

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

February 23, 2001

1:09 p.m.

**MEMBERS PRESENT**

Representative Norman Rokeberg, Chair  
Representative Scott Ogan, Vice Chair  
Representative John Coghill  
Representative Kevin Meyer

**MEMBERS ABSENT**

Representative Jeannette James  
Representative Ethan Berkowitz  
Representative Albert Kookesh

**COMMITTEE CALENDAR**

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 34

"An Act relating to the statutory rule against perpetuities, to nonvested property interests and trusts, and to the suspension of the power of alienation of property; and providing for an effective date."

- MOVED SSHB 34 OUT OF COMMITTEE

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."

- HEARD AND HELD

**PREVIOUS ACTION**

BILL: HB 34

SHORT TITLE:RULE AGAINST PERPETUITIES

SPONSOR(S): REPRESENTATIVE(S)MCGUIRE

Jrn-Date	Jrn-Page		Action
01/08/01	0033	(H)	PREFILE RELEASED 1/5/01
01/08/01	0033	(H)	READ THE FIRST TIME -

			REFERRALS
01/08/01	0033	(H)	JUD
01/22/01	0143	(H)	SPONSOR SUBSTITUTE INTRODUCED
01/22/01	0143	(H)	READ THE FIRST TIME - REFERRALS
01/22/01	0143	(H)	JUD
02/23/01		(H)	JUD AT 1:00 PM CAPITOL 120

**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 MINUTE(L&C)
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
02/12/01		(H)	Moved CSHB 27(L&C) Out of Committee MINUTE(L&C)
02/14/01	0311	(H)	L&C RPT CS(L&C) 4DP 3NR
02/14/01	0311	(H)	DP: CRAWFORD, HAYES, MEYER, ROKEBERG;
02/14/01	0311	(H)	NR: HALCRO, KOTT, MURKOWSKI
02/14/01	0311	(H)	FN1: ZERO(REV)
02/14/01	0311	(H)	FN2: (CED)
02/14/01	0311	(H)	REFERRED TO JUDICIARY
02/23/01		(H)	JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

REPRESENTATIVE LESIL McGUIRE  
 Alaska State Legislature  
 Capitol Building, Room 418  
 Juneau, Alaska 99801  
 POSITION STATEMENT: Sponsor of SSHB 34.

STEPHEN E. GREER, Attorney at Law  
 PO Box 24-2903  
 Anchorage, Alaska 99524-2903

POSITION STATEMENT: Assisted with presentation of SSHB 34.

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

POSITION STATEMENT: Assisted with presentation of the proposed CS for HB 27 and answered questions.

BILL BRADY, Alaska Realtors Association  
PO Box 110101  
Anchorage, Alaska 99511

POSITION STATEMENT: Testified in support of the concept of the proposed CS for HB 27 and asked questions of the committee.

FRANCO VENUTI  
PO Box 3652  
Homer, Alaska 99603

POSITION STATEMENT: Testified in support of the intent of the proposed CS for HB 27 but expressed offense at a letter previously submitted during the House Labor and Commerce Standing Committee meeting.

BILL BLOOM  
PO Box 4194  
Homer, Alaska 99603

POSITION STATEMENT: Asked questions of the committee regarding the proposed CS for HB 27.

DAVID R. OWENS, Owner  
Owens Inspection Services  
PO Box 3589  
Palmer, Alaska 99645

POSITION STATEMENT: Testified in opposition to the proposed CS for HB 27.

RICK JARVIS, ReMax Properties  
2600 Cordova, Suite 100  
Anchorage, Alaska 99503

POSITION STATEMENT: Testified in support of the proposed CS for HB 27.

JOHN BITNEY, Legislative Liaison  
Alaska Housing Finance Corporation  
Department of Revenue  
PO Box 101020

Anchorage, Alaska 99510

POSITION STATEMENT: Testified in support of the proposed CS for HB 27 and recommended an amendment.

**ACTION NARRATIVE**

TAPE 01-23, SIDE A  
Number 0001

CHAIR NORMAN ROKEBERG called the House Judiciary Standing Committee meeting to order at 1:09 p.m. Representatives Rokeberg, Ogan, Coghill, and Meyer were present at the call to order.

HB 34 - RULE AGAINST PERPETUITIES

Number 0040

CHAIR ROKEBERG announced that the first order of business would be SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 34, "An Act relating to the statutory rule against perpetuities, to nonvested property interests and trusts, and to the suspension of the power of alienation of property; and providing for an effective date."

Number 0063

REPRESENTATIVE LESIL McGUIRE, Alaska State Legislature, sponsor, said that as complicated as the rule of perpetuities is, SSHB 34 is very simple. In 1997 Alaska passed the Trust Act, which was an attempt to bring Alaska up to the standards of other states such as Delaware - a state considered to be forward-thinking with regard to trust laws. She noted that Alaska has a unique tax structure, in that it is virtually nonexistent. To take advantage of this fact and create a new industry in Alaska, the Trust Act was passed. Through passage and revisions of the Trust Act, a group of attorneys discovered problems with the original legislation. Alaska's attempt to abolish the rule against perpetuities was not entirely successful. Current law still rendered trusts subject to estate and gift tax on the federal level. Last year, SB 162 was an attempt to clarify that the rule against perpetuities was abolished for all practical reasons in Alaska, in other words, to allow for the creation of dynasty trusts, or perpetual trusts, as they are sometimes called. These trusts enable transfer of property to successive generations without federal or state income tax.

REPRESENTATIVE McGUIRE explained that SSHB 34 was a minor modification to Alaska's trust law, which would allow a legislatively approved policy to be carried out. She added that the committee may face similar technical bills in the near future and asked the committee to remember that the legislature had made a decision for Alaska to become a forward-thinking state with regard to trust laws. In an attempt to diversify the state economically, the area of trusts was chosen, and she warned that this required that Alaska stay ahead of other states in order to attract the same dollars. She added that this was why SSHB 34 was retroactive. On another note, she said that while this was a complex issue, it was not controversial, primarily due to the tax structure in Alaska.

Number 0595

CHAIR ROKEBERG added that revisions to Alaska's trust law had created an entire new industry. One of the changes was the ability to elect community property status within a marriage, which would avoid a "step up in basis" should a spouse pass away. He also noted that the establishment of trusts would generate jobs and bring money to the state. This would also allow for a capital base increase for investment purposes. He pointed out that Alaska Trust Company, National Bank of Alaska, Alaska USA [Federal Credit Union], and Key Bank have all availed themselves of this law to generate business. The State of Delaware has attempted to replicate Alaska's trust laws. He added that Alaska has minimized, to a very small percentage, the premium tax on life insurance policies that are involved in the establishment of trusts. This was called the jumbo policy premium tax, and with its abolishment, the amount of revenue generated to the state has increased. Other states now come to Alaska and use the state's trust law and combine it with insurance products; thus they can buy several multimillion-dollar policies and pay very little tax. He said he hoped that SSHB 34 would be one of the few cleanup bills [the legislature] would see this year.

REPRESENTATIVE McGUIRE also noted that one of the requirements of the original legislation adopted was that trusts had to be administered by an Alaskan trust company. It is this requirement that generates jobs in Alaska.

Number 0977

STEPHEN E. GREER, Attorney at Law, testified via teleconference and assisted with the presentation of SSHB 34. He explained

that SSHB 34 was needed to clarify legislation that was passed last year [SB 162]. The dynasty trust, which is just one small aspect of the entire umbrella of trust legislation, allows an individual to create a trust that can go on from generation to generation, whereby individuals within a family can make use of the trust assets. It can also be structured in such a way so that, as assets pass from generation, federal and state tax can be avoided. However, when the rule [against] perpetuities was abolished, Alaska inadvertently fell into what is called the Delaware tax trap. He said that although last year's legislation fixed that problem, current law still lacks a distinction between a presently exercisable general power of appointment and a testamentary general power of appointment. He opined that SSHB 34 was a technical amendment that provided for this distinction in Alaska's rule against perpetuities.

Number 1275

MR. GREER explained that the rule against perpetuities says that at some point in time, all trusts must end and the trust assets must be distributed to the beneficiaries. That length of time is measured by "life and being," at the time of the creation of the trust, plus 21 years. Essentially, a trust can go on for the benefit of an individual's children, but it has to end at some point when it gets distributed to the grandchildren, thereby subjecting the assets to gift taxation, and to estate taxation when the grandchildren die. He offered that it would be wonderful to create a trust whereby the assets are made available for use to succeeding generations, a trust in which the assets are not subject to estate tax as they pass to succeeding generations. In order to accomplish the creation of this type of trust, the rule against perpetuities was amended in 1997 so that the period of time a trust may continue extended for as long as beneficiaries existed. This allowed people of wealth to establish trusts that ensured dramatic growth of assets by not subjecting them to estate taxation.

MR. GREER gave an example of a \$1 million trust with a return of 5 percent after taxes. If that trust was permitted to grow for 120 years, but subjected to an estate taxation of 50 percent at each generation, it would grow to \$21 million. However, if that same trust were exempt from estate taxation, it would grow to \$348 million. He went on to say that Alaska had abolished the rule against perpetuities so that individuals could create these types of trusts. All that is needed is an Alaskan resident willing to take on the duties of trustee. Out-of-state residents wishing to create such a trust must move their money

to Alaska because the trusts must be administered in Alaska. He said he understood that South Dakota, another state that had abolished the rule against perpetuities, managed over \$80 billion in trusts. He believed one of the primary reasons South Dakota had been able to garner so much money was because Citicorp moved in and had huge marketing potential. Currently Alaska has not had any similar large institution enter the state in order to market Alaska's [trust] law.

Number 1693

MR. GREER also explained that a dynasty trust could be structured in such a way that the assets would be made available for the use of an individual's children without being included in the children's estate tax base, and the assets would not be subject to the claims of the children's creditors. In order to accomplish these goals and stay within state tax law, certain powers can be given to the children: a child can be made the beneficiary of his or her own dynasty trust and use both income and principal as he or she sees fit; also, the child can be given a nongeneral power of appointment so that he or she could decide who receives the assets and how they are distributed at his or her death.

MR. GREER brought up the fact that the Internal Revenue Code contained a provision whereby if a beneficiary of a trust who possesses a nongeneral testamentary power of appointment exercises that power in such a way that the trust assets are passed on to another trust, which also has a beneficiary with a nongeneral power of appointment, then the assets will be subject to estate tax at the death of the original beneficiary. This is sometimes known as the Delaware tax trap. Currently, any state that has abolished the rule against perpetuities will fall into this tax trap if a beneficiary exercises his or her nongeneral power of appointment to create a further nongeneral power of appointment. He believed that SSHB 34 would allow Alaska to fix its trust law retroactive to April 22, 1997, in order to avoid this tax trap.

MR. GREER outlined that a beneficiary of a trust who has a nongeneral testamentary power of appointment can exercise that power without estate taxation resulting. A beneficiary could also choose to vest the trust to himself or herself. The rule against perpetuities demands that the time a trust might last must be computed. With the passage of SB 162, trusts could no longer go on forever, and would thus avoid the tax trap. There had to be a period of time within which trusts must end.

Current law dictates that a trust must vest within a thousand years of the creation of the trust if a beneficiary exercises a nongeneral testamentary power of appointment. If, on the other hand, a beneficiary is given a presently exercisable general power of appointment, it is as if the beneficiary were just given the trust property, and thus the thousand-year computation begins from the time the beneficiary received the power. He listed an example of a beneficiary of a trust in excess of \$1 million who has a testamentary nongeneral power of appointment and gives another beneficiary a presently exercisable general power of appointment in order to avoid a 55 percent generation-skipping tax. This action actually trips the tax trap, but by doing this, it subjects the property to the lesser estate tax rate versus the higher generation-skipping tax rate.

MR. GREER concluded by expressing his belief that SSHB 34 would perfect Alaska's trust law and conform it to common law understanding of the rule against perpetuities.

TAPE 01-23, SIDE B

Number 2390

MR. GREER, in response to questions from Representative Coghill, said that it was unlikely SSHB 34 would see any court challenges. He also said that if Alaska were to change its estate tax structure, it might necessitate altering the trust laws to accommodate dynasty trusts. However, because often states choose to have their estate and income taxes resemble the federal taxing scheme, dynasty trusts would probably be allowed to continue. He said he saw that the biggest threat to Alaskan trusts would be the imposition of an income tax on the trust's assets.

MR. GREER elaborated on points brought up by Chair Rokeberg by saying that if a state income tax were to be established, a provision could be made to exempt nonresident trusts maintained in Alaska, but he did not see any way to avoid taxation of trusts formed by Alaska residents. Mr. Greer went on to say that he believed, should Congress repeal the estate tax, Alaska would have an ability to take the billions of dollars outside of dynasty trusts and move them to Alaska because current Alaska law exempts trust assets from state income taxation and protects them from creditor claims.

MR. GREER explained that the reason for the changes in Section 1 was to make a distinction in the law between presently

exercisable general power of appointment and testamentary general power of appointment. The latter power relates back to the date of the original trust instrument. The former power relates to the date that power was granted to a beneficiary. He also clarified that the addition of the words "of alienation" in Section 3 was to conform with the first part of each sentence in which those words were added. Mr. Greer confirmed that the term "settlor", inserted in Section 3, was someone who had formed a revocable trust and subsequently died, causing the trust to become irrevocable. He also agreed that he was in favor of raising estate taxes higher than they are currently but capping them to protect small businesses.

Number 1457

REPRESENTATIVE OGAN moved to report SSHB 34 out of committee with individual recommendations and the accompanying zero fiscal notes and asked for unanimous consent. There being no objection, SSHB 34 was reported out of the House Judiciary Standing Committee

The committee was at-ease from 2:20 p.m. to 2:35 p.m.

HB 27 - LICENSE HOME INSPECTORS

Number 1438

CHAIR ROKEBERG announced that the next order of business 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." [Before the committee was CSHB 27(L&C).]

CHAIR ROKEBERG, speaking as the sponsor of HB 27, noted that the proposed committee substitute (CS) had a technical correction on page 8, line 26, changing the word "and" to "or".

Number 1352

REPRESENTATIVE COGHILL made a motion to adopt the proposed committee substitute (CS) for HB 27, version 22-LS0136\S, Lauterbach, 2/20/01, as a work draft. There being no objection, the proposed CS, Version S, was before the committee.

CHAIR ROKEBERG explained that interested parties within the real estate community had raised the concept of the proposed CS several years ago. Home inspectors throughout the country are becoming a major element in commerce and the real estate industry because of interest germinated in the real estate community regarding the relationship between home inspectors and disclosure statements, the development by the legislature of disclosure statements, the growth of the home inspection business, and the demand of home inspection services by federal housing elements and lenders. Many states have been taking up potential regulation of [home inspection] types of activities. He added that currently, anybody could call himself or herself a home inspector and establish a business, though that person would, of course, have to demonstrate competence in order to establish a clientele. Because of the problems he has seen arise in the area of home inspection, as well as his own experience with this type of legislation, Representative Rokeberg said he favored more governmental regulation [of the home inspection industry].

CHAIR ROKEBERG added that last year, HB 418 removed receipts of license fees and fees for services of the Department of Community and Economic Development (DCED) from the general fund calculation. He said that at the request of people in the industry, a full board had been created; although it did have fiscal ramifications, the board, not the state, would fund those.

CHAIR ROKEBERG brought attention to liability issues referred to on page 8, lines 13-28, affecting [AS 08.57.800 and AS] 08.57.810 and page 14, line 1, which repealed an existing statute.

Number 1158

JANET SEITZ, Staff to Representative Norman Rokeberg, Alaska State Legislature, assisted with the presentation of the proposed CS. She explained that the proposed CS would establish a board of home inspectors consisting of five voting members and one nonvoting, ex officio member. The nonvoting member would be the executive director of the Alaska Housing Finance Corporation (AHFC). The AHFC had requested its inclusion on the board due to the volume of interaction it has with home inspectors. She further explained that the board would have the general powers that most boards have to develop exams, issue licenses, and develop licensing procedures. The Division of Occupational Licensing would oversee the board.

MS. SEITZ went on to say that the proposed CS would require licensure of home inspectors and registration of associate (or apprentice) home inspectors. A home inspector would be responsible for work performed by an associate home inspector under his or her employ.

Number 1079

MS. SEITZ referred to page 4 and mentioned that the language now reflects that licensure would not be granted to anyone with an unresolved criminal complaint. The language also now reflects that disciplinary action refers only to real estate or home inspection matters.

MS. SEITZ said the proposed CS contained provisions for the following: advertising and business cards as they relate to identification, a required pre-inspection document, conflict of interest definitions and disclosure deadlines, and written inspection report requirements. With regard to the last, Ms. Seitz added that this requirement does not preclude the home inspector from taking the client with him or her on tour and presenting an oral report. She referred to page 7, line 10, and said that the validity of the home inspection report was limited to 180 days. She added that the proposed CS set forth the grounds for disciplinary sanctions, brought the board under the Administrative Procedure Act, and gave the board the authority to go to court and enjoin individuals from performing home inspections that are in violation of licensure. Ms. Seitz also referred to page 8, line 16, and said this language created a two-year limitation during which a party to the transaction could bring an action against a home inspector.

CHAIR ROKEBERG mentioned that this limitation was a controversial issue and was discussed in the House Labor and Commerce Standing Committee (HL&C). A prior version of HB 27 reflected that liability was limited to the same 180-day period of the [home inspection] report's validity. He said he felt the need to have a distinction between the validity period of the report and the length of time in which an inspector could be held liable for omissions or incorrect inspections. The result was to impose a two-year limitation, which reflects Wisconsin's limitation. He noted that though the state had a three-year statute of limitation, he felt that a two-year seasonal cycle was sufficient to expose any problems created as a result of any omissions or failures to identify problems by the home inspector.

MS. SEITZ continued by saying that language on page 8 also limits who could bring suit against the home inspector. If a person is not party to the transaction, or is in unlawful receipt of the home inspection report, then that person cannot bring action against the home inspector. She explained that the proposed CS also includes prohibitions against the home inspector performing repairs on problems discovered during an inspection that was performed for a fee. A home inspector is also prohibited from inspecting his or her own property, or property that he or she has a financial interest in, for a fee. The proposed CS also establishes the following exemptions from licensure and registration: federal, state, or local employees; home inspections performed on the home inspector's own personal residence without a fee; a registered engineer/architect (or engineer/architect-in-training) who affixes his or her seal and signs the report; a pesticide applicator inspecting for pesticide applications; a general contractor with a residential contractor's license/endorsement; a real estate appraiser while performing those specific duties; and an energy rater, again, while performing those specific duties.

Number 0763

MS. SEITZ noted that the proposed CS also has a definitions section. She then referred to page 12 where language in the AHFC provision was amended as it pertained to International Conference of Building Officials (ICBO) inspectors. She added that there are two sections in the proposed CS that will reflect this language because of transitional considerations. After the transitional period, the ICBO inspectors will have to abide by home inspector licensure requirements. The delayed effective date for Section 5 of the proposed CS would allow existing ICBO inspectors time to comply with the new requirements. Ms. Seitz concluded by noting that the proposed CS also contains provisions which will bring violations of certain sections [of AS 08.57] under the Fair Trade Practices Act, allows the board to start developing regulations before licensing measures go into effect, and contains transitional licensure provisions.

Number 0610

BILL BRADY, Alaska Realtors Association, testified via teleconference. He said that he was speaking just a real estate agent and not for the Alaska Realtors Association because the Alaska Realtors Association had not had time to meet and discuss the proposed CS. He did, however, note that the Alaska Realtors

Association agreed that there needed to be some form of home inspector licensure. On another point, he questioned the lack of public liability or property damage insurance in the proposed CS.

CHAIR ROKEBERG explained that the final residual element regarding public liability insurance was deleted from the proposed CS because the state does not statutorily require any state licensees to acquire insurance, and he did not intend to set a precedent with home inspectors. In addition, the topic of mandatory errors and omissions (E&O) insurance had already been debated over the years and had failed to pass muster. All that was left in prior versions of HB 27 was minimal general liability insurance, and Representative Rokeberg said he felt that those provisions were redundant because any prudent business operator would have liability insurance anyway. He added that insurance requirements are not in the real estate statutes either.

MR. BRADY said he disagreed. He felt that there should be some type of public liability and property damage insurance in the proposed CS. He reminded the committee that home inspectors go into people's homes and move around in crawl spaces and attics. He asked if an inspector who fell through the ceiling and was injured would be able to sue the homeowner. He wondered if in that situation the consumer would be protected.

Number 0353

CHAIR ROKEBERG rebutted that no other profession had statutorily required insurance, and he inquired if Mr. Brady thought realtors should have statutorily required insurance.

MR. BRADY said he still felt that insurance should be required for home inspectors because a home inspector was more likely to be injured or cause damage during the course of the inspection than a realtor would be during the course of showing a home to a prospective buyer. He also said, however, that he did not want to hold up passage of the proposed CS on this point.

CHAIR ROKEBERG countered that in the example given by Mr. Brady, the home inspector was more likely to bring a cause of action.

MR. BRADY agreed with Chair Rokeberg on that point. On another point, he sought clarification on whether a home inspector who lost his license could work under another home inspector's license as an associate. He noted that in real estate, a broker

who lost his or her license, could still work as an agent for an employing broker.

CHAIR ROKEBERG said his staff would research that issue.

Number 0069

FRANCO VENUTI testified via teleconference and said he was an ICBO certified combination dwelling inspector. He added that he serves as a member of the Federal Housing Administration (FHA) New Construction Inspection Panel, as construction inspector for the Veterans' Administration. He has been working in the public construction industry for the last 30 years and has been inspecting new and existing homes since 1992. He stated that he was extremely insulted by the letter written by Carla Stanley, which was submitted as part of the public record in the House Labor and Commerce Standing Committee on February 2, 2001. He said that the letter contained a number of untrue allegations and slandered Mr. Venuti's business reputation. The letter referred to a case between the Stanleys and their builder, which went to binding arbitration in 1999. Mr. Venuti added that the arbitrator held the Stanleys liable. The Stanleys then appealed the arbitration and were again held liable by the superior court. This case, which was judged in two instances to be without merit, was now apparently being used .... [Tape ended mid-sentence.]

TAPE 01-24, SIDE A  
Number 0001

MR. VENUTI continued by saying he respectfully requested the aforementioned letter be removed from the public record.

MR. VENUTI spoke on another issue: model codes are only minimum standards and not design ideals. He pointed out that on new construction, he often never meets the homeowners and never has any contact or contract with them. He normally contracts only with the builder. In the field, he cannot hold the builder to anything other than minimum code standards. He added that he has inspected for a number of builders on a regular basis, and he recognized that the quality of workmanship varied with the builder's experience as well as the price range of the project. The reality of the market is that the quality of a home is directly related to the budget. Unfortunately, many new-home buyers have unrealistic expectations and naively assume that a \$130,000 home will have the same quality as a \$300,000 home. If

a budget only allows for minimum standards, then that is what the buyers get even though they may not like it.

Number 0105

MR. VENUTI explained that with existing home transactions, the final call on whether a home gets purchased falls to the real estate appraiser, who evaluates the property based on the relationship to the financing scenario. He added that specific financing scenarios often have their own unique requirements, not all of which are minimum code standards. In the typical home sale, there are more people involved than just the buyer, and the home inspector has to walk a fine line in order to satisfy the buyer, the seller, and the realtor. Savvy inspectors write reports that do not impede the transaction. He said he had observed that when a buyer is determined to purchase a particular home, the buyer does so regardless of the home inspection report. He finalized his comments on this issue by saying that existing home inspections and new construction inspections were two completely different issues; the proposed CS needed to more thoroughly separate the two different types of inspections.

MR. VENUTI then referred to page 4, line 1. He asked what constituted an unresolved complaint and what happened if the complaint was without merit. He added that that language would "make it open season on home inspectors." He said, however, that he supported the intent of [HB 27], but cautioned that it would not eliminate homeowner (indisc.) and would simply complicate issues. He said he felt that a more effective way in which to ensure homeowner and homebuyer satisfaction would be to require homeowners to purchase new construction warranty insurance. He added that this solution would not require the layers of bureaucracy and additional consumer costs entailed in [HB 27]. In conclusion, he again respectfully requested that the Stanley letter be removed from the public record.

CHAIR ROKEBERG noted that he was familiar with the aforementioned letter, and asked Mr. Venuti to fax his testimony to the committee to ensure that it [too] became part of the public record. He said he appreciated Mr. Venuti's support. He added that many of Mr. Venuti's comments were about current industry practices and not part of the proposed CS.

CHAIR ROKEBERG also explained that the language on page 4 of the proposed CS regarding unresolved criminal complaint and disciplinary action referred only to licensure qualification and

did not relate to any subsequent disciplinary actions. He said this meant that a person needed to have a clean record in order to get his or her initial license. He did agree that [the committee] should take another look at the language regarding an unresolved disciplinary action going before a regulatory authority of the state. He offered that the language meant that a person would have to be another licensee, for example, a contractor, or [the disciplinary action] would have to be at the criminal level. He said [the committee] would make sure it did not apply to a home inspector with a causative action against him or her.

Number 0433

BILL BLOOM testified via teleconference and asked questions of the committee. His first questioned whether the entire proposed CS pertained only to the AHFC-financed homes.

CHAIR ROKEBERG responded that the proposed CS had very little to do with the AHFC; it only related to the specificity in [the AHFC] statute about the use of home inspectors for [the AHFC] lending product. The proposed CS would ensure that all home inspectors in the state, including the ICBO inspectors, were licensed under the board [of home inspectors]. He added that the proposed CS would pertain to all houses in the state, both new and existing, that were not in a jurisdiction which had its own building codes, examinations, and inspections.

MR. BLOOM said he assumed that licensing and inspection fees would pay for the administrative cost of the board. He then asked if the examination provisions reflected examinations for different types of licenses, such as for new-construction inspection and existing-home inspection. He noted that the recognized national exam for existing homes would be the American Society of Home Inspectors Exam (ASHIE), and this exam had a prerequisite of 250 home inspections.

CHAIR ROKEBERG confirmed that the examinations would reflect the different licenses. He noted that there were several ICBO exams. He also explained that the board could, in establishing examinations, adopt the ASHIE test or a similar type of test and then administer it. He noted that an earlier version of HB 27 contained standards for transitional licensing that included home inspection experience. This language was removed to prevent an unfair burden on home inspectors from rural areas, where it was difficult for a home inspector to perform the number of inspections required to fulfill prerequisites.

MR. BLOOM referred to the license renewal provision of the proposed CS. He said he understood that ICBO inspectors "re-test" every three years for code changes, but he could not see what continued competency testing would entail for existing home inspectors.

CHAIR ROKEBERG answered that it could entail refresher courses and continuing education curriculum.

MR. BLOOM said he was surprised that the required inspection report could be an oral report. He wondered about third-party recipients of those reports, and who else might be receiving the reports.

Number 0899

CHAIR ROKEBERG clarified that the required inspection report had to be written; an oral report could be given in addition to the written one, however. He suggested that Mr. Bloom was looking at an older version of HB 27 and not the one currently before the committee. He explained further that whoever purchased the report had to give consent for the report to be passed on to third-party recipients. That way, the home inspector would be protected by ensuring the report was not distributed to unauthorized parties. Chair Rokeberg noted that the current CS encouraged oral reports during inspections so that the homebuyer could be made aware of details that would not necessarily be in the written report.

MR. BLOOM said he did not understand what "contrary to public policy" meant [as used on page 9, lines 27-28].

CHAIR ROKEBERG explained that it meant a contract could not contain a provision that limited the home inspector's liability to the fee of the home inspection. He also noted that this language was a change in public policy. Chair Rokeberg also informed Mr. Bloom that the insurance requirement provisions had been deleted completely from the proposed CS. He recommended that Mr. Bloom acquire the latest version. Chair Rokeberg further suggested to Mr. Bloom that his concerns regarding Section 4 would be better addressed to the AHFC representative because Section 4 contained existing statutory language specific to the AHFC.

MR. BLOOM noted that while most of the proposed CS appeared to him to relate to existing home inspectors, the portion which was

included that related to ICBO inspectors made the proposed CS confusing.

CHAIR ROKEBERG commented that while he agreed with some of Mr. Bloom's comments regarding Section 4, the proposed CS did not speak to those issues at all.

Number 1348

DAVID R. OWENS, Owner, Owens Inspection Services, testified via teleconference in opposition to the proposed CS as it is currently written. He said that his primary reason for opposition was because not all inspectors were going to be regulated under the proposed CS; it would leave the residential inspectors to carry the burden, which would, in turn, drive costs up and force some inspectors out of business. He also said he felt it was inappropriate to have a real estate agent on a regulating/inspection board.

CHAIR ROKEBERG asked Mr. Owens to specify which inspectors he meant when Mr. Owens said the proposed CS would not be regulating all inspectors. Chair Rokeberg said the only exempt inspectors he knew of would be those that worked for municipalities or other jurisdictions that have enforcement of building code.

MR. OWENS said that there were inspectors doing private inspection work who were going to go unregulated. As an example he listed the specialty inspectors that do inspections of concrete, rebar, structural steel, structural welding, fireproofing, post-tensioned slabs and beams, and soil compaction. He said he also believed that the Federal Housing Administration and Veterans' Administration inspectors would go unregulated as well under the proposed CS. On another point, he said he was not clear if, on the new construction, only the AHFC inspectors would be regulated, leaving the other inspectors of new construction unregulated. He added that if he felt that all inspectors were being included in the proposed CS, he would support it.

CHAIR ROKEBERG explained that all inspectors were included in the proposed CS with the exception of municipal inspectors and specialty inspectors of rebar and welding. The board would regulate all ICBO, existing-home, and new-home inspectors who were performing inspections defined in the proposed CS. He did note, however, that because an energy rater does not inspect all components of a home, the proposed CS would not regulate an

energy rater. Chair Rokeberg also explained that because the proposed CS was designed for consumer protection, commercial inspectors were not included because commercial interests have the ability to protect themselves.

Number 1650

RICK JARVIS, ReMax Properties, testified via teleconference and said simply that he was in support of the proposed CS.

Number 1654

JOHN BITNEY, Legislative Liaison, Alaska Housing Finance Corporation, Department of Revenue, testified via teleconference. He said the AHFC was in favor of the proposed CS. He noted, however, that the AHFC did not provide a fiscal note even though page 2, lines 4-7, required the AHFC to pay the cost of being an ex officio member. He explained that originally, the AHFC had wanted to participate on the board in order to ensure that a construction standard was adopted equal to, or better than, the standard the AHFC currently has in place. Mr. Bitney said that it was not necessary for the AHFC to be a member of the board in perpetuity; a limited timeframe would serve as well, and would ensure that the fiscal note remained zero. If, however, the legislature wanted the AHFC to remain on the board in perpetuity, then the AHFC would consider submitting a revised fiscal note.

CHAIR ROKEBERG acknowledged that the committee would consider an amendment to limit the time that the AHFC served on the board. He said he would hold open the public hearing on the proposed CS [Version S], which he intended to bring back before the committee on Monday. [HB 27 was held over.]

**ADJOURNMENT**

Number 1769

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:28 p.m.