

ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE

April 6, 2010

1:32 p.m.

MEMBERS PRESENT

Senator Joe Paskvan, Chair
Senator Joe Thomas, Vice Chair
Senator Kevin Meyer
Senator Con Bunde

MEMBERS ABSENT

Senator Bettye Davis

COMMITTEE CALENDAR

HOUSE BILL NO. 354

"An Act relating to eligibility for loans from the Alaska capstone avionics revolving loan fund."

- MOVED HB 354 OUT OF COMMITTEE

HOUSE BILL NO. 253

"An Act relating to the time periods affecting certain liens related to providing labor, material, service, or equipment to real property, including buildings and other improvements."

- MOVED HB 253 OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 287(JUD)

"An Act relating to the adoption of the Uniform Disclaimer of Property Interests Act, and to the disclaimer of property rights under the Uniform Probate Code."

- MOVED CSHB 287(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 354

SHORT TITLE: AK CAPSTONE AVIONICS REVOLVING LOAN FUND

SPONSOR(S): REPRESENTATIVE(S) KELLER

02/19/10	(H)	READ THE FIRST TIME - REFERRALS
02/19/10	(H)	L&C
02/23/10	(H)	TRA REFERRAL ADDED AFTER L&C

03/08/10 (H) L&C AT 3:15 PM BARNES 124
 03/08/10 (H) Moved Out of Committee
 03/08/10 (H) MINUTE(L&C)
 03/10/10 (H) L&C RPT 4DP
 03/10/10 (H) DP: BUCH, NEUMAN, CHENAULT, OLSON
 03/11/10 (H) TRA AT 1:00 PM CAPITOL 17
 03/11/10 (H) Moved Out of Committee
 03/11/10 (H) MINUTE(TRA)
 03/12/10 (H) TRA RPT 7DP
 03/12/10 (H) DP: JOHANSEN, MUNOZ, JOHNSON, T.WILSON,
 GRUENBERG, PETERSEN, P.WILSON
 03/25/10 (H) TRANSMITTED TO (S)
 03/25/10 (H) VERSION: HB 354
 03/26/10 (S) READ THE FIRST TIME - REFERRALS
 03/26/10 (S) L&C
 04/06/10 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)

BILL: HB 253

SHORT TITLE: MECHANIC/MATERIALMEN LIENS

SPONSOR(S): REPRESENTATIVE(S) RAMRAS

01/08/10 (H) PREFILE RELEASED 1/8/10
 01/19/10 (H) READ THE FIRST TIME - REFERRALS
 01/19/10 (H) L&C, JUD
 03/01/10 (H) L&C AT 3:15 PM BARNES 124
 03/01/10 (H) Moved Out of Committee
 03/01/10 (H) MINUTE(L&C)
 03/04/10 (H) L&C RPT 5DP
 03/04/10 (H) DP: LYNN, BUCH, CHENAULT, T.WILSON,
 OLSON
 03/12/10 (H) JUD AT 1:00 PM CAPITOL 120
 03/12/10 (H) Moved Out of Committee
 03/12/10 (H) MINUTE(JUD)
 03/15/10 (H) JUD RPT 6DP
 03/15/10 (H) DP: LYNN, GRUENBERG, HERRON, DAHLSTROM,
 GATTO, RAMRAS
 03/26/10 (H) TRANSMITTED TO (S)
 03/26/10 (H) VERSION: HB 253
 03/29/10 (S) READ THE FIRST TIME - REFERRALS
 03/29/10 (S) L&C, JUD
 04/06/10 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)

BILL: HB 287

SHORT TITLE: UNIFORM ACT: PROPERTY INTEREST DISCLAIMER

SPONSOR(S): REPRESENTATIVE(S) RAMRAS, GRUENBERG

01/15/10 (H) PREFILE RELEASED 1/15/10

01/19/10 (H) READ THE FIRST TIME - REFERRALS
 01/19/10 (H) L&C, JUD
 03/01/10 (H) L&C AT 3:15 PM BARNES 124
 03/01/10 (H) Moved Out of Committee
 03/01/10 (H) MINUTE(L&C)
 03/04/10 (H) L&C RPT 1DP 4NR
 03/04/10 (H) DP: LYNN
 03/04/10 (H) NR: BUCH, CHENAULT, T.WILSON, OLSON
 03/11/10 (H) JUD AT 1:00 PM CAPITOL 120
 03/11/10 (H) <Bill Hearing Canceled>
 03/17/10 (H) JUD AT 1:00 PM CAPITOL 120
 03/17/10 (H) Moved CSHB 287(JUD) Out of Committee
 03/17/10 (H) MINUTE(JUD)
 03/19/10 (H) JUD RPT CS(JUD) 7DP
 03/19/10 (H) DP: LYNN, GRUENBERG, HERRON, DAHLSTROM,
 HOLMES, GATTO, RAMRAS
 03/23/10 (H) TRANSMITTED TO (S)
 03/23/10 (H) VERSION: CSHB 287(JUD)
 03/24/10 (S) READ THE FIRST TIME - REFERRALS
 03/24/10 (S) L&C, JUD
 04/06/10 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

REPRESENTATIVE KELLER
 Alaska State Legislature
 Juneau, AK
POSITION STATEMENT: Sponsor of HB 354.

MATT JOHNSON
 Staff to Representative Keller
 Alaska State Legislature
 Juneau, AK
POSITION STATEMENT: Commented on HB 354 for the sponsor.

REPRESENTATIVE RAMRAS
 Alaska State Legislature
 Juneau, AK
POSITION STATEMENT: Sponsor of HB 253.

GRACE RUDY
 Overhead Door Co.
 Fairbanks, AK
POSITION STATEMENT: Supported HB 253.

SANDRA HEMBREE
 Alaska Best Plumbing and Heating

Fairbanks, AK

POSITION STATEMENT: Supported HB 253.

REPRESENTATIVE GRUENBERG

Alaska State Legislature

Juneau, AK

POSITION STATEMENT: Sponsor of HB 287.

TERRY THURBON

Chief Administrative Law Judge &

Uniform Law Commissioner

State of Alaska

POSITION STATEMENT: Answered questions on HB 287.

DAVE SHAFTEL, estate and trust attorney

Anchorage, AK

POSITION STATEMENT: Supported HB 287.

ACTION NARRATIVE

[1:32:18 PM](#)

CHAIR JOE PASKVAN called the Senate Labor and Commerce Standing Committee meeting to order at 1:32 p.m. Present at the call to order were Senators Thomas, Meyer, Bunde, and Paskvan.

HB 354-AK CAPSTONE AVIONICS REVOLVING LOAN FUND

CHAIR PASKVAN announced HB 354 to be up for consideration.

[1:34:19 PM](#)

REPRESENTATIVE WES KELLER, sponsor of HB 354, said he has heard no negatives about the Capstone Project. He said this FAA pilot program in Southeast and Southwest Alaska claimed a 47 percent reduction in accidents. Since then the challenge is to get all the aircraft equipped with the proper equipment. All HB 354 does is correct an oversight by making aircraft operators in the state who lease their aircraft eligible for the loan that was put in place for purchasing the equipment.

SENATOR BUNDE asked if this revolving loan fund supports itself.

REPRESENTATIVE KELLER answered yes and that HB 354 is supported by the Division of Investments in the Department of Commerce, Community and Economic Development (DCCED).

SENATOR BUNDE asked what the Capstone equipment costs.

[1:36:18 PM](#)

MATT JOHNSON, staff to Representative Keller, answered that the upper end equipment costs around \$15,000 and purchasers can borrow up to 80 percent of that which would be about \$12,000.

SENATOR BUNDE said that jibes with his memory; that amount is not something that someone would get on a lark.

CHAIR PASKVAN closed public testimony.

SENATOR THOMAS moved to report HB 354 from committee with individual recommendations and attached fiscal note(s).

SENATOR BUNDE objected to note a possible conflict because he is an aircraft owner and could conceivably take advantage of this particularly if the price comes down substantially; then he removed his objection. There were no further objections and HB 354 moved from committee.

[1:38:40 PM](#)

CHAIR PASKVAN announced an at ease from 1:38 to 1:39 p.m.

[1:39:46 PM](#)

CHAIR PASKVAN called the meeting back to order at 1:39 p.m.

HB 253-MECHANIC/MATERIALMEN LIENS

CHAIR PASKVAN announced HB 253 to be up for consideration.

[1:40:04 PM](#)

REPRESENTATIVE JAY RAMRAS, sponsor of HB 253, said this bill is from one of the chair's constituents, Rocky Paby, a Fairbanks boiler technician and that he has taken lengthy testimony from small contractors, an overhead door company, and a couple of boiler technicians on it. He said that communities often organize regular maintenance, but many times workmen are called on after hours or for emergencies. Presently they are subject to a 90-day lean period. Once the first 30 days goes by because they don't have a regular accounts payable relationship, these bills often get shuffled to the bottom of their paper pile. As such, these tradesmen are losing their position and their ability to lien jobs. So, HB 253 merely extends the time within which to file a lien from 90 days to 120 days. This will give an additional 30 days to work with property owners to secure payment or to negotiate a reasonable payment plan.

SENATOR BUNDE said he assumed you have to be 30 days in arrears before any concern comes to the vendor's attention, and then they have two more months to place a lien. Why isn't that two months adequate?

REPRESENTATIVE RAMRAS answered that reasonable people don't anticipate that the bill is due when it is mailed to them, because they see on the bottom of the billing statement that it's due in 30 days. As a result the contractors in this class of small business people find themselves in a position where they don't send a bill until time has passed and then people that they are billing don't often pay upon receipt of an invoice until the next billing cycle. In a community like Fairbanks that still uses diesel, often people get into situations like today where the price of oil has reached \$87/barrel and the price of home heating oil is over \$3/gallon. Families are seeing \$1100 in fuel bills for a monthly period; they call out to get their boiler man to do a repair late at night when they have lost their heat for their home and then that bill takes a seat behind the regular cycle of paying for their fuel. As a result, they see the business owner being punished passively simply because the person for whom they did the work in a distressed time doesn't have the money to pay. So, if the clock doesn't start running until after 30 days and then they only have a 60-day window with which to file a lien, a number of contractors have said that simply isn't an adequate period of time.

He said he has heard a criticism that perhaps when the service man shows up at the house they should present to the person that they are doing work for a right to waive lien, but then you would be accusing the person of having bad credit at the moment you're there to service them and that isn't a good business practice. This is an excellent compromise to help households and not berate customers at the time of service.

1:45:42 PM

CHAIR PASKVAN clarified that it's not the date of the bill that is important to the lien statute, but the date of the completion of the service. So if the furnace man comes in and doesn't give you the bill on the day that he does the job and gets the bill to the customer two weeks later, it has already been maybe 30-50 from the time of the completion of the work. You have one more cycle and then you are almost up against the 90 days from the completion of the work. So the billing cycle is distinct from the completion of the work trigger date.

SENATOR THOMAS asked if the small businesses he spoke to thought the 120 days was a good number. He knew that invoicing is often delayed because shops are small and people are busy.

REPRESENTATIVE RAMRAS replied that sometimes these small business people are drawn into work because they have a passion for it. Sadly some of his closest friends who have a passion for repairing your stuff show less of an interest in billing you for it promptly and even less of an interest in collecting it. They are excellent trades people but not such great business people. This would be an extra buffer, an opportunity for them to not suffer so much from their own procrastination.

[1:48:27 PM](#)

GRACE RUDY, owner, Overhead Door Co., Fairbanks, AK, testified that a lot of times when she tries to collect bills after the 30 days is passed - which is really when the bill is due - she gets anything from the people just don't have the money and want to make payments to maybe you can't get hold of them at all for 60 days and after you get a hold of them, they let you know that they have been on vacation for a month and now they don't have any more money. By the time the 90 days is up you're trying to work with them, because you don't want to alienate your customers, but 90 days often is not enough time. Another 30 days would be very valuable for the customers and the business people for many reasons.

[1:50:13 PM](#)

SANDRA HEMBREE, Alaska Best Plumbing and Heating, Fairbanks, Co., added that one situation that comes up quite a bit, especially in the winter time, is when they are dealing with insurance claims for expensive damage. In most of those situations they are dealing with tens of thousands of dollars rather than hundreds of dollars, and it takes at least 90 days before they even consider processing payments. She knows of several instances where the home owner gets the check and the business never sees the money because they decide to take off with it. Businesses don't have any recourse because they have to wait for the insurance adjusters to do their fractions, then they submit that to the mortgage company; the mortgage company wants to do their own inspections. It's a very time consuming process.

MS. HEMBREE said they don't have problems with their customers, but they do have cases where they set up a payment plan, and then the people don't pay and then they have to track them down.

By the time they realize they are just not going to pay it's past that 90 day mark.

CHAIR PASKVAN asked if the insurance company doesn't make the check out as dual payee.

MS. HEMBREE answered they are supposed to but in a lot of cases they don't. In most cases they make it out to the mortgage company and the home owner, so then they have to send the checks to the mortgage company and get an inspection. Then the mortgage company will release the money to the homeowner. They are outside that chain in most cases. The dual check is very rare.

SENATOR BUNDE said he wanted businesses to be paid for their services and promptly and asked if there is any danger that the word will go out that someone can drag their feet for another 30 days.

MS. HEMBREE answered no; she has found if you're going to pay your bill you will.

MS. RUDY agreed 100 percent.

SENATOR BUNDE asked if they can begin the lien process sooner if they felt these were scofflaws.

REPRESENTATIVE RAMRAS answered that you can file a lien right away, but probably not on repeat customers.

CHAIR PASKVAN closed public testimony.

[1:55:20 PM](#)

SENATOR THOMAS moved to report HB 253 from committee with individual recommendations and attached zero fiscal note(s). There were no objections and it was so ordered.

HB 287-UNIFORM ACT: PROPERTY INTEREST DISCLAIMER

[1:58:03 PM](#)

CHAIR PASKVAN announced HB 287 to be up for consideration.[CSHB 287(JUD) was before the committee.]

[1:57:01 PM](#)

REPRESENTATIVE MAX GRUENBERG, sponsor of HB 287, introduced Gretchen Staff, his chief of staff who is a member of the Alaska Bar. He said this updates the existing Uniform Probate law specifically, AS 13.12.801 that deals with "disclaimers." A

disclaimer is a device in probate law where if a person is given a bequest, is a devisee under a will or is a beneficiary of a trust, he can say he doesn't want to take a particular asset. It can be done for a number of reasons: because for example the person isn't able to manage it if it's a business or a house that requires active management or for tax purposes. For example, if he leaves money to his son and he is elderly or in bad health and doesn't want to be taxed on that particular bequest he can disclaim it and it goes directly to his heir, the grandson. That saves a substantial amount of federal taxes.

He explained that originally this issue was covered in a single section and since then the world of probate law has gotten more complex and tax law has changed. As a result the commissioners on uniform state laws have enacted the Uniform Disclaimer of Property Interest Act, which repeals the original section and updates it in a separate act. This just updates the existing law.

REPRESENTATIVE GRUENBERG said they made very few changes, but one they did make was to the question of whether any creditor claims would survive. An amendment says you cannot escape child support obligations by disclaiming, because some people would rather see their money go away than see their ex-spouse get it and take care of the kids and that is not good public policy.

[2:02:14 PM](#)

SENATOR MEYER noted that this started in 1999 and 16 states have adopted it since then. Why haven't more states jumped on board?

REPRESENTATIVE GRUENBERG replied that he thinks that the Commission on Uniform State Laws has a lot of bills on a variety of subjects; some of them are very timely and important like the Uniform Electronic Signatures Act that has to keep pace with commerce. Others are less publicized, and only one or two probate laws get passed a year. Probate laws aren't very sexy and many lawyers don't deal with them. One of the bills they brought last year was the UCC update, which they did. Sometimes it has to politically find someone who wants to push it. That doesn't mean it's controversial.

The only controversy he is aware of is a series of law review articles between the reporter who drafted this and one other practitioner from different parts of the country who have some basic philosophical differences.

[2:05:00 PM](#)

TERRY THURBON, Chief Administrative Law Judge and Uniform Law Commissioner, State of Alaska, said she wasn't aware of anything in the Act that should be a problem for Alaska, and since 23 or 24 other states have enacted this already, that provides the needed momentum.

REPRESENTATIVE GRUENBERG said this bill was introduced several years ago by Representative LeDoux, and there was some controversy about the child support. That was cured and Representative LeDoux is no longer here, so it took a little while to pick it up again.

He stated that the folks in Alaska brought this bill forward; it's a uniform act, but the commissioners traditionally only bring two or three bills a year to the legislature.

2:07:30 PM

DAVE SHAFTEL, estate and trust attorney, Anchorage, Alaska, he is a member of an information group of lawyers who work in this area and have been working with the legislature since 1997 to suggest what they think would be good additions to Alaska law. This bill came to his attention a couple of years ago through Representative LeDoux and they asked for time to study it. They worked on it and consulted with a law professor at Florida State University who had written a number of articles about it. He was supportive but suggested changes that were very good. Some of them that they thought fit Alaska were incorporated into the legislation. They came back with the bill last year, which was a very busy year and the bill didn't get through then. They think it's a very good bill.

2:09:21 PM

SENATOR THOMAS asked for an example of the situation on page 7, line 13, paragraph (e) that says "in the case of an interest created by a beneficiary designation made before the time the designation becomes irrevocable, disclaimer shall be delivered to the person making the beneficiary designation."

MR. SHAFTEL explained that this whole section is procedural and describes how the knowledge of this disclaimer gets transferred according to the rules stated in this statute or according to directions in the instrument that created that property right and goes on to whomever is entitled to it. Lines 13-15 talk about an interest created beneficiary designation made before the time the designation becomes irrevocable. For example, you might have a life insurance policy and you might make a beneficiary designation in that policy of your son or daughter that is not

irrevocable. That beneficiary designation can be changed at any time. But if your daughter does not want to receive that property and would rather it go to her children, she can disclaim that interest. The disclaimer's notice would be delivered back to the person making the beneficiary designation. He said these provisions attempt to answer questions of how to make a disclaimer effective.

SENATOR THOMAS asked if someone passes away, does that create the situation where the designation becomes irrevocable.

MR. SHAFTEL answered yes.

CHAIR PASKVAN asked what his thoughts were about the addition of the child support obligation.

MR. SHAFTEL said it is just fine. It's one exception that appears in other areas of trust law.

[2:14:50 PM](#)

CHAIR PASKVAN closed public testimony.

SENATOR THOMAS moved to report CSHB 287(JUD) from committee with individual recommendations and attached zero fiscal note. There were no objections and it was so ordered.

[2:15:55 PM](#)

CHAIR PASKVAN found no further business to bring before the committee and adjourned the meeting at 2:15 p.m.