

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

February 5, 2003

1:00 p.m.

**MEMBERS PRESENT**

Representative Lesil McGuire, Chair  
Representative Tom Anderson, Vice Chair  
Representative John Coghill  
Representative Jim Holm  
Representative Ralph Samuels  
Representative Les Gara  
Representative Max Gruenberg

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 68

"An Act relating to the office of victims' rights."

- MOVED CSHB 68(JUD) OUT OF COMMITTEE

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."

- MOVED CSHB 9(JUD) OUT OF COMMITTEE

**PREVIOUS ACTION**

BILL: HB 68

SHORT TITLE:OFFICE OF VICTIMS' RIGHTS: INCLUDE MUNIS

SPONSOR(S): REPRESENTATIVE(S)SAMUELS BY REQUEST

Jrn-Date	Jrn-Page		Action
01/29/03	0085	(H)	READ THE FIRST TIME -

			REFERRALS
01/29/03	0085	(H)	JUD
01/29/03	0085	(H)	REFERRED TO JUDICIARY
01/31/03	0108	(H)	COSPONSOR(S): GARA, HEINZE
02/05/03		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 9

SHORT TITLE:HOME INSPECTORS/CONTRACTORS  
 SPONSOR(S): REPRESENTATIVE(S)ROKEBERG

Jrn-Date	Jrn-Page		Action
01/21/03	0032	(H)	PREFILE RELEASED (1/10/03)
01/21/03	0032	(H)	READ THE FIRST TIME - REFERRALS
01/21/03	0032	(H)	L&C, JUD, FIN
01/29/03		(H)	L&C AT 3:15 PM CAPITOL 17
01/29/03		(H)	Moved CSHB 9(L&C) Out of Committee -- Time Change -- MINUTE(L&C)
01/31/03	0098	(H)	L&C RPT CS(L&C) 6DP
01/31/03	0098	(H)	DP: LYNN, GATTO, CRAWFORD
01/31/03	0098	(H)	GUTTENBERG, ROKEBERG, ANDERSON
01/31/03	0099	(H)	FN1: ZERO(REV)
01/31/03	0099	(H)	FN2: ZERO(LAW)
01/31/03	0099	(H)	FN3: ZERO(LWF)
01/31/03	0099	(H)	FN4: (CED)
01/31/03	0099	(H)	REFERRED TO JUDICIARY
01/31/03	0106	(H)	COSPONSOR(S): HAWKER
02/05/03		(H)	JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

STEPHEN BRANCHFLOWER, Director  
 Office of Victims' Rights (OVR)  
 Alaska State Legislature  
 Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 68 and responded to questions.

GERAD GODFREY

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 68 on behalf of the Godfrey family.

MARCI SCHMIDT

Wasilla, Alaska

POSITION STATEMENT: Testified in support of HB 68 and the OVR.

REPRESENTATIVE NORMAN ROKEBERG

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 9.

BRYAN BUTCHER, Legislative Liaison

Alaska Housing Finance Corporation (AHFC)

Department of Revenue (DOR)

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 9.

RICK JARVIS

Re/Max Properties Inc.

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 9.

TED VEAL

Homer, Alaska

POSITION STATEMENT: During discussion of HB 9, expressed concerns and asked questions of the sponsor.

ROBERT MILBY

Wasilla, Alaska

POSITION STATEMENT: Expressed concerns during discussion of HB 9.

BERNIE SCHUYLER

Eagle River, Alaska

POSITION STATEMENT: Testified in opposition to HB 9.

KEVIN JONES

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 9 and asked questions of the sponsor.

DAVID R. OWENS, owner

Owens Inspections Services

Palmer, Alaska

POSITION STATEMENT: Expressed concerns during discussion of HB 9.

CAROL J. PERKINS, Owner

Active Inspections

Wasilla, Alaska

POSITION STATEMENT: Expressed concerns during discussion of HB 9.

WILLIAM BRUU  
Wasilla, Alaska

POSITION STATEMENT: Expressed concerns during discussion of HB 9.

**ACTION NARRATIVE**

**TAPE 03-2, SIDE A**

Number 0001

**CHAIR LESIL MCGUIRE** called the House Judiciary Standing Committee meeting to order at 1:00 p.m. Representatives McGuire, Samuels, Holm, Gara, and Coghill were present at the call to order. Representatives Gruenberg and Anderson arrived as the meeting was in progress.

HB 68 - OFFICE OF VICTIMS' RIGHTS: INCLUDE MUNIS

Number 0045

CHAIR MCGUIRE announced that the first order of business would be HOUSE BILL NO. 68, "An Act relating to the office of victims' rights."

Number 0083

REPRESENTATIVE SAMUELS, speaking as the sponsor, explained that HB 68 merely clarifies existing statute with regard to the jurisdiction of the Office of Victims' Rights (OVR); HB 68 does not expand the authority of the OVR, which was created by the 22nd legislature in order to give victims an independent voice in the criminal justice system. In effect, he added, the OVR [acts as] an ombudsman; the OVR can issue a report at the end an investigation, with possible requests for any necessary changes including changes in statutes. He indicated that in the legislation that originally created the OVR, the language defining "justice agency" did not specifically include municipalities. However, in addition to the OVR being headquartered in Anchorage, over 50 percent of all [Alaska's] crime victims are subject to investigation by the Anchorage Police Department (APD) and live within the Municipality of Anchorage (MOA).

REPRESENTATIVE SAMUELS relayed that the question of the OVR's jurisdiction was raised as a result of its investigation of the circumstances following the murder of former Department of Public Safety (DPS) commissioner, Glenn Godfrey, and the shooting of his wife, Patricia Godfrey. He noted that although this particular conflict between the OVR and the MOA has been resolved, HB 68 would ensure that such a question would not be raised in the future. He explained that he is sponsoring HB 68 at the request of the mayor of Anchorage, George P. Wuerch, and noted that in members' packets are letters of support from the Anchorage Assembly, the OVR, and the Godfrey family.

REPRESENTATIVE HOLM asked whether "municipality" is defined in statute and, if so, does it clearly indicate that boroughs and cities are included in that definition.

REPRESENTATIVE SAMUELS opined that in creating the OVR, the 22nd legislature intended for municipalities and their police departments to be included in the OVR's jurisdiction. He then read a portion of that original legislation:

(1) "justice agency" means a department, office, institution, corporation, authority, organization, commission, committee, council, court, or board in the executive or judicial branches of the state government that is, in any manner, involved with or responsible for the apprehension, prosecution, incarceration, or supervision of criminal or juvenile offenders ....

Number 0312

REPRESENTATIVE GRUENBERG directed members to Title 29, which contains the definition of "municipality" as follows: "'municipality' means a political subdivision incorporated under the laws of the state that is a home rule or general law city, a home rule or general law borough, or a unified municipality".

REPRESENTATIVE GARA, after noting that HB 68 is warranted, opined that municipalities are already covered by the existing law. He indicated, however, that HB 68 ought to be passed to keep anyone from arguing that point in the future. He asked what reasoning the MOA used in saying that it was not covered.

REPRESENTATIVE SAMUELS remarked that that question would best be directed at "the city attorney."

REPRESENTATIVE GARA said:

At this point, I can't see the good faith argument that the [MOA] wasn't covered in the first place. And that there is somebody who is ... making the legislature go through this process of enacting a new bill just to address a concern that I still don't understand ... rubs me the wrong way.

REPRESENTATIVE SAMUELS relayed that by the time he entered into the discussion, there were already a lot of misunderstandings, a lot of hard feelings, and a lot of heels dug in.

Number 0525

STEPHEN BRANCHFLOWER, Director, Office of Victims' Rights (OVR), Alaska State Legislature, relayed that he was appointed in May 2002 by the 22nd legislature to serve on the OVR, the purpose of which is to advocate on behalf of crime victims and investigate their complaints, ensuring that none of a victim's 50-plus statutory and constitutional rights are violated. He also relayed that one of the very first cases that the OVR undertook to investigate was the aforementioned Godfrey case, and this investigation lasted approximately three months. The OVR subpoenaed over 4,000 documents, took sworn testimony, and published its report on its web site on November 26, 2002.

MR. BRANCHFLOWER explained that under the terms of the OVR legislation, the MOA had a statutory right to file a response, which, in part, raised the question of whether the OVR had jurisdiction to investigate the MOA. The MOA argued that the definition of a "justice agency" in AS 24.65.250(1) only addressed the judicial and executive branches of state government. He said that counter to the MOA's argument, his position is that there is other authority granted within AS 24.65.110, which very clearly states that the OVR "shall assist crime victims in obtaining the rights crime victims are guaranteed under the constitution and laws of the state with regard to the contacts crime victims have".

MR. BRANCHFLOWER relayed that as a result of the publicity surrounding both the Godfrey case and the MOA's assertion that the OVR did not have jurisdiction, the Anchorage Assembly adopted a resolution - Resolution No. AR 2002-391(F) - on December 17, 2002, specifically acknowledging that the MOA was subject to the jurisdiction of the OVR. He also relayed that on January 25, 2003, the MOA passed Ordinance No. AO 2003-2, which states explicitly that, "the jurisdiction of the Office of

Victims' Rights over the Municipality of Anchorage and its departments, agencies, officials, and employees is officially acknowledged". He, too, referred to the letters of support in members' packets.

Number 0784

MR. BRANCHFLOWER opined that it is important to pass HB 68 because, in many areas of the state, crimes are investigated by local police departments rather than the Alaska State Troopers. He also opined that in creating the OVR, the 22nd legislature intended that municipalities would be included in the jurisdiction of the OVR, particularly the largest law enforcement agency in the state, the APD. He relayed that most of his cases originate with the APD, and that at this time, the OVR has 124 cases.

MR. BRANCHFLOWER surmised that the reason the word "municipality" was omitted from the original OVR legislation was because when it was created, it was modeled after statutory language pertaining to the Office of the Ombudsman, which specifically did not include "municipality" in order that individual municipalities could institute their own ombudsman's offices. He posited that this omission was merely an oversight, and that the 22nd legislature did intend for the area of the state with the largest population to fall under the jurisdiction of the OVR. In closing, he said that the OVR supports the adoption of HB 68.

CHAIR McGUIRE relayed her belief that "justice agencies" as defined in AS 24.65.110 is certainly broad enough to include the largest police force in the state of Alaska, adding that HB 68 will clarify that issue for the future.

REPRESENTATIVE GRUENBERG raised the issue of amendments, and spoke of possibly adding, to page 1, line 10, after "municipality" the words "as defined in AS 29.71.800".

MR. BRANCHFLOWER confirmed that such an amendment would preclude smaller jurisdictions from arguing that somehow they are excluded from the definition of "justice agency" in AS 24.65.250 simply because they don't qualify as a municipality. He opined that such a change would be an improvement.

REPRESENTATIVE GRUENBERG asked whether the OVR would be amenable to adding language that would allow the OVR to assist individuals with issues related to junk cars.

MR. BRANCHFLOWER pointed out that the OVR is specifically designed to assist victims of crimes against a person, not property crimes, and remarked that his preference would be for the OVR to focus its limited resources on addressing crimes against a person, as outlined in the original legislation: felonies, misdemeanors involving domestic violence, and misdemeanors involving violations of AS 11.41.

Number 1312

GERAD GODFREY, speaking on behalf of the Godfrey family, recounted for the committee the process that his family and the OVR went through in investigating the circumstances following the shooting of his parents, Glenn and Patricia Godfrey, as well as details of the MOA's response to that investigation. He relayed that the OVR has proved to be an invaluable resource for his family, whose primary goal at this juncture is to ensure that no one else suffers from the same problems uncovered by the OVR's investigation, including the problems encountered because of the MOA's - specifically, the city attorney's office - obstructive stance regarding that investigation. In closing, he reiterated that the OVR has been an invaluable tool, and expressed his support for the passage of HB 68.

CHAIR MCGUIRE assured Mr. Godfrey that the committee would do every thing it can to ensure that the OVR's jurisdiction is not questioned again.

Number 1747

MARCI SCHMIDT said simply that she is in support of HB 68 and the OVR, and mentioned that it was Victims for Justice that put her in touch with the OVR. She asked members to continue to do what they can to support the efforts of the OVR.

REPRESENTATIVE GARA extended an invitation to the Godfrey family to contact his office regarding the possibility of pursuing a bar complaint against the city attorney for his conduct related to the OVR's investigation of the Godfrey case.

Number 1878

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 1, on page 1, line 10, after "municipality" add "as defined in AS 29.71.800". There being no objection, Amendment 1 was adopted.

REPRESENTATIVE GRUENBERG then expressed concern regarding the title of HB 68, and relayed that he had another amendment to offer on that point.

The committee took an at-ease from 1:37 p.m. to 1:38 p.m.

REPRESENTATIVE GRUENBERG, after distributing [Conceptual] Amendment 2, explained that his intent is to narrow the title, which would then read: "An Act adding municipalities to the definition of 'justice agency' with regard to the jurisdiction of the office of victims' rights".

Number 1931

The committee took an at-ease from 1:40 p.m. to 1:42 p.m.

[Not on tape, but reconstructed from the committee secretary's log notes, was the following motion:]

REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 2.

Number 2010

CHAIR McGUIRE asked whether there were any objections to adopting Conceptual Amendment 2. There being no objection, Conceptual Amendment 2 was adopted.

Number 2023

REPRESENTATIVE COGHILL moved to report HB 68, as amended, out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHB 68(JUD) was reported from the House Judiciary Standing Committee.

#### HB 9 - HOME INSPECTORS/CONTRACTORS

Number 2063

CHAIR McGUIRE announced that the final order of business would be 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."

Number 2060

REPRESENTATIVE COGHILL moved to adopt CSHB 9(L&C) as the working document. There being no objection, CSHB 9(L&C) was before the committee.

Number 2080

REPRESENTATIVE NORMAN ROKEBERG, Alaska State Legislature, sponsor, relayed that last year, a previous iteration of HB 9, after the passing the House, did not get a chance to pass the Senate. He explained that HB 9 will regulate the occupation of home inspectors, which is one element in the chain of transactions that lead up to the purchase and sale of new and existing homes in Alaska. He noted that of all the occupations involved in a real estate transaction, the occupation of home inspector is not licensed or regulated in any way. He remarked that at one time, this legislation had provisions for a board of home inspectors, but due to the high costs of the biennial licensing fee, he decided to delete those provisions. Instead, he added, "we took the novel approach of putting it under the specialty contractor section" of the [Division of Occupational Licensing], which in effect lowered the cost of the biennial license from approximately \$600 to \$250. He relayed that one of his concerns was that if the price of a license was too high, it could actually affect the price of a home inspection.

REPRESENTATIVE ROKEBERG said that the current version of HB 9 is a good compromise and will still provide consumer protection. He noted that in a memorandum to the committee, he has outlined a few legal issues that the committee might wish to focus its attention on. He remarked that the original idea for this legislation was brought forth by the real estate industry in an effort to "do some cost shifting of liability." He said that he in turn has tried to create a "balanced, equitable bill with the foremost thought and objective to be the consumer." He continued:

I believe we've given the home inspectors some benefits here by lessening their liabilities and the statute of limitations as it relates to some of their reports and so forth. On the other hand, we've removed some immunization that they've had ... under the current statutes ..., always keeping in focus a

certain balance, here, about Alaska climactic conditions, the impacts on reports, [and] the cost to consumers. But the foremost issue is, right now, anybody without any competency whatsoever can go in business as a home inspector.

REPRESENTATIVE ROKEBERG, in closing, said, "By providing the bonding and other sources, we do not affect, in any way other than timeframes, any rights of cause of action by any complainant in the state." He noted that there were a couple of "tune-up" amendments.

Number 2328

REPRESENTATIVE GARA said:

There is a provision in this bill that addresses when somebody who writes a home inspection report will be held liable if they do a very poor job at it, and the bill as it reads right now allows somebody who purchases a home to hold a home inspector accountable if their conduct was negligent, if their conduct was grossly negligent, if their conduct was reckless or somehow deficient ...

REPRESENTATIVE ROKEBERG interjected to say that those standards are not listed in HB 9, adding that "the standards of gross negligence and so forth are repealed by this bill."

**TAPE 03-2, SIDE B**

Number 2383

REPRESENTATIVE GARA indicated that he did not mean to imply that those liability standards were in the bill; rather, he was merely leading up to an issue he has concerns with.

Number 2327

BRYAN BUTCHER, Legislative Liaison, Alaska Housing Finance Corporation (AHFC), Department of Revenue (DOR), said simply that the AHFC supports HB 9.

Number 2296

RICK JARVIS, Re/Max Properties Inc., said simply that he initiated the concept of this legislation, that it is a consumer protection issue, and that he is in support of HB 9.

REPRESENTATIVE GRUENBERG requested that at some point someone "walk us through the bill."

CHAIR MCGUIRE indicated that the committee would hear from the sponsor again and suggested that he would provide more details at that time; she also noted that in members' packets is a sectional analysis and a sponsor statement. She noted that a previous version of the bill passed the House during the last legislative session.

Number 2211

TED VEAL noted that he is a residential homebuilding contractor and an International Conference of Building Officials (ICBO) inspector. He referred to Section 40, which repeals AS 18.56.300(c), and said that by not having that language, "it more or less puts a target on the back of the inspector to anybody ... who has any kind of a complaint" regarding the structure and will make the inspector liable for that structure. He said that currently, an inspector appears on site and does spot checks during the construction process; he/she is not able to continually observe what is done throughout that process. Therefore, he added, "removing that raises a great deal of concern on my part, just having to fend off frivolous lawsuits and liability issues that are prone to happen in our society in this day."

MR. VEAL said that if [HB 9] passes, it is going to make it much more difficult to perform the inspection because of the liability burden; "there are so many things and options - the contractor can change things after the inspector's left the site" - he noted, and the contractor would not know that such had occurred. He reiterated that there are a lot of things that concern him with regard to repealing that portion of [current statute]. He expressed a desire to protect the consumer, but noted that he wanted to "see some more investigation, and maybe refer to the practice of the code bodies throughout the country - and how they handle it - and take a similar track in that manner."

MR. VEAL then referred to page 10, lines 1-4. He noted that it lists a two-year period for new-construction reports and a one-year period for existing-construction reports. He asked why that difference is stipulated. He also noted that homebuilders, too, have a one-year warranty period.

REPRESENTATIVE ROKEBERG, in response to Mr. Veal's question, said that the distinction was based upon the premise that in an existing home, any defect or omission in a home inspection report should be evident pretty quickly to anybody that would have grounds for a cause of action. He noted that currently the statute of limitations regarding that type of circumstance is three years; HB 9 would reduce it to one year. With regard to a new home, however, an error or omission might not make itself evident until after one year has elapsed, he said, adding that this distinction was a compromise arrived at while attempting to lower the "traditional period of contractual statutory limitation" from a three-year period to a lower period. To the benefit of home inspectors, he remarked.

Number 2007

REPRESENTATIVE ROKEBERG, in response to a question, noted that a copy of the statute repealed by Section 40 is included in members' packets.

MR. VEAL asked whether, as a licensed, homebuilding general contractor with a residential endorsement and required bonding and liability insurance, he would have to get more bonding and liability insurance in order to continue to perform ICBO inspections. He also asked whether, under HB 9, he will be required to "use a different form of inspection reports other than the PUR [purchase] forms that [AHFC] is currently using."

REPRESENTATIVE ROKEBERG, in response, said:

As a contractor, under the exemption section in the bill, he would be exempt from his contracting business - would not have to be a licensed home inspector - unless ... he wished to put himself out and charge money for home inspections. In that instance, then, he needs to be licensed as a home inspector. And presumably the bond would not be duplicative; I'm not familiar enough with that statute to see if it would, because he's required to have a bond under the contracting license and, frankly, I don't know the answer to that, whether it would be duplicative.

The other question he raises ... came up in a hearing last week. The current bill requires that a report be filled out, both for a new and existing home. It came to my attention that generally ICBO inspectors for newer homes don't necessarily fill out a report to

make visual inspections, and basically sign off on a form from [AHFC] which is [an] occupancy permit. So we have drafted a conceptual amendment ... that takes care of that, that there either would be a report form or, that report, in the case of new homes, would be in the form of a certificate of occupancy. So that would be consistent with ... current practice.

CHAIR McGUIRE directed attention to the exemption section on page 15, specifically lines 28-30, which read: "(6) registered as a general contractor with a residential contractor endorsement under this chapter and is performing only activities within the scope of that registration".

Number 1813

ROBERT MILBY noted that he has a general contractor's license with a residential endorsement, and that he is also "an ICBO-certified combination dwelling inspector" and inspects new construction. He opined that [HB 9] contains discriminatory language with regard to inspections of new residential construction in rural Alaska. He said that he is opposed to the deletion of [AS 18.56.300(c) as is proposed via] Section 40 of the bill. He said that ICBO certifications are required [by] "municipality inspectors as well as in the private sector, ... and I don't think leaving this [language] out when the rest of the inspectors in the state are not ... judged under those - they're exempt from that." "I believe that we should all be on the same playing field," he said, adding, "I believe the state of Alaska should be on [the] same - residential - the same building codes throughout the state."

MR. MILBY continued:

As inspectors out in rural Alaska, we don't make up any codes. We inspect by the codes that we're given, that the [Alaska State Fire Marshal] has adopted. And I'm not sure what's broken here that we're trying to fix. ... I'm just not sure of what problems it's causing anybody, that an ICBO-certified inspector goes out and inspects a home. Now, the inspection reports that we make out through each phase of the house is a written [form]. It's not like ... the final summation goes on the PUR forms, but we clearly have inspection reports that state any violations of the code.

And ... I'm not sure, from what I heard ..., if that's clear. The contractors have it, and we inspect ... to make sure that those are corrected. The two-year liability thing sounds like a downplay from a three-year. However, I've been a general contractor here in Alaska for almost 30 years, and ... you have that inherent one-year liability for things that are wrong. And I think you're always liable for things that are gross and negligent. And even if I had a mechanical contractor putting in a furnace, ... he has a one-year liability also, but not from when the house was purchased but from when he installed that particular item. ... I'm just not sure what we're trying to fix here.

Number 1647

MR. MILBY opined that it would be much more productive to spend time adopting a single code for the entire state, and ensuring that inspectors are certified by the state and are inspecting under the same code.

REPRESENTATIVE GARA asked Mr. Milby whether he is saying he believes that currently, the standards that are applicable to home inspectors might be adequate to assure the public that home inspectors are well enough qualified.

MR. MILBY replied:

I am in the new-construction inspection field, having had that many years in the building industry here in Anchorage. And I also have a residential contractor's license in another state. But what I'm saying is, an ICBO-certified inspector is qualified to inspect a home, yes.

REPRESENTATIVE ROKEBERG pointed out that HB 9 calls for certain competency standards, one of which is passing an ICBO exam. Thus, he ventured, there are no additional burdens placed on Mr. Milby other than applying for his license and paying the licensing fee. He also pointed out that the Uniform Common [Interest] Ownership Act (UCIOA) requires a two-year warranty period for condominium-style townhouse developments.

CHAIR McGUIRE noted that the transitional licensing provisions can be found on page 22, beginning on line 11. She relayed her belief that Representative Rokeberg has done a good job of

trying to be as accommodating as possible to the people in the industry. She acknowledged that it can difficult to have one's industry become regulated, but suggested that the aforementioned provisions do give some leeway to folks who are already in the home inspection industry.

REPRESENTATIVE GRUENBERG asked for verification that the language which two speakers have objected to having removed via Section 40 reads, "(c) A person may not bring an action for damages based on a duty imposed by (b) of this section to inspect a residential unit unless the action is for damages caused by gross negligence or intentional misconduct", and that that duty is basically a requirement of inspection in order to get certain loans. Thus, he surmised, passage of HB 9 will allow a person to maintain an action for damages based upon simple negligence.

REPRESENTATIVE ROKEBERG confirmed that. He said that that is part of the balance achieved by HB 9. "We're making some concessions - I know that Representative Gara has some of those concerns - but that's really a major part of the whole balancing act," he added.

Number 1421

BERNIE SCHUYLER noted that he is "an ICBO-certified inspector for combination dwellings and business, and a building inspector in the UBC [Uniform Building Code]." He said that he is not in favor of HB 9, the main reason being the deletion of the language cited in Section 40. He also opined that there is not enough delineation between "new construction and prior construction," adding that they are two different inspections.

REPRESENTATIVE GRUENBERG said:

Just for the record, I've heard three of you testify, and you're all in the business, and you'd all like to be immunized unless somebody can show you acted grossly negligent or ... did something intentional. That's a very high standard. Why, on a public policy basis, do you think you deserve such special protection, sir?

MR. SCHUYLER said, "Well, for one reason, the municipalities are covered; they don't have any of that problem that we have."

REPRESENTATIVE GARA remarked that the current standard that applies to most people in society when they act towards another person is that they're not liable unless they engage in unreasonable care that causes somebody harm. "That's what we define as negligence," he added, "that's the standard that has been applied in this country for over 100 years in all sorts of circumstances, and that's the standard that I believe Representative Rokeberg has said should stay in place and not be altered in this bill. But sometimes, he noted, people hear the term negligence and they think that that's not very irresponsible conduct. But one would never be held negligent unless it were determined that he/she engaged in conduct that was unreasonable and that showed a lack of reasonable care. That is quite a burden, he opined.

Number 1264

KEVIN JONES said that he performs home inspections in the Anchorage area as well outside that area. He explained that he mainly concentrates on preexisting homes rather than new construction, although he is an ICBO-certified combination dwelling inspector and could "do that" should he choose. He said that overall, he is supportive of HB 9, although he does understand the concern regarding Section 40. He noted that he is also president of the local chapter of the American Society of Home Inspectors (ASHI), and that they do support licensing of the industry.

MR. JONES referred to page 8, line 3, which reads: "(b) All advertising and business cards prepared by a registered home inspector or associate home inspector for the home inspection business must show the inspector's name, mailing address, and registration number". He asked why that requirement is included, and whether such is required of everyone who's licensed in any type of business in the state.

REPRESENTATIVE ROKEBERG said that this particular provision "is found in other forms of statutes in occupational licensing," but as written only applies to home inspectors. He added that [such a requirement] is consistent with a number of other occupations. He indicated that this requirement will enable authorities to identify and "grab" those who fail to comply with the [proposed] licensing provisions.

MR. JONES referred to Section 18, page 10, lines 20-22, which read: "Contractors and home inspectors may not advertise that they are bonded and insured simply because they have complied

with the bond and insurance requirements of this chapter". He asked what the intent of that language is.

CHAIR McGUIRE surmised that that language merely modifies existing law to include home inspectors.

REPRESENTATIVE ROKEBERG agreed, adding that the language being modified is located in the "specialty contractors license" [requirements]. He remarked, however, that "it seems rather redundant."

CHAIR McGUIRE suggested that the language is intended to mean that because new requirements are being imposed, simply complying with any other bonding and licensing elements of the chapter does not then enable a person to advertise as being "licensed and bonded."

Number 1061

REPRESENTATIVE GRUENBERG remarked that the language in Section 18 relates back to and conforms to language in Section 15 on page 9. After noting that the bonding requirements in Section 15 stipulate \$10,000 for a general contractor and \$5,000 for a home inspector, he posited that the policy behind [proposed] AS 08.18.111 is to indicate that a contractor, and in this case a home inspector, may not claim to the general public that he/she is properly bonded and insured merely by acquiring "this very small bond," which probably would not cover him/her in most circumstances. He said he thinks that this provision is a good one and, turning back to the provision pertaining to business cards, stated that that provision is really good public policy.

MR. JONES, on the issue of what shall be visually examined during a home inspection, referred to page 18, lines 14-15, which reads: "(I) other systems or components as specified by the department in regulations". He remarked that that is a pretty broad statement, and asked the sponsor to comment.

REPRESENTATIVE ROKEBERG replied that when defining "home inspection" for the purposes of this legislation, he tried to be as thorough as possible. However, in the event that changes need to be made at a later date, the language in [subparagraph (I)] gives the department the flexibility to further define "home inspection" via regulations without having to petition the legislature for a statutory change.

Number 0729

DAVID R. OWENS, owner, Owens Inspections Services, said that he has been a building inspector for 20 years as of this year. He went on to say:

In general ... I believe that this is a pretty good bill for existing-home inspectors; I don't see anything in here that is too flagrant for the portion of the work that's for existing-home inspectors. ... But the other part of this is the new-home inspection, and this is not a good bill. I do not endorse it. I'm strongly opposed to ... [Section 40, which repeals AS AS 18.56.300(c)]. We were instrumental in the early '90s in getting that [language] put in there, and that is the same type of protection that any municipal inspector has under the ... administrative section of the code - they are not personally responsible unless it's gross negligence or intentional misconduct. And that language appears throughout all the codes, and is given to all municipal inspectors that do that type of work.

One of the things that's always bothered me about the way this has gone together is that not all inspectors ... that do inspection work are being regulated by this bill. ... They're picking and choosing who we're going to regulate. And ... if we're going to regulate an activity, such as building inspection, then we ought to include all building inspectors; ... there's a list of 20 or 30 different types of commercial inspectors that are not being regulated. A few of my buddies that do that kind of work kind of chuckle a little bit saying, "You're under the regulation and I'm not," and I simple don't think that that's fair.

Number 0586

CAROL PERKINS, Owner, Active Inspections, noted that she is an ICBO combination dwelling inspector in Wasilla and does inspections on existing homes. She indicated that as an existing-home inspector, she likes HB 9. However, she remarked, as a new-construction inspector she has the same concerns that were previously expressed regarding Section 40 and the lack of clarity pertaining to the inspection reporting of new and existing [buildings].

Number 0533

WILLIAM BRUU noted that he is an ICBO inspector, does existing-home inspections, and is also an "energy rater." He said, "The current proposed legislation is flawed, in my opinion, in that it assesses a common set of liabilities to two totally different activities." He continued:

As to certification, a home inspector is an individual who says, "I am a home inspector." Meanwhile, [an] ICBO-certified combination dwelling inspector is a person who has proven his knowledge of all the applicable codes through a comprehensive test. Many of the current ICBO inspectors in Alaska obtained that certification by attending a weeklong series of seminars and then challenging the test. For those attempting the test the first time, the test had a failure rate in excess of 50 percent. The test is comprehensive and tough. The ICBO inspector is also required to maintain his or her certification by testing on code changes and additions, typically on a three-year cycle.

One aspect of the legislation before you: [page] 5, lines 21-31, and [page] 6, lines 1-12, in summary lay out the required reports that a home inspector is required to provide and perform as part of his inspection. An ICBO inspector is already required to leave a copy of his field notes at each phase inspection. The requirement that he provide a verbal report to the customer is counterproductive. In most cases, the customer is not there. The builder is nowhere on site.

All the inspections performed by the ICBO inspector on new construction are required to be formally documented on an [AHFC] form PUR-102. The ... [PUR-102] becomes a recordable document upon completion. The completed PUR-102 is then recorded and becomes attached to the deed on the property. The name and the ICBO certification number of the inspector becomes a matter of record and, in reality, the inspectors can stand liable for those inspections as long as that document exists. A previous legislature has provided some protection for the inspectors from unscrupulous clients by adopting the provision in [AS 18.56.300(c)]. This legislation proposes to drop that protection, and we feel that that is a violation.

Number 0325

MR. BRUU continued:

As to the function of the home inspector versus the ICBO inspector, there is a world of difference. The ICBO inspector is required to perform a series of inspections during the construction of new houses. Those periodic inspections include: a plans review, which may take up to four hours depending on the complexity of the plan; footings and foundations - some foundation types require as many as five trips to the site to view the progress until the foundation itself is complete; rough-ins inspections, which shall include at least four major sub assemblies - framing, mechanical rough-ins, electrical rough-ins, and plumbing rough-ins; ... insulation and vapor retarder inspections - this, of course, is extremely important in our sever climate; and a final inspection, [for] which [the AHFC] has published very specific policy and guidelines ....

All installed appliances and systems are checked for installation and function. It would be very, very unusual if any of the appliances or mechanical equipment installed in new construction would be "used" and would require the inspector to render an opinion as to the life expectancy, which is normally expected of an existing-home inspector. Conversely, the home inspector visits a house once for a period of time, usually less than three hours. He is expected to visually inspect the property. He cannot and is not expected to view the interior of walls and other hidden parts of the constructions. He is expected to comment on the age and condition of appliances and systems that are installed. The American Society of Home Inspectors [ASHI] in their "Standards of Practice" fully recommend that an inspector not address code issues because they are not trained nor equipped with the knowledge to do so.

Number 0212

There are other major differences in the scope and responsibilities of an ICBO inspector and a home inspector that this legislation does not address. If

this legislation passes as written, we feel there will be a major reduction in the standards to which homes have been built in order that they be financed by [the AHFC]. Sections 33 and 34, when implemented, will allow anyone who claims to be a home inspector, and is licensed by the state, to perform new-house code inspections on new construction. The inspector will not have to be certified by any of the code-writing organizations. He can do so voluntarily, but he does not need to be, under this legislation.

MR. BRUU concluded:

If the legislature wishes to keep the standards as high as they are today and have the inspectors respond to changes and advancements, then they should continue to call for the new-home inspectors to be certified by the code-writing organizations. Alaska Housing Finance [Corporation] should continue to be required to have their collateral inspected to ensure that they have code-compliant dwellings in compliance with the legislature's wishes and provide some consumer protection. One matter of administrative change that I think needs to be understood by the committee ... as well [as] the sponsor is [that] the International Conference of Building Officials basically no longer exists. All the code-writing organizations across the United States have now come together and created the International Code Conference, and that will be the governing and authoring agency for all the building codes. Thank you for the opportunity to testify.

CHAIR MCGUIRE, with regard to Mr. Bruu's comments about the oral report, turned to page 6, line 9, and pointed out that it merely says that an oral inspection report "may" be given. In other words, she explained, it is not a requirement.

MR. BRUU mentioned that in previous versions of the legislation, it was mandatory to give both a written report and an oral report.

**TAPE 03-3, SIDE A**

Number 0001

CHAIR MCGUIRE turned to the language on page 6, line 11, regarding the 180-day period, and asked for an explanation of how "that matches up with the statute of limitations."

REPRESENTATIVE ROKEBERG offered that the 180-day period pertains to the amount of time in which a home inspection report has validity. He recounted that a previous version of the legislation had a one-year period, and that some have argued for a 24-hour period of validity; the 180-day period is a compromise. He remarked that a home inspection report is not an engineering report; it is merely a report of a three-hour visual inspection that costs \$350. He noted that in Alaska, the climactic conditions are such that a home inspection can be performed one day but then the next day it could snow two feet and cause damage to the building, or an earthquake could occur and cause damage.

CHAIR MCGUIRE turned to page 10, lines 1-4. She noted that the statutes of limitations for [filing] claims are based on a report that is only valid for 180 days. She surmised, therefore, that "that defect had to have been discovered during that 180-day period upon which the home inspector signs off."

REPRESENTATIVE ROKEBERG indicated that that is incorrect; instead, the defect or omission can be discovered within the one- or two-year period, depending upon what type of home the report was related to. He elaborated:

One of the problems that we found in practice is that, number one, whoever would purchase the report, say a buyer of a home, would purchase a home inspection report at the advice of a real estate licensee. ... They would have the inspection done, they'd own the report, [and] they'd then make an offer on the home; many times the seller would even [have] ... an inspection [done as well]. ... Then the report becomes part of the bargaining process - usually for correction of defects ... [listed] in the report. ... Remember, ... the disclosure form under state law ... even advises people to get a home inspection report. But at this point, ... in the real estate business we call it a "DFT," deal fell through. ... What we found is [that] this particular report keeps getting handed around to lenders, to other people, [and] it could ... end up with buyer number two.

REPRESENTATIVE ROKEBERG said that the questions then become: Who has liability? Who owns this report? House Bill 9, he opined, makes clear that the ownership of the report is in control of the person who has purchased it or "has given written

consent for that, because the lender may want to see that." The lender can see it, but cannot pass it on to a third party. This will ensure that someone unrelated to the original transaction regarding the home inspection report does not rely on an obsolete report. This provision, he noted, does not preclude someone from bringing forth a cause of action.

Number 0428

REPRESENTATIVE GARA surmised as follows:

As to whether or not somebody is harmed by a report and has a right to seek to hold the home inspector accountable, the one- or two-year statute-of-limitations period applies. As to whether or not a report that is written can be used for purposes of a home sale, [it's] a separate question. And this section that says the 180-day period applies, applies only in those circumstances where you're determining how long the report is valid for purposes of home sales and deals that fall through, and this is not related to the liability issue; this is related to the "who gets to rely on the report in purchasing a home" issue.

REPRESENTATIVE ROKEBERG said that is correct.

REPRESENTATIVE GRUENBERG reiterated that he would like someone to walk him through the bill. He mentioned that he would like a little time, a day or two, to figure out what the bill entails before passing it from committee.

CHAIR MCGUIRE said that it is her intention to pass HB 9 from committee at this meeting. She expressed the hope that Representative Gruenberg would have his concerns addressed by the sponsor after the meeting or some other time before the bill goes to the House floor.

Number 0603

REPRESENTATIVE GARA pointed out that although many of the members of the committee are already familiar with HB 9 and many of the people who have testified have been working on the legislation for many years, he and other members are not familiar with the topic. He said:

I do not believe that we can go through as detailed a bill like this, and answer everybody's questions about a bill as detailed as this - a bill that changes as many liability standards and rules of law as this - in a hasty manner. We have 10 minutes left under our schedule for this meeting; I have many questions [that] are going to take more than 10 minutes. I am generally supportive of this bill. There are some provisions that cause me concern, I have some substantive questions, and, I hate to say this, but I think that I would request that maybe we continue this discussion at our next [House Judiciary Standing Committee] meeting. And I think that would be a decent practice for other bills that involve sort of a significant amount of analysis, as this one does. So, that would be my request for the chair, that we invite the folks back, including Representative Rokeberg, for another meeting on this bill. It's a complex bill, and we shouldn't vote before we fully understand what we're voting upon.

REPRESENTATIVE GRUENBERG said, "Madam Chair, I'm not trying to delay this, but I would like to know what I'm voting on so I can defend it on the [House] floor."

REPRESENTATIVE ROKEBERG pointed out that HB 9 also has a House Finance Committee referral. He again mentioned that a memorandum he provided listed the points that he anticipated the House Judiciary Standing Committee would focus on, adding that he provided that memorandum in an effort to expedite the process. He said that although he can appreciate the comments made by Representatives Gara and Gruenberg, reading the bill is "the responsibility of a particular member."

REPRESENTATIVE GARA interjected to say, "Point of personal privilege." He went on to say:

I would assume that every single member of this committee has read this bill. I have read this bill. I have many questions for you, Representative Rokeberg; you are the [person most familiar] with this bill. I would like to field those questions to you, and I would like to have a debate on the record as to whether or not this is good public policy for the state of Alaska. This bill could be referred to six, seven, or eight committees; if all six, seven, or eight committees do not have adequate time to review

the merits of this bill, then that doesn't help anybody. It's not so much a matter of how many committees this bill is referred to, it is a matter of whether any committee has adequate time to ask the questions and engage in the debate that is relevant to the bill. So that's why I would like to have more time to talk about this. I'm perfectly ready to start with my questions; the problem is, we have five minutes left.

Number 0865

REPRESENTATIVE ROKEBERG opined that there should be adequate time for members to acquaint themselves with the bill before it is heard on the House floor, indicating that he would be happy to answer any questions before that time.

REPRESENTATIVE GRUENBERG said:

I was seriously considering co-sponsoring the bill - I didn't know enough about it to do it - because I think it's a good idea these people be licensed. I didn't do it because it seemed like a very complex bill - maybe it's not - I had no idea how long it had been around. And I don't mean to be goring your ox, because I'm really not. I am talking about the way our committee needs to work. And I had previously sat on this committee for eight years; I was the only one who sat on it in the legislature for eight years while I was here. Sometimes ... this committee seemed to take time to do work on bills, and it was aggravating to those of us who sponsored bills that came before the committee. The bills that came out were generally pretty [good] product, were defended on the floor pretty easily, and passed, and passed both bodies because they knew this committee did its work. And I was always proud, have always been proud, to be on this committee, because that has been the reputation of this committee. And I would hope that ...

CHAIR McGUIRE interjected to call for an at-ease, which lasted from 2:54 p.m. to 2:55 p.m.

CHAIR McGUIRE noted that because the House Labor and Commerce Standing Committee was not meeting that afternoon, the House Judiciary Standing Committee meeting could continue past 3:00 p.m. in order to address some of the issues raised. She said:

I respect all the comments that have been made. There is always a very tenuous balance ... between getting it 100 percent right and getting bills moved through. ... I don't know that 10 hours more would make [all members] 100 percent comfortable. ... I respect ... [the participation of Representatives Gara and Gruenberg]; I don't intend to marginalize that, or make you feel ... that your views are not important. At the same time, I do have the background, and I guess you'll just have to trust ... that fact, ... that ... I've seen the bill, I think it's a good compromise, I think it's a good consumer-protection bill, and there will be a period of time between today, when this bill moves out, and ... [when it moves] on to Finance Committee. And I would hope that both of you would take the opportunity to read the packet ... that contains numerous pages of testimony and opinions and so on, and to absorb the public testimony today, [and] if you have amendments that you would like [offered], that you would take ... time to meet ... with Representative Rokeberg prior to its final hearing before the Finance Committee.

Number 1062

REPRESENTATIVE COGHILL made a motion to adopt Amendment 1, which read:

Page 13, following line 12:

Insert a new bill section to read:

**\* Sec. 27.** AS 08.18.123 is amended to read:

**Sec. 08.18.123. Denial, suspension, and revocation of endorsement or home inspector registration.**

(a) The department may suspend, revoke, or refuse to grant or renew a residential contractor endorsement, a home inspector registration, or an associate home inspector registration upon a finding that

(1) the application is fraudulent or misleading;

(2) the endorsement holder or registrant [CONTRACTOR] has knowingly violated this chapter or a lawful order or regulation of the department;

(3) the endorsement holder or registrant [CONTRACTOR] is incompetent or has engaged in fraudulent practices.

(b) Proceedings for the denial, suspension, or revocation of residential contractor endorsement, home inspector registration, or associate home inspector registration are governed by AS 44.62 (Administrative Procedure Act)."

Renumber the following bill sections accordingly.

Renumber internal references to bill sections in accordance with this amendment. Below are all internal bill section references in this bill:

Page 22, lines 1, 12, 20, and 31

Page 23, lines 7, 17, 19, 20, 21, 22, 24, 25, and

26

REPRESENTATIVE ROKEBERG noted that Amendment 1, which pertains to registration, is merely a conforming amendment requested by the Division of Occupational Licensing. He said that he supports the adoption of Amendment 1.

Number 1122

CHAIR McGUIRE asked whether there were any objections. There being no objection, Amendment 1 was adopted.

Number 1133

REPRESENTATIVE GARA made a motion to adopt Amendment 2, which read [original punctuation provided]:

Section 17. Add the following provision:

(e) the limitations periods in this section will not begin until the later of the date of the home inspection report, or the date a claimant should reasonably become aware of an actionable claim.

CHAIR McGUIRE objected for purposes of discussion.

REPRESENTATIVE GARA said:

There is a rule in our civil justice system that has been around for a good 50 years. It's called the "date of discovery" rule, and I'll discuss that in a moment. My overview of this bill is that largely it gives consumers some additional assurances than what they had before about the quality of home inspections. Those provisions are good. But what it gives, it also

takes away. As currently written, this bill takes away the rights of consumers to enforce the new rights they've been given. In that sense, many of the provisions of this bill are - probably unintentionally ... - empty, and that's what I'd like to address.

Let me give you an explanation of what the date of discovery rule is; it's been in our courts for a number of decades. And, for frame of reference, for those of you who've seen the popular movie Civil Action, the popular movie Silkwood, those involved sever, fatal injuries that people suffered - cancers, very debilitating injuries, injuries that people suffered many, many years after somebody did something bad. ... The movie Civil Action involved groundwater pollution, groundwater pollution that occurred in the 1970s. For many, many years, children in a community in Massachusetts were exposed to toxic ground water. They didn't know it; nobody knew they were drinking polluted groundwater. Within a number of years - 10, 12, 15, let's say - many, many children in the neighborhood started coming down with leukemia. Many, many children in the neighborhood started dying.

Number 1242

REPRESENTATIVE GARA continued:

There's a provision in this bill that says an action has to be brought within two years of the inspection report. The date of discovery rule says, "You don't make somebody bring an action before they have one: you don't make somebody bring an action before they even know they're injured." The time period doesn't begin to run until somebody reasonably has some indication that somebody else did something bad. So, in this bill right now, as it is written, there is a one-year and a two-year statute of limitations. It says the people who write home inspection reports can only be liable for up to a year or two years, at the outset, from the date they write the report.

Let me give you an example of where a consumer ... has paid a good bit of money - and I don't consider \$350 to be a trivial amount of money - let's say we have a circumstance where a consumer purchases a home. They want to know that the home is safe for their children;

they hire a home inspector, the home inspector says exactly what Representative Rokeberg says, which is, "I'm not going to tear this house apart for you to find every single defect in it." But the purchaser says, "You know, I'm really concerned about the wiring in this house; that's really all I want to know about - is the wiring okay."

... Well, maybe one home inspector says, "I'm not willing to do that for you." But the consumer finds a home inspector who says, "I am willing to do that for you." The home inspector gives the house a clean bill of health but, in fact, there was glaringly bad wiring in the house. And this is ... close to a circumstance that has happened ... in the bush. Three, four, five years afterwards, the house burns down. The children in the house are killed; the family is killed. Significant injury has occurred, five years from the date of construction or from the date of the home inspection report. The consumer all along thought that the house was okay.

Number 1359

REPRESENTATIVE GARA went on to say:

But ... you don't have a timetable for when fires happen; you don't have a timetable for when faulty wiring will finally sort of manifest its inadequacies. In the case I'm referring to, the courts said the consumers' cause of action didn't run out two years from the date they bought the house. They didn't know there was going to be a fire two years from the date they bought the house; they thought the house was okay. They knew there was going to be a fire when there was a fire; they didn't have any reason to disbelieve what they were told about the house, ... to disbelieve that the house was a safe house, until the fire occurred.

So the date of discovery rule says whatever your statute of limitations, ... it begins to run at this point: either the date of the person's bad act - so let's say the negligent home inspection report, [in] this case - or at the time the consumer should have first had any reasonable indication that something was wrong with the product they purchased - the home

inspection report, in this case. How can you let somebody's rights disappear before they even know that they have them? How can you let somebody's opportunity to hold somebody accountable disappear even before they know that they have any reason to hold the person accountable? That's the point of the home inspection report. If the point is that a person wants to find out whether they have a safe house, and if the home inspector says, "Yes, I'm willing to provide this particular service" - to check the wiring, let's say - why are we giving people rights that they can't enforce?

So, what this Amendment [2] does is it says your limitations period will not disappear before you have any reason to know that you have a claim. It's a traditional rule - it's applied in Republican states, it's applied in Democratic states, it's been applied by conservative judges, it's been applied by liberal judges - it first started in cases involving toxic chemicals like the ... Civil Action [example] I talked to you about. Or, let's envision a circumstance where many, many years ago a cigarette company tried to convince children to start smoking - in year 1960, let's say - the child started smoking and became addicted and developed cancer in year 1975.

Number 1462

REPRESENTATIVE GARA continued:

The statute of limitations would have been two years - ... not two years from the date they started smoking, [but] two years from the date they realized that something wrong had happened. Maybe in 1970 they found out that cigarettes were dangerous for them, finally; maybe the studies finally came out. Well, maybe they had two years from that date, but not two years from the date that somebody handed them the cigarettes, when they had no idea something wrong had happened. So, I'll give you maybe two examples of where this ...

CHAIR MCGUIRE interjected to ask: "Do you honestly believe that a judge would not apply a date of discovery rule with a case such as you described? Honestly?"

REPRESENTATIVE GARA said, "If the statute directs ... I worry."

CHAIR MCGUIRE said, "I don't." "That's why you have judicial discretion, and the reality is, you've set statutes of limitations that you have a reasonable expectation of the liability that's hanging out there for you," she added. But in cases where situations as described occur, where there is gross negligence, where a serious harm has been done, there is judicial discretion to apply a date of discovery, she posited, remarking, "And you know that."

REPRESENTATIVE GARA said:

I don't know that, and here's why I don't know that: In this state, ... there have been many, many attempts to get rid of and limit the date of discovery rule. This statute reads that your cause of action disappears specifically within one or two years from the date of the report. It's specific. Courts are very wary about overriding what a legislature tells them the law is. In this bill we are telling the courts the law is that ... a home inspector is only liable for one or two years from the date of the report.

Number 1563

If somebody wants to comfort me, that we have a general statute within Alaska law that applies the date of discovery rule - even apart from what this statute says - if somebody comforts me that ... there is a provision in Alaska law that applies the date of discovery rule, I have no problem with this bill. If you can convince me that a court is going to ignore the specific wording of this [proposed] statute and impose a date of discovery rule, I have no problem with the bill. I am not convinced at this point that ... I would be comfortable ... passing a bill that says the opposite of what I hope it would say.

REPRESENTATIVE GARA concluded:

To be careful, what we would do is adopt either this amendment or an amendment stating that this provision does not do anything to disturb the date of discovery rule. If we did that, I would withdraw my Amendment [2] in favor of an amendment like that. But if it is

this committee's intention to apply a rule like the date of discovery rule, I believe it has to be stated somewhere in the statutes. I am worried that the specific language of this [proposed] statute, which is that the legislature directs the courts to allow a cause of action only one or two years from the date of the report, will be applied as written.

CHAIR MCGUIRE assured members that during the next two years, the extent of liability, personal and otherwise, and statutes of limitations would be issues for ongoing debate. She remarked that statutes of limitations are in place in order to allow a reasonable businessperson to move on. At the same time, she noted, the legislature has to be protective of consumers. A balance must be achieved, and that's what tort reform and statute of limitations are about, she posited. She observed:

And the date of discovery has been something that in my experience - in reading - ... [has] even been applied in cases where there was a specific statute of limitations. So it is a tool in a judicial [toolbox] that is there for cases that are egregious, where a judge can say "You know what, there was no reasonable chance that this innocent victim could have discovered it." And so I don't know that [what] Representative Rokeberg wants to do is to say that; I think what he wants to do is say, "We're going to try to limit this statute of limitations." That tool is out there, but I think it's a very specific public policy message that [Representative Rokeberg is] trying to convey.

Number 1683

REPRESENTATIVE ROKEBERG said he opposes Amendment 2. He went on to say:

I think that Representative Gara's arguments are well founded in law and have a place in the law, but not in this place. It is the intention of the author of this bill to place a pretty stringent fence around those periods when causes of action be brought forward. And ... there's numerous reasons here. Number one, the example he cited regarding the wiring: ... a home inspector ... is not generally competent to comment on ... the state of the wiring. ... To make a complete analysis of that, number one, you should be [an] electrical engineer and/or a competent journeyman in

that trade. And, additionally, the scope of work, which is required under this bill to be defined in the report and the contract one engages in, should be clearly delineated: the level of competence and what degree of inspection you're going to do.

... So the consumer has ... been put on notice; therefore, anybody who would undertake the example of the bad wiring would ... be in breach of the basic concepts of this bill. ... Let's not use wiring [examples]; let's use a roof or a foundation [example]. Those are the two primary elements that come into play a lot when you are dealing with home inspections and there's some dispute about that. This is precisely the point here. To have a full roof inspection, you need to have an invasive inspection - you need to take the ... thing apart - and you should have an engineer or somebody that's competent to do that. Not a home inspector. That's the whole point. A competent home inspector who's licensed - takes the exam, follows the regulations of a regulated occupation - shouldn't even be doing that. ... If he does it, then he should be actionable.

Number 1727

REPRESENTATIVE ROKEBERG continued:

... And the same goes for a foundation. To make a proper inspection of a foundation, a home inspector will go down and kind of visually look at it. And ... guys that know the business can kind of tell you, "This doesn't look too good"; they can sniff it out, ... people with talent, they can do that kind of stuff. And that's what they get paid for, for \$350. ... That's a trifling amount in the whole world universe of economic activity; I think it's pretty ... small to try to lay ... liabilities of literally hundreds of thousands of dollars on something like that. But I would agree, there is certain amount of reliance upon that, but it is limited and that's part of the whole process here of the bill.

Point in fact ..., if there is a structural problem with that, particularly obviously in [a] new home, there's going to be a warranty, there's going to be a contractor and/or there should be a disclosure

statement in the liability on the part of the seller if they don't properly disclose a defect that would be readily ... apparent to somebody. So there's other elements here. The home inspector is only one of a number of people that could have culpability or liability in any kind of a transaction. To try to focus on all this attention on one party is not fair. And that's why, as [Chair McGuire] ... points out here, it's the effect on commerce here. To do otherwise, to use ... the concept of date of discovery rule, is basically open ended. It doesn't affect the [facts] that we're having to deal with here.

... If there's an architectural design problem, if there's a structural problem in the engineering of a structure, you're right: sometimes this doesn't show up for some time. ... And that's why we have a longer statute of repose and statute of limitations for those types of things. This is a matter of public policy. We're trying to define and contain the liability on the one hand ... and also remove some of the immunities ... granted before, to kind of get a balance here, and also make sure we do the two-pronged thing we want to do. We want to have good consumer protection - as well as try to keep the cost of it down to the public - and to make sure that commerce can go on.

Number 1869

REPRESENTATIVE ROKEBERG concluded:

So, to try to say that we ... can't adopt some kind of a modification to these time-honored rules of law, that's precisely, as legislators, what we're all about here. It is making sure that we can get a fair balance to fit the circumstances here. I would say, Madam Chair, when I first introduced this bill, we were one of the first states in the union to even undertake this. Since that time, ... at least half of the other states have already adopted regulation. So it's a matter of the type and form here. But it's clear to me that this situation doesn't lend itself to that type of imposition of this particular date of discovery rule, and I think the clear public policy, from all standpoints, bears up that type of policy.

REPRESENTATIVE SAMUELS, on the issue of Amendment 2, said he agrees with Chair McGuire.

REPRESENTATIVE HOLM indicated that he is opposed to Amendment 2. He said:

Why, in heaven's name, would anybody want to be a home inspector if he had unlimited liability? ... This bill, to me, is good public policy, as it's written, to promote orderly economic activity. I think that's what we should be doing and I respectfully promote that idea ...; Representative Rokeberg did a very good job drafting this bill. As I've read this bill, there are certain things that I don't particular care about, and I don't particularly understand why the timing is there.

I, personally, have had problems with buying a home, and in my history I understand what caveat emptor is; I understand what "Let the buyer beware" is. I also understand what personal responsibility for my purchasing power is all about, that I have personal responsibility to myself to make good decisions. There are no perfect solutions, and the reliance of the buyer is upon his or her knowledge, money, and the seller's representation. The home inspector is just a piece of the puzzle ..., and I respectfully submit that we cannot make a perfect bill that will protect all people from no damage being done to them. So, I speak against this Amendment [2].

Number 1978

REPRESENTATIVE GARA, in defense of Amendment 2, said:

What we have is one bill. We have a chairwoman who believes that the date of discovery rule will apply under the terms of this bill, we have a sponsor who believes the date of discovery rule will not apply under the terms of ... this bill, and we have a person speaking, myself, who is not sure whether the date of discovery rule will apply and who wants to make it clear that it should apply. Let me address the thrust of Representative Rokeberg's comments. Representative Rokeberg is correct in stating that a home inspector does not ... warrant that everything is great about a house. A home inspection is a limited function; a

home inspection report is a limited document. It's pretty clear that a home inspector only warrants certain things when the home inspector writes a report, and doesn't undertake to warrant other things.

All I'm talking about is those things that the home inspector promises the buyer that the home inspector is doing. A court could not hold a home inspector liable for things that the home inspector didn't promise they were doing; a court could not hold a home inspector liable for things that were beyond the home inspector's scope of responsibilities or duties. So the problem that we all suffer is, none of us build homes, none of us are home inspectors, and none of us - I think - have a great grasp on those circumstances where a home inspector might do a bad job and put somebody's life at risk and those circumstances that wouldn't really occur in a home inspection report. But Representative Rokeberg mentions these sort of structural problems.

Number 2062

REPRESENTATIVE GARA continued:

I'll give you an example that really doesn't apply to homes, but I suppose an analogous situation could occur. There was a terrible hotel skywalk collapse a number of years ago. We're not talking about hotels today, but just assume a similar smaller-scale circumstance that involves a house. It was a skywalk that was built more than two years prior to the date of collapse, and it killed over 100 people - I believe those are the right numbers. In any case, a tragic loss of life occurred, and it was a very poorly built and poorly inspected structure. Now, I don't know that ... anything similar to that would fall within the scope of home inspectors duties. What is clear is there are things that will fall within the scope of a home inspector's duties. And we can't tell home inspectors that, "We're not going to hold you accountable for the things you promised to do," whatever they are.

Under today's law, ... until we adopt this bill, the date of discovery rule does apply. And the question is whether or not we should do anything that threatens

to take away that right of consumers to rely upon the date of discovery rule. And I would urge, Madam Chair, that if she believes the date of discovery rule should apply implicitly, ... [that] we take some time to figure out whether or not a court would determine that the date of discovery rule does apply to this bill as written. I think that requires that some of us open up a law book and look through some cases to make sure that it applies. It's a question that I think is lingering out here.

REPRESENTATIVE GARA concluded:

But all I'm trying to say is, as to the things home inspectors promise they're going to do, as to the warranties of safety that they do give to consumers, as to the things that do fall within their job duties, they should be held accountable for the promises that they make. It might not include wiring in all cases, though I would say that if a home inspector came to you and says, "I'm also going to warrant the wiring," then they're warranting the wiring. Maybe if they came to you and said, "Look, I'm not going to look inside any walls; I'm not an electrician," they're not warranting the wiring. Maybe in most cases they're not warranting the wiring, but if they said they were, then they better be.

Number 2133

CHAIR McGUIRE, in response, said:

What's happening right now is that we're talking about one specific piece of legislation. There is a whole framework of laws that are out there, dealing with consumer protection, dealing with date of discovery, dealing with all kinds of things. And what I meant to say, and I thought I said clearly, was that I believe that Representative Rokeberg intent is to limit the statute of limitations to one year and two years; I believe that that's his intent. But what I also said was that I have never seen a case where a very egregious situation has happened where a judge has not been able to access a tool in their tool belt, to go back and say, "date of discovery." So that's what I mean to say, is that we do have branches of government: we make the laws, the judiciary goes

ahead and takes those cases, they have various tools in their toolbox, we don't always like those, but I believe that it is Representative Rokeberg's [intent] to limit that, and I think it's appropriate.

Representative Holm has, I think, very eloquently stated: You're looking at it as one piece of the puzzle. And what you're talking about is a group of people that prior to now have never even been regulated. ... They've been going around doing home inspections, promising who knows what. And so this is a big step that Representative Rokeberg has taken on over the last ... [four] years, ... to try to say let's bring people together and do some regulating of it. I think it's appropriate that you say there's going to be some time limit that we're going to impose so that people can ... move on with their lives from a business standpoint.

CHAIR MCGUIRE indicated that amongst people who have gone to law school, there could be any number of viewpoints regarding the possible interpretation of a judicial proceeding. She said, "You can continue to do your debate, and we will go forward," noting that other members still wished to speak to [this issue].

Number 2214

REPRESENTATIVE ANDERSON opined that Representative Gara's [argument] has some merit. He remarked that he has suffered the date of discovery rule while trying to set a time regarding a tort action. He said that he is as pro-business and as pro-builder as they come, but accountability and consumer protection are important. He added:

And I think the interesting thing is, as we get these bills, it would be so easy to pass the buck and say, "Hey, this bill is just addressing one issue - home inspection/home inspectors as whole - and there's so many other people that could be sued and we can't get them in this setting at this meeting."

REPRESENTATIVE ANDERSON surmised that Representative Gara's point is, what better time than the present to prevent ambiguity and litigation with regard to legislation. He noted that although Representative Rokeberg has said that the example regarding electric wiring is a bad example, [paragraph] (12)(B)

on page 18 specifically refers to a visual inspection of electrical systems.

REPRESENTATIVE ROKEBERG pointed out that there is a provision requiring a pre-inspection agreement, and that this agreement would outline the specific scope of what a particular inspection entails. He remarked that Representative Gara's example regarding the hotel skywalk pertains to commercial construction issues, not home inspection issues.

The committee took an at-ease from 3:26 p.m. to 3:29 p.m.

Number 2332

REPRESENTATIVE COGHILL called for the question on Amendment 2.

CHAIR MCGUIRE asked whether there were any objections.

REPRESENTATIVE GARA objected.

CHAIR MCGUIRE announced that there would be a roll call vote on the calling of the question.

A roll call vote was taken. Representatives Anderson and Gara voted yes. Representatives Coghill, Holm, Samuels, and McGuire voted no. Representative Gruenberg was absent for the vote. Therefore, the vote was 2-4.

Number 2382

CHAIR MCGUIRE asked that roll call vote be taken on Amendment 2.

A roll call vote was taken. Representatives Gara, Gruenberg, and Anderson voted in favor of Amendment 2. Representatives Coghill, Holm, Samuels, and McGuire voted against it. Therefore, Amendment 2 failed by a vote of 3-4.

Number 2386

REPRESENTATIVE COGHILL made a motion to adopt Conceptual Amendment 3, which read [original punctuation provided]:

Page 6, line 7 after "section." insert:

In cases of new homes, this report can be in the form of a certificate of occupancy.

**TAPE 03-3, SIDE B**

Number 2356

REPRESENTATIVE ROKEBERG indicated that Conceptual Amendment 3 is a clarifying amendment that reflects the current practice of the ICBO inspectors who inspect new homes for the AHFC. He added that a certificate of occupancy is the equivalent of the AHFC's PUR-102 form.

Number 2340

CHAIR MCGUIRE asked whether there were any objections to Conceptual Amendment 3. There being no objection, Conceptual Amendment 3 was adopted.

Number 2334

REPRESENTATIVE COGHILL moved to report CSHB 9(L&C), as amended, out of committee with individual recommendations and the accompanying fiscal notes.

Number 2317

REPRESENTATIVE GRUENBERG objected for the purpose of asking the sponsor a question. He referred to page 9, Section 17. He said:

I take it that the statute of limitations in that provision only applies to actions against individuals registered under the (indisc. - voice faded away).

REPRESENTATIVE ROKEBERG said it is his understanding that the licensees registered under this proposed legislation would be individuals rather than corporations.

CHAIR MCGUIRE asked whether there were any further objections to the motion.

Number 2276

REPRESENTATIVE GARA objected. He said, "With the Chair's permission I would request just probably less than two minutes to discuss one conceptual amendment."

CHAIR MCGUIRE said: "At this point in time, I'm going to continue moving the bill out, and if you'd like to continue discussing that with Representative Rokeberg prior to it moving

on to [the House Finance Committee], I think it'd be fantastic; you two could even use my office."

A roll call vote was taken. Representatives Holm, Samuels, Anderson, Coghill, and McGuire voted in favor of reporting CSHB 9(L&C), as amended, out of committee. Representatives Gara and Gruenberg voted against it. Therefore, CSHB 9(JUD) was reported from the House Judiciary Standing Committee by a vote of 5-2.

#### **ADJOURNMENT**

Number 2211

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:35 p.m.