

**MINUTES**  
**SENATE FINANCE COMMITTEE**  
**February 02, 2001**  
**9:00 AM**

**TAPES**

**SFC-01 # 7, SIDE A**

**CALL TO ORDER**

Co-Chair Pete Kelly convened the meeting at approximately 9:00 a.m.

**PRESENT**

Senator Dave Donley, Co-Chair  
Senator Pete Kelly, Co-Chair  
Senator Jerry Ward, Vice Chair  
Senator Lyda Green  
Senator Gary Wilken  
Senator Lyman Hoffman  
Senator Donny Olson  
Senator Loren Leman

**Also Attending:** SENATOR GENE THERRIAULT; HEATHER BRAKES, staff to Senator Gene Therriault; CATHERINE REARDON, Director, Division of Occupational Licensing, Department of Community and Economic Development

**Attending via Teleconference:** From Anchorage: DWAYNE ADAMS, American Society of Landscape Architects (ASLA); From Fairbanks: PAT KALEN

**SUMMARY INFORMATION**

SB 9-BD OF ARCHITECTS, ENGINEERS, LAND SURV. ETC

The Committee heard from the sponsor, the Department of Community and Economic Development and members of the public. The bill was reported from Committee.

SB 21-FINES BY THE STATE MEDICAL BOARD

The Committee heard from the sponsor and the Department of Economic Development. The bill was held in Committee.

SENATE BILL NO. 9

"An Act extending the termination date of the State Board of Registration for Architects, Engineers, and Land Surveyors."

HEATHER BRAKES, staff to Senator Gene Therriault, stated that SB 9 proposes the extenuation of the State Board of Registration for Architects, Engineers and Land Surveyors for additional 4 years out to June 30, 2005. She informed the Committee that there was a committee substitute (CS) adopted in the Senate Labor and Commerce Committee. She explained that the CS also extends the temporary board member seat or landscape architect seat, which is a non-voting seat on the board and was established by section 31, chapter 47, of SLA 1998. She noted that the temporary board member seat is also set to expire on June 30, 2001 and SB 9 proposes the extenuation of that with the board. She pointed out that in the packet there are several letters of support, as well as, a legislative audit that was released in December of 2000.

Mrs. Brakes further stated that the legislative audit found that the board was operating in an efficient and effective manner and that it should continue to regulate architects, engineers, land surveyors and landscape architects. Further, it was found that the board is safeguarding the public interest by insuring the competence and integrity of those who hold themselves out as such. She indicated that it was also found that the board serves a public purpose and has demonstrated an ability to conduct its business in a satisfactory manner. The board continues to propose changes to regulations to improve the effectiveness of the regulatory oversight provided by these professions. She pointed out that most importantly it states that the existence of the board provides more assurance that the various professionals it oversees are competent and promote maintenance of the integrity of the professions involved.

Mrs. Brakes referred to the three recommendations made in the audit; first, bringing the board into parity with other professional boards by requiring continuing education for the professionals. She indicated that they spoke with several of the professionals that are overseen by the board and as they all agree that those requirements are coming there is still a lot of controversy as to what those requirements should be. She added that there was no support to attach that. The focus is simply to extend the board at this point. Second, with regards to the recommendations, it talks about replacing the mining engineer seat with a landscape architect seat. She noted that again it was a controversial issue that the professions felt should not be

attached to the bill. In fact, she added, that the landscape architects are not recommending it either. She noted that it is a fairly new profession and they are hoping to simply have the temporary board seat extended out for the additional four years and at that point if a need is felt to make it a permanent seat they might do it at that time. She continued, saying that the third recommendation spoke to statutory clarity for the licensing of architects and the board has dealt with that through regulation.

Co-Chair Kelly asked about the fiscal note.

CATHERINE REARDON, Director, Division of Occupational Licensing, Department of Community and Economic Development, indicated that the division provides the staff support for the Board of Architects, Engineers and Land Surveyors. She explained that the fiscal note is a \$3,000 fiscal note in terms of new expenditure authority; however, for the purposes of full disclosure they also attached an explanation of what they actually spent on regulation of the professions for the last two fiscal years. She pointed out that if they decided to stop having the board and regulating the professions that amount of the money could be removed from the state budget. She noted that the reason for the 3,000 dollar increase in their expenditure authority was the fact that under the current law the non-voting landscape architect could not receive money from the division for their travel to the board meetings; the existing law states that all costs, with regards to their participation in board meetings, has to be born by the board member. She said that it did not seem like a fair system; therefore, in addition to extending the non-voting landscape architect member SB 9 allows that person to receive the normal per diem for food and travel. She pointed out that the \$3,000 would be generated through license fees; therefore, it will not be increasing any budget gap problems.

Senator Wilken referred to the second page of the fiscal note where it states that in 1999 they spent \$522,038.55 and collected \$131,325.92 and then in 2000 they proposed to spend 551,370.90 and collect 1,095,757.18. He requested clarification.

Mrs. Reardon clarified that by law each profession must cover its own costs through the fees generated by those professions. She noted that since all of the licenses are issued for two-year periods there is always a high revenue year and a low revenue year. She explained that the high revenue year is when everyone renews their licenses and the low year is when just new licensees are coming in and exams are being conducted; therefore, the fact that there is a high and a low is totally appropriate. She indicated that they try to have the revenue from the two-year license period

and the expenses for the two-year license period equal. She noted that another reason they may not be equal is that deficits and surpluses from prior years roll forward.

PAT KALEN testified via teleconference from Fairbanks. He referred to the recommendations for continuing education and indicated that the board would be taking that issue up at the meeting in Juneau on February 15 and 16. He noted that at the previous meeting they had taken a stand in favor of having authority given to the board, although he believes they will be discussing the continuing education requirement a bit more. He referred to the budget and audit review and advised the Committee that they may want to wait until after the meeting in Juneau to move forward with SB 9.

DWAYNE ADAMS, American Society of Landscape Architects (ASLA), testified via teleconference from Anchorage, indicated that he could touch on specifics with regards to the Alaska Special Design Council. He indicated that the ASLA, as well as, the Alaska Special Design Council, support the bill as worded.

Senator Wilken wondered how many people this would cover.

Mrs. Reardon explained that there are approximately 5,000 people regulated by the board.

Senator Lemman informed the Committee that the board regulates him and passage of the bill would cost him money; having said that, he offered a motion to report from Committee, CS SB 9(L&C), 22-LS0242/F, with individual recommendations and the attached fiscal note from the Department of Community and Economic Development.

Senator Green wondered if the considerations brought up by the board at the meeting in February would be talked about and possibly offered as amendments to the bill before it goes through.

Senator Therriault responded that with regards to continuing education the regulated community is split on that issue. He noted that he had considered putting in permissible language allowing the board, through a regulatory process, to bring that on. He indicated that he heard quite a bit of testimony that they were not quite ready to take that on yet; however, if the legislature wanted to add that it has been dealt with through regulations that were the findings of the auditors. He added that with regards to the mining engineer seat they have been through that battle in the past and would like to keep it the way it is. He commented that they have not had a real problem finding someone to fill that seat.

Senator Green removed her objection.

Senator Therriault noted that the title is worded broadly enough that those things can be considered anywhere along the process.

Senator Olson wondered what the consequences are if someone does not keep up with their continuing education.

Senator Therriault pointed out that currently there is no requirement, but if there were a requirement their license could be suspended.

Senator Olson wondered if they could be fined as well.

Mrs. Reardon reiterated that there is currently no requirement for continuing education. She said that she would imagine if they create the requirement for continuing education at the time of renewal they would be asking people to certify that they have done their continuing education. If they certified that they had and a random audit indicated that they had not told the truth then they would be subject to the usual array of disciplinary action. On the hand, she noted, that if they told the truth and indicated that they did not do their continuing education then they would most likely delay their renewal of their license until they came up with the hours. She pointed out that they have not had to face that situation, because members of the industry are not at the point where they have unanimously agreed to have a continuing education requirement.

Senator Olsen wondered how available continuing education programs are and if it would be difficult to travel during the wintertime.

Mrs. Reardon suspected that some of those concerns might be behind members of the industry being reluctant to support a continuing education requirement. She noted that since there is not a continuing education requirement there might not be as much systematic continuing education offered.

Senator Therriault that is the type of thing, he said, that if the legislature decided to go to that level they could either spell that out in statute or through the regulatory process by getting input by the regulated community on what classes, how often and if they would have to travel out-of-state to attend.

Senator Olson urged that when they start taking away people's licenses it is a pretty serious infraction on someone's livelihood. He also noted that when they start implementing more requirements they are going to need more people to oversee those requirements,

which will entail more expenses. He said that he was hesitant to apply the requirement until there was something more established.

Co-Chair Kelly pointed out that the objection was removed and that there was still a motion before the Committee. Without further objection CS SB 9 MOVED FROM COMMITTEE.

SENATE BILL NO. 21

"An Act increasing the maximum civil fine that may be imposed by the State Medical Board as a disciplinary sanction."

SENATOR DONALD OLSON, sponsor of SB 21, stated that he introduced SB 21 to increase the monetary sanction that the State Medical Board may impose on a licensee upon a finding of professional or ethical misconduct. He explained that the bill increases the maximum penalty from the \$10,000 limit that is currently in statute to \$25,000. He feels that the justification for SB 21 is twofold. First, he believes that the maximum sanction of \$10,000 does not provide a sufficient monetary deterrent, given the economic status of many licensees. Most often the severity of the penalty is in no manner equivalent to the damage caused in extreme cases of misconduct. Furthermore, the \$10,000 limit has not been changed since it was first enacted 14 years ago.

Senator Olson further explained that a second reason for SB 21 is the increasing costs that the board is experiencing in its caseload management of misconduct allegations. It is not unusual for the costs of a misconduct determination to exceed the \$10,000 penalty limit. He indicated that since licensure fees wholly support the activities of the board and fines increased costs of operation usually translate into license fee increases. He pointed out that SB 21 offers a second way to meet increasing caseload costs. It expands the board's cost recovery ability through increased fines. In practice then, he noted, the financial burden for this regulatory activity may be shifted more from the general membership to the wrongdoers themselves.

Senator Olson further stated that, currently, the board has 188 cases that are open for potential investigation and adjudication by the Division of Occupational Licensing. During calendar year 2000, 130 new cases were opened and 133 closed. This effort resulted in 35 disciplinary actions against medical board licensees. He pointed out that in fiscal year 2000, the costs of pursuing misconduct charges exceeded \$160,000.

Co-Chair Kelly wondered if there were enough cases currently to

cause fees for non-violating license holders to go up.

Senator Olson responded that he did not have the specific number.

Co-Chair Kelly clarified the question, saying that it is not potential, but is actually happening.

Senator Olson indicated that it has happened that the fees for the licensure between 1998 and the year 2000 have increased significantly.

Senator Green said that it sounds like a really good idea and think they should broaden the concept out in those areas of high dispute. She wondered if the funds go directly into the medical board credit account.

Senator Olson agreed that the burden should be shifted to the wrongdoer regardless.

CATHERINE REARDON, Director, Division of Occupational Licensing, Department of Community and Economic Development, said that they consider fines received from a specific profession in the receipts supported services category and technically part of the general fund, but they are credited to the specific profession that they come from. She affirmed that the amount they spend on investigation and discipline of wrongdoers greatly exceeds the amount of money they bring in, in fines, in any one-year. She reported that they spent \$160,000 last year just on legal bills and expert witnesses for the medical board. She pointed out that there is no way they took in anywhere close to \$160,000 in fines for medical professionals; therefore, she declared that this is a real situation.

Senator Green wondered if it could be brought to a net zero.

Mrs. Reardon answered no, but it could improve the situation and slightly improve licensees feeling of fairness that those who are found to have done wrong would pay more. She also thinks, as the sponsor mentioned, the fact that the maximum fine has not gone up means inflation has also kept up with salary and the cost of living.

Senator Green wondered if there was any assessment of legal costs of the wrongdoer.

Senator Olson clarified that the question is whether the licensee who has allegedly done wrong would bear some of the cost by the state. He responded that it is his understanding that the

wrongdoer would bear no cost.

Senator Green wondered if it is appealable.

Mrs. Reardon responded yes. She explained that disciplinary actions by the licensing board could be appealed directly to the superior court and then on to the Supreme Court.

Senator Green said that she did not think it was enough.

Co-Chair Kelly asked Senator Green if she was entertaining an amendment.

Senator Green indicated that she would not burden the Committee, but feels that it is certainly something to think about in the future. She pointed out that about two weeks prior the real-estate licensees underwent a cataclysmic event when they had a series of high cost things and then they are suddenly paying three or four times what they had paid the year before. She noted that it seemed punitive to the non-wrongdoers. She suggested that there might be something in the bill that states that wrongdoers do bear a bigger share of the burden. She referred to last year's legislation, SB 34, on the board of barbers and hairdressers regarding the addition of the tattooing and body piercing occupations and declared that eventually that is going to cost the barbers and hairdressers a lot of money when there is litigation over the wrongdoing of the license holder. She urged that they really should be looking at all the boards to be sure that the wrongdoer bears a bigger share of the cost.

Co-Chair Kelly referred to the 188 cases and wondered if those were just general ethical complaints or complaints that were potentially finable up to maximum.

Mrs. Reardon responded that all violations are potentially finable, in that, the statute states that for a violation of the statutes and regulations governing the profession the fine could be as high as \$10,000 and with this bill, \$25,000. She noted that the way the process works is that if the division's investigation finds sufficient evidence in violation of the law then they file a charging document and the person has the right to an administrative hearing in front of a hearing officer who is an attorney. She pointed out that the hearing officer acts as an administrative law judge and would view the maximum penalty as the worse offence and medium offences go in the middle and smaller ones go toward the bottom; therefore, there is some protection there from everyone being charged \$25,000.

Co-Chair Kelly expressed concern that if they are not setting the fines high enough for the most egregious offenses there might be a danger that the people who commit the more minor offenses would have higher fines to cover the administrative costs of the program.

Mrs. Reardon indicated that the fines are intended to be disciplinary actions not cost-recovery actions. She noted that they do have the effect of helping to offset costs, but they are suppose to be like a reprimand or a suspension; something that is matched to the grievousness of the offence not how much it costs to catch the wrongdoer. She explained that there would not be a process through which the division said, "Hey, we've got so much disciplinary money to cover; therefore, we think this person with a minor offense should have to pay \$25,000," rather they have to come in and argue that a bad act merits a certain amount of money. She clarified that it is intended to be a sanction and not a cost recovery.

Mrs. Reardon further stated that she looked at fines from the medical programs for the last couple calendar years: in 2001 they had four fines; worst case was a sexual misconduct case, which was a \$10,000 fine suspended down to \$5,000 and the smaller fines were for continuing education and tended to be at about \$1,000; in 2000 there were fifteen fines and six of them were for \$5,000, which was half of the maximum; in 1999 there were four fines; in 1998 there were fourteen. She explained that \$1,000 is sort-of the baseline for offenses such as lying on an application about continuing education or something like that and then \$10,000 would be for pretty grievous offenses.

Co-Chair Kelly indicated that Senator Green brings up a good point, "Is this enough?" He wondered if there was a problem with boosting the \$25,000 amount or if that number was chosen for a particular reason.

Senator Olson indicated that a licensee would probably want a system that is somewhat incremental and less than extreme, because they are starting to deal with some large amounts of money. It was his understanding that other states did not have a fine maximum much higher than Alaska.

Co-Chair Kelly wondered if this was a number that the state medical board recommended.

Mrs. Reardon responded that the state medical board does support it and she suspected that the state medical board would probably approve a higher number. She noted that if they get into the \$100,000 range they might be bringing in legal issues about whether

the size of the fine makes them no longer eligible for a civil situation. She was not sure at what dollar amount that actually happens, but they do have to watch for that.

Senator Wilken wondered what the state spends to process the cases.

Mrs. Reardon said that out of the division's budget, between the investigator's salary, the money they pay to the Department of Law and the money they pay to the expert witnesses that they are probably talking about \$2 million per year for all of their professions. She knows that they pay \$600,000 to the Department of Law every year.

Senator Wilken wondered if that was just for these violations.

Mrs. Reardon clarified that it was for all of their professions.

Senator Wilken wondered if they were to move the \$25,000 to some other number what would the number be to recoup the average costs spent over the last five years.

Mrs. Reardon responded that the amount of money they spend in investigating a particular case that results in disciplinary action-

Senator Wilken interjected and asked how much have they collected, using the \$10,000 limit, back from the violator.

Mrs. Reardon estimated that in a high year they might get \$50,000 and in low year they might get \$5,000.

Senator Wilken clarified that they are collecting \$25,000 to \$30,000 per year and asked how much it is costing them to process that money.

Mrs. Reardon responded that they have investigated a lot of people that do not end up being disciplined; therefore, they do not want to count their costs. She noted that the \$160,000 was not including investigator time or hearing officer time. That was just the cost of paying for an attorney and expert witnesses, so the number would actually be substantially higher. She pointed out that a good portion of the \$160,000 for last year went to a case that has not resulted in a final action.

Senator Wilken wondered if it would be proper to suggest that in rough numbers it costs them a half-million dollars a year to do these things and they have recouped, under a \$10,000 limit, somewhere around \$25,000; therefore if they multiple the \$10,000 by

20 they would approach, perhaps, what it would take.

Mrs. Reardon said that she feels that she should go back and look at her numbers, but she indicated that they would have to have a very large maximum fine to have it pay for itself; larger than people would probably be comfortable with.

Co-Chair Kelly noted that they have the added problem of crossing from administrative to court actions.

Mrs. Reardon responded yes.

Senator Wilken requested that Mrs. Reardon go back and look at her numbers, because it is important that they understand what is being done.

Co-Chair Kelly agreed.

Senator Wilken wondered if the physicians are covered under the Equal Employment Opportunity (EEO) policies when they are found guilty of a wrongdoing and are fined.

Mrs. Reardon said that she did not know. She thinks that it varies a lot. She explained that there is no state requirement that their licensees have any malpractice or liability insurance; therefore, she believes that a fair number do not. She said that they could only guess by the amount of money being spent on the defense whether or not licensee has some other source of money. She noted that sometimes it appears that they do have some backup and other times it does not.

Senator Olson commented that the main point of sponsoring SB 21 was to provide the flavor of what goes on. He indicated that as long as he remains a senator they could almost guarantee that there will be this kind of incremental increase in some of the fines. As far as the second question by Senator Wilken, he said that is his understanding that most physicians pay it out of their own bank accounts. He added that as far as he knows there is no third party.

Senator Wilken wondered if it was just a hand slap, such a continuing education \$1,000 fine, if it would be under EEO.

Senator Olson responded that he did not think so.

Co-Chair Donley indicated that he had the same question and thought that some sort of admissions and errors insurance would cover the professional mistakes versus the more intentional mistakes. He

thought it would be good to find out. He pointed out that any time they are dealing with a range of fines and set the higher fines the question is whether they are pulling up the lower level fines that are generally set by the board. He indicated that if it is not their intent there is a pretty simple way of dealing with that and that is by inserting a paragraph of legislative intent, which states, "by raising the fine maximum the intent of the legislature is to address the most grievous types of situations going on and not necessarily to raise the fines for people who are doing simple professional mistakes where there is not intent involved." He added that he thought something like that would be well suited for this situation if that is the sponsor's intent. He believes that when they do get the more serious offenses that it would be appropriate to add language saying, "for those people receiving the maximum civil fine the board could also assess them for the cost to the state of administrating them for the prosecution that led to that fine."

Co-Chair Kelly wondered if they do something like that if they would then take all the cases out of the realm of the board and everyone would begin to appeal to the court system, because they have so much at stake.

Co-Chair Donley responded that they are certainly not going to take on all of the cases, for instance, all the small cases would not be affected by the changes, rather they would be protected by those changes. He indicated that the only cases that somebody might be inclined to appeal are ones with a maximum fine.

Co-Chair Kelly pointed out that they would probably go through court system.

Co-Chair Donley agreed.

Senator Olson said that Senator Donley brought up a good point. He added that it is his intention to do things in a step-wise manner and this is the first step. He said that it is his intent to proceed cautiously.

Co-Chair Kelly requested that Senator Olson get together with other members of the Committee, rewrite the bill and come up with a Committee Substitute.

Senator Green wondered if there is a wall between what the medical board does and the court.

Mrs. Reardon explained that they are unrelated, but information may go back and forth. For example, when the division has the medical

board investigate a complaint and there is a malpractice judgement and a case out there that has come to completion-

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Mrs. Reardon continued that they certainly would try and get the evidence that has already been considered and use it in their case. She noted that there is a requirement under state law that physicians who make payments in malpractice cases, either through settlements or being found in the wrong, have to report that to the medical board. She explained that there is information transferred, but the two processes and the two punishments are separate.

Senator Green wondered if her constituents then go to the Alaska Medical Board and say, "I want to know what happened in the life of Doctor 'so-and-so'." She wondered if there would be free and unfettered information provided to that person.

Mrs. Reardon responded that it is not free and unfettered. She explained that the malpractice cases that have been reported to the division are public information. She added that the accusations that are filed and the disciplinary decisions that the medical board has reached is also public information. She said that ongoing open investigations are considered to be confidential. Once an investigation is closed, either through disciplinary action or through deciding that there is not sufficient evidence to proceed, then the Public Records Act dominates the answer to the question; when someone asks the division for information about a license holder they go through a process of looking through the files, categorizing all of the documents and talking to the Department of Law. She explained that a person might get 99 percent of the information or much less, because it depends on the legal analysis of the Public Records Act. She noted that medical records are an exception to the Public Records Act, so the division does not give out records that they have obtained during an investigation. There is a balance between the constitutional right to privacy and the Public Records Act. She indicated that sometimes it depends on who is asking.

Senator Green wondered Mrs. Reardon meant by that.

Mrs. Reardon said that the easy example would be medical records, which are clearly excluded by the Public Records Act. She also noted that if someone is engaged in litigation with the state rather than requesting information from the division they would request information through the discovery process.

Senator Green wondered what she means by litigation with the state.

Mrs. Reardon said that it could be the physician or the unhappy consumer.

Senator Green clarified that if a person goes to the various information agencies about the records of a physician and the decisions were decided on or agreed to before they reached the final stage of a court settlement then none of that information would be public. If a physician before court settlement none of that information is available. She said that she finds it very difficult to explain to someone that they do not have access to that information, because they settled at the 11<sup>th</sup> hour. She suggested that they need to have free exchange and people need to be able to find out about their physician. She said that she is not sure whom they are protecting, but it does not seem to be the consumer.

Co-Chair Kelly asked Senator Olson to possibly come up with new language and Mrs. Reardon if she would supply the Committee with information regarding civil actions and court actions. He ordered the bill HELD in Committee.

#### ADJOURNMENT

Co-Chair Kelly adjourned the Senate Finance Committee meeting at 9:56 a.m.