

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

January 31, 2001

3:49 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. 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

HOUSE BILL NO. 70

"An Act extending the termination date of the State Physical Therapy and Occupational Therapy Board."

- SCHEDULED BUT NOT HEARD

PREVIOUS ACTION

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

WITNESS REGISTER

JANET SEITZ, Staff
to Representative Rokeberg
Alaska State Legislature
Capitol Building, Room 118
Juneau, Alaska 99801
POSITION STATEMENT: Introduced HB 27 for the sponsor,
Representative Rokeberg.

WILLIAM BRUU, Owner
Ti-Le-An Management Inc.
165 East Parks Highway, Suite 207
Wasilla, Alaska 99654
POSITION STATEMENT: Testified on HB 27.

BARB NORD, Chair
Kenai Peninsula Realtors
Industry Issues
690 Sycamore
Kenai, Alaska 99611
POSITION STATEMENT: Testified on HB 27 and supports the concept
of licensing home inspectors.

RON JOHNSON, Broker
610 Attla Way Street 10
Kenai, Alaska 99611
POSITION STATEMENT: Testified on HB 27.

TED VEAL, Home Inspector/Energy Rater
539 Elderberry
Homer, Alaska 99603
POSITION STATEMENT: Testified on HB 27.

FRANKO VENUTI, Certified Combination Dwelling Inspector
P.O. Box 3652
Homer, Alaska 99603
POSITION STATEMENT: Testified on HB 27.

ROBERT PANKRATZ, Licensed ICBO Inspector
P.O. Box 1856
Homer, Alaska 99603
POSITION STATEMENT: Testified on HB 27.

BILL BRADY, President
Alaska Association of Realtors
P.O. Box 110101
Anchorage, Alaska 99511
POSITION STATEMENT: Testified on HB 27.

JOHN BITNEY, Legislative Liaison
Alaska Housing Finance Corporation (AHFC)
4300 Boniface Parkway
Anchorage, Alaska 99510
POSITION STATEMENT: Testified for AHFC in favor of HB 27.

AMY DAUGHERTY, Lobbyist
Alaska Professional Design Council (APDC)
327 West 11th Street
Juneau, Alaska 99801
POSITION STATEMENT: Testified for APDC on HB 27.

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

ACTION NARRATIVE

TAPE 01-10, SIDE A
Number 0001

CHAIR LISA MURKOWSKI reconvened the House Labor and Commerce Standing Committee meeting at 3:49 p.m. [The minutes for the AK State Hospital & Nursing Home Association overview are found in the 3:20 p.m. cover sheet for the same date.]

HB 27-LICENSE HOME INSPECTORS

Number 0067

CHAIR MURKOWSKI stated that the 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."

Number 0067

JANET SEITZ, Staff to Representative Rokeberg, Alaska State Legislature, introduced HB 27 on behalf of the sponsor, Representative Rokeberg. She said the bill sets up a system for licensing home inspectors and [establishes] professional standards for the board. She said it requires education for licensure to protect the consumer. She pointed out that Representative Rokeberg's concern was that currently anyone could get a license and say he or she is a home inspector.

MS. SEITZ explained that consumers are relying on people who are not qualified and problems are occurring in the industry. She said Representative Rokeberg introduced the bill at the request of the real estate industry and active home inspectors, who helped develop the bill.

MS. SEITZ said the sponsor presented a proposed committee substitute (CS), Version F, to committee members on January 30, 2001. She said it includes suggestions from Alaska Housing Finance Corporation (AHFC) and the legislative drafter.

REPRESENTATIVE KOTT made a motion to adopt Version F [22-LS0136\F] as a work draft.

MS. SEITZ responded to a question from Representative Halcro about why after July 1, 2002, the AHFC representative would be a non-voting member. She said AHFC suggested the [bill] language; they wanted the executive director to be a voting member during the transitional period, to lend expertise to the board. After that period, the executive director would perform as a non-voting, ex officio member on the board.

REPRESENTATIVE ROKEBERG said the Legislative Information Offices (LIOs) had been sent copies of the proposed CS, Version F of the bill.

Number 0383

CHAIR MURKOWSKI reported that [there being no objection] the committee had adopted Version F of HB 27 as the work draft.

WILLIAM BRUU, Owner, Ti-Le-An Management Inc., an inspection firm in the Mat-Su Valley, said he is an International Conference of Building Officials (ICBO) inspector and a certified energy rater for the State of Alaska, and also does

home inspections. He had three questions about Version F for the committee.

MR. BRUU relayed that the definition of home inspector in the bill does not differentiate between [types of] inspectors. He said one is certified by a national organization to do inspections using a set of standards on new construction - specifically building codes. He said the level that this individual has to obtain, prior to actually certifying to AHFC that a home has met inspection standards, is much greater than that of a home inspector who is looking at old construction and is providing an opinion of condition to a potential buyer.

MR. BRUU said he would like to see the bill make a more distinctive definition for home inspector, and [add] an additional definition for a certified inspector who does specific code inspections on new construction.

MR. BRUU referred to Version F, page 11, lines 30-31, and page 12, lines 1-2, and asked how the deletion protects the consumer. He said deleting that particular provision of the existing statute allows the builder to find anyone with a business license that says that he or she is a home inspector to do inspections on new construction - code compliance inspections - when "they" are not certified by any national agency.

MR. BRUU directed the committee to Version F, page 9, lines 26-27. He said in order for him to submit an energy rating to AHFC for certification of a home, he has to have gone through an education program provided by one or more agencies, a program approved by AHFC as an instruction program. He said liabilities have to be checked and certified by an agency. A person literally has to go out and perform a series of energy ratings and be qualified via this method, and then AHFC would issue final approval by sending a letter. He said if that is not a certification process, he doesn't know what is.

MR. BRUU referred to a memorandum from Terri Lauterbach, Legislative Counsel, Legislative Legal and Research Services, dated January 30, 2001, regarding Version F of HB 27, attached to Version F when it was sent to the LIOs. He said paragraph 4 of the memorandum indicates that the energy rater is not certified as an energy rater. He said he would like the committee to understand that some of the provisions, if implemented, especially those that remove the ICBO requirement, would take away 60 percent of his business.

Number 0746

REPRESENTATIVE ROKEBERG responded by saying that some of the things Mr. Bruu brought up had to do with the way the drafter recommended that the bill be drafted. He assured him that none of his fears were founded.

REPRESENTATIVE ROKEBERG said the distinctions between the new and existing home construction are part of the provisional transition agreements of getting a license. He said it then becomes a matter for the board to establish the standards between new and existing construction.

REPRESENTATIVE ROKEBERG explained that the language in Version F, Section 5, page 11, was in the former bill at the request of AHFC. He referred back to Section 4, which puts the home licensees in place. He said there is a delayed effective date. He said it is a little complicated because Section 5 isn't effective until after Section 4 [is in place], and the inspectors are licensed.

Number 0858

MR. BRUU said he doesn't see this specifically in the bill.

REPRESENTATIVE ROKEBERG directed his attention to Version F, page 14, line 22, "* Sec.12. Section 5 of this Act takes effect January 1, 2003." He said there is a delayed effective date for that section and the new board would have implemented the licensure of new and existing inspectors at that time. He said the law requires that it be written this way in order for it to be done.

REPRESENTATIVE ROKEBERG explained that Section 4 is in effect and then Section 5 comes into place.

REPRESENTATIVE ROKEBERG referred to the exemptions changed in Version F and said it exempted architects and engineers. He asked Mr. Bruu to explain the third point he raised.

Number 0949

MR. BRUU reiterated that AHFC's statement in the memorandum, page 2, paragraph 5, says:

The exemption listed in paragraph (8) on page 9 has been rewritten because, according to AHFC, there is no state certification program for energy raters.

MR. BRUU emphasized that his concern was about energy raters. He said becoming an energy rater is a lengthy process that has been approved and established by AHFC. [A person must go through this process] in order to be able to submit certifiable energy ratings to AHFC. He said if the process that a person goes through these days to become an energy rater is not a certification process, then he has a hard time deciding what a certification process is.

REPRESENTATIVE ROKEBERG explained that all that section does is exempt energy raters, whether certified or not. He said it doesn't affect the bill.

Number 1041

MR. BRUU said the point he was trying to make is that energy raters are, by definition, an inspector and a technician that inspect and certify new or existing homes [to ensure] that certain state standards are met. He said if licensure is required of home inspectors and ICBO inspectors, then energy raters should be included in that process along with other inspectors in Alaska that are defined as specialty inspectors. He said there are specific categories in areas where inspections are performed. He said if this is a consumer protection bill, then the consumer needs to be considered when looking at who is encompassed in the bill.

REPRESENTATIVE ROKEBERG said he has had this discussion with Mr. Bruu before and it comes down to a judgment call. He does not deny that "those" people should be regulated, but said it goes beyond the scope of the bill. He said, as the author of the bill, he thought it would bring too many people under the new board who wouldn't necessarily qualify to be there. He said Mr. Bruu is a unique, multi-talented person who is certified to inspect new homes, existing homes, and to conduct energy ratings.

REPRESENTATIVE ROKEBERG said the committee might discuss Mr. Bruu's points but he, as a matter of judgment, had decided it would extend the bill beyond the scope of what he was trying to do.

MR. BRUU said he had his questions answered. He said he would probably be working with Representative Rokeberg throughout the process to make some changes to the bill.

REPRESENTATIVE ROKEBERG said Mr. Bruu had been involved in the process for three years and asked Mr. Bruu if he supports the concept of the legislation.

Number 1184

MR. BRUU said he is satisfied with the concept of licensure for inspectors in Alaska but is in a quandary as to how this will affect Bush communities and the ability of AHFC and others to finance property in Bush communities.

REPRESENTATIVE ROKEBERG said he shares Mr. Bruu's concerns. He said Mr. Bitney from AHFC was here and they would continue to focus on that issue.

Number 1227

BARB NORD, Chair, Industry Issues, Kenai Peninsula Realtors, said "we" whole-heartedly agree with the concept of licensing home inspectors. She said "we" feel that AHFC is not the only financing corporation and the Act just relates to AHFC loans. She referred to Version F, page 7, line 22, ["180 days old or was unlawfully disclosed to the person bring the action."] She said in the bill before, that period of time was one year. She referred to page 8, line 11, and stated that this had been one year too. She asked what had changed to make it a 180-day limit.

MS. NORD referred to Version F, page 10, Section 3, "'home inspection'", line 6, (B) "interior plumbing and electrical systems;" She said much of plumbing is in the interior but there is always plumbing on the outside of the house along with other electrical [systems]. She wondered how much would be covered [by the inspection], if the whole house is not covered. She said if the exterior is not covered, [any] defects with the plumbing and electrical systems is of concern. She referred specifically to the word "interior" in (B).

Number 1348

REPRESENTATIVE ROKEBERG said Ms. Nord had a good point.

REPRESENTATIVE ROKEBERG said the one-year versus 180-day limit refers to the length of time the [inspection] report is valid. He said it is a concept of the liability (indisc.) by the inspector and is a legal issue that has been debated - with some controversy.

REPRESENTATIVE ROKEBERG said one of the reasons the legislation is being formed is because of the standards of practice and past events. He said in most situations, a homebuyer will retain the services of a home inspector prior to making an offer on a home - or [the prospective buyer] makes an offer, and part of the contingency is that a home inspection be done.

REPRESENTATIVE ROKEBERG said the legislation attempts to establish a fiduciary relationship between the inspector and the client; therefore, the person paying for the report has exclusive control over it. He said the client has the dominion over the inspection report and can give it to whomever he or she chooses. He said in the past, one of the problems had been that the report was handed around to various people and oftentimes copies were made.

REPRESENTATIVE ROKEBERG said the report is getting distributed everywhere when, in fact, it is a report between the client and the person who pays for it. He said there have been lawsuits filed and claims made against home inspectors from people who have copies of a report. He said oftentimes "they" don't even know how they got a copy of it and then a deal falls through because they saw the unauthorized report. He said this bill controls that (indisc.).

Number 1499

REPRESENTATIVE ROKEBERG said home inspection in a northern climate like Alaska's is a snapshot of the condition of the home or building on that day, when the inspector completed the report. He said going through the seasons, particularly in the wintertime, there could be substantial differences. He said the condition of a building changes over time. And, the debate has been over the length of time the report should be valid.

REPRESENTATIVE ROKEBERG said this bill was also considered before and set the length of time [for the validity of a report] at one year. He said he decided that due to the seasonal conditions [in Alaska], getting through a winter with a report is lucky. He said in order to be fair to the inspectors, who may have liabilities attached to the report, it should be

limited. He said the arguments on the opposing side have been in relation to the statute of (indisc.) and the statute of limitation for bringing liability actions - some are six years in the state.

REPRESENTATIVE ROKEBERG said home inspectors don't design homes, they just inspect them one day, and this is the condition in which they found them on that day. He said completing a report in October and allowing it to be valid in May is not fair. He said this is where the decision was made [to limit the period of time].

Number 1589

REPRESENTATIVE HALCRO said if he is buying a home, it's his responsibility to have the home inspected prior to closing. He said, "If he is given a report done eight months ago on the same home, say, from the realtor, wouldn't he still, as a responsible homebuyer, want to have his own opinion done?" He said he is not quite sure if he understands the problem because from a responsible homebuyer's standpoint, he would want to have his own inspector and have him or her do an inspection.

REPRESENTATIVE ROKEBERG said that [home inspection] reports that are a couple of years old have been used as leverage and/or causes of action against home inspectors - which is not fair. He said reports have been used and what they are trying to do is to cut off their liability. He said the reports cost around \$350. When there is a defect in a home, the recent homeowner is going to look for someone to sue. He said one of the reasons they are involved in this issue is the liability shift from one profession to another. He said it is the disgruntled homebuyer who got a bad deal that is looking for "a pocket." And because home inspectors recently became a part of the industry in the urban areas, it's [become] a growing and newer phenomenon in business.

REPRESENTATIVE ROKEBERG said if he was the seller of a home, he would have a home inspection done and provide it to the buyer, but if he were the buyer, he would get his own home inspector. He said there was a question about why a home inspection reports might last longer in some instances. He explained that realtors might advise people to have a home inspection done that would be valid for a longer period of time because if the house doesn't sell in six months, another inspection would have to be done. He said maybe that is good, but if it's been vacant for six

months, things happen to a vacant home more than one that is occupied.

REPRESENTATIVE ROKEBERG said there was a concern about liability shifting.

Number 1719

REPRESENTATIVE HALCRO asked, "Then wouldn't it be prudent, on our behalf, to also incorporate the realtor in this circle of liability?" He said if he is selling a home and providing the buyer with a report, or suggesting someone who may or may not be qualified to give an accurate home inspection, shouldn't he be just as liable as the home inspector?

REPRESENTATIVE ROKEBERG said the realtor shouldn't be liable because he or she doesn't do the work of the home inspector.

REPRESENTATIVE HALCRO said realtors have a vested interest in the sale of a home, and if they provide the [client with the] report, "shouldn't realtors be just as liable as the person who did the report?"

REPRESENTATIVE ROKEBERG said the transfer of reports will be made subject to law. He said the realtor shouldn't be handing out reports without the consent of the person who paid for it.

Number 1795

MS. NORD said the one-year status, Version F, page 7, line 22, was more along the lines of what she was referring to [in her testimony]. She said she thought it would be better to have the report every (indisc.). She said (indisc.) does not know, and it may be months or years after that when he or she discovers that the home inspection should have visually caught something on the day the inspection was done. She said as a realtor she has had this experience more than once.

Number 1824

RON JOHNSON, Broker, said he had some concerns, which he had expressed in a letter to Representative Rokeberg, and some new concerns too.

MR. JOHNSON said in reading the title of the Act - referring to inspections for AHFC loans - he doesn't think this bill applies to him because it says, "for residential loans purchased or

approved by the Alaska Housing Finance Corporation." He said he didn't think the bill would affect his doing conventional or FHA loan [inspections].

MR. JOHNSON referred to Version F, page 2, and said it took him quite a while when reading the bill to realize that there's a licensed home inspector and there's a registered associate home inspector. And throughout the bill it alludes to the associate home inspector as also being licensed.

MR. JOHNSON said, in his original letter [to Representative Rokeberg], he recommended that the associate home inspector be added to the definitions. He said he addressed it in his letter but felt it was very important that the associate be specifically addressed as registered, not licensed.

Number 1930

MR. JOHNSON referred to [Version F], page 5, line 8, "inspector's name, mailing address, and license or registration number." He said the business or the name of the business would be the one that would have to be identified rather than [that of] the individual. He asked what would happen to the associates working under a licensed inspector employed by a corporation or real estate office that had a franchise. He said the associates could go along with the license or the licenses could be replaced. He said his question is really about the bills, checks, and payments that are made by the company. He said he thinks it would be a legal trust but the real estate commission still has to address this.

MR. JOHNSON referred to [Version F], page 7, line 19, Sec. 08.57.810, and said it should be deleted altogether. He said if there is a complaint, then the courts should decide [the outcome]. He said under statutes of fraud, the 180-day [liability] "wouldn't fly anyway."

Number 1997

MR. JOHNSON said if it is going to be limited, then it should be a year. He referred to page 8, line 4, (3), ["offer or deliver compensation, an inducement, or a reward to the owner of the inspected property, the broker, or the agent, for the referral of business to the home inspector or the home inspector's company;"]. He said he thought it was a violation of fair trade, as he addressed in his letter [to Representative Rokeberg].

MR. JOHNSON he said under the definitions, page 10, line 14, (4):

[Put] home inspectors after that. [Then put] licensed home inspectors means ... Then under that, change (5) to (6), and put (5) ... [as] a registered associate home inspector.

MR. JOHNSON said he agreed with Ms. Nord's comments about Sections 4 and 5. He said if AHFC is taken out of the title, then Sections 4 and 5 could easily be deleted. He said he did not see the logic in having the executive director of AHFC on the board of home inspectors.

CHAIR MURKOWSKI asked Mr. Johnson to please fax a copy of his comments to the committee.

REPRESENTATIVE ROKEBERG addressed some of Mr. Johnson's concerns by saying that the AHFC in the title refers to the ICBO new home inspectors outside their own jurisdictions - and "they" are in there. He said associate home inspectors are not licensed. He said corporations and businesses are not licensed and individuals have to be licensed. He said if there is an incorporated home-inspection business, the associate works under the principal licensee. He said only in the area of engineering can a corporation be licensed in Alaska, just like a broker.

REPRESENTATIVE ROKEBERG said the 180-day [liability] is open for argument. In response to Mr. Johnson's fair trade question, he said, "Yes, if those things are done, they are in violation of the Fair Trade Practices Act, and can be prosecuted."

Number 2115

TED VEAL, Home Inspector/Energy Rater, said he and Mr. Bruu do similar work. He said "we" just received the latest copy of the bill and he hasn't had an opportunity to review the changes.

MR. VEAL said he is not aware of the difficulties that would require this legislation, so he has some reservation about the passage of it because it would require more paperwork and costs for the inspectors. He said he mostly does ICBO inspections for new construction and energy ratings.

Number 2204

FRANKO VENUTI, Certified Combination Dwelling Inspector, with the ICBO, and a member of the Federal Housing Authority (FHA) inspection panel, said he has 30 years of experience working in the industry and performs new inspections to ICBO standards for the AHFC mortgage program and properties.

MR. VENUTI said he also performs inspections for buyers who are interested in existing properties. He said he concurs with Mr. Veal that "we" just received a copy of the revised bill [Version F] and are not up to speed on what changes have been made.

Number 2256

CHAIR MURKOWSKI said people could submit testimony via the fax machine and the bill would be taken back up again on Friday.

Number 2268

MR. VENUTI said he was concerned about the intent of the bill and was not aware of the number of complaints that have been generated.

MR. VENUTI referred to page 5, line 19, [**Sec. 08.57.310. Pre-inspection document required**], and asked if it would apply to new construction with AHFC. He referred to page 7, under Article 7. General Provisions, lines 29-31, and said he has been working in the building industry for a number of years and has worked on properties that he has inspected. He said typically the inspection happens, and then later the owner asks him to do some property repairs. He said he does not feel he is alone in his concern about the 12-month period. He said in many small towns in Alaska there are people who do this.

MR. VENUTI said he agrees with the 180-day [liability] provision, page 8, line 11, and asked how it would be financed. He also asked who would pay for the cost of establishing the board and how it would affect the bottom line for the homeowner. He said he just doesn't see how the bill will help his customers. He said he thinks the system works the way it is and wonders who will gain from the institution of the bill.

MR. VENUTI said AHFC has some clear rules that inspectors follow for properties financed through them. He said he is concerned that there would be a duplication of effort.

Number 2439

MR. VENUTI said in looking at the rules provided through AHFC, there is a portion that talks about liability of the inspector. It says, "In accordance with AS 18.56.300 (c), a person may not bring an action for damages against an ICBO inspector who has inspected a residential unit unless the action is for damages caused by gross negligence or intentional misconduct of the inspector."

MR. VENUTI said he reads that to cover the intent of what this bill is trying to do.

MR. VENUTI asked about the formulation of the board and whether the state will be advertising for positions or if the members will be appointed. He asked how one would apply to be on the board.

REPRESENTATIVE ROKEBERG said the licensees would be paying for [the board] and the governor would make appointments, if the board were created.

TAPE 01-10, SIDE B

REPRESENTATIVE ROKEBERG said in larger urban areas of the state people don't have the small hometown knowledge [like Mr. Venuti spoke about]. He said the potential for boosting one's own income in that capacity exists and he appreciated Mr. Venuti for bringing it forward.

REPRESENTATIVE ROKEBERG responded to Mr. Venuti's point about duplicating the efforts of AHFC and said that AHFC is supportive of the bill and wants to see it put into place. He said other than their regulatory scheme, there are no controls over the activities of the ICBO inspectors in the state.

Number 2452

REPRESENTATIVE ROKEBERG asked Mr. Venuti if he takes continuing education classes.

MR. VENUTI said he does.

Number 2440

CHAIR MURKOWSKI said Mr. Venuti wasn't entirely sure what was driving the need to establish [the board] and Ms. Seitz, Staff to Representative Rokeberg, indicated that it came about because

there were some problems. She asked Representative Rokeberg to explain the problems within the industry.

Number 2425

REPRESENTATIVE ROKEBERG said anyone could be a home inspector in this state but not an ICBO inspector. The people in the outer areas [of the state] doing work for AHFC have to go through a program to receive their certifications. He said there is no organization other than AHFC that can administer it. He said that is why AHFC requested to be put into the bill so there is an umbrella organization on home inspection and it can be regulated in the state.

REPRESENTATIVE ROKEBERG said the biggest problem area is in home inspection, where there are no requirements; anyone can call himself or herself a home inspector without any training. He said there is no oversight or way to regulate the quality of the work being done throughout the state.

REPRESENTATIVE ROKEBERG said home inspectors came about because of the disclosure form that the state legislature and property [entities] put into place. Now when a home is sold, any defects have to be disclosed. He said people are concerned about full disclosure, since most homeowners don't even know they have a problem. He said if a home inspector is hired, the report could be used to fill out the disclosure form. He said that way there isn't culpability if a person fully discloses any defect in the home.

REPRESENTATIVE ROKEBERG said in the real estate industry there has been a lot of case law in the last couple of decades to determine who was liable for certain defects, or defects they should have known about. He said the real estate industry is very interested in the bill because it helps establish areas of responsibility and liability in a real estate transaction.

REPRESENTATIVE ROKEBERG said there is a fundamental need to regulate the activities of the home inspectors. He said "we" need to be able to establish standards of practice that fit in and mesh with other regulated areas such as: banks, insurance companies, lenders, real estate brokers, and real estate appraisers.

Number 2333

REPRESENTATIVE ROKEBERG said two years ago, former Secretary of Housing and Urban Development (HUD), [Mario] Cuomo, promulgated regulations. For a federal mortgage, a person would have to have a real estate appraiser inspect the home. He said real estate appraisers in Alaska are licensed professionals but are not trained as home inspectors. He said the federal regulation requires an appraiser to do work that he or she is not even qualified to do. He said he has been in contact with U.S. Senator Ted Stevens' office and "we" have a moratorium on the enactment of this for Alaska. He said he would check back into this.

REPRESENTATIVE ROKEBERG said the implementation of the state regulation allows "us" to go back to the federal government and tell them to stay out of this business. He said "we" need to be able to conduct our own regulations locally and adapt our methods, particularly in Alaska. He said the people who do this work need to have experience, and building construction practices in Alaska are different than in the Lower 48 because of the climate.

REPRESENTATIVE ROKEBERG said there is a litany of reasons why he thinks a strong case can be made for regulating the industry.

Number 2234

REPRESENTATIVE HAYES asked what legal cases Representative Rokeberg could cite as actual problems, in relation to the bill.

REPRESENTATIVE ROKEBERG said there have been a number of uses of the realtor-grievance procedure. He said there is a dispute-resolution procedure that the real estate industry has adopted, in large part, to stay out of court. He said a number of the cases that have come before the grievance-complaint committee have centered on the shifting of liability. He mentioned that the real estate industry wants this bill but cautioned the legislative members to keep in mind that the realtors want to shift liability. He cautioned them to look out for it and be aware when people are trying to shift liability off themselves and on to someone else.

REPRESENTATIVE ROKEBERG said the discussion about the one-year versus the 180-day [liability] is at the root of this, since the length of time the report is good for makes a big difference to "them" - in terms of their practice.

Number 2166

ROBERT PANKRATZ, Licensed ICBO Inspector, said the working draft was just received a few minutes ago, so he couldn't be specific. He said in general, he inspects new construction for ICBO certification for AHFC. He said he doesn't see a problem in that area; he doesn't think anything is broken, and it seems they are being thrown in to solve another problem with the existing home inspectors.

Number 2124

BILL BRADY, President, Alaska Association of Realtors, and Chairman of the Anchorage Legislative Committee, said "we" worked closely with Representative Rokeberg on the legislation, and he had sent a letter in from the State of Alaska stating that "they" agree in concept with the bill - that there needs to be some minimum requirements for licensing, testing, continuing education, and [limiting] liability.

MR. BRADY said the board needs to be set up to start governing and regulating itself, and figure out who needs to be brought into the process.

MR. BRADY said he has been a realtor for six years and has not seen a client sue someone without including the realtor because "they" have some liability too. He wanted to assure Representative Halcro that "they" are almost always named in any type of suit, whether it is warranted or not. He said it is not really shifting liability; it's a shift in thinking. He said it is a new profession that has become very popular in the last four and five years - they are being brought in on almost every home-buying decision that a consumer makes.

Number 2050

MR. BRADY said "they" are an important part of the process and there needs to be some minimum standards which will protect the consumer. He said there have been many problems with home inspections but there has been nowhere to go to have them heard. He said there is no body that governs home inspectors, which is what this [legislation] does. He said if there is a sanction against a home inspector, the board could pull the inspector's license, fine him or her, or do [other] sanctions.

MR. BRADY reiterated that the bill allows them to set up their own board so they can govern themselves.

REPRESENTATIVE ROKEBERG said Mr. Brady spoke about the need for there to be a place where problems can be heard. He asked Mr. Brady to give them some examples of why "they" need to have this [legislation].

Number 1990

MR. BRADY said he thinks it is a double-edged sword: not only does it protect the consumer but it also protects the home inspectors. He said a lot of home inspectors are trying to limit their liability to the price of the home inspection. He said home inspections range from \$250 on up, and \$250 doesn't cover much in a house these days.

MR. BRADY said a house is probably the biggest purchase a consumer will make in his or her lifetime. He said having that limited to a \$250 liability is ludicrous, in his view.

MR. BRADY said he is not sure if the 180-day or the 12-month [liability] really matters. A home inspector who has been negligent or has done fraudulent work falls under the same law that states that six years from that defect or knowing about a fraudulent act, and can still be sued.

MR. BRADY said the Anchorage Board of Realtors does mediations between members and clients. He said the problem with this is that it is voluntary; home inspectors are just not willing to come in and do mediation over problems like this.

MR. BRADY said if issues go through a board it would benefit the consumer because the situation could be rectified much more quickly, and with a lawsuit something might be missed.

Number 1895

REPRESENTATIVE HALCRO asked Mr. Brady if he's seen a trend in the last few years where more liability cases are popping up because home inspectors have issued faulty reports and homebuyers are coming back to seek compensation.

Number 1877

MR. BRADY said "absolutely" and consumers are not coming back on the home inspector first. He differentiated between the two people in a real-estate transaction: a realtor who belongs to a national organization, and a licensee. He said consumers are coming back to both groups, and back to the home inspector

trying to get the problem rectified. He said the number of complaints is increasing because of the amount of home inspections being done now. He said 99.9 percent of the time, home inspections are being done for the purchase of a home. He said he hopes he has all of his buyers and some sellers doing home inspection up front. He said some are not willing to do that and have signed a waiver saying "they" had the opportunity to have a home inspection, and have waived that right.

MR. BRADY said it is a big part of the transaction today. He said he can go through a home and catch certain things but he is not qualified to the extent that "these" people are, which is why the bill is needed. He is not qualified to do a home inspection, but tomorrow he could get a license to do one. He said the comment has always been made that the market will weed those people out, but that is not necessarily true.

MR. BRADY asked how long it would take to weed a person out, and how many people does that home inspector have to hurt before he or she is weeded out of the system. He said if one person is hurt, and has his or her dream of owning a home destroyed, then that is one person too many.

Number 1791

REPRESENTATIVE HALCRO asked Mr. Brady if the Board of Realtors has any internal safeguards, such as a list of inspectors who have performed shoddy work. He asked if there was anything along those lines that circulates.

MR. BRADY said it would put them in a jam because individual agents would talk amongst themselves about who is trustworthy and does good work. He said he wouldn't have someone do a home inspection unless he or she is certified by one of the two national bodies, and has liability and errors and omissions (E&O) insurance.

Number 1693

JOHN BITNEY, Legislative Liaison, Alaska Housing Finance Corporation (AHFC), spoke in favor of HB 27 because it provides some consumer protection. He said AHFC is in the bill out of necessity because it is a creature of state statute. He said AHFC currently has a home inspection system in statute.

Number 1638

MR. BITNEY said [coming] out of the 1980s, there were concerns in the state about the quality of inventory in the housing market. He said the legislature at the time began to embark on measures to address this. He said the first one was in 1989 and required additional educational requirements for homebuilder licenses. He said there were programs put in place such as the Alaska Craftsman Program and attempts to address some energy efficiency issues in home construction.

MR. BITNEY said AHFC went through a major merger in 1992; a piece of legislation brought all of the state's housing functions, and public housing for rural loans under AHFC. He said part of the AS 18.56.300 legislation was put into AHFC. It says that in order for a home built after July 1, 1992, to be financed by AHFC, it had to have been inspected by an individual certified by the ICBO, an independent, international-trade association and not AHFC.

Number 1546

MR. BITNEY said there are roughly 100 individuals across Alaska, since that time, who have gone and gotten their certification and perform inspections in order for AHFC to comply with the statute. He clarified that with respect to Representative Rokeberg's idea of a overall state licensing system, AHFC requested that if there were to be a licensing system, that there not be a dual system in state statute, where state licensing inspectors are out there performing and it is not coordinated with AHFC. He said AHFC is included in the title of the bill because AHFC statutes are amended. He said there was the perception that somehow this [legislation] only dealt with AHFC. He said it deals with setting up a state licensing board, and as part of that, AHFC is included in part of the amendments. He said AHFC would recognize those inspectors as part of its process.

MR. BITNEY said he reads the bill to say that a person who is ICBO certified is grandfathered in and the board is required to grant grandfathering or set up some sort of a license. He said six months after the effective date, the ICBO in statute is removed. He said AHFC would like to see a good construction standard put in place once the new system is intact. He said by having ICBOs with AHFC, the quality of housing in the state has improved, and he would like to see this maintained.

Number 1394

MR. BITNEY said that when the board is formed, the construction standard would be up to them. He said there are various standards out there that the board could adopt. He reiterated AHFC's concern about having a good construction standard and said they hope it is at least as good as ICBO's, or better. He said if the bill is not going to set that standard, then AHFC requested to at least be involved in the initial board with the sole intent to be an advocate on the board for the initial period. He said AHFC wants to get a standard established that they are comfortable with, and also one they think is good, because six months later, they are subject to whatever standard the board adopts.

MR. BITNEY said the proposed committee substitute (CS) [Version F], addressed their concerns; the bill allows the board to adopt a standard and they will, as the CS is drafted, be a member of the initial board. He reiterated that their intent is to ensure that there is a good standard.

Number 1344

AMY DAUGHERTY, Lobbyist, Alaska Professional Design Council (APDC), said the committee received a letter that expresses APDC's view on HB 27. She said APDC is glad that the exemption language is in there for engineers and architects. She said the group has not been able to evaluate the proposed CS, so she wasn't able to comment on it.

Number 1308

REPRESENTATIVE ROKEBERG asked Ms. Daugherty to let the 5,000-plus APDC members know that the proposed CS is better because it clarifies everything and allows every engineer and architect in the state, not just civil engineers, to do home inspections. They sign off on it [the home inspection] and have the liability of their stamp behind their signature. He said it is even redundant the way they have it [written in the bill], with both their stamp and their signature. He said the standard of practice is that it is signed, then "they" have to be liable for it, and then it is up to them in how they conduct their business. He said people can do it now, but they can't call themselves home inspectors.

Number 1248

CATHERINE REARDON, Director, Division of Occupational Licensing, Department of Community and Economic Development (DCED), said

her division would staff and assist with the administration of the new law.

MS. REARDON said for the State Board of Registration for Architects, Engineers, and Land Surveyors, another board she serves on, she wanted to clarify that engineers and architects are exempt and do not need to hold home inspection licenses. She said she knows there has been some confusion about whether they automatically qualify for the license, free of the bill. She clarified that "they" are totally exempt.

MS. REARDON said the other issue was what engineers and architects could call themselves since they can't call themselves home inspectors. She said she was unclear about that because it looked as if they couldn't call themselves licensed home inspectors but the exemption language seemed to exempt them (indisc.) from calling themselves home inspectors. She said she doesn't have an opinion but wanted to bring it up incase others did, as it looked that way to her.

MR. REARDON said due to the total exemption of the engineers and architects, she assumes "they" are exempt from the other items on page 7, line 13, which involve liability and legal actions: that an individual can't bring an action for collection of compensation for a home inspection without proving that he or she has a license. She said this would not prevent engineers from taking such an action because they were not compensated for home inspections and are exempt from the entire bill. She also said "they" could still be sued beyond the 180 days for the content of their inspections.

Number 1104

REPRESENTATIVE HAYES asked Ms. Reardon if it is "noble" for another group to request that a group form a board.

MS. REARDON said it is generally the profession that asks to be regulated, but that is not always the case.

REPRESENTATIVE ROKEBERG said [home inspectors] are conspicuous by their absence. He said he has been working with home inspectors across the state for some time. He explained that the bill went through two years of hearings in the last legislature and came to a halt when he discovered that different areas of the state had different ways of doing home inspections. He said the SouthCentral market had a different definition of home inspection. He said what he found in Juneau was that the

real estate community was hiring engineers to do the work and getting a different type of form and report, from those in Anchorage, the Matanuska Susitna Borough, and the Kenai area. He said the Fairbanks area was a little different. He said he stopped the bill because everyone was talking about a different thing and it was causing a lot of controversy.

REPRESENTATIVE ROKEBERG asked Ms. Reardon if she could speak to his office about the fiscal note, which had doubled from last year.

Number 0942

CHAIR MURKOWSKI held over public testimony about the proposed CS, Version F, to HB 27. [HB 27 was held over.]

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 5:15 p.m.