

MINUTES
SENATE FINANCE COMMITTEE
April 22, 2003
10:06 AM

TAPES

SFC-03 # 60, Side A
SFC 03 # 60, Side B
SFC 03 # 61, Side A

CALL TO ORDER

Co-Chair Gary Wilken convened the meeting at approximately 10:06 AM.

PRESENT

Senator Gary Wilken, Co-Chair
Co-Chair Lyda Green, Co-Chair
Senator Con Bunde, Vice Chair
Senator Robin Taylor
Senator Lyman Hoffman
Senator Donny Olson
Senator Ben Stevens

Also Attending: REPRESENTATIVE BRUCE WEYHRAUCH; REPRESENTATIVE NORM ROKEBERG; RICHARD SCHMITZ, Staff to Senator John Cowdery

Attending via Teleconference: From an offnet site: MARK DAVIS, Director, Division of Banking, Securities & Corporations, Department of Community and Economic Development; From Fairbanks: TERRY DUSZYNSKI, International Conference of Building Officials Inspector and Existing Home Inspector; From Mat-SU: WILLIAM BRUU, International Conference of Building Officials Inspector, New Home Inspector, and Energy Rater; DAVID OWENS, Owner, Owens Inspections Services; From Kenai: STEVE WISDOM, Owner, Wisdom & Associates Home Inspection; From Anchorage: REGINA MANTEUFEL; DOUG GRIFFIN, Director, Alcoholic Beverage Control Board, Department of Revenue

SUMMARY INFORMATION

HB 159-FINANCIAL INSTITUTION EXAMINATIONS/C-FAB

The Committee heard from the Department of Community and Economic Development and reported the bill from Committee.

SB 142-DNR LEAD RESOURCE DEVELOPMENT PROJECTS

This bill was scheduled but not heard.

HB 23-RESTITUTION FOR CRIME VICTIMS

The Committee heard from the sponsor and reported the bill from Committee.

HB 9-HOME INSPECTORS/CONTRACTORS

The Committee heard from the sponsor and took public testimony. Three amendments were considered with two being adopted. The bill was held in Committee.

SB 128-COMMON CARRIER LIQUOR LICENSE

The Committee heard from the sponsor and the Alcoholic Beverage Control Board. The bill reported from Committee.

#hb159

HOUSE BILL NO. 159

"An Act relating to the frequency of examinations of certain persons licensed to engage in the business of making loans of money, credit, goods, or things in action; repealing the requirement for a state examination and evaluation of the Alaska Commercial Fishing and Agriculture Bank; and providing for an effective date."

This was the first hearing for this bill in the Senate Finance Committee.

Co-Chair Wilken announced that the House Rules Committee, at the request of the Governor, sponsors this bill. He stated that this legislation would "decrease the frequency of State examinations of Small Loan Companies from twelve months to eighteen months," and eliminate the annual examination of the Alaska Commercial Fishing and Agriculture Bank (C-FAB).

MARK DAVIS, Director, Division of Banking, Securities & Corporations, Department of Community and Economic Development testified via teleconference from an offnet site in Anchorage and stated that this legislation would change State statute to extend the required Small Loan Company (SLC) examination from twelve months to eighteen months. He informed that this action would align

SLC codes with the examination requirement timeline for State chartered banks. He assured the Committee that the eighteen-month timeline would be sufficient, and he stressed that, were the need to arise, the Department would retain the authority to examine the eight operating SLCs more frequently.

Mr. Davis explained that C-FAB does not receive State funding and, unlike banks and credit unions, does not accept public deposits. Instead, he continued, it is "a cooperative which operates to the benefit of its members and is required by statute" to undergo an annual audit by independent, outside auditors. Additionally, he noted that State banking auditors are also required to conduct a "qualitative examination" of C-FAB, which, he asserted, is the only qualitative examination conducted on a non-chartered bank or lending institution in the State. Therefore, he stated, this legislation would allow the qualitative examination to be eliminated due to the fact that C-FAB "has paid back all of its State funding; additionally, it is not a bank lending to the public, is subject to an independent audit, and is subject to a legislative audit." He furthered that, under Title 44, the Department's banking section has no authority in regard to C-FAB, "meaning that were problems detected with C-FAB, there is nothing the Department could do."

Mr. Davis detailed that the independent audit conducted on C-FAB examines types of loans, such as whether loans were awarded to seafood harvesters, tourism entities, or fish processors, and identifies loans that are "paid in full; loans for which interest has been paid in full but are not paying the principle; and identifies loans that are not performing either with interest or payment." He stated that State bank examiners also examine the latter, which are referred to as "non-accruing loans." He attested that "much of the work performed by the outside auditors is duplicated" by State bank examiners, "and in essence, C-FAB has two exams." In consideration of Department budget restraints, he contended that this duplication of efforts is the reason the Department is requesting that the requirement for the State-conducted C-FAB examination be eliminated.

Senator Taylor asked C-FAB's position on the legislation.

Mr. Davis voiced that C-FAB opposes the legislation as specified in a letter [copy on file] C-FAB sent to Governor Frank Murkowski, dated March 19, 2003.

Senator Taylor inquired as to the savings the State would incur by eliminating the C-FAB audit.

Mr. Davis responded that were the SLC audits conducted on an eighteen-month cycle and the C-FAB audit eliminated, the Department could eliminate a currently unfilled senior bank examiner position. He disclosed that, while the Division has been unable to conduct the entirety of its bank examinations in previous years, it is anticipated that these changes would allow the Division, "with present personnel...to complete all bank examinations required by statute."

Senator Taylor surmised therefore that the elimination of this position's salary and benefits would save the Division approximately \$100,000.

Mr. Davis concurred.

Co-Chair Wilken asked whether C-FAB funds, as opposed to general funds, support the cost of the audit.

Mr. Davis explained that the \$5,300 audit fee charged to financial entities is deposited into the general fund. He noted that C-FAB is charged the same examination fee as banks. He shared that in contrast to the Securities and Corporations sections of the Division "which both report profits," these audit fees equate to approximately half of the Division's banking section's operating expenses.

Co-Chair Wilken understood that C-FAB pays for the total cost of the audit.

Mr. Davis clarified that C-FAB pays the examination fee, which is specified in statute; however, he disclosed that the total cost of conducting an audit is approximately \$13,000.

Co-chair Wilken stated, therefore, that C-FAB does not pay the total cost of the audit.

Mr. Davis agreed, but clarified that, "nor do any of the state banks."

Senator Hoffman asked whether audit fees could be adjusted to offset the cost of the audit. Furthermore, he asked whether C-FAB would support a fee change.

Mr. Davis stated that the aforementioned letter from C-FAB indicates that C-FAB would not desire State fees to increase beyond what is charged by federal regulatory agencies to national banks. In other words, he qualified; they do not want state banks to be "discriminated" against. He verified that it would be difficult "to

capture all the costs with the present structure."

Mr. Davis asserted that the majority of the Division's savings would result from the elimination of the aforementioned "highly paid" bank examiner position. He further affirmed the Division's position that C-FAB is not the type of bank that requires a State examination.

Senator Olson asked whether the audits have revealed, "any surprises."

Mr. Davis communicated that the bank is performing well. He reminded that C-FAB's audit, unlike a bank's examination, is available to the public. He noted that the current C-FAB audit requirement was mandated in 1987 to address some "perceived" performance questions and, he opined, that upon satisfaction of that situation, the audit requirement should have been eliminated.

Senator Olson asked whether C-FAB would agree with that determination.

Mr. Davis stated that while the aforementioned letter contends that the audit is considered useful and provides "an element of credit worthiness" to C-FAB, he questioned whether the State, "as a matter of policy," should provide State bank examiners "as a tool" to a cooperative such as C-FAB for a credit evaluation. He argued that a credit evaluation could be performed as a component of the independent audit or through other mechanisms.

Senator Hoffman asked the location and projected termination date of the examiner position that would be eliminated.

Mr. Davis specified that the position is located in Juneau and is currently vacant.

Co-Chair Wilken asked the identity of "C-FAB's lender" as referred to on page three of the March 19th letter.

Mr. Davis clarified that the lender is the Spokane Bank for Cooperatives. He noted that the entity has recently undergone a name change that he could not recall.

Co-Chair Wilken communicated that, during conversations with C-FAB, it appeared "that the audit, more than anything, lent creditability to C-FAB." He asked the testifier to comment on this.

Mr. Davis responded that while C-FAB professes that position, he stressed, "that creditability is not the issue of an examination."

The intent of the examination, he asserted, is for State bank examiners to review the financial "condition of an institution and identify whether it should remain chartered, whether it is meeting its requirements." He noted that the Division works in conjunction with the federal Deposit Insurance Corporation in conducting these examinations. He reiterated that the function of State examiners is not to provide "credit worthiness," and he opined that, "this is misuse of the State bank examination system." Again, he noted that the Legislature requested the Division to conduct C-FAB examinations at a time when C-FAB's financial position was in question, and he reiterated that the examination requirement should have been eliminated when the question was resolved.

Co-Chair Wilken asked whether C-FAB could contract with other entities to conduct an audit similar to that conducted by the State.

Mr. Davis responded that other entities currently conduct similar audits with the exception being that the State investigates non-accruing loans to discern whether a bank "has loans that are labeled as being current which are not." He stated that independent auditors could perform this sort of evaluation upon request.

Senator B. Stevens asked regarding the FY 03 operational costs of \$635,069 as specified in the Department's testimony [copy on file] dated April 17, 2003.

Mr. Davis responded that this amount pertains to the total operational expenses of the Division's banking section. He noted that this section "loses money; however, the other two sections make a substantial profit for the general fund."

Senator Taylor moved to report the bill from Committee with individual recommendations and accompanying fiscal note.

There being no objection, HB 159 was REPORTED from Committee with fiscal note #2 in the amount of (\$126,000) from the Department of Community and Economic Development.

#hb23

CS FOR HOUSE BILL NO. 23(JUD)

"An Act relating to court-ordered restitution and compensation following a criminal conviction."

This was the first hearing for this bill in the Senate Finance Committee.

Co-chair Wilken explained that this bill pertains to restitution for crime victims and specifies that, "the court may value volunteer labor when considering restitution for crimes against a non-profit corporation."

REPRESENTATIVE BRUCE WEYHRAUCH, the bill's sponsor, informed that this legislation was introduced in response to a Court of Appeals ruling that overturned an awarded restitution from a convicted defendant to a non-profit entity for volunteer labor that was required to audit the financial records of the organization. He shared that in this case, Demers v. State, 42 P.3d.1 (Alaska App.2002), the Court ruled that the Legislature did not intend for the affected legislative statutes to be read "so broadly" as to allow non-profits to recover this kind of a value. Furthermore, he disclosed, that while the Supreme Court did not rule on the case, two Supreme Court justices requested further interpretation regarding the restitution statute.

Representative Weyhrauch pointed out that this bill would allow a non-profit, which is the victim of a crime, "to recover for the value of goods provided by volunteers if it was necessary to alleviate or mitigate the affects of the defendant's crime." He stressed that in order to gain support for this legislation from the Administration, the Court System, and other concerned entities, "the victim" in the bill is identified as the non-profit organization rather than the individual volunteers who provide labor to support the non-profit's position in the proceedings.

Co-Chair Green asked for verification that this legislation would not allow such things as a special interest litigant "in any form to be the recipient of the good faith" award to a non-profit entity "that's been violated or offended."

Representative Weyhrauch responded that, "there is absolutely no intent in this bill, in the criminal context, to provide that kind of benefit to any non-profit in any other form." He stated that this issue has been widely discussed "to ensure that that is not the intent whatsoever."

Senator Taylor contended that this legislation is limited to criminal rather than civil activity. He expounded that "it should not be construed" that the Legislature intends "that similar actions that take place in a civil matter where a civil judgment might be brought, that as part of that judgment, a non-profit be applying for fees or costs incurred by volunteers in prosecuting their civil judgment." He stressed that the intent of this "narrowly drafted" legislation is to not affect anything other than

criminal activity.

Representative Weyhrauch concurred.

Co-chair Wilken thanked the Committee for placing the clear intent of this legislation on the record.

Senator Taylor moved to report the bill from Committee with individual recommendations and accompanying fiscal note.

There being no objection, CS HB 23 (JUD) was REPORTED from Committee with zero fiscal note #2 from the Department of Administration.

AT EASE 10:31 AM / 10:32 AM

#hb9

SENATE CS FOR CS FOR HOUSE BILL NO. 9 (L&C)

"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; repealing a law that limits liability for damages based on a duty to inspect a residential unit to damages caused by gross negligence or intentional misconduct; and providing for an effective date."

This was the second hearing for this bill in the Senate Finance Committee.

Co-Chair Wilken informed the Committee that, while Amendments #1 and #2 were previously adopted, a revised committee substitute has not, of yet, been provided.

TERRY DUSZYNSKI, International Conference of Building Officials - Certified Inspector, and Existing Home Inspector, testified via teleconference from Fairbanks to voice concern that this bill might remove liability limits that International Conference of Building Officials (ICBO) inspectors have regarding damages caused by gross negligence. He clarified that, currently, Home Inspectors are only liable for damages caused by gross negligence or intentional misconduct. He informed that State building codes for residential construction are non-existent and that there is no rule specifying

what should be inspected or what inspectors are liable for. He stressed that "this problem should be addressed before we start moving home inspectors into [the Division of] Occupational Licensing and providing a whole new set of rules." He questioned whether a fiscal note accompanies the legislation, as he understands that the Division of Occupational Licensing would incur expenses in developing a new set of Existing Home inspection standards. He voiced that this bill should address providing qualified Home Inspectors as well as requiring continuing education in the field. He contended that this bill in its current form would create more problems than it would solve.

REPRESENTATIVE NORM ROKEBERG, the bill's sponsor, responded that the issue of repealing the section of the Alaska Housing Finance Corporation (AHFC) statutes that provides immunity for home inspectors of new AHFC financed homes has previously been discussed. The repeal language, he reminded, is limited to new homes that are financed by AHFC and that other new homes financed by other lenders, are not granted immunity under current statute. He specified that there is "no assurance standard" currently in place for any new home inspection at the State or national level. He noted that a forthcoming amendment would address this issue further. He informed that the Division of Occupational Licensing fiscal note has been minimized by including the new provision under the existing "Specialty Contractors" section, and he reminded that "all occupational boards and licensures have to be self-supporting therefore there is no draw on general fund."

WILLIAM BRUU, International Conference of Building Officials Inspector, New Home Inspector and Energy Rater, testified via teleconference from Mat-Su in opposition to HB 9 as he stated his occupation would be negatively impacted by a change in the provisions regarding AHFC financed new homes. He noted that a forthcoming amendment would introduce a provision to provide new home inspectors some protection from nuisance lawsuits. He argued that, were a new home inspector to improperly perform his job, "the market itself would discipline him as to whether or not he would remain in business." He stated that the AHFC provision was originally established in law to recognize the fact that there was no insurance available to protect home inspectors from lawsuits and that no one would venture into the field of home inspection without some indemnification from AHFC or the State. He noted that the situation has not improved as there continues to be a lack of available insurance to protect an inspector's assets. He stated that, "this provision is the only thing that protects inspectors." He stated that he has no answer to the insurance situation, but he stressed that were HB 9 adopted and "this last little bit of protection" removed, then numerous inspectors would "seriously

consider going out of business."

Representative Rokeberg stated that during his nine years as an elected official, he has attempted to be a "voice for small business" and as such, he would not present legislation that would "jeopardize business activity." He mentioned that a "HB 9 New Home Inspection Survey" [copy on file] was recently conducted and, of the 26 respondents, seven indicated that they would not be able to remain in business because of HB 9. He voiced that while being "sensitive to these opinions," he is somewhat skeptical. He reiterated that the big issue is "the availability or lack of availability for adequate insurance coverage." He voiced that it should be recognized that provisions in the bill would provide a one-year statute of limitations for existing homes and a two-year statute of limitations for new homes. He stated that this counters Mr. Bruu's comment that no other limitations exist. He reiterated that rather than harming business, the intent of the bill "is to regulate an unregulated industry that is a central part, and is of growing importance, to the housing stock in the State."

Senator Taylor inquired as to whether "a shorter statute of limitations on a civil action" exists in State statutes.

Representative Rokeberg voiced that he is unaware of any, and he deferred to Senator Taylor's knowledge regarding this issue.

Senator Taylor relayed that, other than as specified in this bill, he is unaware of any other one-year statute of limitations. He furthered that due to tort reform and other legalities, liabilities for contracts have been reduced to a three-year period. He asserted that the hiring of a home inspector by a home purchaser or seller would qualify as a contract under State statute, as it is a contract for services. He questioned the reasoning behind this action as he voiced that limiting the buyer to a one-year statute of limitations protection period is unacceptable.

Representative Rokeberg replied that Senator Taylor's "good points" address the public policy issue that is pertinent to this legislation. He informed that a home inspector conducts a "visual survey" of a home at a cost of approximately \$300. He stated that one element of this legislation would provide inspector experience and competency qualification requirements where none currently exist. He stated that the statute of limitations should reflect the service being performed rather than providing "a chain of deep pockets for people to pick on." He stated that currently the inspection addresses the condition of a house at the time of inspection, and he attested that weather conditions and natural disasters such as wind, hail, flooding, and earthquakes could

change the condition of the home. Therefore, he argued, the inspector's report should only be valid for 24 hours as the condition of a home could be changed in a short period of time. He stated that in a situation where latent defects were unidentified by a home inspector, a longer period could be provided; however, he specified that those liabilities should be the responsibility of the builder, homeowner, or subcontractor rather than being the responsibility of the home inspector. He declared that the home inspector's liabilities should be limited to what is being provided. He noted that contract language exists that limits the amount of liability to the inspector as the amount of the contract, which he qualified "is unenforceable as a matter of law." He stated that, while he agrees with Senator Taylor's sectional analysis, he stated, "there is a valid public policy consideration to shorten this period."

Senator Taylor opined that realtors, in an effort to protect themselves from lawsuits, lobbied the Legislature to incorporate the use of home inspections into the real estate transaction. He stated that when realtors sold a home with defects, "the old adage, let the buyer beware, applies." He continued that when people brought lawsuits for damages against the realtors, the realtors came to the Legislature for help. He noted, that although he opposed the legislation, the home inspection program was enacted by the Legislature, and, he furthered, upon its adoption, every bank began insisting "instantly" that a home inspection be performed. He stated that the home inspection program increases the cost of every house in Alaska that is bought or sold by whatever the cost of the inspector is. He attested "that the home inspector provided another opportunity for the realtor to say this isn't my fault, blame the home inspector and sue him."

Senator Taylor continued that, subsequently, in order to provide protection to home inspectors, the legislature "set up a limitation on liability called the gross negligent policy." Therefore he asserted, when the realtor gets sued, "in court he professes that it was the home inspector that is at fault and by the way, rather than gross negligence it was simple negligence" therefore "you can't sue the home inspector." He stressed that this legislation limits the liability for simple negligence to one year, and that gross negligence must be proven in order to extend liability to the three-year statute of limitations.

Senator Taylor continued that this legislation would require home inspectors to be certified, registered, and bonded, and that any lawsuit brought against a home inspector would be required to be brought within one-year. He stated that were a lawsuit brought within one year, other than the home inspector, all other involved

parties would be protected "by saying blame the home inspector but guess what you can't sue him so sorry." He stated that the only reason this legislation is being presented is to allow "certain professions to shield themselves from their own negligence and liability."

Senator Taylor asserted that while realtors support this legislation, home inspectors do not. He aired that "it provides no service to the average mom and pop homebuyer and just adds another layer of bureaucracy to the transaction." He warned that this legislation would make home inspections mandatory as "all financial institutions would adopt every single thing included in the legislation...the cost of buying and selling every single home would rise based upon what it would cost the home inspector to be bonded, what it costs for him to be licensed," as those costs are passed on to the consumer. He remarked that the only person provided protection by this legislation is the realtor.

DAVID OWENS, Owner, Owens Inspections Services, testified via teleconference from Mat-Su that a new home inspector could be likened "to a third-party inspector of a construction project" as he stated the inspection might require ten visits to a house as it progresses. He stated that even with frequent site visits, the home inspector could not observe the entire process. He stated that there is a significant difference between a new home inspection and an existing home inspection, as he explained, an existing home inspector views a completed home whose walls could conceal a multitude of things. This, he stated, would require an existing home inspector "to make his best guess" based on what equipment he might have and general rules based on national standards.

Mr. Owens stated that the aforementioned survey addresses a variety of concerns and issues with, he contended, the biggest issue being the additional liability placed upon the home inspector. He noted that he could support the bill were amendments relating to liability adopted.

STEVE WISDOM, Owner, Wisdom & Associates, testified via teleconference from Kenai to voice that his company conducts new and existing homes inspections and code compliance inspections. He stated that confusion arises in the bill because it addresses two different types of inspections: those conducted on new homes and those conducted on existing homes. He qualified that the gross negligence clause is limited to new construction inspections. He continued that an existing home inspection is primarily conducted as a component of a real estate transaction.

Mr. Wisdom continued that, "anyone could purchase a fifty dollar business license and perform existing home inspections legally in the State of Alaska." Unfortunately, he shared that this has resulted in numerous people being defrauded by unqualified people identifying themselves as home inspectors. This situation, he declared, "was the original focus of HB 9."

Mr. Wisdom explained that, currently, a typical home inspection should take two hours to complete and "the home inspector is required by the American Society of Home Inspectors [ASHI] code of ethics and standards to provide their client with information regarding the condition of the systems and components of the house" at the time of the inspection. He furthered that items relating to structural, health, and safety issues are usually noted; however, he shared, it is uncommon that an existing home inspector "walks into a home and finds a major defect." Rather, he noted, "they would usually find small clues that would lead them down a path to discovering a major problem within the house."

Mr. Wisdom contended that the majority of today's building inspectors are trained in current building code standards rather than receiving adequate training to inspect an existing home built in 1970 that would not meet today's building codes. He avowed that an existing home inspection is not "a code compliance inspection and does not act as a warranty of quality workmanship, but is simply a report of the home's condition at the time of inspection."

Mr. Wisdom furthered that the ASHI and other organizations have excellent training programs and provide testing to gauge competency in understanding the principles required for an existing home inspection. He stressed the importance of understanding that existing home inspections and new construction and code compliance inspections are very different and require different skills. He informed that code compliance and new construction inspectors must demonstrate competency before earning their code compliance inspector license. He furthered that currently AHFC is the only entity that provides guidance to code compliance inspectors who are referred to as new home inspectors in this legislation.

Mr. Wisdom stated that the home inspection program was adopted in the early 1990s after prompting, "from the housing industry itself" to address the substandard housing built in the 1980s "due to no minimum standards being in place." He continued that the effort to assure that the home inspection program would be adopted was based in "tying the enforcement to State funding of the housing through

the AHFC loan program." He noted that some municipalities have established building departments and building codes; however, he alerted that "most of the housing was being built as it is today," outside of a municipality jurisdiction. He declared "this left the AHFC as the State's building authority by default." He stated that this is why AHFC supports this legislation. He urged that new construction compliance codes be included, and he stated that AHFC views this legislation as a positive way to regulate and police new construction code compliance inspectors.

Mr. Wisdom voiced that this legislation is positive in that it would regulate and police new inspectors, however, he attested that the removal of the gross negligence clause would cause great problems in the industry. He noted that a compliance code inspector must have an ICBO issued license, which would demonstrate competency in codes relating to one-and-two-family dwellings. He stated that failing this test is common as the test covers all topics relating to new construction codes including such things as administrative duties, building plans, footings, foundations, framing, pouring, welds, chimneys, energy efficiencies, mechanical systems and components, plumbing systems and components, electrical systems and components, and swimming pools. He stated that a code compliance, or new home inspector, must examine a home repeatedly throughout the construction process. He stated that new construction/code compliance inspectors must know, in excess of 1700 pages of codes for residential construction.

Mr. Wisdom informed that while "municipalities could be insured through their general liability policy and by favorable state statutes that provide protection to political entities," HB 9's removal of the gross negligence clause would ensure that no insurance carrier would provide Errors and Omission Insurance [E&O] insurance to small firms. He continued that this, coupled with the extended two-year liability period designated for new construction, which he attested is one year longer than the general contractor is held liable for his work, and "would open the door for many lawsuits." He stated that this would place private inspection firms at tremendous risk. He exemplified some construction scenarios in which a leak caused by a defective nail plate might show up eighteen months later; however, he declared, that, as a result of the two-year liability clause in this legislation, the inspector, rather than the contractor or another entity whose liability ended twelve months after the home was completed, might be held liable. He stated that it would be possible, even after careful inspection, that one detail of the 1700 pages of code might be overlooked. He stated that this is why the gross resilience clause is important. He stated that, "the original authors of the original inspection requirements intended to require new construction inspections, but

not to place such liability on the inspector to discourage the inspection from taking place." He qualified that this should not imply that the industry does not require policing, and he noted that this legislation would allow the Department of Labor and Workforce Development and the Division of Occupational Licensing in the Department of Community and Economic Development to investigate and stop inspectors who are not adequately performing their jobs. He alerted that the removal of the gross negligent clause would accomplish nothing more than increase the cost of housing to the consumer.

Mr. Wisdom reminded that the gross negligence language in the bill is limited "to new construction code compliance not the existing home inspection which is a very different item." Therefore, he reiterated that the "great differences" in the two types of inspections requires that specific certification requirements be maintained for each type of inspection.

Senator Bunde voiced that, "the more I hear about this bill, the less I understand." He stated that it appears that the "Buyer Beware" component referred to by Senator Taylor "is being taken out of the equation in lots of situations." He suggested that perhaps the new and existing home controversy could be resolved by implementing a law that would require every home built outside of a municipality that has inspectors to be labeled with the warning that the home is built in an area that does not require inspection. He stated that the warning would alert the homebuyer that losses might not be recoverable.

Representative Rokeberg agreed that compliance codes are not required for structures built outside of a municipality.

Senator Bunde attested to the seriousness of the situation as he was unaware that a new home built, for instance in Chugiak which is outside of a municipal building code area, might not meet building codes. He understood that while private inspections are available in those areas, something might be missed just as it could be during a new home construction inspection within a municipality. However, he stated that at least those homes being build in a municipality would be build under the auspice of municipal codes.

Senator Bunde opined that an existing home inspection is "really someone else's best guess." He stated that while there is a fee for this service, ultimately, he declared, "it isn't worth anything more than advice." He puzzled as to what would be accomplished by this legislation.

Representative Rokeberg replied that the purpose of this

legislation "is to bring some level of competency and qualification of certification to these practitioners...and provide some resource for grievance through a formal procedure." He stated that, in the past, the Legislature has imposed "a disclosure statement requirement on the sale of all existing homes in the State." He stated that this "has driven the development of home inspection."

Representative Rokeberg referenced the copy of the home inspection disclosure report [copy on file] that is required on all home sales. He stated that this report is of great benefit to the people of the State as the report recommends, in two sections, that a home inspector be retained. In response to Senator Taylor's assertion that this would increase the cost of buying a home, he countered that the majority of the financial lending community already require a home inspection to be conducted before a loan is arranged. He opined that this legislation "is not the cost driver" in this situation, "but is a remedial piece of regulatory legislation."

Representative Rokeberg stressed that this is the only unregulated component in a real estate transaction. He stated that the backup material includes evidence of abuses by bad inspectors to which he attested, the only current recourse is through the court system. He stated that this bill could be summarized "as a balance of what we want to do in terms of limiting liabilities as a matter of public policy over creating a form for redress and grievance on the part of those who have been harmed and damaged by incompetency." He countered Mr. Wisdom's statement that a home inspector's two-year period of liability is one year longer than the contractor's home liability, as in statute, a three-year period is specified under Contract law. In addition, he noted that a ten-year State statute of repose from discoverability "would come into play if there is a latent defect in the construction of a new home." Therefore, he contended that the contractor is ultimately the first entity responsible. However, he continued, this legislation would allow for action against a home inspector "by the builder if the guy did not do his job."

Senator Bunde asked for confirmation that new home construction inspectors, outside of a municipality, are currently regulated and must comply with some national organization standards.

Representative Rokeberg clarified that an ICBO inspection of a home that is constructed outside of a municipality is only required if the home is being financed by AHFC or as specified by a financial institution. He noted that the ICBO has recently been renamed the International Code Council (ICC).

Senator Bunde surmised that a person could claim to be a code inspector just by purchasing a business license.

Representative Rokeberg clarified that in order to inspect AHFC homes an inspector must pass certification requirements.

Senator Bunde expressed that someone without certification could conduct non-Alaska Housing home inspections.

Representative Rokeberg concurred.

Senator Hoffman agreed that further regulation of home inspectors would address some of the problems that home buyers experience. However, he questioned the benefit of lowering the statute of limitations from three-years to one-year and repealing the gross negligence language. He stated that it could be argued that one reason for lowering the statute of limitations is natural disasters; however, he stated that this could be resolved by the specifying that an inspector would not be liable for damages incurred by those elements as, he stated, prospective homebuyers do not assume that those damages would be warranted anyway. He asked what benefits this bill would provide.

Senator Hoffman continued that the bonding language in Section 15 of the bill implies that people would be protected; however, he observed that the back-up material counters that assumption by referencing a scenario wherein a home purchased for \$117,000 was subsequently determined to be "worthless," and the homebuyer award was limited to the \$5,000 bonding requirement. He stated that unless the legislation "required a bond that meant something," the benefit of this legislation would be minimal. Therefore, he asserted that the coverage and the protections provided by HB 9 include a bond that is too low, and the limitation of one-year rather than three-years is inappropriate.

Representative Rokeberg responded that were an individual to purchase an existing home and not determine within the first year that "it is broken," then the individual has the problem. He stated that were an earthquake to occur, the question would be whether the foundation was cracked before the earthquake when the inspector inspected it or was it the result of the earthquake after the inspection. He stated that this is the premise "of narrowing the scope of the limitation down to a shorter period." He asserted that defects should become apparent during the first year, and were a homeowner not to take action within that period of time, it should not be expected that action could be brought at a later date. He stated there should be a common sense limitation. He agreed that a person should be able to bring action against the seller and other

involved persons including the home inspector were misrepresentation of the quality of the condition of the home a factor. He asserted that this is the reason that one component of the bill is the elimination of immunity. He furthered that were a pattern of bad behavior on the part of the home inspector determined, then the State would be allowed to revoke the individual's license. He clarified that, currently, this is not an option.

Senator Taylor asked the bill's sponsor to list other contractors such as car mechanics, boat builders, or roof repair contractors, in the State who are limited to a one-year liability.

Representative Rokeberg declined as he expressed that "the nature and scope of work" of a home inspector is a non-intrusive, visual home inspection as opposed to an engineering inspection which would be undertaken by engineers or other such qualified individuals.

Senator Taylor surmised, therefore, that a person would be required to hire both a home inspector and an engineer in order to receive a thorough report.

Representative Rokeberg suggested that, "in order to do it right, yes." He stated that it would be unreasonable for a \$300 visual scope of work inspection to be liable for thousands of dollars in damages unless the inspector was grossly rather than simply negligent. He stated that this is the issue.

Senator Taylor commented that currently, State statute limits the responsibility to the cost of the contract. This, he declared, would limit the amount awarded to the cost of the inspection or the amount of the bond rather than actual damages. He declared that this is "a sham created by the realtors some years ago" who sought for the creation of "a middle person" who would be sued rather than the realtor." He stated that home inspectors are the "middlemen".

Senator Taylor stated that, it is being asserted by the sponsor, who is a realtor, that hiring a home inspector is insufficient and that an engineer should be hired to properly inspect a home. Senator Taylor stated that this legislation would require a licensed, bonded, and certified inspector to be hired for every home transaction and subsequently, it would require a certified State engineer to be hired to ensure that both the home inspector and engineer would be sued instead of the realtor. He ascertained that furthermore, in order to avoid other lawsuits, the realtors association created the inspection report that specifies what must be inspected. He expressed that "this is appalling" as it is increasing the cost of buying a home for everyone in the State. He

asserted that the largest expenses of a home sale would be those associated with bank requirements, the realtor, title reports and home inspectors. He stated that, at least, this bill would remove the gross negligence clause for home inspectors; however, he expressed that the one-year statute of limitations is unreasonable.

Representative Rokeberg expressed that this situation is not unique to the State but is rather "a national phenomena" and it is good public policy to protect homebuyers in the State.

Senator Taylor countered that narrowing the statute of limitations from three-years to one-year would not protect the buyer.

Co-Chair Green asked the location of the statute of limitations language in the bill.

Senator Taylor informed that it is referenced in Sec. 17, subsections (1) and (2) on page ten, lines five through nine.

Representative Rokeberg responded to Senator Taylor's comments by stating that this legislation would protect the buyer by removing home inspector immunity in certain instances while granting them limitations on immunity in others, in order to reflect the scope of the job they are performing. He stated that the inspection is a fairly limited affair and should be appropriately reflected in context. He stated that this is a component of commerce, and the desire is to have it "move smoothly" while protecting the consumer.

Senator Taylor again asked how the consumer would be protected.

Representative Rokeberg responded that lowered inspection costs would result.

Senator Taylor questioned how lowered fees would protect the consumer, as at the same time, the consumer must give up two of three years to file a lawsuit.

Representative Rokeberg commented that another consideration is the availability and price of E&O insurance to the practitioners.

Amendment #3: This amendment changes the bill's title by deleting language on page 1, lines 6-8 that reads "repealing a law that limits liability for damages based on a duty to inspect a residential unit to damages caused by gross negligence or intentional misconduct;"

Additionally, the amendment deletes all material in Sec. 41, Sec. 42, on page 22, lines 21 -25; as well as accompanying technical

language in Sec. 47 on page 24, line 17. This language reads as follows.

Sec. 41. AS 18.56.300(c) is repealed.

Sec. 42. The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. The change made by sec. 42 of this Act applies to causes of action that accrue on or after July 1, 2005.

Sec. 47. Sections 41 and 42 of this Act take effect July 1, 2005.

Co-Chair Green moved for the adoption of Amendment #3.

Senator Bunde objected.

Co-Chair Green explained that this amendment would change the bill's title by removing language pertaining to damages caused by gross negligence or intentional misconduct. Additionally, she stated that the amendment addresses concerns voiced by Mr. Owens in his testimony.

Representative Rokeberg stated that arguments supporting the amendment would be that it would grant private home inspectors immunity from lawsuits, as are municipal code inspectors currently. He voiced concern regarding the lack of available E&O insurance for new home construction inspectors; which, he noted is available for existing home inspections. In opposition to the amendment, he shared that the amendment would allow for simple negligence. He reiterated that the intention of the bill is to remove some immunity while imposing other regulations.

Senator Taylor stated that this amendment would "make a bad bill atrocious." He stated that it would not protect the consumer because the one-year statute of limitations would continue to be included in the bill. In addition, the amendment would repeal the language that would allow for simple negligence while allowing the continuance of a gross negligence standard comparable to that of a public building official. He stated that this does not benefit the consumer but does benefit someone in the inspection business. He stated that were he in the home inspection business, he too, would "probably advocate for no liability to be placed on the business that I am practicing." However, he declared, as a matter of public policy, this is not in the best interest of Alaskans.

A roll call was taken on the motion.

IN FAVOR: Senator Olson and Co-chair Green

OPPOSED: Senator Taylor, Senator Bunde, Senator Stevens, and Co-chair Wilken.

ABSENT: Senator Hoffman

The motion FAILED (2-4-1)

Amendment #3 FAILED to be adopted.

Amendment #4: This amendment changes language in Sec.17, on page 10, as follows.

On page 10, line 5, the words "one year." are inserted following the word "within". The amended language reads as follows.

Sec. 08.18.085. Legal actions against home inspector. (a) Notwithstanding contrary provisions of AS 08.18.081 or AS 09.10, a person may not bring an action against an individual registered under this chapter based on a home inspection report unless the action is commenced within one year.

Furthermore, the following language on page 10, lines 6 - 9, is deleted.

- (1) two years after the date of the home inspection report if the report related to a new home; and
- (2) one year after the date of the home inspection report if the report related to an existing home.

In addition, on page 10, line 10, the words "limitations" and "apply" are deleted and replaced with "limitation" and "applies," and on page 10, line 14, the word "limitations" is replaced with "limitation". The amended language reads as follows.

(b) The limitation in (a) of this section applies to all actions based on a home inspection report, regardless of whether the action is based on breach of contract, personal injury or death, property damage, or another source of liability except that (a) of this section is not applicable to an action based on gross negligence or intentional misconduct by the home inspector. The limitation may not be waived by contract.

Co-Chair Green moved for the adoption of Amendment #4.

Co-Chair Wilken objected for explanation.

Co-Chair Green explained that the amendment would reduce the length of time that action could be brought against a home inspector to one-year after the date of the new home inspection rather than two-years as specified in the proposed bill. She stated that this change would align that new home inspection time frame with the limitations for existing home inspections as well as aligning with the standard builder's warranty.

Co-Chair Wilken summarized that the amendment would require that all action must be brought within a one-year timeframe, regardless of whether it involves a new or existing home.

Representative Rokeberg agreed. He stated that the question is whether a new home should require a longer liability period than required for an existing home. He stated that while he supports Senator Taylor's stated position on this, it would not negate his support of the legislation.

Senator Taylor voiced opposition to the amendment as he questioned why one group of contractor's liability period should be limited to one-year while other contractor groups would retain a three-year liability timeframe. He opined that the home inspector job does not require this level of protection. However, he stated that were this amendment rejected, the bill would provide a one-year statute of limitations on existing home inspections and a two-year limitation on new homes, which he voiced, "is backwards."

A roll call was taken on the motion.

IN FAVOR: Co-chair Green, Senator Stevens, Senator Bunde, and Senator Olson

OPPOSED: Senator Taylor and Co-chair Wilken

ABSENT: Senator Hoffman

The motion PASSED (4-2-1)

Amendment #4 was ADOPTED.

In response to a question from Senator B. Stevens, Co-chair Wilken specified that Amendments #1 and #2 were adopted in the previous meeting.

Co-Chair Wilken asked the sponsor to explain the Department of Community and Economic Development's fiscal note #4, dated January

29, 2003, which indicates that the State would expend \$66,100 and collect \$66,100 from receipt-supported services. He asked why a change in revenue of \$126,200 is projected when these items would negate each other.

Representative Rokeberg explained that start-up costs would be incurred during the first year of implementation.

Senator B. Stevens referred the Committee to the fiscal note's analysis, which specifies that revenue would be collected every other year.

Co-chair Wilken stated that the State would collect for two years and expend annually; therefore he stated that the fiscal impact would be net zero at the end of FY 05.

Representative Rokeberg reminded that the initial year would include start-up expenses.

REGINA MANTEUFEL testified via teleconference from Anchorage and urged the State to develop an Internet website that would identify contractors and subcontractors along with bond information and complaints about those entities. She voiced support for the statute of limitations to remain at three-years. Additionally she opined, that to protect the consumer, the State should require a contractor to provide a homeowner with a listing of the subcontractors who worked on the project.

Co-Chair Wilken ordered the bill HELD in Committee.

#sb128

SENATE BILL NO. 128

"An Act relating to licensing common carriers to dispense alcoholic beverages; and providing for an effective date."

This was the first hearing for this bill in the Senate Finance Committee.

Co-Chair Wilken informed that this bill would increase the biennial common carrier liquor dispensary license fee from \$700 to \$1,000 for their first ten licenses and provide for a reduced fee of \$100 per each additional license. He noted that this legislation would specifically affect Alaska Airlines.

Senator Taylor moved to adopt CS SB 128, Version 23-LS0757\H as the working document.

Senator Bunde objected for explanation of the difference between Version H and the previously adopted/proposed Version D committee substitute.

Co-chair Wilken requested that the sponsor be allowed to present testimony before discussion ensues on the bill.

RICHARD SCHMITZ, Staff to Senator John Cowdery, the bill's sponsor, explained that Version "H" specifies an biennial fee of \$2,000 rather than the \$1,000 biennial fee presented in Version "D", as indicated in Section 1, subsection (d) on page two, line eight of the bill.

Mr. Schmitz stated that currently each aircraft flying intrastate routes and dispensing alcoholic beverages is required to be licensed. He stated that this bill proposes to license each community being served rather than licensing each aircraft as he stated that the licensing of individual aircraft is a cumbersome process. He stated that aircraft making one stop in the State and small aircraft that do not serve alcoholic beverages would not be affected by this Legislation. Specifically he stated this legislation would affect Alaska Airlines. He noted that the Alcoholic Beverage Control Board (ABC Board) supports this legislation.

Co-Chair Wilken summarized; therefore, that the bill would license nineteen communities at a biennial fee of \$2,000 and is relatively revenue neutral.

Mr. Schmitz clarified that the bill would incur minimal expense for the State.

Co-chair Wilken stated, therefore, that the cost incurred would be approximately \$38,000.

DOUG GRIFFIN, Director, Alcoholic Beverage Control Board, Department of Revenue testified via teleconference from Anchorage, and explained that the Board requested this regulation change. He characterized the existing regulations as "overkill," as it requires hundreds of Alaska Airlines' aircraft to be licensed because it is unknown which of their aircraft would be used within the State. He stated that this legislation would also benefit other national or international airlines that might consider providing

service within the State.

Mr. Griffin furthered that the biennial community fee of \$2,000 and the biennial common carrier dispensary license fee of \$1,000 would incur an annual expense of approximately \$10,000. He furthered that currently, Alaska Airlines pays for a full year license; however, he noted that service to some communities is seasonal. Therefore, he noted, provisions are included in the Legislation to provide for seasonal licenses in six-month increments at approximately half of the full year fee.

Co-chair Wilken asked whether the ABC Board supports Version "H".

Mr. Griffin affirmed.

Senator Taylor moved to report SB 128 from Committee with individual recommendations and accompanying fiscal note.

There being no objection, SB 128 was REPORTED from Committee with a new zero fiscal note, dated April 22, 2003 from the Department of Revenue.

[Note: The Committee did not adopt the Version H committee substitute and the matter was revisited at the meeting dated April 23, 2003.]

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ADJOURNMENT

Co-Chair Gary Wilken adjourned the meeting at 11:53 AM