authority to perform home inspections revoked in this state or in another jurisdiction; and
(3) is not the subject of an unresolved complaint or disciplinary action before a regulatory authority in this state or in another jurisdiction."

Page 4, line 16, following ".":

Insert "A license that has been suspended expires at the end of the period for which the license was issued, regardless of whether the period of suspension has expired."

Page 7, line 3:

Delete "An"

Insert "In addition to the written inspection report required under this section, an"

Page 7, line 16:

Delete "AS 08.57.060(4)"

Insert "AS 08.57.060(a)(4) or (b)(1)"

[The foregoing was adopted later as Amendment 1.]

REPRESENTATIVE ROKEBERG referred to the section that refers to page 7, line 3 of HB 27, Version L. He pointed out that a written inspection is mandated. The ambiguity about "written" or "oral" was deleted by mandating "written," and an inspector is not precluded from doing an oral report. He verified that throughout the bill, it refers to written inspection reports.

Number 0689

REPRESENTATIVE HALCRO referred to the amount of time that a person has to respond if there is a problem. He asked if the 180 days applies to the oral [inspection report] given to a person when walking through the house.

REPRESENTATIVE ROKEBERG replied that he thought any evidence would be on the written report. He said an oral report could have been left out [of the bill], but he wanted to ensure that the people "on the ground" know that it is allowed. The written report is the statutory requirement, and an oral report is permissive by adding the "in addition to".

Number 0743

CHAIR MURKOWSKI paraphrased from page 8, [Sec. 08.57.810], the legal actions against home inspector, which read in part: "A person may not bring an action against an individual licensed under this chapter based on a written inspection home report if the report is more than 180 days old". She said it is clear that it's based on the written report.

Number 0786

REPRESENTATIVE ROKEBERG reported that he will be taking up the issue of the 180 days in his committee [House Judiciary Standing Committee] because he wants to limit the length of the report, in terms of its validity, but he is reluctant to limit the liability under it, because if there is an omission or an error, there should be liability attached to it. He said there is a distinction between the length of time a report should be valid and the liability.

Number 0814

REPRESENTATIVE ROKEBERG went through the rest of proposed Amendment 1. He said the amendment was offered at the suggestion of Ms. Reardon. He referred to line 8, which refers to page 4, following line 3, paragraphs (1) (2), and (3), of Version L. That section read:

Insert a new subsection to read:

"(b) A person may register with the board as an associate home inspector upon application, payment of the required fee, and determination by the board that the person

(1) within the seven years preceding the date of application, has not been under a sentence for an offense related to forgery, theft in the first or second degree, extortion, or defrauding creditors or for a felony involving dishonesty;

(2) has not had the authority to perform home inspections revoked in this state or in another jurisdiction; and

(3) is not the subject of an unresolved complaint or disciplinary action before a regulatory authority in this state or in another jurisdiction."

REPRESENTATIVE ROKEBERG pointed out that subsection (b) is being added to those who qualify for a license by adding exactly the same thing for the associate home inspector. It clarifies the issue between a home inspector and an associate home inspector.

REPRESENTATIVE ROKEBERG referred to line 21 of proposed Amendment 1, which refers to page 4, line 16, Version L, following "." That section read:

Insert "A license that has been suspended expires at

the end of the period for which the license was issued, regardless of whether the period of suspension has expired."

He explained that it is a clarification from Legislative Legal regarding what happens when there's a suspension before expiration.

REPRESENTATIVE ROKEBERG said the amendment that refers to page 7, line 16, of the bill is the result of adding the associate home inspector language on the first page of the amendment. That section of the amendment read:

Delete "AS 08.57.060(4)"

Insert "AS 08.57.060(a)(4) or (b)(1)"

REPRESENTATIVE ROKEBERG made a motion to adopt Amendment 1.

Number 0925

CHAIR MURKOWSKI announced that Amendment 1 had been moved, and there being no objection, it was adopted.

Number 0942

REPRESENTATIVE ROKEBERG pointed out that "we have also extended the date ... that was in question before, to 2004, to make sure that their lack of grandfathering didn't upset people." He clarified that the date had been 2003 and is now 2004, with a time period of implementation for when one has to have a license.

Number 0975

MS. SEITZ, referred to the transitional license. She said the transitional license part of the bill starts on page 14, and there are three different licenses. If a person is a home inspector on October 1, 2000, and has passed the International Conference of Building Officials (ICBO) exam, that person can get a joint transitional license that allows him or her to inspect new and existing construction. If a person has just passed either the American Society of Home Inspectors exam or the Examination Board of Professional Home Inspectors, he or she can get a transitional, previously occupied or existing residence [license]. And if a person has passed the ICBO exam, he or she can get a [license to inspect] new construction.

MS. SEITZ explained that all of the licenses are valid as transitional licenses until January 1, 2004, which Representative Rokeberg spoke about earlier. She said the previous bill version [F] had it set at 2003, but after discussing the regulatory process, it was decided to extend the date. She said at the end of that period, everyone must comply with the qualifications set forth by the board. Everyone must have certain qualifications by the time the transitional licenses expire because the licenses are not renewable.

CHAIR MURKOWSKI reiterated that all of the transitional licenses expire January 1, 2004, and everyone has to take a board-determined examination and will all be on the same track with licensure.

Number 1090

REPRESENTATIVE ROKEBERG surmised that the regulations would be grandfathered in, except for continuing education on "Arctic conditions" or something like that because of the existing national exams and the desire of the new board to keep the fees down.

Number 1118

REPRESENTATIVE ROKEBERG concluded by complimenting Representatives Crawford and Hayes on the amendments that they brought to him. He said Representative Hayes brought him several amendments, two of which have been taken care of by the changes. Representative Hayes had brought up an issue; a constituent in Fairbanks felt that just because a person is an engineer doesn't make him or her a home inspector. Representative Rokeberg said over the years "we" have had a lot of debate about this issue. Having an educational background as an architect or engineer doesn't necessarily mean that a person would have education and training in how to do a home inspection. He agreed with this point.

Number 1178

REPRESENTATIVE ROKEBERG recognized that there are engineers and architects that do participate as home inspectors. That particular organization has about 5,000 members, he said, and without the exemption in the bill, he's afraid that any chance of the consumer being protected by passing this bill would be overcome by "the death somewhere in its journey to the third

floor." He understood the wisdom of leaving well enough alone and leaving the exemption in.

Number 1238

REPRESENTATIVE CRAWFORD commented that he appreciates the changes and considerations that the sponsor made, and he is glad that the bill is "getting through."

CHAIR MURKOWSKI said she has Representative Rokeberg's assurance that he is going to deal with the liability issue in the next committee [House Judiciary Standing Committee].

Number 1276

REPRESENTATIVE MEYER stated that this is the first bill he saw, even before being sworn in, and it has come a long way. He said Representative Rokeberg made a lot of concessions, and it merits being passed on at this point.

Number 1314

REPRESENTATIVE HALCRO made a motion to move Version 22-LS0136\L, Lauterbach, 2/8/01, from committee with individual recommendations and the attached fiscal notes. There being no objection, CSHB 27(L&C) moved out of the House Labor and Commerce Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 5:20 p.m.