

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

January 29, 2003

3:15 p.m.

MEMBERS PRESENT

Representative Tom Anderson, Chair
Representative Bob Lynn, Vice Chair
Representative Carl Gatto
Representative Norman Rokeberg
Representative Harry Crawford
Representative David Guttenberg

MEMBERS ABSENT

Representative Nancy Dahlstrom

OTHER LEGISLATORS PRESENT

Representative Mike Chenault

COMMITTEE CALENDAR

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(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 15

"An Act relating to establishing the Alaska No-Call List, a data base of residential telephone customers who do not wish to receive telephonic solicitations; providing that the data base be compiled at no cost to the customers; requiring paid telephonic sellers to purchase the data base; requiring telephonic sellers to identify themselves; requiring telephonic solicitors who are otherwise exempt from registration as telephonic solicitors to file with the Department of Law and purchase the data base; and providing for an effective date."

- BILL HEARING POSTPONED

PREVIOUS ACTION

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
01/21/03	0032	(H)	REFERRED TO LABOR & COMMERCE
01/29/03		(H)	L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

RICK URION, Director
Division of Occupational Licensing
Department of Community & Economic Development
Juneau, Alaska

POSITION STATEMENT: Testified that the division doesn't have an official position on HB 9.

JOHN BITNEY, Lobbyist for
Alaska State Home Builders Association
Palmer, Alaska

POSITION STATEMENT: Offered general support for HB 9, although the association didn't yet have an official position on the bill.

STEVE CLEARY, Executive Director
Alaska Public Interest Research Group (AkPIRG)
Anchorage, Alaska

POSITION STATEMENT: Identified minor changes necessary before AkPIRG will support HB 9.

ROBERT MILLER, Chair
State Board of Registration for Architects, Engineers, and Land Surveyors
Anchorage, Alaska

POSITION STATEMENT: Suggested changes to HB 9 to clarify use of stamp and signature by architects and engineers.

FRANCO VENUTI
Homer, Alaska

POSITION STATEMENT: During the hearing on HB 9, identified numerous changes and suggested the bill be rewritten by home inspectors.

BILL BRADY, Legislative Chair
Anchorage Board of Realtors
Anchorage, Alaska

POSITION STATEMENT: Spoke in favor of HB 9.

JANET SEITZ, Staff
to Representative Rokeberg
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions about HB 9.

BRYAN BUTCHER, Legislative Liaison
Alaska Housing Finance Corporation
Department of Revenue
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 9.

ACTION NARRATIVE

TAPE 03-3, SIDE A

Number 0001

CHAIR TOM ANDERSON called the House Labor and Commerce Standing Committee meeting to order at 3:15 p.m. Representatives Anderson, Lynn, Gatto, Rokeberg, Crawford, and Guttenberg were present at the call to order. Chair Anderson announced that Representative Dahlstrom is excused because she is in Anchorage attending the change-of-command ceremony at Fort Richardson for the new commissioner of the Department of Military & Veterans Affairs.

Representative Chenault was also in attendance.

HB 9-HOME INSPECTORS/CONTRACTORS

Number 0055

CHAIR ANDERSON opened the hearing on 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 0120

REPRESENTATIVE ROKEBERG, sponsor of HB 9, explained that the bill has been heard by the House Labor and Commerce Standing Committee twice in past legislative sessions. He noted that HB 9 establishes a method of licensure for the home inspector profession in Alaska. The intention is to protect consumers and the home inspection industry by requiring the registration of home inspectors. Currently anybody can call himself/herself a home inspector. For many consumers, buying a home is the largest investment of their entire life. This bill relates only to residential real estate; it does not cover commercial property. Home inspection is becoming very commonplace. Many lenders require home inspections as a condition for making a loan. Lenders have been the primary force behind this type of occupational licensing. In addition, real estate practitioners are trying to protect themselves from the liability for misrepresenting the condition of a property.

REPRESENTATIVE ROKEBERG testified that all parts of the real estate transaction are currently regulated in Alaska. The sale of a home in Alaska, even by a private individual, requires a disclosure of the residence's condition. Home inspectors can help determine if there are any defects in the home prior to the closing of a real estate transaction. Typically, if there are problems identified with a residence, repairing those defects becomes part of the bargaining process and often influences the final price. Registering home inspectors helps prevent the "buyer beware" situation.

Number 475

REPRESENTATIVE ROKEBERG continued that this legislation applies to inspections on existing homes as well as new homes financed by the Alaska Housing Finance Corporation (AHFC). New home inspections are subject to provisions of the International Conference of Building Officials (ICBO). Many home inspectors have certifications to inspect both new and existing homes. Additionally, the bill exempts some professionals from this licensing law, for example, architects and engineers and municipal building inspectors. The bill identifies two levels

of licensees: the home inspector and an entry-level associate home inspector who must be supervised by the former.

REPRESENTATIVE ROKEBERG explained that in past years, he considered setting up a board of home inspectors. Several years ago, the legislature passed [AS] 08.01.065(c), which requires all occupational licensees to pay the full costs of administering their licensing programs. The fees are assessed on a biennial or two-year cycle. When considering the option of creating a separate home inspection board, the Division of Occupational Licensing estimated only 100 people would qualify for licenses, at a cost of \$1,500 to \$1,600 every two years per person. That fee would have probably increased the cost of a home inspection fee that is typically \$300. Some home inspectors favored having their own board so they could have more control over their regulation by the state.

Number 0786

REPRESENTATIVE ROKEBERG explained that he chose the non-board type of occupational license instead, making home inspectors a subset of specialty contractors. Their licensing would be handled by staff in the Division of Occupational Licensing. He noted that the Alaska Home Builders Association originally proposed this idea. About 2,695 people are now licensed as specialty contractors, reducing the estimated cost per home inspector license to \$248 per biennial cycle or \$125 a year. This scheme results in lower licensing fees and lower cost to the public, and gives the division the authority to regulate the industry, provide sanctions, and protect the public.

Number 0988

REPRESENTATIVE ROKEBERG explained that HB 9 requires the home inspector to pass an exam by a national trade organization. A home inspector can register to inspect new or existing homes or both. He noted that HB 9 requires a pre-inspection document and a written inspection report. The bill makes the inspection report valid for six months, a provision that recognizes the limitations of winter inspections and the physical damage caused by the state's severe climate. He will offer an amendment to change the six months to 180 days, he told members, because it is easier to count days.

REPRESENTATIVE ROKEBERG described other provisions of HB 9. It gives the Division of Occupational Licensing the authority to require continuing education, a requirement common to most

occupational licenses. This bill establishes fees for registration, renewals and examination fees. The bill mandates a surety bond of \$5,000, and directs claims against the bond to the small-claims section of District Court.

Number 1195

REPRESENTATIVE ROKEBERG described the current problem of home inspection reports that circulate far beyond the original purchaser. In order to control the distribution of this report, HB 9 provides that the report cannot be used by anybody without the written permission of the person who bought the report. In addition, a person cannot bring legal action based on a home inspection report unless he or she has written consent to use it. The bill sets the statute of limitations for legal claims at two years for new homes and one year on existing homes; otherwise, the statute of limitations on contracts in Alaska is three years.

Number 1401

REPRESENTATIVE ROKEBERG defined a home inspection as a visual, general inspection of the residence. It is not an analysis of a specific component of a home, such as a roof or a foundation. An inspection report may identify problems, such as "a foundation which appears to have problems," which should then be reviewed separately by an engineer or other expert.

REPRESENTATIVE ROKEBERG testified that under HB 9, the department can conduct investigations and issue citations against a home inspector for violations. The bill establishes workers' compensation insurance and requires public liability and property damage insurance. He said the bill has relatively low insurance requirements: \$20,000 for property damage, \$50,000 for injury, and \$100,000 for injury including death. The legislature does not mandate errors-and-omissions insurance for occupational licensees because of its high cost and because it is often not available.

Number 1677

REPRESENTATIVE ROKEBERG said that some provisions of HB 9 relate to AHFC. Section 40 of the bill repeals AS 18.56.300(c) of the Alaska Housing Finance Corporation statute because its standards for gross negligence are so difficult to prove in court. He said this existing standard makes it nearly impossible to litigate against an inspector of an AHFC-financed home. This

legislation repeals that provision and allows a person to bring legal action in superior court against a licensed home inspector for misfeasance.

Number 1800

RICK URION, Director, Division of Occupational Licensing, Department of Community & Economic Development, testified that the division does not have an official position on HB 9. He said that division staff has worked with Representative Rokeberg on previous versions of the legislation; they believe the bill, if passed, will accomplish the goals of the sponsor.

Number 1880

JOHN BITNEY, Lobbyist for the Alaska State Home Builders Association, offered general support for HB 9. Although he said the group does not yet have a position paper on the bill, it did support last session's legislation, and this bill is very similar.

Number 1930

STEVE CLEARY, Executive Director, Alaska Public Interest Research Group (AkPIRG), said his group followed the legislation last year as well. The group's support of HB 9 is contingent on several minor changes. He recommended increasing the bond amount for both contractors and home inspectors from the \$10,000 and \$5,000, respectively, proposed in the bill. The remodeling or construction of a house can cost several hundred thousand dollars, and he said he believes these bond levels are too low. He also said the period of liability [one year for an existing home and two years for a new home] is too short. He said he would like to hear testimony from homebuilders.

Number 2010

REPRESENTATIVE ROKEBERG responded that the amount of the bonds is part of the specialty-contractor licensing statute, and that he is reluctant to overhaul that system.

Number 2103

ROBERT MILLER, Chair, State Board of Registration for Architects, Engineers, and Land Surveyors, spoke to the provisions of HB 9 that exempt architects and engineers from registering as home inspectors. He pointed out a problem on

page 15, lines 13-18. Mr. Miller said architects or engineers must by current law affix their seals, sign the written reports, and add their registration numbers. But HB 9 allows the person to either seal or sign the report. He said that a seal is a mechanical or electronic stamp; it must be signed to be valid.

Number 2316

REPRESENTATIVE ROKEBERG said he appreciated this suggestion and that he would incorporate it into a conceptual amendment.

TAPE 03-3, SIDE B

Number 2375

FRANCO VENUTI, Homer, introduced himself as an ICBO (International Conference of Building Inspectors) combination dwelling inspector, an FHA (Federal Housing Administration) compliance inspector, and a VA [Department of Veterans Affairs] compliance inspector. He said he inspects both new and existing homes in the Homer and Kenai Peninsula areas. He has been working in the industry for 35 years and inspecting homes since 1992.

MR. VENUTI testified that no one in the inspection industry is in favor of the additional cost and regulation of this bill. He asked whether other committee members have heard complaints from consumers. Inspectors are not popular with realtors because they often point out things the seller and realtor do not want to hear, he asserted.

Number 0495

MR. VENUTI listed his objections to HB 9. He said he opposes repealing AS 18.56.300(c), the law that limits the liability of inspectors to damages caused by negligence or intentional misconduct. Current law allows inspectors to make independent decisions and frees them from harassment through frivolous lawsuits. He objected to the requirement for continuing education classes from the American Society of Home Inspectors. Mr. Venuti said a person must join the society, adding an additional \$300 to the cost of doing business, a cost that would inevitably find its way to the consumer. Most experienced inspectors in the business do not hold membership in the group, he said, and he recommended removing any references to the organization from the bill. Another section prohibits an inspector accused of an unresolved complaint from doing

business. He questioned the fairness of applying this provision to inspectors who are unfairly accused.

MR. VENUTI offered his belief that written reports should apply only to existing homes. For new homes, he uses an AHFC form that details compliance with required building codes. He also questioned the six-month validity of the report because the summary of inspection on a new home stays with the property indefinitely. He recommended spelling out the continuing competency requirements. He said AHFC should dictate what constitutes continuing competency for inspecting its projects. This bill should regulate energy raters because energy ratings are an essential part of the inspection process for an AHFC loan package. Mr. Venuti said that engineers are not required to carry insurance, and that allowing them to perform inspections sets up two classes of inspectors. Permitting other entities, including general contractors, to do inspections contradicts the intent of this bill. He testified that HB 9 overlooks the fact that an exam for an [AHFC] combined dwelling inspector is more exacting than the exam required in the bill. The cost of taking redundant exams adds an unnecessary expense to the process and dilutes the qualification requirements.

MR. VENUTI concluded by saying that such legislation needs to be written by members of the inspection industry who understand the process.

Number 2050

CHAIR ANDERSON invited Mr. Venuti to put his comments in writing and send them to the next committee of referral, the House Judiciary Standing Committee.

REPRESENTATIVE ROKEBERG expressed his disappointment that no other members of the home inspection industry testified today. He said he has worked closely with them and that the Alaska chapter of the American Society of Home Inspectors grew out of those meetings. Representative Rokeberg agreed with Mr. Venuti's point about AHFC new-home inspection reports. He suggested that AHFC could adopt a similar form that would meet state law and give AHFC a paper trail to show that the work has been done.

CHAIR ANDERSON responded to Mr. Venuti's question about whether any committee members have heard complaints about the home inspection industry. He said he has received four comments in favor of the bill in the last several days.

Number 1887

REPRESENTATIVE LYNN observed that as an Anchorage realtor, he appreciates the work of good inspectors. He offered his belief that an inspection report identifying defects serves to protect him, the buyer, the seller, the mortgage company, and the general public.

REPRESENTATIVE CRAWFORD noted that he has fielded a number of complaints from constituents in the past several years. He said he supports the bill.

Number 1777

BILL BRADY, Legislative Chair, Anchorage Board of Realtors, said he has testified over the past five years in favor of this consumer legislation. The Alaska Association of Realtors and the Anchorage Board of Realtors supported similar legislation last year. He said his organization will send in letters of support for HB 9. He said most of his group's members have no problem working with home inspectors; they do have problems working with incompetent home inspectors. Fifty dollars buys [an Alaska business] license to become a home inspector for two years, and he said problems can erupt in a field so easy to enter. Most consumers need someone to evaluate a home. He said the American Society of Home Inspectors chapter in Alaska has supported this bill and estimates that 80-90 percent of home inspectors support this bill. Mr. Brady said he is very concerned about a growing number of unqualified home inspectors who may be grandfathered in under this law. He urged the committee to take action on the bill as soon as possible.

Number 1491

CHAIR ANDERSON, after asking if anyone else wanted to testify, closed the public hearing.

JANET SEITZ, Staff to Representative Norman Rokeberg, Alaska State Legislature, helped Representative Rokeberg answer questions about agency fiscal notes in the bill packet. She explained that the bill packet included fiscal notes from last year's legislation because Representative Rokeberg had not received any fiscal notes on the current bill. Today the committee received three fiscal notes on HB 9, and the notes were distributed to members before the meeting.

Number 1275

REPRESENTATIVE ROKEBERG replied to a question from Representative Crawford about why the inspection report on a new home would not be valid after 6 months. Representative Rokeberg said that it is a judgment call over issues of harsh climate and the changing conditions of the dwelling. He said he objects to the acceptance of reports up to 24 months old on the State of Alaska Residential Real Property Transfer Disclosure Statement, a form required by state law.

Number 1146

REPRESENTATIVE CRAWFORD asked whether any municipalities or other local governments are issuing licenses for home inspectors. If so, could the municipality ordinance be stricter than the bill?

REPRESENTATIVE ROKEBERG replied that he did not think a municipality could create a home inspection program stricter than state law. He said he would check on this point.

REPRESENTATIVE CRAWFORD asked how long it would be before an associate home inspector could become a full home inspector.

REPRESENTATIVE ROKEBERG responded that regulations would address the length of the training period. In any case, the person must pass the home inspector examination to become fully qualified.

REPRESENTATIVE CRAWFORD commented that he thinks the \$5,000 surety bond is low, but that he is not offering an amendment because he wants to see the bill moved out of committee.

Number 0871

REPRESENTATIVE GATTO questioned the words "may not" on page 8, lines 14-17, where it says the home inspector "may not be required to give bond in applying for or holding a license issued by a political subdivision for a similar occupation." He also asked for a definition of "similar occupation". He expressed his concern about a person becoming registered without bothering to post the bond or follow the rules.

REPRESENTATIVE ROKEBERG said the intention of this legislation is to "close the barn door" because now anyone can represent himself or herself as a home inspector. He said he reads this section to mean that if a home inspector already has a license

through a municipality, that person does not have to put up more than one bond. He said he will ask the drafter of the legislation why the term "may not" is used in the current statute.

REPRESENTATIVE GATTO asked whether the realtor who insists on a home inspection will accept the report of a friend of the seller who is, for example, an engineer but not registered as a home inspector.

REPRESENTATIVE ROKEBERG clarified that the realtor does not require a home inspection under any law, and the bill grants an exemption to engineers to do home inspections if they use and sign their stamp. Whoever requires the home inspection, for example, the seller or the lender, decides whether the report is acceptable.

Number 0161

REPRESENTATIVE ROKEBERG, in reply to questions from Representative Guttenberg, said HB 9 is the same bill as last year's legislation. He said the bill does not require that all home inspectors be engineers because inspection reports would become phenomenally expensive. The number of engineers willing to do this work might be limited, although in some areas of the state, such as Juneau, it is mostly engineers who do the home inspections. Plus, the competency of many non-engineers who currently do home inspections would be lost.

TAPE 03-4, SIDE A

Number 0001

REPRESENTATIVE GUTTENBERG commented that there has been no testimony from the Alaska Housing Finance Corporation, which is one of the most influential agencies in the home building field, or from lenders or other home inspectors. He asked for a definition of "joint registration" on page 2, line 29. He also pointed out a possible typographical error on page 6, lines 14-15.

MS. SEITZ explained that the definition of "joint registration" is found on page 18, lines 16-17, and means that an individual is authorized to inspect both new homes and existing homes.

Number 0306

BRYAN BUTCHER, Legislative Liaison, Alaska Housing Finance Corporation, testified at the invitation of Chair Anderson that AHFC supports this legislation.

Number 0397

REPRESENTATIVE ROKEBERG answered Representative Gatto's questions about why the [previous] bill didn't pass the Senate and whether there were unresolved issues with the bill. Representative Rokeberg explained that the bill passed the Senate Labor and Commerce Committee and the Senate Finance Committee. It was on the calendar for the final day of session, but it died because it didn't come off the Senate's "rolling calendar" before the midnight deadline.

Number 0559

REPRESENTATIVE ROKEBERG pointed out for the record the inclusion of language on page 5, lines 2 and 14, that was requested by the Division of Occupational Licensing. The section states that a person must have been free for seven years after serving a sentence for certain types of criminal conviction. He said the term "sentence" includes the probation period.

Number 0642

REPRESENTATIVE ROKEBERG moved to adopt Amendment 1, which reads:

Page 4, Line 23:

After "examination"

DELETE: "or set of applicable courses"

Page 4, Line 24:

After "American Society of Home Inspectors"

INSERT: ", American Home Inspectors Training Institute, or National Association of Home Inspectors"

Page 4, line 25:

After "examination"

DELETE: "or set of applicable courses"

Page 6, line 11:

After "valid for"

DELETE: "six months"

INSERT: "180 days after the date the home inspector signs and dates the report"

Page 6, line 21:

After "competency requirements."

INSERT: "The department shall require at least 8 hours continuing competency per licensing period."

Page 22, line 25:

After "American Society of Home Inspectors"
INSERT: ", American Home Inspectors Training
Institute, or National Association of Home Inspectors"

Number 0600

REPRESENTATIVE GUTTENBERG objected for discussion purposes.

REPRESENTATIVE ROKEBERG explained that proposed Amendment 1 reflects changes made in the Senate version of last year's bill. On page 4, lines 23 and 25, the choice of taking either an exam or coursework is reduced to the exam. On page 4, line 24, and page 22, line 25, two other trade organizations that offer home inspector exams are added. On page 6, line 11, "six months" is replaced by 180 days, which is easier to count. He said the language "signs and dates the report" clarifies the start of the six-month period. On page 6, line 21, the amendment specifies eight hours of continuing competency training rather than allowing the regulation writer to set the number.

REPRESENTATIVE GATTO asked whether a choice of exam or coursework should be dealt with by regulation rather than in statute.

REPRESENTATIVE ROKEBERG answered that it is appropriate to make the decision in law because it sets a standard.

REPRESENTATIVE ROKEBERG responded to Representative Guttenberg's question about whether a person must be a member of these trade organizations to take the exam, a question raised earlier by one person who testified. Representative Rokeberg replied that this bill does not require membership in these organizations, nor do these organizations require membership to take their tests.

Number 0900

REPRESENTATIVE GUTTENBERG withdrew his objection to Amendment 1.

Number 0916

CHAIR ANDERSON, upon hearing no further objections, declared that Amendment 1 was adopted.

Number 0926

REPRESENTATIVE ROKEBERG offered conceptual Amendment 2, a handwritten amendment that reads [original punctuation and format provided]:

- p. 15 line 16
change "or"
to "and"
- p. 15 line 22 after reports
change "or" to
"and"
- p. 15 lines 17 & 22
after "signs"
Insert "and dates"

REPRESENTATIVE ROKEBERG explained that this amendment responded to the issue raised earlier in testimony by Mr. Miller, chair of the State Board of Registration for Architects, Engineers, and Land Surveyors, in which an engineer or architect must sign as well as stamp a home inspection report.

Number 1019

CHAIR ANDERSON announced, with no objections, that Amendment 2 was adopted.

Number 1029

REPRESENTATIVE LYNN moved to report HB 9, as amended, out of committee with individual recommendations and attached fiscal notes. There being no objection, CSHB 9(L&C) was reported from the House Labor and Commerce Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 5:10 p.m.