

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

April 27, 2005

8:54 a.m.

MEMBERS PRESENT

Senator Ralph Seekins, Chair
Senator Charlie Huggins, Vice Chair
Senator Gene Therriault
Senator Hollis French
Senator Gretchen Guess

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CS FOR HOUSE BILL NO. 116(JUD)

"An Act relating to the liability of certain persons for certain violations of alcoholic beverages laws."

MOVED SCS CSHB 116(JUD) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 81(L&C)

"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; modifying the exemptions from regulation under AS 08.18 for 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

SENATE BILL NO. 127

"An Act prohibiting a public officer from taking official action regarding a matter in which the public officer has a significant financial interest; and defining 'official action' for purposes of the chapter generally referred to as the Executive Branch Ethics Act."

SCHEDULED BUT NOT HEARD

SENATE BILL NO. 186

"An Act relating to the Alaska Executive Branch Ethics Act."

SCHEDULED BUT NOT HEARD

SENATE BILL NO. 187

"An Act relating to legislative ethics open meetings guidelines, to the public members of the Select Committee on Legislative Ethics, to alternate members of the legislative subcommittees, to advisory opinions, and to confidential information and proceedings regarding legislative ethics complaints and investigations."

SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

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
01/26/05	(H)	Moved CSHB 81(L&C) Out of Committee
01/26/05	(H)	MINUTE(L&C)
02/02/05	(H)	L&C RPT CS(L&C) NT 5DP 1NR
02/02/05	(H)	DP: LYNN, KOTT, LEDOUX, GUTTENBERG, ANDERSON;
02/02/05	(H)	NR: ROKEBERG
02/09/05	(H)	JUD AT 1:00 PM CAPITOL 120
02/09/05	(H)	Moved CSHB 81(L&C) Out of Committee
02/09/05	(H)	MINUTE(JUD)
02/11/05	(H)	JUD RPT CS(L&C) NT 3DP 3NR
02/11/05	(H)	DP: GRUENBERG, KOTT, ANDERSON;
02/11/05	(H)	NR: DAHLSTROM, COGHILL, MCGUIRE
03/02/05	(H)	FIN AT 1:30 PM HOUSE FINANCE 519
03/02/05	(H)	Heard & Held
03/02/05	(H)	MINUTE(FIN)
03/07/05	(H)	FIN AT 1:30 PM HOUSE FINANCE 519
03/07/05	(H)	Moved CSHB 81(L&C) Out of Committee
03/07/05	(H)	MINUTE(FIN)
03/09/05	(H)	FIN RPT CS(L&C) NT 3DP 6NR

03/09/05 (H) DP: HAWKER, FOSTER, MEYER;
 03/09/05 (H) NR: MOSES, JOULE, STOLTZE, CROFT,
 KELLY, CHENAULT
 03/16/05 (H) TRANSMITTED TO (S)
 03/16/05 (H) VERSION: CSHB 81(L&C)
 03/18/05 (S) READ THE FIRST TIME - REFERRALS
 03/18/05 (S) L&C, JUD
 04/07/05 (S) L&C AT 1:30 PM BELTZ 211
 04/07/05 (S) Heard & Held
 04/07/05 (S) MINUTE(L&C)
 04/19/05 (S) L&C AT 1:30 PM BELTZ 211
 04/19/05 (S) Moved SCS CSHB 81(L&C) Out of Committee
 04/19/05 (S) MINUTE(L&C)
 04/20/05 (S) L&C RPT SCS 2DP 3NR SAME TITLE
 04/20/05 (S) NR: BUNDE, DAVIS, SEEKINS
 04/20/05 (S) DP: ELLIS, STEVENS B
 04/26/05 (S) JUD AT 8:30 AM BUTROVICH 205
 04/26/05 (S) Scheduled But Not Heard

BILL: HB 116

SHORT TITLE: LIABILITY FOR ALCOHOL LAW VIOLATIONS

SPONSOR(S): REPRESENTATIVE(S) MEYER

01/28/05 (H) READ THE FIRST TIME - REFERRALS
 01/28/05 (H) STA, JUD
 03/01/05 (H) STA AT 8:00 AM CAPITOL 106
 03/01/05 (H) Moved CSHB 116(STA) Out of Committee
 03/01/05 (H) MINUTE(STA)
 03/02/05 (H) STA RPT CS(STA) NT 3DP 2DNP 1AM
 03/02/05 (H) DP: GARDNER, GATTO, SEATON;
 03/02/05 (H) DNP: RAMRAS, ELKINS;
 03/02/05 (H) AM: GRUENBERG
 03/21/05 (H) JUD AT 1:00 PM CAPITOL 120
 03/21/05 (H) Moved CSHB 116(JUD) Out of Committee
 03/21/05 (H) MINUTE(JUD)
 03/22/05 (H) JUD RPT CS(JUD) NT 7DP
 03/22/05 (H) DP: GRUENBERG, ANDERSON, KOTT,
 DAHLSTROM, COGHILL, GARA, MCGUIRE
 04/01/05 (H) TRANSMITTED TO (S)
 04/01/05 (H) VERSION: CSHB 116(JUD)
 04/04/05 (S) READ THE FIRST TIME - REFERRALS
 04/04/05 (S) STA, JUD
 04/14/05 (S) STA AT 3:30 PM BELTZ 211
 04/14/05 (S) Moved CSHB 116(JUD) Out of Committee
 04/14/05 (S) MINUTE(STA)
 04/15/05 (S) STA RPT 4DP
 04/15/05 (S) DP: THERRIAULT, ELTON, HUGGINS, DAVIS

04/25/05 (S) JUD AT 8:30 AM BUTROVICH 205
04/25/05 (S) Heard & Held
04/25/05 (S) MINUTE(JUD)

WITNESS REGISTER

Mr. Michael Pawlowski
Staff to Representative Kevin Meyer
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Commented on HB 116

Mr. John Bittner
Staff to Representative Tom Anderson
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Introduced HB 81

Mr. Grey Mitchell, Director
Labor Standards and Safety Division
Department of Labor & Workforce Development
PO Box 21149
Juneau, AK 99802-1149
POSITION STATEMENT: Commented on HB 81

Mr. Mike Musick
Ester Construction
Fairbanks, AK
POSITION STATEMENT: Testified in support of HB 81

Mr. Wally Smith
Smith Alaska Construction
Fairbanks, AK
POSITION STATEMENT: Testified in support of HB 81

Mr. Steve Gochis
Cut Above Contracting
Fairbanks, AK
POSITION STATEMENT: Commented on HB 81

Mr. Dave Dillard
3-2-1 Construction
Fairbanks, AK
POSITION STATEMENT: Commented on HB 81

Mr. Terry Duszynki
Fairbanks, AK

POSITION STATEMENT: Testified in support of HB 81

Mr. Todd Larkin
Fairbanks, AK

POSITION STATEMENT: Testified in opposition of HB 81

Mr. Brent Lavelle
Denali State Bank
Fairbanks, AK

POSITION STATEMENT: Testified in support of HB 81

Mr. Randy Doll
Fairbanks, AK

POSITION STATEMENT: Commented on HB 81

Mr. Dan Foltz
Fairbanks, AK

POSITION STATEMENT: Commented on HB 81

Mr. Bob Herting
Fairbanks, AK

POSITION STATEMENT: Testified in support of HB 81

Mr. Patrick Dalton
Delta Junction, AK

POSITION STATEMENT: Testified in opposition of HB 81

Mr. Dave Owens, Owner
Owens Inspection Services
Palmer, AK

POSITION STATEMENT: Testified in support of HB 81

Mr. Jeff Desmit
Southeast Alaska Builders Association
Juneau, AK

POSITION STATEMENT: Testified in support of HB 81

ACTION NARRATIVE

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at [9:21:04 AM](#). Present were Senators Charlie Huggins and Chair Ralph Seekins.

CSHB 116(JUD)-LIABILITY FOR ALCOHOL LAW VIOLATIONS

[9:21:04 AM](#)

CHAIR RALPH SEEKINS announced HB 116 to be up for consideration.

CHAIR SEEKINS confided he would consider adding a retroactive application to HB 116.

Mr. MIKE PAWLOWSKI, staff to Representative Meyer, clarified his previous testimony regarding the action pending on the youth. The youth who was volunteering with the police was threatened with a lawsuit but he is not sure where the lawsuit stands at this point in time.

Chair Seekins announced a brief recess at [9:27:09 AM](#).
[9:30:09 AM](#)

CSHB(L&C) 81-CONTRACTOR LICENSE ENFORCEMENT

CHAIR RALPH SEEKINS announced HB 81 to be up for consideration.

Mr. JOHN BITTNER, staff to Representative Tom Anderson, introduced the bill. HB 81 is intended to help enforce Alaska's current laws. Section 2 gives the Department of Labor and the Division of Occupational Licensing authority to issue administrative fines for violations of the law. Section 5 is intended to preserve Alaskans' rights to build their own home but not aid them to become unlicensed contractors. The time limit between building a residential property would be extended to two years.

[9:31:56 AM](#)

Senator Hollis French joined the committee.

MR. BITTNER stated the Alaska State Home Building Association, the Association of Builders and Contractors, the Department of Labor and Workforce Development, and the Division of Occupational Licensing all support HB 81.

SENATOR CHARLIE HUGGINS asked the concerns of the people who oppose HB 81.

MR. BITTNER admitted there was negative testimony, some of which was simple misunderstanding of the bill. Section 5 is all current statute except the change in Paragraph 12.

[9:33:56 AM](#)

CHAIR SEEKINS asked whether a person is allowed to start construction on two different homes during the same time period.

MR. BITTNER said the statute limits construction to one home every year. HB 81 would propose to change this to one home every two years.

SENATOR HUGGINS asked whether HB 81 restricts building of a utility shed.

MR. BITTNER answered no.

SENATOR HUGGINS asked whether HB 81 restricts building of an addition.

MR. BITTNER answered no.

[9:36:08 AM](#)

SENATOR FRENCH asked whether a 5-plex would apply to HB 81.

MR. BITTNER responded yes.

[9:37:00 AM](#)

MR. DAVE OWENS, owner, Owens Inspection Services, testified in support of HB 81. The Mat-Su valley is Alaska's fastest growing area. There is a large amount of owner/builders building single-family homes for resale, often with no warranty and not up to professional standards. These people are competing with licensed contractors.

[9:38:56 AM](#)

MR. PATRICK DALTON testified in opposition of HB 81. He said he has 25 years of experience in the residential building industry working mostly for homeowners. HB 81 violates certain fundamental rights and liberties contained in Article 1, Section 1 of the Alaska State Constitution. HB 81 seeks to hinder the rights of two classes of people in order to support one class - the contractors.

[9:40:59 AM](#)

MR. DALTON suggested HB 81 is approaching a problem from the wrong angle. If the state is concerned about the quality of houses they should enforce building inspection and codes.

[9:42:41 AM](#)

MR. MIKE MUSICK, owner, Ester Construction, and president of the Interior Alaska Builders Association, testified in support of HB 81. He claimed the people speaking against HB 81 are breaking the law.

[9:44:58 AM](#)

MR. WALLY SMITH, owner, Smith Alaska Construction, testified in support of HB 81. He informed his contracts vary from \$50,000 - \$250,000. HB 81 does not change existing law it simply provides active enforcement of the law.

[9:46:32 AM](#)

MR. STEVE GOCHIS, Cut Above Contracting, questioned the outcome when an unlicensed builder gets injured. Construction companies are required to carry compensation, liability, and disability policies. He asked who is responsible if an uninsured contractor gets injured on a homeowner's property. He suggested the state and the taxpayers would have to pick up tab. He said it is getting harder to play by the rules because people are doing large projects and unfairly competing with contractors.

[9:48:30 AM](#)

MR. DAVE DILLARD, builder, 3-2-1 construction, testified that workman's compensation is getting out of hand and liability policies are escalating. He suggested the handyman provides a necessary function so long as they stay limited to the \$5,000 project.

[9:51:21 AM](#)

MR. TERRY DUSZYNSKI, home inspector, testified in favor of HB 81. He said the state should to do something to curb the non-licensed homebuilder.

[9:52:48 AM](#)

MR. TODD LARKIN testified both sides agree on the better part of the bill. He said he has no desire to build above the \$5,000 limit but has a desire to do all manner of work within that limit for any customer he pleases. He asserted HB 81 effectively outlaws independent laborers on all major construction sites. HB 81 would outlaw the act of accepting small amounts of work. HB 81 installs massive enforcement methods against those who are simply earning a living. The accused should have the same rights as a person awarded a traffic ticket. The department should have to provide some type of legal proof to fine a person \$1,500 a day for going to work. Years of state red tape have made the contractors situation bad, but instead of fixing the situation they have chosen to make someone else's life just as bad. He asked why the backers and legislators are so intent on kicking independent laborers off every substantial job site in Alaska and taking their right to trial away.

[9:57:06 AM](#)

SENATOR FRENCH asked Mr. Larkin why Section 5 Paragraph 8 wouldn't cover an independent laborer.

MR. LARKIN responded a handyman would not be allowed to work on a project where the total value is larger than \$5,000. If a person even assists on a project undertaken by the same or different contractor they will be under the enforcement measures.

[9:58:51 AM](#)

SENATOR FRENCH said as he reads Paragraph (8) he does not see how the independent laborer can't do more than one project provided they are each less than \$5,000. He asked Mr. Bittner how HB 81 treats independent laborers.

[10:01:14 AM](#)

MR. BITTNER said the specific provision does not address independent laborers. HB 81 is enforcing current law with respect to independent laborers. Mr. Larkin is correct that he cannot work for a contractor on a larger job. The issue has to do with insurance purposes.

SENATOR FRENCH advised Mr. Larkin that HB 81 is aimed at contractors.

MR. LARKIN explained Paragraph (8) is specifically aimed at the 8101-license holder.

SENATOR FRENCH reported HB 81 is related to contractors. He asked Mr. Larkin how an independent laborer could fall under the contractor classification.

MR. LARKIN asserted because of the way the work is classified. The law could interpret the laborer is contracting his labor.

CHAIR SEEKINS disputed Mr. Larkin's logic and said the contractor's worker's compensation company would categorize the laborer as an employee.

MR. LARKIN responded workman's compensation does not have anything to do with HB 81. He said the fact is he is a self-employed independent laborer with multiple customers. He has confirmed through legal channels that his interpretation is correct and he would immediately be subject to fines if HB 81 were to pass into law.

[10:04:57 AM](#)

Senator Gretchen Guess joined the committee.

[10:05:19 AM](#)

MR. GREY MITCHELL, director, Labor Standards and Safety Division, Department of Labor and Workforce Development (DOLWD), explained the positive thing associated with HB 81 is that it streamlines enforcement. He explained if an independent laborer were found to be working on a job that exceeded \$5,000 in aggregate value, he could be charged with a class B misdemeanor with a \$2,000 penalty and possible jail time. HB 81 is an attempt to take out the criminal penalty and make it an administrative fine. There will be a hearing process, which would allow for an appeal to the courts if necessary.

[10:07:17 AM](#)

CHAIR SEEKINS stated HB 81 would also stop a contractor from being able to hire many people to do several individual jobs valued at \$4,999 each in order to avoid having to cover the people with insurance protection and all the other laws that pertain to having employees.

MR. MITCHELL agreed.

SENATOR FRENCH said the independent laborers are concerned with violating AS 08.18.011, which says laborers have to be registered. He asked Mr. Mitchell whether the DOLWF is mainly concerned with them being registered.

MR. MITCHELL said yes.

SENATOR FRENCH asked the cost of registering.

MR. MITCHELL explained a two-year license is \$200. The difference is the insurance and bonding. He said Mr. Larkin would like to be able to work on projects up to \$5,000 on bigger jobs. That is a specialty contractor and they are required to carry a \$5,000 bond and basic liability coverage for property damage or injuries.

[10:10:44 AM](#)

SENATOR FRENCH asked Mr. Larkin for his perspective.

MR. LARKIN asserted what Mr. Mitchell said was untrue. There is no option whatsoever for an independent laborer to register as an independent laborer/contractor because there is no such thing. He said he does not want a specialty because currently he can be hired for a myriad of things that don't fall under a

specialty. He stated HB 81 is odious because he will be forced to pick one trade and be isolated to it.

[10:12:46 AM](#)

SENATOR FRENCH said Mr. Larkin makes a valid point. He suggested another exemption under AS 08.18.161.

CHAIR SEEKINS speculated about the possibility for abuse. A contractor could have several independent laborers working on a job none of whom have any liability for their actions. He expressed concern that would be the future business model.

MR. LARKIN commented the business model Chair Seekins detailed would not be logistically possible.

[10:15:30 AM](#)

MR. BRENT LAVALLE, construction lender, testified in support of HB 81. He said he has seen licensing laws get skirted. He expressed concern that some lenders such as Fannie Mae and Freddy Mac do not require finished product inspections.

[10:17:48 AM](#)

MR. RANDY DOLL, owner, Set Builders Incorporated, testified he initially was for HB 81 but is now against the bill. He said he currently employs 8-10 people but he could turn them into handymen and save 20 percent. He could continue to build the homes and have no liability or warranty on the houses.

[10:19:40 AM](#)

MR. DAN FOLTZ, rental owner, testified he uses the handyman to do apartment renovations. He said he would not be able to find a contractor to do the job for less than \$5,000. He also has projects that are long-term and costs exceed well over \$5,000 but he does them in increments he can afford. He has used contractors in the past and has had problems that had to be resolved in court. He expressed support for the handyman but said the \$5,000 limit is too small.

[10:21:28 AM](#)

MR. BOB HERTING, owner, Eureka Builders, testified in support of HB 81. He has been building homes since 1977 and carries all the necessary insurance and bonding. He said HB 81 acts in the best interest of the consumer.

[10:22:43 AM](#)

MR. JEFF DESMIT, licensed builder, represented 160 members of the Southeast Alaska Builders Association. He asserted people

operating below the licensing laws put contractors out of business. He was troubled to hear testimony from people who admit they are operating out of the law. He stated he is not against legitimate handymen so long as they operate under the current statutes.

[10:27:43 AM](#)

MR. DESMIT claimed the current crisis with insurance is due to unlicensed builders.

[10:28:29 AM](#)

MR. ALLAN WILSON, builder and legislative co-chair Alaska Home Building Association, said the Association requested the legislation. They see many complaints of individuals building multiple homes essentially acting as contractors but calling themselves homeowner/builders.

[10:30:58 AM](#)

MR. WILSON agreed with the \$5,000 limit for licensed laborers. He said it compares with Oregon and Washington.

CHAIR SEEKINS closed public testimony. He held HB 81 in committee.

CSHB 116(JUD)-LIABILITY FOR ALCOHOL LAW VIOLATIONS

[10:33:39 AM](#)

CHAIR RALPH SEEKINS announced HB 116 to be up for consideration. He asserted the intent of the legislation was to ensure no minor could be charged as a result of participating in an enforcement action. He proposed to add a retrospective action to HB 116.

SENATOR HOLLIS FRENCH referred to a letter to Representative Kevin Meyer from the Alcohol Beverage Board identifying a defense of public duty clause.

[10:35:59 AM](#)

CHAIR SEEKINS moved Amendment 1 to SCS CSHB 116 Version \Y to include that the Act applies retrospectively to all actions and proceedings under AS 04.16.049 or 04.16.060 that are not determined by final judgment before the effective date of HB 116.

SENATOR GRETCHEN GUESS objected for discussion. She asked for an immediate effective date.

CHAIR SEEKINS agreed.

Senator Guess removed her objection.

Amendment 1 was adopted unanimously.

10:37:45 AM

SENATOR CHARLIE HUGGINS moved SCS CSHB 116(JUD) from committee with individual recommendations and attached fiscal note(s). There being no objection, the motion carried.

Chair Seekins recessed the meeting to the call of the chair at 10:39:08 AM.