

**ALASKA STATE LEGISLATURE**  
**HOUSE LABOR AND COMMERCE STANDING COMMITTEE**

January 26, 2005

3:25 p.m.

**MEMBERS PRESENT**

Representative Tom Anderson, Chair  
Representative Pete Kott  
Representative Gabrielle LeDoux  
Representative Bob Lynn  
Representative Norman Rokeberg  
Representative Harry Crawford (via teleconference)  
Representative David Guttenberg

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 46

"An Act permitting grants to certain regulated public utilities for water quality enhancement projects and water supply and wastewater systems."

- MOVED HB 46 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."

- MOVED CSHB 81(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 35

"An Act extending the termination date of the State Board of Registration for Architects, Engineers, and Land Surveyors; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 46

SHORT TITLE: WATER/SEWER/WASTE GRANTS TO UTILITIES

SPONSOR(S): REPRESENTATIVE(S) HARRIS, COGHILL, ROKEBERG

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  
01/26/05 (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  
01/21/05 (H) Heard & Held  
01/21/05 (H) MINUTE(L&C)  
01/26/05 (H) L&C AT 3:15 PM CAPITOL 17

**WITNESS REGISTER**

TOM WRIGHT, Staff  
for Representative John Harris  
Juneau, Alaska  
POSITION STATEMENT: Testified in support of HB 46.

LORI BACKES, Special Assistant  
Mayor  
Fairbanks, Alaska  
POSITION STATEMENT: Testified in support of HB 46.

BENJAMIN BROWN, Legislative Liaison  
Office of the Commissioner  
Department of Environmental Conservation (DEC)  
Juneau, Alaska  
POSITION STATEMENT: Testified in support of HB 46.

JIM STRANDBERG, Commissioner  
Regulatory Commission of Alaska  
Anchorage, Alaska  
POSITION STATEMENT: Testified in support of HB 46.

KARA MORIARTY, President,  
Greater Fairbanks Chamber of Commerce  
Fairbanks, Alaska  
POSITION STATEMENT: Testified in support of HB 46.

JOHN BITNEY Lobbyist,  
Alaska State Home Builders Association  
Anchorage, Alaska  
POSITION STATEMENT: Testified in support of HB 81.

GREY MITCHEL, Director,  
Labor Standards and Safety  
Juneau, Alaska  
POSITION STATEMENT: Testified in support of HB 81.

DAVE OWENS, President  
Mat-Su Homebuilders Association  
Matanuska- Susinita, Alaska  
POSITION STATEMENT: Testified in support of HB 81.

**ACTION NARRATIVE**

[The beginning was not on the recording, but it was reconstructed from the committee secretary's log notes]

**CHAIR TOM ANDERSON** called the House Labor and Commerce Standing Committee meeting to order at 3:25:18 PM (3:32:51) Representatives Anderson, Kott, LeDoux, Lynn, Rokeberg, Crawford via teleconference, and Guttenberg were all present at the call to order.

HB 46-WATER/SEWER/WASTE GRANTS TO UTILITIES

CHAIR ANDERSON announced that the first order of business would be HOUSE BILL NO. 46, "An Act permitting grants to certain regulated public utilities for water quality enhancement projects and water supply and wastewater systems."

TOM WRIGHT, staff for Representative John Harris, Alaska State Legislature, sponsor, announced, on behalf of Representative Harris, that this is a relatively new bill which is limited to privately owned companies that are economically regulated by the Regulatory Commission of Alaska (RCA).

CHAIR ANDERSON said that Bonnie Williamson also supports the bill.

LORI BACKES, Special Assistant to the Mayor, Fairbanks, said that she was here today to support HB 46. She said that privately held utilities do not have access to certain funds that public utilities have. This bill levels the field by making all funds available to all utility companies.

[THE RECORDING BEGINS HERE]

BENJAMIN BROWN, Legislative Liaison, Office of the Commissioner, Department of Environmental Conservation, described the program as one primarily funded through state monies but there are some smaller communities that are funded by federal funds. Only municipalities are currently eligible right now. Over the last 10 years, 36 local governments have benefited from these grants. There is a local match requirement that is scaled depending on the population of the community because the smaller the community, the less it has to contribute.

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MR. BROWN explained that the grants are awarded on a competitive basis, taking into account public health and environmental impact of the project, as well as community capacity and a few other factors. It's a typical grant program.

MR. BROWN emphasized that are seven staff positions who run this grant program and the same staff administer the winter loan programs. This bill is a policy decision that the legislature needs to make. Both the prior speakers demonstrated the fairness of allowing communities who don't have don't have public utilities to benefit the way communities like Anchorage do.

MR. BROWN commented that the only concern he had was that if the bill is passed as written, a third position would have to be added. If everyone who is eligible for the grant took the necessary steps to be considered and subsequently apply for the grant it would be too much work for the current staff. However, the existing staff could be sufficient if the eligibility requirements were modified to reduce the workload.

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REPRESENTATIVE ROKEBERG asked if Mr. Brown could specify the amounts of the grants.

MR. BROWN answered absolutely.

REPRESENTATIVE ROKEBERG asked if this information could go back three years.

MR. BROWN affirmed that he would be happy to make sure the fiscal notes of the last three years are provided to the committee members.

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REPRESENTATIVE GUTTENBERG recalled that a few years ago, legislation that allowed privately owned utilities to obtain loans was passed. If the list of these companies was available one could ascertain who was applying for grants as well.

MR BROWN affirmed that he would make this list part of the same work request.

REPRESENTATIVE ROKEBERG asked if it is correct that there are 193 utilities that qualify. He then asked if there is a list that could be provided.

MR. BROWN said Mr. Stranberg from RCA provided the list of unregulated and regulated utilities.

REPRESENTATIVE ROKEBERG indicated that Mr. Brown mentioned a modification of the bill that might affect the fiscal note, and then went on the ask if he had any suggestions.

MR. BROWN explained that as long as there aren't an excessive amount of people applying for the grants, then the fiscal note will go down to zero.

REPRESENTATIVE ROKEBERG stated that the way the finances are going, it probably will go to zero.

REPRESENTATIVE GUTTENBERG observed that in the same fiscal note, DEC expects to be administering six grants a year.

MR. BROWN stated that there is a numerical typographical error in the fiscal note, and therefore a corrected version as it comes out of this committee.

REPRESENTATIVE LEDOUX, looking at page 2 of the bill, indicated that she wanted to clarify that the private utilities being economically regulated by RCA numbered at around 15 or 20. She continued by asking why, according to Mr. Brown, there was 126 that would qualify for the grants.

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MR. BROWN answered by stating that there were two categories—certificated and uncertificated. An entity that is not certificated could become certificated and not be economically regulated, but it could also request that it be economically regulated and not be certified, thereby making it eligible for this grant program. There are some hoops to jump through, but there is nothing wrong with that. At the end of the day these entities have to agree that they want to be regulated by the RCA. The incentive for doing this is eligibility for these grant funds.

CHAIR ANDERSON clarified that this total of 126 represents the most that can possibly be eligible.

REPRESENTATIVE LEDOUX pointed out that there are private utility companies out there that are not currently regulated by the RCA, and theoretically, she asked, if they wanted to be eligible, could they ask to be regulated by the RCA.

MR. BROWN clarified that such entities are home owner associations and trailer parks and are not in the business of selling utilities service to anyone who wants to buy it. Although these entities have a set level of demands, they can request to be regulated.

JIM STRANDBERG, Commissioner, Regulatory Commission of Alaska in Anchorage, said he would discuss very briefly, the number of certificated and economically regulated utilities in the state because this might help provide an understanding of this particular situation.

REPRESENTATIVE ROKEBERG highlighted that private utilities currently certified are on a list that is in the file. He mentioned that the Trillium Corporation of Wasilla is a certified sewer and water utility and is associated with the Settlers Bay Development of which his company is a customer and not an owner of the Trillium Corporation. He ends by firmly stating that there is not a conflict of interest.

MR. STRANDBERG, explained that the statute specifies that the RCA is responsible for certificating, providing the certificate for public convenience for all public utilities. The process typically involves reviewing a utility as it evolves.

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MR. STRANDBERG continued by stating that the universe of utilities is relatively large. The other tasks that the RCA performs is for a subset of that large group. These groups submit cost information to the RCA which sets a rate it can charge for its services.

MR. STRANDBERG noted that this bill specifies that any economic activity that is regulated by the RCA, is eligible for the grants.

MR. STRANDBERG stated that although the RCA certifies a large number of utilities, currently, it only economically regulates a few utilities in the state. This occurs when the RCA perceives that the utility has become a monopoly.

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MR. STRANDBERG said that there were a number of numbers mentioned. In the fiscal note, there were 193 non-municipal utilities that could be eligible for these grants. The question, he said, is how many of them would actually come in for the grants. He then went on to say that the RCA has a zero fiscal note on this bill mainly due to the fact that many of these utilities would come under economic regulation at a later date.

REPRESENTATIVE GUTTENBERG mentioned page 2 on the fiscal note provided by RCA where the witness spoke referenced reduced regulation programs, and asked for an expansion of the programs description. When this is implemented, some utility groups may want to be regulated at a higher level, he surmised. He ended by asking Mr. Strandberg if he could talk about this and describe what is being done with the reduced regulation program.

MR. STRANDBERG answered that the RCA has been working for years on this part of the RCA's operation, which began, he said, with an audit action item in 2000 that required us to be more active in utilities. Since that time, the RCA has provided alternative certification programs for small utilities. The RCA is bringing more utilities under this provisional certification program.

MR. STRANDBERG stated that additionally, he said that RCA currently has an open regulation docket and an active stakeholder working group to change the way that RCA economically regulate to make it more affordable and more effective.

REPRESENTATIVE GUTTENBERG asked what the regulation break up point is.

MR. STRANDBERG stated that is to be determined. Currently RCA have assembled stake holders and are awaiting their analysis.

REPRESENTATIVE ROKEBERG, referring back to Representative Guttenberg's statement, stated that when this process is completed, there is a different method of regulating smaller utilities which are less of a burden. He ends by asking if this is the objective.

MR. STRANDBERG replied yes and announced that the goal of his agency was to lessen the cost of regulation and make it more effective. He then stated that whatever the rule is that the RCA develops will represent full economic regulation but a different set of rules will be configured for smaller utilities.

REPRESENTATIVE ROKEBERG asked if this included all the class A, B, and C water utilities.

MR. STRANDBERG announced that his group spent lot of time on this indulgence and all known small utilities were included.

REPRESENTATIVE ROKEBERG took this further by asking whether they regulate both the A and B classes.

MR. STRANDBERG stated that this includes any utilities that provides service to 10 or more customers.

REPRESENTATIVE ROKEBERG asked if there are still three different categories of water utilities still.

MR. STRANDBERG answered that the Department of Environmental Conservation has this nomenclature and this has more to do with water quality. The RCA has a different set of definitions under which it operates.

REPRESENTATIVE ROKEBERG asked if private utilities are regulated if they are monopolies in their area.

MR. STRANDBERG stated this is correct.

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CHAIR ANDERSON closed public testimony.

REPRESENTATIVE ROKEBERG inquired as to how the RCA handles grants and how this legislation affects rate setting.

MR. STRANDBERG answered that the RCA has regulatory tools, and therefore it has the ability to not allow a privately owned utility to enrich its shareholders from the provision of an infrastructure grant like this. The utility cannot earn a return on the grant and it cannot have the customer pay back the money gained by the grant contribution.

KARA MORIARTY, President, Greater Fairbanks Chamber of Commerce, announced her support for HB 46 and the idea that all utilities should be on the same level playing field. Currently the only utilities that are eligible for these grants are public owned utilities. The grants are primarily used for infrastructure development and upgrades. She noted that the shareholders cannot receive returns on investments. The ratepayers and citizens are the only ones who can receive benefits from the grants.

MS. MORIARTY then went on to say that all utilities in Fairbanks, Alaska are either privately owned or are a cooperative. She continued by stating that businesses and residents where are at a disadvantage compared to other Alaskan residents. The cost of doing business, she said, is great in Fairbanks. The problem of connection to major utility lines hampers economical development, even downtown near the city center. She concluded by reiterating that private and cooperative utilities should have access to the grants.

CHAIR ANDERSON, upon determining that no one else wanted to testify, closed public testimony.

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REPRESENTATIVE ROKEBERG moved to report HB 46 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, it was so ordered.

#### HB 81-CONTRACTOR LICENSE ENFORCEMENT

CHAIR ANDERSON announced that the next 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 recalled that at a prior hearing, there was a suggestion to delete sections referring to home inspectors. This is not going to happen because it would create a title change. However, he noted that there is an amendment that he would like to have explained.

JOHN BITNEY, Lobbyist, Alaska State Home Builders Association (ASHBA), said that ASHBA is introducing a conceptual amendment, which he said was located on page 5, line 2 of [Version Y]. The language on this page is in response to the existing language in owner/builder language in statute.

MR. BITNEY explained that the existing statutes broadly exempts owner/builders from building a single family multiplex every year. The time limit is very ill defined. He recalled that the testimony talked about each member of a family running a contract business and building several buildings, not to live in, but for resale value. The aforementioned act, he said, violated the law.

CHAIR ANDERSON provided clarity by stating that a family has several children who each build homes and they are able to do this under the stipulation of the statute.

REPRESENTATIVE ROKEBERG moved that the committee adopt CSHB 81, Version 24-LS0144\Y, Mischel, 1/26/05, as the working document. There being no objection, Version Y was before the committee.

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CHAIR ANDERSON asked if Mr. Bitney could briefly describe each section of Version Y.

MR. BITNEY explained that in Version Y, Section 1 addresses the enforcement statutes. Section 2 is the heart of the bill, since it deals with the fines. Section 3 takes the existing penalty and increases it to the new penalty phase being added. Section 4 defines the violation and Section 5 is the long list of exemptions. Section 6, he said, is the conforming section.

MR. BITNEY continued by stating that Sections 7 and 8 are transitional sections that ensure this is not retroactive.

DAVE OWENS, Representative, Mat-Su Homebuilders Association, Matanuska- Susinita, answered yes and that he gives full support of this bill and agree with the previous speaker, Mr. Bitney.

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REPRESENTATIVE GUTTENBERG asked whether there is a quantifiable number of fines or complaints that would illustrate that there is a problem.

GREY MITCHEL, Division Director, Labor Standards and Safety, Department of Labor and Workforce Development, answered that the number of violations range from 130 to 150. There have been 85 violations in this fiscal year so far.

CHAIR ANDERSON clarified that Mr. Mitchel's numbers refer to people who are not authorized or licensed to operate as a contractor but are doing so.

REPRESENTATIVE ROKEBERG inquired as to the level of the current sanction.

MR. MITCHEL stated that the current sanction is a criminal penalty, a misdemeanor. Therefore, the department is required to take the case to the district attorney. Since these are low-level cases for the DA, it is difficult to pursue these cases.

CHAIR ANDERSON asked if it is a class B misdemeanor.

MR. MITCHEL agreed and said that this was correct: "I think that the current criminal citation is being listed in section 4 of the bill as it is in statute now".

REPRESENTATIVE ROKEBERG surmised then that the goal is to have the civil penalties and administrative fines as a tool, rather than going through a criminal prosecution.

MR. MITCHEL agreed and said this was correct.

REPRESENTATIVE ROKEBERG chortled that an offender could ostensibly receive a injunction, get a civil penalty, administratively fine him, and get a class B misdemeanor case. He then asked if there is a conflict of laws here.

REPRESENTATIVE KOTT agreed that there may be a problem with the bill if it allows three avenues of prosecution to exist. He asked Mr. Mitchel to produce a scenario in which a violation

could be detected and no fine imposed. Ostensibly, the inspector does not have to give a fine and the fine could be anything between \$1 and \$1,000. He pointed out that there is a lot of wiggle room here.

MR. MITCHEL posed a situation in which someone has been caught with an expired license. In such a situation the DLWD would issue a civil fine, especially if the individual comes in and shows that he has been reissued a current license and has current bonding. The department, in such a case wouldn't pursue a criminal prosecution.

REPRESENTATIVE KOTT indicated that it sounded like one could be guilty of noncompliance and not be punished. He then suggested that the level of the fine could be adjusted in cases such as these. He further stated that there is no knowledge of the offender's intention and thus there is the possibility that there could be felonious intent.

CHAIR ANDERSON said that it always a dilemma.

REPRESENTATIVE LEDOUX referred to Section 5, the exemptions section, paragraph 12, and asked how the figure of three years was determined.

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JOHN BITNEY, Lobbyist, Alaska Home Builders Association, explained that the idea to specify a bright line level amount for enforcement. The discussions thus far have agreed upon the minimum of two years and a maximum of three years. The idea was that it had to be more than one year. This enabled the department to truly determine that it was an owner/builder situation.

REPRESENTATIVE LEDOUX inquired as to when enforcement action would occur enforcement take place. She offered an example of a person building a home and two years later selling the same home. She then asked if this is when the department got involved.

CHAIR ANDERSON offered that the department would be involved when there had been a violation detected.

MR. BITNEY related his understanding of the applicability and that this would be applied not when one sells the home, but when

one begins to act like a general contractor for the construction of the next new home, not when the old home is sold.

CHAIR ANDERSON stated that Representative LeDoux was actually trying to ask what would happen if a owner/builder sold the home after two years, which would be in violation of the three-year occupancy requirement.

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REPRESENTATIVE ROKEBERG stated that the question from Representative LeDoux is germane in terms of the slight ambiguity that is created by inserting this clause into the document. He stated that we have a three-year standard by adopting the CS, but we still retain a one-year standard within the same sentence. He pointed out that within the same sentence there are three different tests of the bill's legitimacy.

CHAIR ANDERSON stated that the recommendation could be to tweak page 5, line 6, so that it is in parity with page 5, beginning of Section 12, lines 2-3.

REPRESENTATIVE ROKEBERG answered that it is a matter of drafting.

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CHAIR ANDERSON asserted that he wants this clean and unambiguous.

REPRESENTATIVE ROKEBERG pointed out that if an owner/builder builds something, occupies it, and then builds something else, this legislation disallows the sale of the prior property. He asserted that this constrains trade.

CHAIR ANDERSON declared that the only difficulty he has with this idea is the possibility of having a commercial building versus a home and reconciling the two.

REPRESENTATIVE ROKEBERG affirmed that the owner/builder can reside in both concurrently. The owner/builder would have to show external evidence for his occupancy in one or both residencies.

CHAIR ANDERSON supposed there was the possibility of ambiguity.

REPRESENTATIVE ROKEBERG moved that the committee adopt Conceptual Amendment [1 inserting language] such that 'you can only privately build a house every three years' be added.

CHAIR ANDERSON announced that this suggested language would be added to page 5, lines 2-7, subsection 12.

REPRESENTATIVE GUTTENBERG asked if the three consecutive calendar years could be interpreted as 14 months or is the intent to have 36 months.

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MR. BITNEY said he thought that either way it's saying the same thing.

CHAIR ANDERSON stated that Legislative Legal and Research Services could review it.

REPRESENTATIVE ROKEBERG inquired as to the rationale behind selecting three consecutive years.

CHAIR ANDERSON related that the legislative intent of the bill is to discourage builders from acting like a private homebuilder in order to fall undetected within this requirement. The intent is to keep them from building homes and not occupying them. It is also discourages the practice of family building activities which also circumvents the core of the bill. Three years is an arbitrary number and has no judicial principal behind it, but is long enough to show proof of residency and intentions to build and occupy.

MR. BITNEY agreed that three years is long enough to determine occupancy, which is the term being used by his organization since it really gets to the heart of the matter, and provides a brighter line on which to judge cases.

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REPRESENTATIVE LEDOUX posed a situation in which someone builds his own home, and then sells it after two years, and then doesn't build another house. She asked if that owner/builder would be liable if he held off on building another house right away.

CHAIR ANDERSON reiterated that the owner must occupy the residence for three consecutive years. Once construction is

completed, the owner/builder must move in and reside there for three years, or the contractor licensure is violated.

MR. BITNEY clarified that the language speaks to when the owner/builder can start construction on the next new home.

REPRESENTATIVE LEDOUX expressed concern in a situation in which someone builds a home and for some reason he moves someplace else. Theoretically, such an individual would be in violation of the law. She asked if such a person could be prosecuted.

REPRESENTATIVE GUTTENBERG reiterated that the intent is not to stop the owner/builders who build one home every four to five years. The legislation attempts to catch those people that are trying to stay under the radar.

REPRESENTATIVE ROKEBERG suggested that the test could be whether the owner/builder is the bona fide owner/occupant.

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REPRESENTATIVE ROKEBERG went on to say that the committee could even talk about restricting family members. The legislation could be worded in such a way that would prohibit various members of a family from qualifying.

CHAIR ANDERSON said that although he liked what Representative Rokeberg suggested about making it more definitive in terms of the differences, but that expands the bill enough in Conceptual Amendment 1, that it has become a concern. He suggested that the legislation as amended by and with the stated legislative intent be moved.

REPRESENTATIVE ROKEBERG expressed concern regarding whether the previous motion provided the drafter with enough flexibility. Therefore, Representative Rokeberg withdrew Conceptual Amendment 1. There being no objection, it was so ordered.

REPRESENTATIVE ROKEBERG moved that the committee adopt Conceptual Amendment 2, as follows:

The number of building units will be consistent with any length of prohibition and additionally consider the builder and his bona fide use of the property. If the person who builds the building and the person is a bona fide user of the building there will be no three-year restriction.

REPRESENTATIVE ROKEBERG continued by stating that there cannot be restrictions on the movement and mobility of people. We need another criteria which is a bona fide residency and the restriction of numbers of people within a family that would qualify for building.

MR. BITNEY suggested that the language on page 5, lines 2-3, which read, '**occupies the property after construction for not less than two consecutive years**', would be better within the limitation on page 5, line 6. This is opposed to having it placed at the beginning of the paragraph. This is more contextual to the idea trying to be conveyed.

CHAIR ANDERSON noted that there was no objection to Conceptual Amendment 2. Therefore, Conceptual Amendment 2 was adopted.

REPRESENTATIVE ROKEBERG moved to report CSHB 81, Version 24-LS0144\Y, Mischel, 1/26/05, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 81(L&C) was reported from the House Labor and Commerce Standing Committee.

#### **ADJOURNMENT**

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:40 p.m.