

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

January 21, 2005

3:22 p.m.

MEMBERS PRESENT

Representative Tom Anderson, Chair
Representative Pete Kott
Representative Gabrielle LeDoux
Representative Bob Lynn
Representative Harry Crawford
Representative David Guttenberg

MEMBERS ABSENT

Representative Norman Rokeberg

COMMITTEE CALENDAR

HOUSE BILL NO. 64

"An Act extending the termination date for the Board of Public Accountancy; and providing for an effective date."

- MOVED HB 64 OUT OF COMMITTEE

HOUSE BILL NO. 47

"An Act extending the termination date of the Board of Certified Real Estate Appraisers."

- MOVED HB 47 OUT OF COMMITTEE

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."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 64

SHORT TITLE: EXTEND BOARD OF PUBLIC ACCOUNTANCY

SPONSOR(S): REPRESENTATIVE(S) HAWKER

01/12/05 (H) READ THE FIRST TIME - REFERRALS
01/12/05 (H) L&C, FIN
01/21/05 (H) L&C AT 3:15 PM CAPITOL 17

BILL: HB 47

SHORT TITLE: EXTEND BOARD OF REAL ESTATE APPRAISERS

SPONSOR(S): REPRESENTATIVE(S) SAMUELS

01/10/05 (H) PREFILE RELEASED 12/30/04
01/10/05 (H) READ THE FIRST TIME - REFERRALS
01/10/05 (H) L&C, FIN
01/21/05 (H) L&C AT 3:15 PM CAPITOL 17

BILL: HB 81

SHORT TITLE: CONTRACTOR LICENSE ENFORCEMENT

SPONSOR(S): REPRESENTATIVE(S) ANDERSON

01/19/05 (H) READ THE FIRST TIME - REFERRALS
01/19/05 (H) L&C, JUD, FIN
01/21/05 (H) L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

JULIE LUCKY, Staff
for Representative Mike Hawker
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 64 on behalf of the sponsor,
Representative Hawker.

PAT DAVIDSON, Legislative Auditor
for the Legislative Audit Division
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 64 and HB 47 on
behalf of the sponsor Representative Hawker.

DON RULIAN, Chairman
of the Legislative Committee;
past President, Alaska State CPA Society

POSITION STATEMENT: Testified in support of HB 64.

LALANYA SNYDER, Staff

for Representative Ralph Samuels
Alaska State Legislature
POSITION STATEMENT: Testified on behalf of Representative
Samuels, sponsor of HB 64.

JEFF DE SMET, Owner and Contractor
J. De SMet Construction
POSITION STATEMENT: Testified on HB 81.

ALAN WILSON, Legislative Co-Chair
Alaska State Home Building Association
POSITION STATEMENT: Testified on HB 81.

MIKE MUSICK, President
Interior Alaska Building Association;
Member, Alaska State Home Building Association
POSITION STATEMENT: Testified on of HB 81.

TOM GERVAIS, Owner
Alkota Plumbing and Heating
POSITION STATEMENT: Testified on HB 81.

DAVE OWENS, Owner
Owens Inspection Service;
President of Mat-Su Home Builders Association
POSITION STATEMENT: Testified on behalf of HB 81.

RICK URION, Director
Division of Occupational Licensing
Department of Commerce, Community, & Economic Development
POSITION STATEMENT: Testified on HB 81.

GREY MITCHEL, Director
Division of Labor Standards and Safety
Department of Labor & Workforce Development
POSITION STATEMENT: Testified on HB 81.

ACTION NARRATIVE

CHAIR TOM ANDERSON called the House Labor and Commerce Standing
Committee meeting to order at [3:22:00 PM](#). Representatives Kott,
LeDoux, Lynn, Crawford, and Guttenberg were present at the call
to order.

HB 64-EXTEND BOARD OF PUBLIC ACCOUNTANCY

CHAIR ANDERSON announced that the first order of business would be HOUSE BILL NO. 64, "An Act extending the termination date for the Board of Public Accountancy; and providing for an effective date."

JULIE LUCKY, Staff for Representative Mike Hawker, Alaska State Legislature, explained that the extension of the board of public accountancy is to June 30, 2009, following approval. This board she said, protects public interest by ensuring that only qualified people are licensed as accountants and that appropriate standards are enforced. The board's fees cover the cost of regulatory costs. The board is actively working on the number one recommendation which is giving additional test sites for uniform CPA examinations.

PAT DAVIDSON, Legislative Auditor, Legislative Audit Division, indicated that indeed the recommendation of the legislative audit was to make a four-year extension for this board. The division made an additional recommendation with regard to changing the CPA exam from a manual model to a computer model. The CPA exam used to be offered twice a year, and now its offered four times a year. The division also asked that financial barriers to the profession be eliminated.

CHAIR ANDERSON asked whether or not there had been any legislation that changed the testing procedures.

MS. DAVIDSON replied yes, there were changes made last year.

REPRESENTATIVE GUTTENBERG asked what the relationship between the board and Culmetrix and how well they get along and if there is any way that the board is moving to take this over.

MS. DAVIDSON explained that it is a nationalized test. Culmetrix is a contractor with a nationwide organization. The board is allowed to use this test to test participants and all the candidates get their license from this test. This means that it is not realistic to move away from the nationwide test. Alaska is working with a contractor and is trying to expand the number of sites.

REPRESENTATIVE LYNN asked how long it will be [for the expansion] and who determines this.

MS. DAVIDSON reported that the normal limit in statute is set at four years. If recommendations are made for something further out, the [division] specifies why. For the sunset process in

total, [the division] is recommending that the Board of Public Accountancy be extended to eight years.

REPRESENTATIVE LEDOUX asked how long the Board of Accountancy has been in existence and how long have the legislature has been going through the sunset reviews.

MS. DAVIDSON answered that the board has been in existence for a long time. She added that for the record she and the division's staff are all CPA's, and therefore are not without review. Anytime something occurs that is not in accordance with standards is always noted.

DON RULIEN, Chairman, Legislative Committee; past President, Alaska State CPA Society, outlined a letter he had written previously and stated that he wanted the continuance of the board. He announced that his group is currently working on the same bill being discussed.

REPRESENTATIVE LYNN moved to report HB 64 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 64 was reported from House Labor and Commerce Standing Committee.

HB 47-EXTEND BOARD OF REAL ESTATE APPRAISERS

[3:32:42 PM](#)

CHAIR ANDERSON announced that the next order of business would be HOUSE BILL NO. 47, "An Act extending the termination date of the Board of Certified Real Estate Appraisers."

LALANYA SNYDER, Staff for Representative Ralph Samuels, Alaska State Legislature, announced that HB 47 is the result of a legislative audit and that the boards function is to set standards for the real estate industry, and oversee the examinations by which appraisers are certified, and adopt regulations to ensure that state and federal regulations are satisfied. She concluded by stating that the bill extends the board until June 30, 2010.

[3:33:52 PM](#)

PAT DAVIDSON, Legislative Auditor, Legislative Audit Division, announced that the division conducted an audit of the Board Of Real Estate Appraisers and recommend an extension.

MS. DAVIDSON continued by saying that the use of state certified real estate appraisers will be a continuing requirement for Alaska financial institutions to qualify for federal deposit insurance and participate in the selling of mortgage loans to federal government sponsor entities like Sallie Mae and Freddie Mac. As a result they believe that the board should be extended.

CHAIR ANDERSON closed public testimony on HB 47.

REPRESENTATIVE KOTT moved to report HB 47 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 47 was reported from the House Labor and Commerce Standing Committee.

HB 81-CONTRACTOR LICENSE ENFORCEMENT

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

CHAIR ANDERSON, speaking as the sponsor, said that house bill was created because individuals in the construction trade were hiring themselves out as construction contractors when they were in fact, not registered as such. They were not fulfilling the licensure aspect as such.

[3:35:55 PM](#)

CHAIR ANDERSON paraphrased from his sponsor statement, which read [original punctuation provided]:

Under current law, the State of Alaska investigates and enforces violations of construction contractor laws. Both the Departments of Labor and Commerce, Community & Economic Development have authority to pursue violations of work performed by unregistered construction contractors. For the most part, they rely upon the public complaints, and follow up with investigations (depending on the availability of

resources). Under current laws, these agencies enforce violation by issuing citations. After a citation is issued, the impetus falls to the Department of Law as to whether or not to prosecute the matter in Court.

With over 1,600 unregistered contractors operating under this exemption, numerous reports have been made about these unregistered businesses offering construction services in violation of the laws. Enforcement efforts have proven to be difficult and many consumers are unaware their contractor may not be qualified to provide construction services, and even worse, have little or no insurance and warranty protections.

HB 81 would amend the law to allow DCCED of DOL to issue civil penalties for violations. Instead of going through the Dept. of Law, a violator would either pay a fine (proposed at \$1,000 for the first violation and \$1,500 for subsequent violations) or appeal to an administrative hearing officer. This system would be much more effective toward penalizing first-time violations quickly and effectively. The Departments would retain the option of going through the current criminal violation process if the fines did not deter a violator.

CHAIR ANDERSON concluded by stating that the bill would allow better penalization of violators and repeat offenders would really be scrutinized. He concluded by urging everyone to support HB 81.

[3:38:51 PM](#)

JEFF DE SMET, Owner and Contractor of J. De Smet Construction, informed the committee that he runs a contracting business here in Juneau and has been in business for 28 years. He explained that he is representing the local building industry association for which he is the president elect. He noted that he is also on the board of directors of Alaska State Home Builders Association. Mr. De Smet announced that he is in favor of HB 81, which he said needs to come out of the criminal side of statutory law and be placed where citations can be given out. He postulated that it is a budgetary constraint that will motivate people to be knowledgeable with statutory issues and address problems.

REPRESENTATIVE GUTTENBERG asked the speaker to talk about the impact on contractors.

[3:40:30 PM](#)

MR. DE SMET explained that over the years, there have been blatant violations in which people who have no license whatsoever employ people without workers' compensation or liability insurance. He went on to say that the legitimate contractors cannot compete against this because [those working without a license] are charging the same labor rates without offering protection for the consumer or the worker.

MR. DE SMET then pointed out that the product problems and problems with insurance are both local and statewide. The aforementioned are ongoing problems especially with the crisis involving workers' compensation rates and the general liability problems.

MR. DE SMET, in response to Representative Guttenberg, explained that these rogue handymen are operating outside the bounds of the law and it wastes a lot of time and money. "We" are trying to elevate everyone to the same level, he said.

CHAIR ANDERSON reiterated for the record that the three main things that are at issue here are consumer protection, the creation of an even playing field, and lastly limiting the depreciation of a contractors license.

REPRESENTATIVE GUTTENBERG answered that this is the case absolutely.

REPRESENTATIVE CRAWFORD asked who will enforce the law and the issuing of the citations.

[3:44:10 PM](#)

CHAIR ANDERSON asked the Representative Crawford's question be addressed later in the discussion.

[3:44:28 PM](#)

ALAN WILSON, Legislative Co-Chair, Alaska State Home Building Association, stated that his group looked at several ways to enforce this bill. He concurred with Chair Anderson that this

bill is a good fix, although he noted the concern with people acting like contractors, and owner/builder families. He indicated that [owner/builder families] are building homes one after another and current statutes are very vague on this. Mr. Wilson related that [owner/builder families are allowed to build] one single family building per year. However, the definition of "year" is unclear and needs to be resolved in the statute. This [vagueness] makes it difficult for the department to enforce. Therefore, he requested the opportunity to address this issue in the bill. He suggested that perhaps the matter can be addressed by defining the start date or limiting those who are building multiplex structures to make money. He opined that the penalty, a fine of \$250, is not stiff enough to make the violation one to worry about.

[3:49:11 PM](#)

REPRESENTATIVE LEDOUX questioned whether there is any requirement in regard to selling the home after building the home.

MR. WILSON answered that it is not clear, but indicated that there is no requirement.

[3:50:14 PM](#)

MIKE MUSICK, President, Interior Alaska Building Association; Member, Alaska State Home Building Association, said that after [the associations] met and discussed the handyman issue, they came to a consensus that some legislation should be put into place to address these unlicensed contractors who are working as general contractors. Licensed builders must have 16 hours of building science classes, relative to the Alaskan environment. He related that this bill should be passed.

[3:52:18 PM](#)

TOM GERVAIS, Owner, Alkota Plumbing and Heating, announced that he has seen a great deal of abuse of the handyman license in this industry over the years. One of the big issues in Anchorage is the rise in carbon monoxide poisoning deaths, which are attributable to poor installation. All appliances, he said, are accompanied by manuals that are very specific. Furthermore, the appliances must be installed in accordance with local and state guidelines. He said that this problem is rampant and it's hard to identify [offenders]. To remedy this, he suggested requiring a physical license on the vehicle or on the person. He furthered

this idea by adding that at the point of sale, the permit should be sold. This would ensure that a licensed individual would be looking at the installation. He concluded by reiterating his support of this bill.

REPRESENTATIVE LYNN stated that as he understood it, the line between handyman and licensed worker is delineated by the amount of the contract, that is that handymen can do work amounting to less than \$5,000.

MR. GERVAIS informed the committee that one has to be a certified plumber to perform any task in plumbing systems, waste systems, and natural gas systems. Although \$5,000 is still the demarcating amount, he contended that there are skilled aspects of the profession that are valued at lower than \$5,000.

REPRESENTATIVE LYNN posed a situation in which a job estimate is \$4,500, but increased to \$5,500 as problems arise.

MR. GERVAIS answered that if the job estimate is \$4,500, the job is way beyond the handyman specialty.

[3:55:52 PM](#)

CHAIR ANDERSON asked if this is an anomaly that doesn't happen very often.

MR. DE SMET postulated that this problem happens frequently. By statute, plumbers and electricians have to have a certification of fitness to do the job. By contrast, carpenters don't. He noted that contractors have to have a license that ensures the contractor has the proper education and background to do the job.

MR. DE SMET went on to say that the general public has to accept some of the responsibility and seek out a licensed, bona fide skilled worker. [The associations] are trying to work with the public to educate them regarding who to hire and who not to hire.

CHAIR ANDERSON suggested that people employing handymen are not watching the limit and saying that a contractor needs to come in when that limit is reached. He further suggested that when the handyman breaches this limit, the employing people contact the department.

MR. DE SMET related his personal experience in which handymen have gotten into situations beyond their capability. He said that the state needs to educate consumers on this matter.

4:00:26 PM

DAVE OWENS, Owner, Owens Inspection Service; and President, Mat-Su Home Builders Association, stressed that he and his group very much appreciate the new legislation. He announced that he has a few comments with regard to the owner/builders and said he has seen an abuse of the law. For instance, whole families who build and sell homes with the intention of never occupying them. He requested that this breach of the law be fine tuned to mitigate the problem. Mr. Owens expressed his hope that this legislation would not become a home inspector bill, and therefore he asked that the term referring to home inspectors be replaced with "specialty contractor". This language, he clarified, can be found on page 1, line 4. He explained that home inspectors are contractors just like all specialty contractors.

4:03:47 PM

RICK URION, Division of Occupational Licensing, Department of Commerce, Community, & Economic Development, asserted that the bill is a good step. He related the [division's] frustration with this issue and related the good work being done to deal with it.

REPRESENTATIVE GUTTENBERG referred to page 2, lines 24-26, which read:

The department may not impose an administrative fine on a person who is acting as a contractor or home inspector in an area with a population of 1,000 or less that is not connected by road or rail to Anchorage or Fairbanks.

REPRESENTATIVE GUTTENBERG asked how that related to people living in cities that require licensing and going out to rural areas where there is no requirement for licensing. He noted that these places were not exempt from this.

MR. URION declared that he did not write this particular phrase and is surprised. He said he supports the [Representative Guttenberg's] assertion that the language seems to exempt people

in the Bush. He also said that people in the Bush deserve the same kind of protection as those in urban areas.

4:06:18 PM

GREY MITCHEL, Director, Labor Standards and Safety, Department of Labor and Workforce Development, announced that the [department] did the majority of enforcement for contractor licensing. He then described these inspections as being done with staff who are doing this work on the side from their normal ascribed duties. The problem here is making transitions from these normal duties to the more 'police' side of inspection duties. In offering his support, he said that this proposal will create a streamlined enforcement process by which one will be able to issue an administrative fine and the alleged violator will have the opportunity to request a hearing.

MR. MITCHEL said that currently, when one writes a citation, it has to be presented to the district attorney, who then decides whether to take the case. He went on to say that one of the problems is whether his division could show that the person knew he/she was supposed to be licensed. He explained that when the department goes to the work site a cease and desist order is issued, which most often results in the offender stopping the activity. However, the offender might have several jobs and these don't always get inspected. This bill will allow the department to do a better job when it comes to enforcing the licensing rules ubiquitously.

CHAIR ANDERSON pointed out that now is the time for the technical questions.

REPRESENTATIVE GUTTENBERG asked what happens if a person acting as a contractor in Juneau goes to Halibut Cove where he/she doesn't act under his contractor's license and thus walks away from his liability [in Halibut Cove].

MR. MITCHEL answered that [the legislation] created an exemption from the administrative fine component should [an individual] operate in areas that require licensing. However, licensing is still required, he stated.

MR. MITCHEL stated that his group believes that having this be an administrative fine, the potential for extra work in the administrative hearing side is going to be made up on the efficiency side with the inspectors not having to spend so much time on the work up of the citations. He announced that [the

department] has a proposed amendment. Essentially, the bill in Section 2, on page 2, line 17, allows someone to request a hearing over the telephone. Although there is no real time period in which to do so, the law stipulates that it be done in a timely manner.

MR. MITCHEL offered a proposal allowing 30 days for someone to request a hearing. Afterwards there is no alternative. It sets the stage for efficient handling of fines. With regard to the telephone request, he suggested that this should be done in writing to address the why a hearing is required.

CHAIR ANDERSON closed public testimony on HB 81.

REPRESENTATIVE GUTTENBERG moved to report HB 81 out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE LYNN referring to the second paragraph, line 17, made a motion to adopt [Conceptual Amendment 1], which would eliminate the dangling preposition "to".

CHAIR ANDERSON agreed to Conceptual Amendment 1.

REPRESENTATIVE GUTTENBERG questioned whether 30 days is enough time.

MR. MITCHEL stated that the time limit was arrived at through the standard civil rules for response to court filings.

REPRESENTATIVE LEDOUX questioned whether these [requests] out through certified mail.

MR. MITCHEL answered that they are delivered through restricted delivery.

CHAIR ANDERSON added that someone will know because he/she will have to sign for the letter.

CHAIR ANDERSON announced that Conceptual Amendment 1 was adopted and that public testimony was still open, though limited.

[HB 81 was held over.]

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at [4:19:49 PM](#) [stated as 4:17 p.m.].