



Representative Kurt Olson
Chairman
House Labor & Commerce Committee
Alaska State Capitol, Room 24
Juneau, Alaska 99801-1182

Re: House Bill 167

An Act relating to the regulation of architects, engineers,
land surveyors, and landscape architects

Dear Representative Olson:

Representing the professional design industry I offer my support for HB 167 dealing with proposed amendments to AS 08.48.221 Seals, AS 08.48.281 Prohibited Practice, AS 08.48.331 Exemptions, and AS 08.48.341 Definitions.

This support is offered based on observing abuse in the use of Seals and the misinterpretation of the intent regarding Exemptions. These observations have occurred during forty years of practice in the field of architecture in Alaska and serving on the Board of Registration for Architects, Engineers, and Land Surveyors (AELS Board) for eight years. During my service on the AELS Board I served on the Enforcement Advisory Committee for eight years working with and advising the investigator relative to enforcement of statutes and regulations. The review of cases of suspected offenses of impropriety in the use of seals and application of exemptions revealed significant violations of life safety codes in construction documents prepared by unqualified individuals.

The current statutes are not clear relative to the intent and impede enforcement of the guidelines required to protect the health, safety, and welfare of the public. The suggested amendments relative to the referenced statutes will mitigate confusion in the interpretation of the intent of the statutes.

The attached position paper outlines the rational for the proposed amendments and examples of critical violations resulting from individuals working outside there realm of expertise in the process of designing and constructing facilities.

If additional information is required please contact Harley Hightower at 907.644.0798 or hhh@gci.net.

Thank you for the opportunity to submit this letter of support and to testify on this important issue.

Sincerely,

A handwritten signature in blue ink that reads "Harley H. Hightower". The signature is fluid and cursive, with the first name "Harley" being the most prominent.

Harley. H. Hightower, FAIA

Attachment

**STATE OF ALASKA
BOARD OF REGISTRATION FOR
ARCHITECTS, ENGINEERS, AND LAND SURVEYORS (AELS)
POSITION PAPER**

**Relative to Proposed Amendments to AS 08.48.221 Seals,
AS 08.48.281 Prohibited practice, AS 08.48.331 Exemptions,
AS 08.48.341 Definitions**

March 20, 2013

DISCUSSION

Chapter 48 outlines the Statutes and Regulations governing Architects, Engineers, and Land Surveyors in the State of Alaska. Section 08.48.011 created the State Board of Registration for Architects, Engineers, and Land Surveyors (AELS) to administer the provisions of Chapter 48 for the furtherance and enforcement of health, safety, and welfare.

AS 08.48.221 Seals

Current regulations and statutes have been interpreted suggesting that a registrant is allowed to seal design documents that are not in the realm of the registrants discipline of licensure if the “registrant certifies on the face of the documents to the extent of the registrants responsibility”. The interpretations conflicts with the large majority of the registrants that understand and work within their areas of expertise and qualifications based on their experience, education, and examination. Crossover of disciplines should occur only on “design of minor importance”.

Based on involvement serving on the AELS Board Investigation Advisory Committee this writer has reviewed numerous small buildings (warehouses, shops, and the like) whereby all documents (architectural and civil, mechanical, and electrical engineering) have been sealed and signed by a registrant of a distinct discipline. The majority of these small and seemingly simple and uncomplicated buildings have had numerous and major health and safety code violations.

Common deficient health and safety issues that are significant examples that were discovered while reviewing documents based on misuse of seals include violations of the following life safety codes:

- Mixed occupancy buildings are required to be separated with fire separations to isolate hazardous areas from non-hazardous areas (International Building Code, Section 508).
- Equipment and appliances having an ignition source and located in hazardous areas shall be elevated such that the source of ignition is not less than 18” above the floor surfaces on which equipment or appliance rests (International Mechanical Code Sec. 304.3). This issue is similarly outlined and required by the National Electrical Code.

- Offices and other inhabited areas adjacent and/or having openings into Repair Garages require a positive atmospheric pressure (International Mechanical Code, Section 403).

The above referenced codes are significant issues and have found to be violated as a result of misuse of seals. Numerous other code issues have been discovered. In many cases documents are not prepared to a stage of completion to allow a thorough code analysis or provide adequate information for construction to proceed in accordance with code requirements.

AS 08.48.281 Prohibited practice

This issue is related and recommended amendments are necessary for coordination with and adding clarity for the support of the amendments and requirements of AS 08.48.221 Seals.

AS 08.48.331 Exemptions

Under Sec 08.48.331 Exemptions.(a) states, “(a) This Chapter does not apply to” and then goes on to list 14 subjects of exemptions. The AELS Board has observed that a broad interpretation of this exemption section has been interpreted to suggest that all and/or any one of the 14 subjects are exempt from all provisions of Chapter 48.

A larger issue concerns subject (7) Specialty Contractors. The investigative staff and code enforcement officials have reported to the AELS Board significant abuse under this exemption (e.g. mechanical and electrical subcontractors in the course of construction activities are either constructing without drawings and specifications and/or constructing with documents not prepared by licensed professionals). This subject could further be interpreted where a multi-story or sophisticated hazardous building could be constructed by a group of specialty contractors (mechanical, electrical, controls, steel erector, roofing, carpet, curtain wall, etc., etc.) without a design professional being involved. This would be counter to all logic relative to health, safety, and welfare and could not possibly be the intent of the AELS Board who reviewed or authored this section prior to its adoption. This subject was discussed with a representative of the Attorney Generals office at a scheduled AELS Board meeting where analysis of past documentation of legislative action was suggested that may reveal the thought process and legislative intent of the exemptions in question.

AS 08.48.341 Definitions

This issue is related and recommended amendments are necessary for coordination with and adding clarity for the support of the amendments and requirements of AS 08.48.221 Seals

ANALYSIS

The Attorney Generals office through the investigative staff provided documentation for review and analysis. This effort produced no knowledge of the legislative intent or thought process of the provisions under Sec.08.48.331 Exemptions. Analysis of other

documentation was necessary to reach conclusions of the issues of concern relative to Exemptions. The documentation reviewed included:

- Statutes and Regulations – Construction Contractors, Chapters 18 and 21
- Statutes and Regulations – Electrical Administrators, Chapter 32 and 40
- Statutes and Regulations – Mechanical Administrators, Chapters 39 and 40
- Statutes and Regulations – Architects, Engineers, and Land Surveyors, Chapter 48

A thorough review of the Statutes and Regulations pertaining to Construction Contractors (including Specialty Contractors), Electrical Administrators, and Mechanical Administrators indicates there are no provisions for contractors to design, engineer, or otherwise establish design criteria. The one exception where design is mentioned is Chapter 40 Mechanical Administrators. Sec. 08.40.390 Exclusion (b) states “(b) AS 08.40.210 – AS 08.40. 490 do not apply to persons engaged in the design, installation, and maintenance of fire extinguishing systems.” are exempt from the requirements of Chapter 40. The design, installation, and maintenance of fire extinguishing system are allowed under Sec. 08.48.331. (a), (14).

Chapter 21 Construction Contractors, Article 2. Specialty Contractor Trades, 12AAC 21.200 outlines 37 different Specialty Contractors. Applying the mechanical and electrical subcontractor logic that they are exempt from installing systems not designed by licensed professionals the 35 other Specialty Contractors could follow this logic and design and build any size building of any hazardous occupancy without the participation of design profession. This is not only an illogical thought process and endangers not only the public and property of the structure in question but that of adjacent and nearby structures. In addition it violates the objectives of regulatory agencies dealing with health, safety, and welfare.

The date and intent of the addition or revision of the statute dealing with Specialty Contractors is not apparent from the data provided and reviewed. It may be assumed that it occurred when the subject of responsibilities for design, installation, and maintenance of fire suppression systems was under consideration. Regardless of timing and intent it is being inaccurately applied based on any sense of logic.

Relative to Sec. 08.48.331 Exemptions, (7) this statute should be revised to delete “or designing systems”. AS 08.18 Construction Contracts presently specifically excludes the mention of design contained under regulations pertaining to specialty contractors. The provision for a “*contractor preparing shop or field drawings*” is acceptable as long as the industry standard definitions are provided. Shop Drawings are prepared by contractors, subcontractors or vendors that show how a particular aspect of the work is to be fabricated and installed. Shop Drawings are not contract documents; they do however, demonstrate how an aspect of the work will satisfy the construction documents. They complete the information cycle between drawings prepared by licensed professionals and the actual construction. Field drawings are similar to shop drawings however generally prepared in the field to provide more precise data to the trades in the field. An example could be the contractor providing plans and details to the carpenter for constructing form

work with exact dimension for conformance with the drawings prepared by a licensed professional. The primary difference between a shop drawing and a field drawing is that the shop drawings are generally a requirement of the contract documents and should be reviewed and approved by the licensed professional and this effort is not required for field drawings. These definitions are required to avoid the interpretations that contractors can design buildings.

CONCLUSIONS

A review of statutes and regulations governing contractors, mechanical contractors, electrical contractors, and specialty contractors with the results indicating that no provision authorizing these contractors to provide design and engineering of facilities. The AEELS Board is a regulatory board for the purpose of ensuring that licensed professionals meet a minimum standard of practice in the various professions to protect the public health, safety, and welfare. To assume that the Board would relegate the responsibility of design and engineering to individuals not in conformance with the minimum education, experience, and examination requirements is beyond logic and violation of the obligations required of the AEELS Board.

Statutes and Regulations governing the AEELS Board specifically Sec. 08.48.11 charges the Board to “administer the provisions of Chapter 48”. Present interpretation of Sec. 08.48.331 prevents the Board from achieving this charge.

AS 08.48.341 Definitions

This issue is related and recommended amendments are necessary for coordination with and adding clarity for the support of the amendments and requirements of AS 08.48.331.

RECOMMEDATIONS

Revise Sec. 08.48.221 Seals in accordance with suggested statute amendments.

Revise Sec. 08.48.281 Prohibitive Practice in accordance with suggested statute amendments

Revise Sec.08.48.331 Exemptions as described and in accordance with suggested statute amendments.

- Exemptions 1 through 5 remain unchanged.
- The recommended amendments to Exemption (6), (C), (i) is a revision for conformance of Chapter 48 with State of Alaska, Division of Fire Prevention and local authorities having jurisdiction which require that appropriate design professionals prepare the construction documents and seal the drawings for multi-family residents containing more than three single family units in lieu of four.
- The recommended amendment for Exemption 7 would delete the words “or designing systems”. The preparation of shop drawings and field drawings would remain the responsibility of the specialty contractor.
- Exemptions 8, and 9 remain unchanged.

- The recommended amendments for Exemption 10 adds the disciplines of architecture, land surveying, and landscape architecture to the list of those exempt from the requirement of Chapter 48.
- Exemptions 11, 12, 13, and 14 clean up language for consistency with terminologies used in Chapter 48.

Revise Section 08.48.341 Definitions in accordance with suggested statute amendments.

Harley H. Hightower, FAIA