

HOUSE FINANCE COMMITTEE
March 7, 2005
1:40 P.M.

CALL TO ORDER

Co-Chair Meyer called the House Finance Committee meeting to order at 1:40:29 PM.

MEMBERS PRESENT

Representative Mike Chenault, Co-Chair
Representative Kevin Meyer, Co-Chair
Representative Bill Stoltze, Vice-Chair
Representative Eric Croft
Representative Richard Foster
Representative Mike Hawker
Representative Jim Holm
Representative Mike Kelly
Representative Carl Moses

MEMBERS ABSENT

Representative Reggie Joule
Representative Bruce Weyhrauch

ALSO PRESENT

Jon Bittner, Staff, Representative Tom Anderson; Grey Mitchell, Director, Division of Labor Standards and Safety, Department of Labor and Workforce Development; Alan Wilson, General Contractor, Legislative Chair for the Alaska State Homebuilding Association, Juneau; John Bitney, Lobbyist, Alaska State Home Building Association (ASHBA); Todd Larkin, Handyman Builder, Fairbanks

SUMMARY

HB 81 An Act establishing an administrative fine and procedure for construction contractors in certain circumstances; increasing the amount of a civil penalty for persons acting in the capacity of contractors or home inspectors; modifying the elements of a crime involving contractor registration and residential contractors; and exempting the administrative hearings for imposing an administrative fine on construction contractors from the hearings conducted by the office of administrative hearings in the Department of Administration.

CS HB 81 (L&C) was reported out of Committee with a "no recommendation" and with zero note #1 by the Department of Community & Economic Development and

zero note #2 by the Department of Labor & Workforce Development.

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#HB81

HOUSE BILL NO. 81

An Act establishing an administrative fine and procedure for construction contractors in certain circumstances; increasing the amount of a civil penalty for persons acting in the capacity of contractors or home inspectors; modifying the elements of a crime involving contractor registration and residential contractors; and exempting the administrative hearings for imposing an administrative fine on construction contractors from the hearings conducted by the office of administrative hearings in the Department of Administration.

Co-Chair Meyer noted that the bill had been held in order to get clarification on the fiscal notes.

Representative Holm MOVED to ADOPT Amendment #1. (Copy on File). Representative Hawker OBJECTED.

Representative Holm noted that the amendment was brought forward by one of his former staff members who currently makes his living as a handyman. He is concerned that passage of the legislation will take away some of his current business. Representative Holm requested that Mr. Larkin testify on the amendment.

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TODD LARKIN, HANDYMAN CONTRACTOR, FAIRBANKS, explained that under existing language of the proposed legislation, for a person with a handyman license, the common business practice would be that if a fully bonded general contractor wanted to have the handyman on the building site, they would now be precluded. The new fine structure would be in the amount of \$1500 dollars per day if they accepted that work. The work consists of the miscellaneous items done between trade contractors.

However, given the strictest reading of the law, after about \$3200 dollars worth of work, as indicated on Page 4, Line 18, the contract arrangement would be illegal. If the license were exceeded from working on a project valued over \$5000 dollars, the exemption would go away and the handyman would be subject to the fines.

Mr. Larkin pointed out that the amendment clarifies that if the handyman was working on a project over \$5000 dollars,

they would be exceeding their license and therefore should be fined; however, if working for different contractors, the handyman becomes solely the "customer". He thought that the handyman should not be punished for that. Mr. Larkin explained that is common business practice. When the law was amended last year that language slipped by, as most handymen were not reading the law and there was not significant enforcement. Mr. Larkin claimed that it had been written in an unfortunate way and would definitely preclude most handyman business practices.

Representative Holm asked when a handyman is working for a general contractor, would the handyman give the general contractor the same release for workers compensation. Mr. Larkin replied that he personally does, however, it is not worth the paper it is written on. The bill does not address liability. Last year, the wording "project/owner" was added, indicating whom ultimately is liable for workers compensation coverage, even if they were not carrying the policy. He stressed that everyone on the job site is forced to be covered by a workers compensation scheme.

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Representative Holm inquired if the handyman could become an employee. Mr. Larkin responded that insurance companies now are insisting that anyone on a job site is covered. Strict reading of the law contends that the handyman is not an employee. Contractors do not have control over the handyman. He reiterated that by law, that person would not be considered an employee.

Representative Hawker observed that Amendment 1 would restrict legitimate work by the handyman. He thought that the second sentence would provide assurance to protect the State. He thought that language regarding the purpose of the evasion could provide sufficient latitude. He added that clause acts as a catch for unscrupulous behavior.

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Co-Chair Meyer agreed.

Representative Hawker WITHDREW his OBJECTION to Amendment 1. Vice-Chair Stoltze OBJECTED in order to hear from the sponsor.

JON BITTNER, STAFF, REPRESENTATIVE TOM ANDERSON, advised that the amendment was outside the scope of the bill's purpose, thus, the sponsor does not know the full indication to the current contracting laws. He recommended that the Committee defer to the actual contractors and the Department of Labor & Workforce Development.

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GREY MITCHELL, DIRECTOR, DIVISION OF LABOR STANDARDS AND SAFETY, DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT, pointed out that last year, there was a change in the level of projects that a person with a handyman's license could perform. The change dropped the level of job income from \$10000 dollars to \$5000 dollars. The intent was to make sure that the project size was made clear regarding what a handyman can legally perform.

Mr. Mitchell pointed out that there are many specialty subcontractors that are licensed and the language will protect them. The sub contractors wanted to delineate themselves from the handymen; he stressed the different category of business license. The language would eliminate the possibility of competition between the sub contractor and the handyman.

Mr. Mitchell stated that accepting the amendment would be a significant change. Any size project would then be available for a handyman to work on. The amendment requires that the general contractor assume more liability and risk than if they had licensed the sub contractors to do the work.

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Representative Holm understood that the handyman would not be able to work in the aggregate for more than \$5000 dollars. Mr. Mitchell responded that current law restricts individuals with a handyman's license on any job over that amount. They would also be prohibited from doing small parts for those jobs.

Co-Chair Meyer understood that the handyman could be working on multiple jobs, but none could be worth more than \$5000 dollars. Mr. Mitchell replied that was correct. He reiterated that they would need to be "set jobs" and not part of a larger project.

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Co-Chair Meyer thought it would be a "big step" to move from handyman to contractor. Mr. Mitchell agreed it would be a fairly large step. He knew that there was a different license cost but that the main issues were bonding and insurance. There are significant costs associated with being a general contractor. The costs for workman's compensation are essentially the same no matter what type of license the person has.

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Co-Chair Chenault questioned what happens to a handyman injured on a job site. Mr. Mitchell thought that it would depend on what the courts decided. Initially, there is a presumption that the handyman is covered.

Co-Chair Chenault explained that as a general contractor, he is required to make sure that all the sub contractors have proper credentials to be on the job site. If an employee gets hurt, there is a good possibility that the contractor will have to pay or the corporation authorizing the work will pay the costs.

Mr. Mitchell admitted that he did not know about workers compensation law.

Vice-Chair Stoltze requested that someone from the homebuilders testify.

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ALAN WILSON, GENERAL CONTRACTOR, LEGISLATIVE CHAIR FOR THE ALASKA STATE HOMEBUILDING ASSOCIATION, JUNEAU, pointed out that HB 81 is an enforcement bill. The handyman issue is a separate concern. He commented that handymen are truly that, handy men and they do not have a roll to play in a general contractors day to day business. He state that if he had a job for \$500 dollars that needed to be sub contracted out, he would sub contract it out to sub contractors, protecting him from any liability.

Mr. Wilson explained that the manner in which the handyman issue relates to the construction industry is that some of the employees eventually go off and get their handyman license, which he believes is part of the licensing latter. The system works overall as a step-by-step process. The handyman issue "muddies the waters" and that HB 81 cleans up those concerns.

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JOHN BITNEY, LOBBYIST, ALASKA STATE HOME BUILDING ASSOCIATION (ASHBA), echoed testimony provided by Mr. Wilson. He explained that the way workers compensation works is that if you come on a job site, there would be an exemption if you were a sole individual business company. You are not required under the workmen's compensation to have your own policy. The underwriting standards in which the insurance company assesses your premium and the person on the job site, who does not have a certificate, then the insurance company can retroactively increase the premium for that general contractor.

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Representative Holm asked why they should preclude hiring someone that poses a greater risk. Mr. Bitney replied that is current business practice and it is up to them to understand and agree to the risk that they are taking on having an uncovered person on the job site. It is a question of exasperating the large retroactive assessments by the insurance company on those premiums.

Mr. Wilson acknowledged that this is a major concern throughout the industry and that purchasing a sub contractors license could exempt a person from workers compensation. When coming to work for a general contractor, the handyman could be exempt from workers compensation until audit time with the insurance agent. It is very confusing within the industry. The Association has attempted to clean that language up because "as a guy leaves the roof and hits the ground, they become your employee". He stressed, it is a mess.

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Representative Holm noted that he did not want to exclude the entrepreneurial person but also did not want to create a difficult situation for the contractors.

Co-Chair Meyer acknowledged that HB 81 would not be the correct vehicle to address the handyman concerns, since it is an enforcement bill.

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Representative Croft pointed out that the old law distinguished between two varying operational concepts with exemptions:

- The operation of a job, and
- The intent to obey.

Representative Croft continued, the amendment adds the idea of the \$5000 worth of work for any of sub contractors as long as there are different contractual relationships with each. Mr. Wilson assumed that was the intent of the amendment.

Representative Croft asked what was wrong with the amendment. Mr. Wilson explained that it would put subcontractors out of business. It would establish two standards with which to accomplish the same thing. He emphasized that from the workers compensation and licensing side, he would prefer that his employees be licensed, insured and bonded.

Representative Croft asked the main step of moving from a handyman to a sub contractor. Mr. Wilson stated that currently, to become a handyman requires that you buy a business license. A sub contractor is required to have a business and a sub contractor license, bonding and general liability.

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Co-Chair Meyer asked the cost of bonding and insurance for a sub contractor. Mr. Wilson responded that the bonding costs run between \$500 - \$600 dollars per year for a \$5000 sub contractors bond; the liability ranges between \$1500 to \$3000 dollars per year.

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Representative Kelly asked if there had been previous testimony regarding the pros and cons of the legislation.

Mr. Bitney pointed out that was language included in the House Labor and Commerce Committee that attempted to address abuses and problems that came up during testimony. HB 81 began as an enforcement piece for people not registered. Following testimony, it was determined that some business not registered as contractors, were operating through various exemptions. Current law clarifies that if a person was acting as their own contractor, they could build one house or commercial building per year. Testimony has indicated that a large family could allow every member of that family to build one of these units every year; essentially, that family would then be operating a substantial general contracting business. That type operation exceeds the intent of the law. The language only intends that a person can "build their own home". The legislation tightens up the language to prohibit it from acting as a loophole.

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Vice-Chair Stoltze maintained his objection to Amendment 1.

A roll call vote was taken on the motion to adopt Amendment 1..

IN FAVOR: Moses
OPPOSED: Croft, Foster, Hawker, Holm, Kelly, Stoltze,
Chenault, Meyer

Representative Joule and Representative Weyrauch were not present for the vote.

The MOTION FAILED (1-8).

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Representative Hawker stated that he was inclined to support the "intent behind the amendment". He advised that his "no" vote was not a vote against the concept.

Co-Chair Meyer agreed; however, commented that HB 81 was not the correct vehicle.

Representative Holm added that he did not want to see the Committee voting on legislation that removes one group of workers from the job market.

Representative Kelly acknowledged that the handyman is an apprentice group that feeds into the system. He admitted that he was supportive of small business people, however, the legislation will create more definition for the homebuilders.

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Representative Foster MOVED to report CS HB 81 (L&C) out of Committee with individual recommendations and with the accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

CS HB 81 (L&C) was reported out of Committee with a "no" recommendation and with zero note #1 by the Department of Community & Economic Development and zero note #2 by the Department of Labor & Workforce Development.

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ADJOURNMENT

The meeting was adjourned at 2:23 P.M.