

HOUSE FINANCE COMMITTEE
February 12, 2003
1:44 PM

TAPE HFC 03 - 17, Side A
TAPE HFC 03 - 17, Side B

CALL TO ORDER

Co-Chair Williams called the House Finance Committee meeting to order at 1:44 PM.

MEMBERS PRESENT

Representative John Harris, Co-Chair
Representative Bill Williams, Co-Chair
Representative Kevin Meyer, Vice-Chair
Representative Eric Croft
Representative Richard Foster
Representative Mike Hawker
Representative Reggie Joule
Representative Carl Moses
Representative Gary Stevens
Representative Bill Stoltze
Representative Jim Whitaker

MEMBERS ABSENT

None

ALSO PRESENT

David R. Owens, Owens Inspection Services, Board of Directors, Matanuska-Susitna Home Builders Association and the American Society of Home Inspectors, Palmer.

PRESENT VIA TELECONFERENCE

William Bruu, Wasilla; Robert Springer, Kenai; Ted Veal, Homer; Robert Milby, Wasilla; Bryan Butcher, Legislative Liaison, Alaska Housing and Finance (AHFC).

SUMMARY

HB 9 "An Act relating to the registration of individuals who perform home inspections; relating to regulation of contractors; relating to registration fees for specialty contractors, home inspectors, and associate home inspectors; 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

to civil actions arising from residential unit inspections; and providing for an effective date."

HB 9 was HEARD and HELD in Committee for further consideration.

#hb9

HOUSE BILL NO. 9

"An Act relating to the registration of individuals who perform home inspections; relating to regulation of contractors; relating to registration fees for specialty contractors, home inspectors, and associate home inspectors; 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 to civil actions arising from residential unit inspections; and providing for an effective date."

Co-Chair Williams provided the Committee with the proposed Committee Substitute, Work Draft 23-LS0029\I 2/10/03. He pointed out his intention to hold the bill, pending incorporation of technical changes to the Proposed Committee Substitute.

REPRESENTATIVE NORMAN ROKEBERG, SPONSOR, explained that HB 9 pertains to a number of residential real estate transactions. He stated that all parties in these transactions are subject to government oversight, with the exception of home inspectors in this state. He noted that it required little training to enter the market as a home inspector. He pointed out that the bill was in its 23rd public hearing in five years. A Committee change placed licensure under the special contractor license, lowering the fiscal note and the cost to home inspectors, thereby passing savings on to public. He acknowledged the substantial controversy over the bill's repeal of immunity to new home inspectors, known as ICBU inspectors, who work in predominantly unregulated, rural areas. He expressed his opinion that the bill balances and gives protection to inspectors and to the public.

Co-Chair Harris asked for clarification of the issue that not all inspectors are regulated under the bill.

Rep. Rokeberg responded that the bill was intended to regulate those marketing themselves as residential home inspectors. He referred to Section 08.18.161 which lists Exemptions, and noted that the bill exempts those completing an inspection of a component of the house. He emphasized the need to examine the definition of home inspector. He clarified that the intention of the bill is only to regulate those individuals who charge money to inspect homes for the

public. He explained that it was not intended to regulate those who are regulated elsewhere in statute. For example, if an engineer was inspecting a portion of a house as part of his engineering duties, this did not need to be regulated. However, if he advertised his services as an inspector to the public, this must be regulated. He noted that not all work experiences were applicable to residential home inspection.

Co-Chair Harris asked if the Alaska Housing Finance Corporation (AHFC) supported the bill.

Representative Rokeberg responded that AHFC was supportive and available for testimony via teleconference.

Representative Croft questioned the effect of Section, listed on page 10, as to the purport to limit liability for home inspectors (AS 08.18.181 or AS 0.10). He also questioned which Committee Substitute would be moved.

Representative Rokeberg responded that an error in the Proposed Committee Substitute would be corrected prior to the movement of the bill.

Representative Croft continued to ask whether, if in a period beyond one year after a home inspection, an error was discovered in the inspection, any recourse was possible. He also questioned if evidence existed to imply that the inspector knowingly altered the inspection, whether recourse was available.

Representative Rokeberg noted that, after a year, statute would prohibit recourse. He expressed that he was uncertain of the legal course to take if deliberate negligence was implied.

He continued by explaining that, in Alaska, natural conditions such as extreme weather can alter the findings of an inspection even after one day. He stressed the importance to limit liability to a reasonable period in order to balance the public good with commerce. He stated that some AHFC inspectors were within statutory immunity and gave some examples. He pointed out that those who would be damaged by a faulty report could easily file a grievance with the inspector. He felt it necessary to limit the time of liability. He stated that this was a policy decision, balancing public protection with protection to the practitioners. The bill pertains to a cursory visual inspection of a home. A more in-depth inspection would require the expertise of an engineer to properly analyze and penetrate a component of construction. Representative Rokeberg stressed that a separate issue would be raised if an element surfaced that was not apparent in a visual inspection and required invasive evaluation.

Representative Stoltze asked whether the bill pertained to external elements of a home, such as septic systems.

Representative Rokeberg stated that the bill might apply to a home inspector who possessed expertise in that area. He stated that the goal of the bill was to obtain the best-qualified inspector for the best price. He suggested that time periods of liabilities were limited based on reasonable periods as experienced by courts and developed into public policy. He noted that insurance of licensure was not regulated, thus creating potential problems, since home buyers had insurable interest.

Co-Chair Williams reiterated that the bill would not be moved out of committee today, but would be brought up again the following week, and that further questions could be answered at that time.

Representative Croft clarified that his intent was to discuss public policy. He referred to the immunization of AHFC inspectors by prior statute, and asked what percentage of the market that represented.

Representative Rokeberg stated that the current practice was for contracts limiting liability to the amount of the home inspection, approximately \$350. He suggested that the bill provides consumer protection to current practice. He pointed out that currently, many inspectors carried their own insurance, but in the past inspectors had non-liability. The bill does not limit liability except in regard to the time factor.

Representative Croft concluded that he did not agree that the issue was actionable when so broadly defined.

Co-Chair Harris referred to the fiscal note, which reflects charges to newly licensed home inspectors for continuing education.

Representative Rokeberg concurred that the inspectors were self-supporting and presented no cost to the State.

Representative Joule clarified whether the bill would be heard and moved a week from Thursday and that public process would be included.

Co-Chair Williams noted that public testimony would conclude in this session. He speculated that the Committee Substitute would have little bearing on the bill.

BILL BRUU, WASILLA, owner of a private inspecting firm for fifteen years, testified via teleconference and raised concerns about the bill. He referred to fiscal note 4, from

the Labor and Commerce Committee, indicating that the change in cost to inspectors was \$126,200 for first biennial period. He noted that this was based on 100 inspectors statewide. He clarified that for the first two years, the cost would be \$1,200 for licensing fees alone, not including travel costs, etc. He suggested that the Fiscal note be recalculated to accurately reflect the total costs to inspectors and eventually to the consumer.

Mr. Bruu also referred to Rep. Croft's question regarding the percentage of [AHFC] inspectors that were involved in the process. He stated that Sections 33 and 34 of the bill affected every [AHFC] inspector. He also speculated that the bill reduces the amount of consumer protection as currently provided by AS 18.56.300. It substitutes a nationally certified inspector (ICBO new home inspector) with an Alaska certified inspector, with unknown criteria.

Representative Rokeberg confirmed the figure of \$126,000, but responded that licensure had been changed to a sub-category of specialty contractors, as opposed to a home inspection board, which would cost \$1,500 per biennial. He stated that the cost was actually only \$246 per biennium. He projected that the statute will affect 2,700 people.

ROBERT SPRINGER, KENAI, testified via teleconference. He noted that he is a home inspector who works privately and for AHFC. Mr. Springer spoke in favor of competency requirements, but only in terms of examination by a third party, and not through the State. He stated that he was not in favor of bonding and insurance requirements, since it will raise the cost to inspectors. He maintained that most inspectors have insurance, and the cost of verification should not be passed on to consumers. He expressed his opinion that the bill would make his services more valuable, but that he would have to pass on any additional costs to the consumer.

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TED VEAL, AN INTERNATIONAL CONFERENCE OF BUILDING OFFICIALS (ICBO) INSPECTOR, HOMER, testified against aspects of the bill. He commented that the bill appears to be directed toward problems related to existing home inspections. He observed that the ICBO inspectors were for some reason grouped into the bill, and maintained that this is not a good fit. He explained that existing home inspection is a one time visual observation, whereas the ICBO inspection requires five to eight sight inspections during the construction of a new home. He requested that the ICBO inspection process be removed from the bill. He supports protecting consumers, but felt that there would be negative impacts to the ICBO inspectors.

In response to a question by Representative Croft, Representative Rokeberg explained that ICBO inspectors were a nationally recognized group that administer education and qualifying examinations. He also noted that the bill provides new home inspectors with regulations adopting the ICBO criterion as a qualifying exam. Existing homes are covered under organizations like the American Society of Home Inspectors.

BOB MILBY, ANCHORAGE, testified in opposition to the bill via teleconference. He noted that he is a general contractor with a residential endorsement in Alaska, and ICBO inspector for new housing, reiterated his prior Opposition to the bill. He acknowledged changes to the bill, but still felt that it discriminates against the private sector, taking away protection of municipalities. Agreed that an engineer might not be qualified to inspect all parts of a home. He suggested that AHFC could possibly require an invasive home inspection on existing homes that they refinance. He asserted that taking away a protection clause would not take homes to closing more quickly, or pass on savings to realtors.

BRYAN BUTCHER, LEGISLATIVE LIAISON, ALASKA HOUSING AND FINANCE CORPORATION (AHFC) testified via teleconference to AHFC's support for the bill. He noted that he had worked with the Sponsor on the bill over the past several years.

DAVID R. OWENS, OWENS INSPECTION SERVICES, BOARD OF DIRECTORS, MATANUSKA-SUSITNA HOME BUILDERS ASSOCIATION AND THE AMERICAN SOCIETY OF HOME INSPECTORS, testified in opposition to the legislation. He provided members with a copy of testimony dated May 2002, which he submitted to the Senate in 2002 (copy on file).

The proposed HB9 bill has not substantially changed from last year. The drafter of this bill has failed to insert any of our concerns with regards to new construction that have been proposed to him over the last five years. Please review the previous testimonies.

This bill is not just a simple document to insure an inspector is qualified and licensed. It is a complicated and fragmented 23-page piece of legislation that violates the Constitution of the State of Alaska. Further more, it creates a discrimination issue.

If this bill is passed in its current form, new home inspectors as a group will file a lawsuit based on the constitutionality and discrimination issues this bill will pose.

Questions:

Why is Alaska Housing law being changed in an Inspectors licensing bill? (I suggest you take any reference to Alaska Housing out of this bill).

Why is it that all inspectors doing business in the State are not being regulated and licensed under this bill?

Why do we need 23 pages? (I suggest we make this a simple requirement to get a license and provide proof of your qualifications to be an inspector).

Personally I would like to know why the Anchorage Real Estate Association is so intent on only regulating the residential side of this business?

Owens Inspection Services current inspection team consists of

- 3 New and existing home inspectors
- 1 Energy Rater
- 2 Commercial Inspectors (Including myself)

50 Percent of my current team will require regulation. The others will not.

The Liability:

The repeal of Article 40 page 21 line 29 will substantially increase the new home inspection liability. This article that we currently have in place under Alaska Statute 18.56.300 allows a reasonable level of protection for the purpose of Alaska Housing new home inspections. New home inspectors only want the same level of protection under the law as the State and Municipal inspectors have.

(See attached references from the International Building Code, International Residential Code, Uniform Plumbing Code, and International Electrical Code. Exhibit A, B, C, & D. The type of language mentioned in the above references should be included in this bill)

The cost:

If this bill is passed as is, our firm will double or triple our fees in the next 2 to 3 years. This will be due in part from added insurance costs; administrative costs and a large part will be due to additional re-inspections to prevent the possibility of frivolous lawsuits. These costs will be transferred to the client, or contractor, but will

eventually cost the consumer in the long run. I believe the consumer wants a good quality new home inspection at a reasonable price and I believe it is one of his rights to expect this. Currently new home inspections range from \$750.00 to \$1500.00 depending on the level of service requested. The consumer who builds his own home would take the brunt of this increase in cost due to their lack of construction experience.

Time delays. Time is money, as we all know.

As you tighten the regulations on new home inspectors this will transfer to the field. Due to the possibility of frivolous law suits stemming from this legislation any small detail on an inspection report will have to be completed and re-inspected prior to giving the contractor a go ahead to the next phase of construction. This type of over zealous inspection activity will cause time delays for the contractor, real estate agent and eventually the homebuyer. Again, the consumer will be the party that is impacted the most.

The code:

It is unfortunate that here we are in the year 2003 and the State Of Alaska has not adopted a minimum code standard for new construction. It is further unfortunate that it has been left up to the lenders to write regulations to protect their investment in these properties. For example FHA, VA and AHFC have their own regulations for inspection and construction of new homes. Again there is no code for new construction in the State of Alaska.

How can you tell a new home inspector or a general contractor he did not do his job properly if the State does not have a minimum standard to compare his work to?

In Summary:

I do support the concept of fair and equal regulation of the inspection Industry. In my opinion the concept of regulating new home inspectors has occurred too soon in the legal process of protecting the consumer. I do not support this bill as written.

Co-Chair Williams concluded public testimony. He noted that, if further testimony were desired, it would be by invitation only, and would occur next week.

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ADJOURNMENT

The meeting was adjourned at 2:31 pm