

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

February 25, 2011

3:30 p.m.

**MEMBERS PRESENT**

Representative Kurt Olson, Chair  
Representative Dan Saddler  
Representative Steve Thompson  
Representative Lindsey Holmes  
Representative Bob Miller

**MEMBERS ABSENT**

Representative Craig Johnson, Vice Chair  
Representative Mike Chenault

**COMMITTEE CALENDAR**

HOUSE BILL NO. 125

"An Act moving the Alcoholic Beverage Control Board to the Department of Commerce, Community, and Economic Development and relating to duties of that department; and providing for an effective date."

- MOVED CSHB 125(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 147

"An Act setting a monthly salary for the executive secretary of the Board of Public Accountancy."

- MOVED OUT OF COMMITTEE

HOUSE BILL NO. 155

"An Act relating to public construction contracts."

- HEARD & HELD

HOUSE BILL NO. 118

"An Act relating to a tax credit for corporate income taxes paid for qualified research and development expenditures; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 125

SHORT TITLE: ALCOHOLIC BEVERAGE CONTROL BOARD

SPONSOR(s): RULES BY REQUEST OF LEG BUDGET & AUDIT

01/26/11	(H)	READ THE FIRST TIME - REFERRALS
01/26/11	(H)	L&C, FIN
02/09/11	(H)	L&C AT 3:15 PM BARNES 124
02/09/11	(H)	Heard & Held
02/09/11	(H)	MINUTE(L&C)
02/16/11	(H)	L&C AT 3:15 PM CAPITOL 106
02/16/11	(H)	Heard & Held
02/16/11	(H)	MINUTE(L&C)
02/18/11	(H)	L&C AT 3:15 PM CAPITOL 106
02/18/11	(H)	Scheduled But Not Heard
02/25/11	(H)	L&C AT 3:15 PM BARNES 124

BILL: HB 147

SHORT TITLE: BOARD OF PUBLIC ACCOUNTANCY SECRETARY

SPONSOR(s): LABOR & COMMERCE

02/09/11	(H)	READ THE FIRST TIME - REFERRALS
02/09/11	(H)	L&C, FIN
02/25/11	(H)	L&C AT 3:15 PM BARNES 124

BILL: HB 155

SHORT TITLE: PUBLIC CONSTRUCTION CONTRACTS

SPONSOR(s): LABOR & COMMERCE

02/11/11	(H)	READ THE FIRST TIME - REFERRALS
02/11/11	(H)	L&C
02/25/11	(H)	L&C AT 3:15 PM BARNES 124

**WITNESS REGISTER**

SUE STANCLIFF, Special Assistant  
Office of the Commissioner  
Department of Public Safety (DPS)  
Juneau, Alaska

**POSITION STATEMENT:** Testified during the discussion of HB 125.

JOELLEN HANRAHAN, Director  
Division of Administrative Services  
Department of Commerce, Community & Economic Development (DCCED)  
Juneau, Alaska

**POSITION STATEMENT:** Testified during the discussion of HB 125.

JENNIFER SENETTE, Staff  
Representative Kurt Olson  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented HB 147 and HB 155 on behalf of the prime sponsor, the House Labor & Commerce Committee, Representative Kurt Olson, Chair.

DON RULIEN, Member  
Alaska Society of Certified Public Accountants (ASCPA);  
Council Member, American Institute of Certified Public  
Accountants (AICPA)  
Anchorage Alaska

**POSITION STATEMENT:** Testified during the discussion of HB 147.

GREY MITCHELL, Director  
Division of Labor Standards & Safety  
Department of Labor & Workforce Development (DLWD)  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions during the discussion of HB 155.

GARY KNOPP, President  
Assembly  
Kenai Peninsula Borough Assembly (KPB)  
Kenai, Alaska

**POSITION STATEMENT:** Testified during the discussion of HB 155.

MARK FOWLER, Purchasing and Contracting Officer  
Kenai Peninsula Borough (KPB)  
Kenai, Alaska

**POSITION STATEMENT:** Testified in support of HB 155.

SCOTT BLOOM, Assistant Attorney  
Kenai Peninsula Borough (KPB)  
Kenai, Alaska

**POSITION STATEMENT:** Testified in support of HB 155.

ROBERT RUTHNER, Executive Director  
Kenai Watershed Forum (KWF)  
Kenai, Alaska

**POSITION STATEMENT:** Testified during the discussion of HB 155.

RON KOVALIK  
Fairbanks, Alaska

**POSITION STATEMENT:** Testified during the discussion of HB 155.

TIM BECK

Fairbanks, Alaska

**POSITION STATEMENT:** Testified during the discussion of HB 155.

MITCHELL ROCKIER

Fairbanks, Alaska

**POSITION STATEMENT:** Testified during the discussion of HB 155.

**ACTION NARRATIVE**

[3:30:03 PM](#)

**CHAIR KURT OLSON** called the House Labor and Commerce Standing Committee meeting to order at 3:30 p.m. Representatives Olson, Miller, Saddler, Thompson, and Holmes were present at the call to order. Representative Mike Hawker was also in attendance.

[3:30:17 PM](#)

**HB 125-ALCOHOLIC BEVERAGE CONTROL BOARD**

[3:30:25 PM](#)

CHAIR OLSON announced that the first order of business would be HOUSE BILL NO. 125, "An Act moving the Alcoholic Beverage Control Board to the Department of Commerce, Community, and Economic Development and relating to duties of that department; and providing for an effective date."

[3:30:48 PM](#)

SUE STANCLIFF, Special Assistant, Office of the Commissioner, Department of Public Safety (DPS), stated that the committee requested an explanation on the fiscal note. The Alcoholic Beverage Control Board (ABC Board) would be transferred from the Department of Public Safety (DPS) to the Department of Commerce, Community & Economic Development (DCCED), and the funding which is agency receipts is transferred to the DCCED. She advised that there is not any carryover or administrative costs necessary to transfer. The DPS essentially removes the ABC Board from its budget. She asked to read a written statement into the record, which she read, as follows:

As you all probably know, the Division of Legislative Finance is automating the fiscal note process this year to provide improved error checking on the initial fiscal note submission. Legislative Finance is

working with the Governor's Legislative Office of Management and Budget (OMB) on this process. Ultimately this new system and the coordination between government branches and agencies will result in an improved process.

The initial fiscal noted by the Department of Public Safety dated 2/8/11 showed an appropriation required in FY 12 as \$429.8, that is \$429,000, and showed and showed an increase of \$74.7 thousand in FY 13 through FY 17. Although those were the amounts shown on the expenditures and revenues section of the fiscal note, the analysis explained that those were costs that the ABC Board expected to incur if they are to relocate to the Department of Commerce, Community & Economic Development. As noted in the analysis, the bulk of that increase was based on an estimate provided by DCCED. There was no increase of any kind that would have gone to the Department of Public Safety (DPS) in any circumstances. We prepared the fiscal note based on advice from OMB about the proper form of the fiscal note. In particular, it was OMB's understanding that for the new fiscal note process, both DPS and DCCED fiscal notes needed to reflect the increased cost even though only DCCED would have actually had a request for additional funding. After the fiscal note was submitted the director for Administrative Services contacted Legislative Finance fiscal analysts and questioned why DPS would have a positive note when we simply should have simply had a negative fiscal note reflecting the ABC Board leaving DPS. In ensuing conversations between all parties it was determined that there had been a misunderstanding of how DPS fiscal notes should have been shown. DPS then submitted a corrected fiscal note dated 2/15/11, which accurately reflects the impact to DPS if HB 125 passes in its current form, namely that all costs and staff associated with the ABC Board will be transferred from DPS to DCCED. The fiscal note now reflects there is a negative fiscal impact to DPS because those costs will no longer be reflected in the department's budget. We apologize for any confusion that may have resulted from this process.

MS. STANCLIFF related her understanding that staff at OMB has discussed this situation with Representative Hawker. She deferred to the DCCED to discuss the respective fiscal note.

She said she hopes this alleviates concerns over the DPS fiscal note and explains that accurately.

3:35:00 PM

JOELLEN HANRAHAN, Director, Division of Administrative Services, Department of Commerce, Community & Economic Development (DCCED) agreed with Ms. Stancliff's sentiments. She explained the fiscal note process has been confusing and the department is working under shorter timelines to try to get fiscal notes processed. She referred to the DCCED's fiscal note. She clarified that DPS's fiscal note shows a negative impact and DCCED's fiscal note shows a positive amount to move the ABC Board to commerce. The DCCED's fiscal note also shows an increased cost of \$247,500 which reflects a one-time technology information cost to move the database to the DCCED. It also lists an ongoing cost to cover the administrative support within the DCCED.

MS. HANRAHAN elaborated that the fee increase for the information technology (IT), which is the bulk of the cost increase, was determined by the DPS and DCCED's technical teams. The IT teams reviewed whether the ABC Board's data system was compatible with the DCCED's system. The IT determined some issues since the DPS system operates differently than the DCCED's system. The DPS system includes its own firewall that isolates it from the state's system. Additionally, the DPS uses an active directory system which is also not integrated into the state's system. She related that the DB systems are technical. She likened it to removing the 7th floor of a 15 story building, but everything within the walls and the foundation supports the IT function. Thus, all the equipment must be reconfigured since the DCCED and DPS's support foundations are different. However, if the 7th floor was relocated to the 9th floor in the same building, the system would be easier to reconfigure.

MS. HANRAHAN stated that if the ABC Board was on the same state system it would cost less to integrate the ABC Board to the DCCED. The additional cost is to replace some of the equipment that the applications use since the equipment will not be moved. The DCCED has overhead costs for the commissioner's office and the administrative services are primarily inter-agency funded. The department uses an approved allocation plan that is based on weighted positions and efforts. This plan allocates the commissioner's office and the administrative services' costs to the agencies, whereas the DPS is primarily general funded so most of their costs are not allocated. One small ongoing cost

is the allocated cost for fiscal, budget, IT, human resources, and statewide support from the agency, including accounting, travel processing.

[3:41:57 PM](#)

REPRESENTATIVE SADDLER inquired as to whether some automation would occur as a result of the auto-pay functions. He asked why the costs never seem to decrease despite the efficiencies gained.

MS. HANRAHAN answered that the cost allocation plan would be adjusted over time based on changes in the organization and in the levels of effort needed. The current projected costs reflect the FY 12 costs, but level of effort will become more stable once the board is more established in the DCCED.

CHAIR OLSON conferred with the sponsor and related there are no additional fiscal notes to consider.

[3:43:33 PM](#)

REPRESENTATIVE SADDLER made a motion to adopt Amendment 1, labeled 27-LS0378\M.2, Gardner, 2/7/11, which read as follows:

Page 1, line 3, following " ; ":

Insert "**relating to the exercise of peace officer powers granted by the Alcoholic Beverage Control Board;**"

Page 2, following line 6:

Insert a new bill section to read:

"\* **Sec. 3.** AS 04.06.110 is amended to read:

**Sec. 04.06.110. Peace officer powers.** The director and the persons employed for the administration and enforcement of this title may, with the concurrence of the commissioner of public safety, exercise the powers of peace officers when those powers are specifically granted by the board. Powers granted by the board under this section may be exercised only when necessary for the enforcement of the criminally punishable provisions of this title, regulations of the board, and other criminally punishable laws and regulations, including investigation of violations of laws against prostitution and promoting prostitution described in AS 11.66.100 - 11.66.130 and laws against gambling,

promoting gambling, and related offenses described in AS 11.66.200 - 11.66.280. Unless authorized by a search warrant described in AS 12.35.010 - 12.35.120, nothing in this section authorizes the use of magnetic card keys or identification cards to access private clubs."

Renumber the following bill sections accordingly.

CHAIR OLSON objected for the purpose of discussion.

[3:44:02 PM](#)

REPRESENTATIVE SADDLER referred to page 1, line 3, of Amendment 1, which is additional language necessary for the title change. He referred to page 2, line 6, which removes the requirement for key cards. He said he heard from managers of clubs and patriotic organizations that they needed to obtain identification or key cards. He related that the clubs should not have to provide the cards and this language would remove that requirement.

REPRESENTATIVE SADDLER made a motion to conceptually amend Amendment 1, on line 18 after "of" insert "metal keys," and on line 19, after "card keys" insert ",". This would remove the requirement for private clubs to have magnetic card keys or metal keys unless authorized by a search warrant described in AS 12.35.010 - 12.35.120, he stated.

There being no objection, the conceptual amendment to Amendment 1 was adopted.

CHAIR OLSON removed his objection to Amendment 1. There being no further objection, Amendment 1, as amended, was adopted.

[3:46:11 PM](#)

REPRESENTATIVE HOLMES moved to report HB 125, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, the CSHB 125(L&C) was reported from the House Labor and Commerce Standing Committee.

[3:46:53 PM](#)

The committee took an at-ease from 3:46 p.m. to 3:50 p.m.

[3:46:55 PM](#)

**HB 147-BOARD OF PUBLIC ACCOUNTANCY SECRETARY**

3:50:45 PM

CHAIR OLSON announced that the next order of business would be HOUSE BILL NO. 147, "An Act setting a monthly salary for the executive secretary of the Board of Public Accountancy."

3:50:50 PM

JENNIFER SENETTE, Staff, Representative Kurt Olson, Alaska State Legislature, on behalf of the House Labor & Commerce Committee, Representative Kurt Olson, Chair, stated that HB 147 would set the monthly salary of executive secretary for the Board of Public Accountancy (BPA) at a range 23. She mentioned the executive secretary position was created during the last legislature, which was widely recognized and supported since the all volunteer board was understaffed and struggling to fulfill its mission. The BPA involves the protection of the public interest since it has jurisdiction over all public accountants statewide. After the position was created, the Department of Administration established the salary at a range 19. The sponsor believes that the BPA will not be able to attract a qualified candidate to the position at that range.

3:52:47 PM

MS. SENETTE advised members that the bill that created the position called for it to be at a range 23. The fiscal note called for the position to be a range 23. The CPAs statewide, the BPA, and the Alaska Society of Certified Public Accountants all supported this position at a range 23. The CPAs in the state pay the executive secretary's salary from its license fees. Their support is vital and the signals from within the industry provide recognition that a range 23 is appropriate for this position. The body of professional knowledge is vast, professional standards can be complex and requires professional expertise, knowledge and experience. The executive secretary represents Alaska's CPAs at the National Association of the Boards of Public Accountancy (NABPA). This organization significantly addresses policy changes, including enforcement standards, and proposed revisions to statutes and regulations. This is an active board and it is important that Alaska has adequate representation to express Alaska's position on issues. The BPA needs to attract someone with appropriate credentials to engage with the national board. She stated that a range 19

earns approximately \$58,000 whereas a graduate without experience can earn \$60,000 without a license. The executive secretaries nationwide are paid significantly higher than a range 19. She stated that the fact that the Department of Administration (DOA) did not consider the market factor will greatly hamper the BPA's efforts to attract and retain an executive secretary. She reiterated the support for the bill. She stated that the DOA signals its willingness to work with the legislature in terms of its decision on the appropriate range for this position.

[3:56:42 PM](#)

REPRESENTATIVE HOLMES asked for the base salary for a range 23.

MS. SENETTE said she did not have the base salary information for a range 23 employee.

CHAIR OLSON pointed out that this bill was introduced at the request of Department of Administration (DOA).

[3:57:47 PM](#)

DON RULIEN, Member, Alaska Society of Certified Public Accountants (ASCPA); Council Member, American Institute of Certified Public Accountants (AICPA), stated that HB 147 is important to the profession. The professional knowledge needed is technical and comprehensive, covering audits, state and federal income tax arena, and ethical standards. The enforcement can be complex and it is imperative that the Alaska BPA not be further hampered by an inexperienced executive secretary. The ASCPA believes HB 147 is an important bill. In response to Chair Olson, Mr. Rulien agreed the CPA license fees pay for the cost of the CPA's executive secretary.

[3:59:11 PM](#)

REPRESENTATIVE SADDLER asked whether the ASCPA has anyone in mind as a candidate at a range 23. He suggested that it would be a good job for an Alaskan.

MR. RULIEN said he was uncertain. In further response to Representative Saddler, Mr. Rulien responded that the ASCPA would like someone in Alaska with CPA experience. He reiterated that as previously mentioned a person graduating from college with a degree in accounting can earn \$60,000 prior to licensure.

He characterized the field of accounting as a tight market right now.

[3:59:57 PM](#)

REPRESENTATIVE THOMPSON asked whether the BPA had any problems keeping the executive secretary position manned.

MR. RULIEN answered that the BPA has experienced significant staff turnover. At one point the administrator position was shared with other boards. He offered his belief that the training period would require an extensive training period in order for the executive secretary to learn the CPA rules in Alaska.

REPRESENTATIVE HOLMES answered her earlier question. She advised members that a range 19 step A is set at \$59,000 and a range 23, step A would earn \$77,100 per year. She suggested someone could check her math as she based it on the monthly salary schedule. She related the specific salary would be \$6,425 per month for a range 23, step A.

[4:01:27 PM](#)

CHAIR OLSON, after first determining no one else wished to testify, closed public testimony on HB 147.

REPRESENTATIVE HOLMES moved to report HB 147 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 147 was reported from the House Labor and Commerce Standing Committee.

[4:02:29 PM](#)

The committee took an at-ease from 4:02 p.m. to 4:07 p.m.

[4:07:18 PM](#)

### **HB 155-PUBLIC CONSTRUCTION CONTRACTS**

[4:07:24 PM](#)

CHAIR OLSON announced that the final order of business would be HOUSE BILL NO. 155, "An Act relating to public construction contracts."

[4:07:40 PM](#)

JENNIFER SENETTE, Staff, Representative Kurt Olson, on behalf of the prime sponsor, the House Labor & Commerce Committee, chaired by Representative Kurt Olson explained that this bill accomplishes two things. It raises the trigger point for when public construction projects must adhere to the Little Davis-Bacon Act (LDBA) for prevailing wages. Currently, the threshold for Alaska's Little Davis-Bacon Act is set at \$2,000. This bill would raise the threshold to 75,000 before the LDBA would be triggered. This bill would establish a boundary between maintenance, which would not subject to the LDBA and public construction, which is subject to the Little Davis-Bacon wages.

[4:08:30 PM](#)

MS. SENETTE referred to Section 1 of HB 155, which specifies that the chapter only applies to public construction projects over \$75,000. She explained that during the great depression, the Congress enacted a federal statute, the Davis-Bacon Act, which required prevailing wages as the minimum wage to be paid on public works projects. Subsequently, states enacted similar laws, which are known as the Little Davis-Bacon Acts (LDBA). She referred to the LDBA in Alaska, which is located in Title 36. That law currently applies to public construction contracts over \$2,000. This limit is modeled after the limit included in the federal Davis-Bacon Act. She emphasized that the federal Davis-Bacon Act was enacted during the Great Depression in 1935. The reason for the threshold was to acknowledge that some projects are simply too small to justify the administrative burden associated with the Davis-Bacon compliance. Currently, if a project falls under the threshold the municipality or community does not have to go through the "administrative hoops" necessary to comply with the LDBA, including certified payroll, additional reporting requirements, and filing with the Alaska Department of Labor and Workforce Development (DLWD). She characterized the requirements as a substantial administrative burden. She highlighted that in Alaska and particularly in rural Alaska it is hard to find a public construction project that does not exceed \$2,000. The federal limit was based on a mobile workforce during a time when communities were easily accessible. In Alaska, many communities are accessible only by ferry or barge so by the time the materials are transported and the logistical factors are considered, the cost will probably greatly exceed \$2,000, she surmised.

[4:11:04 PM](#)

MS. SENETTE stated that in practice imposing such a low threshold has the effect of not having a threshold. She highlighted that the low threshold also has the effect of discouraging economic development since the rigidity of the LDBA compliance requirements discourages smaller firms from submitting bids on projects. In rural areas it can also mean that workers must be imported to perform work that otherwise could have been done by local workers had local firms bid on the jobs. Raising the threshold would create opportunities for smaller contractors, who may not have had the experience or desire to content with the LDBA requirements. These smaller contractors would be eligible for more projects not subject to the LDBA. A number of other states have raised their thresholds, with the average threshold amount of \$108,000. She reported that 19 other states current have higher thresholds than suggested by HB 155. She related that the DLWD list is in members' packets. She reiterated the current federal threshold was set in 1935 by the Davis-Bacon Act and Alaska's LDBA is modeled after that federal law. She stated that the inflation alone justifies an increased trigger point, but the specific impacts on Alaska she just mentioned support increasing the threshold amount proposed in HB 155.

[4:12:58 PM](#)

MS. SENETTE referred to Section 8 of HB 155, which would clarify maintenance and construction requirements. This bill attempts to exclude maintenance contracts from the definition of public construction. Thus, maintenance contracts would not be subject to the LDBA under the bill. The current statute broadly defines construction, yet it is unclear which projects are considered construction projects and which ones are considered maintenance projects. There is a huge difference between maintenance and construction. Filling 15 potholes or replacing guardrails along the roadway should be considered maintenance work and should not be subject to the LDBA prevailing wages. The fiscal note reflects a \$396,000 decrement, which is due to the decrease in filing fees. She pointed out letters of support from organizations and municipalities in members' packets. This bill has generated considerable public comment, she said.

[4:14:46 PM](#)

REPRESENTATIVE MILLER asked for the rationale to increase the threshold from \$2,000 to \$75,000 before the job is subject to the LDBA.

MS. SENETTE answered that the original conversation with municipalities suggested an increase the threshold for the LDBA to \$250,000, but that figure seemed too significant of an increase. The prime bill sponsor wanted to start lower, she offered.

REPRESENTATIVE MILLER asked if \$75,000 was selected for any particular reason.

CHAIR OLSON said, "That number was pulled out of the air." He related the \$75,000 is not as high as the average increase adopted by other states that have increased the threshold for the LDBA. He offered his belief that HB 155 must be a collaborative effort between the unions, the public entities, and the legislature. He suggested the amount will likely be lower. He anticipated some amendments will be necessary to clean up language and address the threshold limit. He further suggested the amount might be as low as \$50,000 or slightly less. He reiterated the threshold amount must be palatable to a number of people.

[4:16:38 PM](#)

REPRESENTATIVE SADDLER referred to page 3, line 29, of HB 155 and asked for the different between rehabilitation work covered under the bill and maintenance, which would not be covered.

MS. SENETTE deferred to the Department of Labor & Workforce Development (DLWD) to address the definitions.

REPRESENTATIVE HOLMES also asked for clarification on how repair work would differ from maintenance work.

[4:17:29 PM](#)

GREY MITCHELL, Director, Division of Labor Standards & Safety, Department of Labor & Workforce Development (DLWD), stated that the department relies on a 1982 attorney general's opinion that draws a distinction between repair work subject to the LDBA, and maintenance work, which is not subject to the LDBA. It hinges on whether new material is needed for the project. If a roadway is resurfaced, graded, and potholes are cleaned out and repaired, it is considered maintenance and the project is not subject to the LDBA. However, if new materials such as truckloads of dirt are necessary or new guardrail must be used, the project would be considered repair work rather than maintenance work.

[4:18:56 PM](#)

REPRESENTATIVE HOLMES said she would like to review the 1982 attorney general's opinion. She referred to page 4 of HB 155 and stated the definition of maintenance does not bear any resemblance to what he just described. She was unsure of what rehabilitation or repair work would be subject to the LDBA and maintenance work. The definition of maintenance in HB 155 does not speak to new or used materials.

MR. MITCHELL agreed. He said the language in HB 155 does not match the DLWD's interpretation of maintenance and repair work.

CHAIR OLSON agreed that this is one issue he is working to resolve.

REPRESENTATIVE HOLMES asked the committee to also consider definitions for rehabilitation and repair since the terms seem to be overlapping concepts.

[4:20:37 PM](#)

REPRESENTATIVE HOLMES asked whether school districts and regional education attendance areas (REAA's) would be exempt from the bill.

CHAIR OLSON offered his belief that the REAA's will need further clarification.

REPRESENTATIVE MILLER related he had the same question.

[4:21:24 PM](#)

REPRESENTATIVE HOLMES asked for the DLWD's position on HB 155.

MR. MITCHELL answered that the DLWD is neutral on the bill.

[4:22:18 PM](#)

GARY KNOPP, President, Assembly, referred to line 3 of the second paragraph in the sponsor statement, which refers to the bill updating an antiquated statute/ This is what HB 155 does, he said. He related that the current statute erodes the purchasing dollars for local communities and taxpayers. He highlighted that the dollar threshold for the LDBA exists due to the wide recognition that some projects are simply too small to

justify the overhead associated with compliance with the law. He stated that these requirements drive a lot of contractors away from participation on LDBA projects. He acknowledged that the sponsor statement is accurate. He reiterated that the bill would only affect local and state projects, since the federal projects would be subject to LDBA. A lot of the KPB's revenue is derived from service areas with small revenue streams. It is detrimental to the KPB since it must pay prevailing wage rates for small maintenance projects such as filling potholes or redistributing gravel. He offered his belief that the definition of maintenance and repair is almost one and the same. Since the term is so broadly defined in statute, it has been the KPB's experience that the DLWD interprets any public project over \$2,000 as a construction project. The difference between maintenance and repair should not be based on whether new material is used but rather on the overall value of the project. He wondered if a project less than \$75,000 should warrant using the LDBA with the additional requirements necessary to comply with the law. He hoped the committee would consider these issues. In response to Chair Olson, he offered to address any amendments at the next hearing.

[4:26:36 PM](#)

MR. KNOPP referred to the fiscal note and analysis. He said that the filing fee is not necessary for all projects up to \$25,000. He pointed out that the filing fee of one percent does not "kick in" until the \$25,000 threshold is reached. Thus, the fiscal impact should be based on projects from \$25,000 to the proposed \$75,000 threshold, he said. He referred to the fiscal note analysis that lists 1,413 public construction projects with contract values of less than \$75,000, which he thought represents about 70 percent of all projects. He surmised it would also considerably reduce the DLWD workload, which would translate to substantial savings to the state. He referred to page 12 of the FY 05 Legislative Audit report, 05-4605, which suggests a deluge of certified payrolls up to \$4,000 per week negates any systematic screening by the DLWD. This bill would drastically reduce the department's workload since the public construction projects total 2,200 and the DLWD is currently bombarded with certified payrolls. He referred to the FY 2000 Legislative Audit Report, which recommended a shift to a \$25,000 threshold. The audit also suggested defining the terms maintenance and construction, he reported.

[4:29:01 PM](#)

MR. KNOPP stated that he is also a contractor and performs some "dirt work." He said that he could pay an equipment operator \$25 per hour, but that it would cost an additional 32 to 35 percent for the Workers' Compensation and unemployment insurance for the employee. However, the cost for an employee on a prevailing wage job to perform the same work would cost \$86 to \$87 dollars per hour. The wages alone would increase from \$25 to \$47 per hour, he remarked. Additionally, since insurance premiums are based on the payroll costs, his Workers' Compensation and general liability would also increase. He predicted it costs nearly 100 percent more for LDBA employee costs.

[4:30:04 PM](#)

MR. KNOPP referred to the fiscal note. He related that the committee should consider that the \$152,000 in filing fees actually "belongs" to contractors and local contractors, which is significant to the taxpayers.

[4:30:40 PM](#)

MARK FOWLER, Purchasing and Contracting Officer, Kenai Peninsula Borough (KPB), stated that the KPB mayor provided a letter of support for HB 155, which he hoped the committee has received. The KPB believes this bill will benefit the KPB by providing additional buying power and encouraging smaller contractors to bid on small contracts. The KPB is approximately 25,000 square miles, with many communities and villages spread throughout. The KPB encounters a small pool of contractors in the remote communities who are capable of meeting the KPB's needs. However, the KPB has found many small contractors are less willing to participate on contracts subject to the LDBA. The LDBA requirements drive up the cost of doing business and fail to generate local work for contractors.

[4:32:25 PM](#)

MR. FOWLER related a scenario in which the KPB identified a need for fencing. A local contractor bid \$7,500 for the job, which exceeded the \$2,000 threshold and was subject to the LDBA. Once the contractor found out the job was subject to the LDBA, he was no longer interested due to the administrative burden posed by the law. The KPB paid in excess of \$18,000 for a non-local contractor to perform the same scope of work. Often communities are logistically challenged, he said. Numerous smaller less complex projects have been negatively impacted due to the low

threshold. He reiterated that smaller less complex projects that are subject to the LDBA are burdensome to the contractor and the DLWD. The KPB believes that HB 155 would benefit the KPB's residents and contractors. He referred to the fiscal note and stated that the DLWD does not receive a filing fee for projects less than \$25,000, but the department must process all projects over \$2,500. The DLWD does not receive any filing fee for jobs between \$2,500 and \$75,000. These projects require considerable administrative effort without any compensation to the DLWD. He predicted if the threshold is increased as proposed by HB 155, that the DLWD will receive a filing fee on all projects it processes.

[4:35:01 PM](#)

REPRESENTATIVE HOLMES related her understanding that HB 155 would accomplish three things: it would increase the current \$2,000 threshold for the LDBA projects, would change the definitions to exclude maintenance work, and would exempt school districts and REAAs. She asked whether the KPB's main interest is with the monetary aspects of the bill.

MR. FOWLER answered the KPB supports HB 155 in its entirety. He suggested that his scenarios related to his work experience at the KPB.

[4:36:27 PM](#)

SCOTT BLOOM, Assistant Attorney, Kenai Peninsula Borough (KPB), stated that he provides legal guidance for capital projects, road service, and maintenance departments, as well as other legal guidance for the KPB. The LDBA is unduly burdensome on the municipal public construction and maintenance activities. Currently, the statutes lack sufficient clarity for the KPB to accurately determine which projects are subject to the LDBA and which are not. He asked to focus on Section 8 of HB 155 to the definitions for public construction and maintenance. The proposed language is a departure from the current framework. It is based on a 1982 attorney general's opinion and little if any case law provides guidance to better define maintenance from construction. The KPB's road service area contracts out maintenance service for its roads. These activities include plowing and grading roads, maintaining ditches, brushing, replacing culverts, applying calcium chloride, and fixing potholes and sink holes. Additionally, contractors will also replace lost gravel and travel surfaces. The road service area has a Capital Improvement Program (CIP) to upgrade roads. The

KPB clearly understand these CIP projects are subject to the LDBA. However, it is more difficult to determine whether other activities must adhere to the LDBA, including activities such as brushing or when brushing exceeds the "prior line," pulling gravel from the ditches when the ditch is made wider or deeper. He listed some work that may or may not apply to the LDBA, including adding new materials to the ditches, applying calcium chloride, or filling a sink hole or pothole. He asked whether these activities are considered as rehabilitation or repair projects. He asked whether applying \$1,500 of gravel on a roadway and a week later apply \$600 to an adjacent road would constitute one project over \$2,000 or two separate projects. He stated that the KPB's maintenance projects are generally relatively small in value and do not exceed \$20,000. He offered his belief that approving a higher ceiling on the LDBA projects and adding the proposed language in Section 8 of HB 155 which better distinguishes maintenance from construction will alleviate most of the KPB's struggle in determining whether a projects fall under the LDBA. It is critically important for the KPB to know whether a project falls under the LDBA for compliance reasons, he said. The LDBA projects take longer to process and complete, limit the pool of available contractors, and cost more. This limits the number of projects the KPB can complete and means fewer services will be provided to taxpayers. He referred to the fiscal note. He recommended that proposed Section 8, subsection (4) be changed to reflect the language in AS 36.95.010 (6), with the addition of the exclusionary language for the school districts.

REPRESENTATIVE HOLMES referred to proposed Section 8 to the definition for public construction. She was unsure that this language provides clarity since rehabilitation and repair is included, but maintenance is excluded. She asked whether this language needs some additional work.

MR. BLOOM agreed the definition is problematic. He said he was unsure a solution exists. The definition proposed in Section 8 does not define rehabilitation and repair, but tells what it is not. It is not maintenance, he said. He suggested that the current framework hinging on whether material is transported is problematic. He stressed that the DLWD is following an attorney general's opinion, but the opinion does not have legal consequences or any bearing in communities. He offered his belief that it may be necessary to for a court to decide the implications, which he did not think was the best route to proceed.

4:42:52 PM

ROBERT RUTHNER, Executive Director, Kenai Watershed Forum (KWF), stated that he works for a small or medium sized nonprofit organization that performs habitat work in streams throughout the Kenai Peninsula. This represents a fairly large area to cover. He has learned the LDBA by trial and error since he performs road work. He related a lot of his work is clearly public construction and falls within the LDBA. However, some of the work falls outside the LDBA. He related the KWF would like clarity on the definitions just discussed. He outlined that specifically nonprofit organizations generally work for the public good and often have relationships with the local government and sponsors. One limitation that occurs is when someone wants to make a donation or volunteer his/her time to help on a public construction project. The LDBA limits the KWF's ability to complete projects that are in the best interest of the local government since it does not accommodate people who want to volunteer their time or donate funds to help complete a project. Thus, mixing local government funding with private sector monies, can be difficult. He offered the KWF's support for the increase to the threshold for the LDBA. Additionally, he suggested the committee determine whether an opportunity exists to exempt "do-gooder" projects. He thought using volunteers would be beneficial to local government. It could result in a better outcome for projects that have been deemed public construction, such as trails, parks, fences, buildings shared between local government and nonprofit organizations. He reiterated examining the nonprofit and public aspect would assist nonprofits. Additionally, the KWF supports raising the threshold amount for the LDBA.

CHAIR OLSON commented that everyone wants the language as clear as possible in order to avoid litigation.

4:46:42 PM

RON KOVALIK stated that he has served as a volunteer road commissioner for over 30 years. Two years ago this issue was "dropped on us like a bomb" and has nearly paralyzed us, he said. He spoke in support of raising the threshold to \$75,000. He would also like to see the threshold indexed to inflation. He cautioned against defining maintenance, rehabilitation, and repair, as "we're going to go around in circles" and the result will not fix any roads. He said, "What the road needs, we do. If it takes gravel, we use gravel. If we need machinery, we use machinery." The LDBA has made it difficult to use volunteers to

brush or remove snow. He said those types of restrictions practically paralyze the road service areas and prevents any work from being done.

CHAIR OLSON asked how many road service areas are located in the Fairbanks area.

MR. KOVALIK answered that Fairbanks has over 100 road service areas.

CHAIR OLSON suggested the bill would affect small projects.

MR. KOVALIK agreed that it drives off volunteers.

[4:48:24 PM](#)

TIM BECK stated that he is a past road service area commissioner and has previously serves on the Fairbanks North Star Borough Assembly and Road Service Area Committee. He pointed out that today is speaking as a member of the Alaska Municipal League (AML) board. The FNSB does not have road powers. Road service is provided by road service areas, represented by a commission of local residents from within the road service area. The \$2,000 threshold for the LDBA is easily surpassed in the larger service areas. Often, regular maintenance must be addressed as a capital projects due to the \$2,000 limit. The LDBA increases project costs and the completion time. This threshold increase to the LDBA is long overdue and would save local residents thousands of dollars by awarding the administration and design costs associated with capital projects. He listed two things that are advantageous in HB 155: the increase to the \$2,000 threshold to a more practical number and to clearly define capital improvements and maintenance. He related his understanding that maintenance means bringing a road back to its existing condition, prior to an event such as erosion, snowfall or flooding even if it requires additional material to do so. He informed members that Fairbanks currently has 107 road service areas.

[4:50:06 PM](#)

MITCHELL ROCKIER stated that passing HB 155 would place a bigger risk on owners to complete jobs and on employee salaries. He predicted administrator would creatively split up a \$150,000 project ends up being split up into two smaller projects to avoid the LDBA. This could lead to more contract management. He offered his belief that the bill would open it up to workers

receiving different wage scales. Currently, the LDBA wages keeps everyone on equal parity. He related a scenario in which three contractors bid on a job at \$30, \$25, and \$15 per hour. He surmised the bigger contractor will lose out. He stressed that the Davis-Bacon Act wages were established to provide a decent salary and benefits for the middle class. He reiterated his concern that changing the wage scale would open it up to "low bidders."

[4:52:44 PM](#)

CHAIR OLSON stated he was leaving public testimony open on HB 155.

[HB 155 was held over.]

[4:53:25 PM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:53 p.m.