

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

February 11, 2015

3:16 p.m.

MEMBERS PRESENT

Representative Kurt Olson, Chair
Representative Shelley Hughes, Vice Chair
Representative Jim Colver
Representative Gabrielle LeDoux
Representative Cathy Tilton
Representative Andy Josephson
Representative Sam Kito

MEMBERS ABSENT

Representative Mike Chenault (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 81

"An Act relating to an exemption from the regulation of construction contractors."

- HEARD & HELD

HOUSE BILL NO. 9

"An Act providing for the licensing and regulation of private investigators and private investigator agencies; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 81

SHORT TITLE: EXEMPTION: LICENSING OF CONTRACTORS

SPONSOR(S): REPRESENTATIVE(S) TILTON

01/28/15	(H)	READ THE FIRST TIME - REFERRALS
01/28/15	(H)	L&C
02/11/15	(H)	L&C AT 3:15 PM BARNES 124

BILL: HB 9

SHORT TITLE: PRIVATE INVESTIGATORS/AGENCIES

SPONSOR(S): REPRESENTATIVE(S) HUGHES

01/21/15 (H) PREFILE RELEASED 1/9/15
01/21/15 (H) READ THE FIRST TIME - REFERRALS
01/21/15 (H) L&C, FIN
02/11/15 (H) L&C AT 3:15 PM BARNES 124

WITNESS REGISTER

DAN BELLERIVE, Staff
Representative Cathy Tilton
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified on HB 81 on behalf of the prime sponsor, Representative Cathy Tilton.

SARA CHAMBERS, Acting Director
Division of Corporations, Business, and Professional Licensing
Department of Commerce, Community, & Economic Development (DCCED)
Juneau, Alaska

POSITION STATEMENT: Provided comments and responded to questions on HB 81.

ALAN WILSON, Chair
Legislative Committee
Alaska State Home Building Association (ASHBA)
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 81.

ANDRE SPINELLI, Design & Development Manager
Spinell Homes, Inc.
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 81.

ROBERT YUNDT, Vice President
Mat-Su Valley Home Builders Association (MSVHBA)
Palmer, Alaska

POSITION STATEMENT: Testified in support of HB 81.

KIRK PERISICH, Member
Carpenters Local 1281
Juneau, Alaska

POSITION STATEMENT: Testified during the discussion of HB 81.

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

Juneau, Alaska

POSITION STATEMENT: Testified and answered questions on HB 81.

GINGER BLAISDELL, Staff
Representative Shelley Hughes
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: On behalf of the prime sponsor, presented a section-by-section analysis of HB 9.

SARA CHAMBERS, Acting Director
Division of Corporations, Business, and Professional Licensing
Department of Commerce, Community, & Economic Development
(DCCED)
Juneau, Alaska

POSITION STATEMENT: Provided comments and responded to questions on HB 9.

ACTION NARRATIVE

[3:16:12 PM](#)

CHAIR KURT OLSON called the House Labor and Commerce Standing Committee meeting to order at 3:16 p.m. Representatives Colver, Tilton, Kito, Josephson, Hughes, LeDoux, and Olson were present at the call to order.

HB 81-EXEMPTION: LICENSING OF CONTRACTORS

[3:16:55 PM](#)

CHAIR OLSON announced that the first order of business would be HOUSE BILL NO. 81, "An Act relating to an exemption from the regulation of construction contractors."

[3:17:31 PM](#)

REPRESENTATIVE TILTON, speaking as prime sponsor of HB 81, stated that this bill relates to the licensing of residential contractors. She said she introduced HB 81 after holding discussions with members of the Mat-Su Home Builders, Inc. Further, after speaking with contractors and realtors in other areas of the state and some affected home buyers, it became clear that some individuals are commonly exploiting an unintended loophole in the existing statutory language, creating an uneven playing field for licensed professionals who abide by the law and potentially exposing unwitting homebuyers to

substandard construction. In short, HB 81 is really a consumer protection bill and not a bill to restrict trade, she said. She emphasized that HB 81 does not prevent Alaskans from building their own homes, from selling homes they have built, or propose any new licensure.

REPRESENTATIVE TILTON said that under current state law an exemption for licensed contractors has allowed unlicensed contractors to operate a substantial businesses avoiding licensing, bonding, and insurance. By avoiding licensing, bonding, and insurance requirements in the law, unlicensed contractors are skirting the law and jeopardizing protections for consumers.

REPRESENTATIVE TILTON surmised that most committee members probably recall the first home they built and their sense of taking financial risks in doing so. In fact, for most Alaskans, purchasing their homes is the largest investment they will make. This bill helps ensure that home buyers have expectations of a uniform standard of professionalism and seek to reasonably include all individuals engaged in home under the existing residential contractor licensure.

[3:19:50 PM](#)

DAN BELLERIVE, Staff, Representative Cathy Tilton, Alaska State Legislature, on behalf of the prime sponsor, stated that this issue was initially raised by home builders in the Mat-Su valley. A growing number of people are abusing exemptions in state law that were intended to allow people to act as their own general contractors; however, abuse of these exemptions have allowed unlicensed contractors to operate substantial business enterprises without obtaining any licensing, bonding, or insurance, thereby creating an unfair playing field for contractors who do follow the law. This bill, HB 81, will address the issue by establishing a two-year timeframe in which an owner-builder cannot sell a home after the completion of the construction, but provides an opportunity for the owners to sell their homes earlier if they notify the Department of Labor & Workforce Development (DLWD).

[3:20:53 PM](#)

REPRESENTATIVE JOSEPHSON said he likes the bill; however, he wondered whether any constitutional issues such as due process will arise under the bill, with respect to disposition of

property, since home owners cannot sell their homes when they want to do so.

REPRESENTATIVE TILTON answered that a few questions have been raised, but she did not think there were any constitutional challenges at this point.

REPRESENTATIVE LEDOUX related her understanding that contractors can still sell homes, but they must have the appropriate licensing to build homes.

[3:22:36 PM](#)

REPRESENTATIVE COLVER asked whether this bill was an effort to obtain compliance from those parties building homes who have not adhered to rules and regulations pertaining to their employees or by obtaining contractor licenses that most contractors in the home building industry acquire. He asked whether this is an effort to "level the playing field" of those who have been operating outside the regulatory environment.

REPRESENTATIVE TILTON replied the bill could be viewed in that way; however, HB 81 does not prevent people from building or selling their own homes, but it does allow regulators to look for patterns of unlicensed home building, closes a loophole, and creates an "even playing field."

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REPRESENTATIVE COLVER referred to page 2, paragraph 11, of HB 81 which read, "... the exemption in this paragraph does not apply if the structure under construction is advertised for sale or sold during the period of construction or for two years after the period of construction ends, unless the owner can demonstrate to the department's satisfaction that the sale would not result in circumvention of the requirements under this chapter;". He expressed concern about what "the department's satisfaction" might mean if owner-builders desire to sell their homes. He wondered what hurdles the owner/builders would need to jump over, and whether the owners will need to show cause such as divorce or loss of job to do so. He further asked whether owner-builders could add their spouses to the deeds.

[3:25:23 PM](#)

MR. BELLERIVE deferred to the Division of Corporations, Business & Professional Licensing, Department of Commerce, Community, and Economic Development (DCCED).

[3:25:40 PM](#)

SARA CHAMBERS, Acting Director, Division of Corporations, Business, and Professional Licensing, Department of Commerce, Community, & Economic Development (DCCED), stated that the language "to the department's satisfaction" would be developed through the public comment process when the department develops its regulations. She envisioned it would be an open and transparent process for public scrutiny, but will be codified in regulations to ensure the process is clear.

[3:26:40 PM](#)

REPRESENTATIVE LEDOUX asked whether the parameters will be put in regulation and if the regulations will identify the types of exemptions or reasons the department will accept to avoid contractors circumventing the law.

MS. CHAMBERS answered that is correct.

[3:27:02 PM](#)

REPRESENTATIVE LEDOUX asked whether there would be a "catch all" for other circumstances that the department deemed will not circumvent the law.

MS. CHAMBERS responded that the department will work to create a process that is transparent and educational to the public without being so restrictive that some qualifying circumstances wouldn't fit within the structure. She said setting a standard for the public must be in regulation; however, the department will want to ensure that the process meets the intent of the bill by closing any loopholes, yet not be unduly restrictive.

[3:27:54 PM](#)

REPRESENTATIVE LEDOUX asked for further clarification on whether the answer is yes.

MS. CHAMBERS answered yes.

[3:28:01 PM](#)

REPRESENTATIVE COLVER asked for a general framework of the conditions the department envisions will be in the proposed regulations. He further asked what the department has done to enforce contracting regulations, in particular, the requirement that general contractors hold a residential endorsement. He recalled the residential endorsement requires contractors must obtain training and undergo a certification process. He asked whether the department has worked to assist the industry in the Mat-Su Valley to achieve compliance, the types of enforcement actions the department employs, and the reason this bill is needed.

MS. CHAMBERS explained that the DCCED works with the Department of Labor & Workforce Development (DLWD) to enforce contractor licensing throughout the state. Although the enforcement statutes are located within the DCCED's statutes, the DLWD's Division of Labor Standards and Safety, Wage and Hour section conducts wage and hour inspections statewide to ensure compliance. As an efficiency measure, the departments decided that the DLWD will also perform licensing compliance. Thus, rather than having two departments with separate enforcement staff located throughout the state, the DLWD provides licensure compliance and ultimately issues fines, cease and desist letters, and follow-up collection of fines. She emphasized that the DCCED's goal was to ensure compliance and to work with the public and first-time offenders to bring them into compliance; however, the department does have the authority to take stronger action with repeat offenders or those blatantly skirting the law.

[3:31:22 PM](#)

REPRESENTATIVE COLVER asked whether the department could provide data on complaints and subsequent investigations to support the legislative intent of non-compliance. He related his understanding that DCCED issues and administers licenses and the DLWD conducts the wage and hour inspections to verify whether contractors are properly licensed.

MS. CHAMBERS related that the division lists the contractor enforcement activity and those out of compliance on the DCCED's website. She offered to provide the information to the committee.

[3:32:45 PM](#)

REPRESENTATIVE HUGHES related her understanding that this issue was brought to the sponsor's attention in the Mat-Su area. She asked whether this problem exists in other parts of the state.

REPRESENTATIVE TILTON answered yes; that unlicensed contractor activity also occurs in other parts of the state. She reported that this issue is the number one legislative priority of the Alaska State Home Builders Association (ASHBA) and although the Mat-Su Home Builders first approached her, the ASHBA has subsequently highlighted the problems its members have encountered.

CHAIR OLSON added that this issue is a priority for the home builders [Kenai Peninsula Builders Association (KPBA)] in his district, too. He suggested unlicensed contractors might not be as prevalent in Anchorage due to the number of building inspectors in that area, but it is an issue in the smaller communities.

[3:33:49 PM](#)

REPRESENTATIVE LEDOUX asked for further clarification on the fiscal note.

REPRESENTATIVE TILTON answered that the Division of Corporations, Business and Professional Licensing identified costs of \$2,500 in its fiscal note, but she has been working with the department to see if these costs can be zeroed out. In response to a question, she agreed that a similar bill was introduced last year without any fiscal impact so she thought there might be some leeway.

[3:34:45 PM](#)

REPRESENTATIVE LEDOUX asked whether the fiscal note costs are limited to \$2,500.

REPRESENTATIVE TILTON answered yes. She stated that contractors pay fees and their program pays for itself; however, there are some additional items she has been working on with respect to the fiscal note.

[3:35:48 PM](#)

CHAIR OLSON opened public testimony on HB 81.

[3:35:57 PM](#)

ALAN WILSON, Chair, Legislative Committee, Alaska State Home Building Association (ASHBA), stated that HB 81 is the ASHBA's number one priority. He stated that the problems are magnified in the Mat-Su area, but as previously mentioned, the Kenai Peninsula and rural areas have also experienced some problems. Although ASHBA views this bill as a consumer protection bill, it is also a means of closing a loophole since some homeowners have complained to the ASHBA. He offered his belief that this bill will "level the playing field" since some people have been operating outside of the regulations that everyone else must abide by; however, the bigger issue is consumer protection. He said his organization has worked extensively with Grey Mitchell, Director, of the Division of Labor Standards & Safety, Department of Labor & Workforce Development (DLWD) on enforcement issues. Although significant progress has been made, the issue has become a priority for The ASHBA, he said. He urged members to support HB 81.

MR. WILSON added that he was surprised by the fiscal note costs; however, licensed contractors are willing to pay extra fees, if necessary. In response to a question, he agreed that the "valley" is the Mat-Su Valley and not the Mendenhall Valley.

[3:39:24 PM](#)

ANDRE SPINELLI, Design & Development Manager, Spinell Homes, Inc., testified in support of HB 81. He offered his belief that this issue is not limited to rural Alaska or the Mat-Su Valley, and said that unlicensed contractor activity happens in Anchorage, even though it's a heavily-regulated building environment. For example, someone will build a house without a contractor's license and immediately put up a "for sale" sign. These unlicensed contractors don't pay fees for licensure or other fees for their employees, he said. He related his understanding that the need for this bill arose when the attorney general's office advised the DLWD that the law was too vague to enforce and he envisioned that HB 81 will tighten up existing law. For example, when owner-builders build their homes, they are allowed to perform their own plumbing and electrical work. If these owner/builders are acting as unlicensed contractors, it allows them to unfairly compete with licensed contractors. It raises consumer protection issues since licensed plumbers and electrical contractors are not being used in homes that are built and subsequently marketed to the public.

[3:41:53 PM](#)

ROBERT YUNDT, Vice President, Mat-Su Valley Home Builders Association (MSVHBA), stated his family has lived in the Mat-Su area since the 1940s. He graduated from Wasilla High School in 1998 and has also worked as an owner-builder. Although he now does consulting work, he has family members [who build homes]. He offered his belief that this bill was not intended to harm anyone who wants to put sweat equity into a project. Members of his organization and the DLWD frequently have observed "owner-builders" in the Mat-Su Valley who build multiple homes, often in the same subdivision. These owner-builders post real estate signs in their yards during construction and market their homes on Craigslist. He related a situation in which an owner-builder did work to a home and the family died from carbon monoxide poisoning due to inadequate air exchange. The home with [faulty ventilation] was the only home in the subdivision he had not built. He offered his belief that these deaths could have been avoided if the owner-builder had hired a contractor, noting contractors are required to have continuing education on safe practices.

MR. YUNDT acknowledged it was difficult for contractors who abide by rules to compete with unlicensed contractors who do not. He offered his support for HB 81 since it will help provide consumer protection. Although he did not think the bill would curb owner-builders from building homes, it will probably result in more residential contractor licensing and continuing education.

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REPRESENTATIVE LEDOUX asked how this bill will be enforced. She asked whether the banks will require some type of certificate.

MR. YUNDT answered that the unlicensed builders don't use Alaska Housing Finance Corporation (AHFC), but use larger nationwide conventional mortgages, such as Fannie Mae or Freddie Mac. These conventional financing organizations do not require a full set of inspections, but rely on a licensed safety inspection at the end of construction; however, this bill will force the unlicensed builders to get a residential endorsement, he said.

[3:47:06 PM](#)

REPRESENTATIVE LEDOUX asked for further clarification on the provision related to owners selling a home within the two-year

period. She questioned how it would be known and whether the purchaser could declare the home sale null and void if any problems arose. She said she wants to put "teeth into this" issue and not just add prohibitions. She then questioned how this bill will stop the unlicensed builders.

MR. YUNDT related his understanding that owner-builders not being able to openly market their homes will help curb unlicensed activities. He suggested that from a business standpoint, it typically takes about 4-6 months to build a house and during this time other general contractors notice any building activity and can monitor and report any suspected unlicensed activity. Under the bill, anyone who has posted "for sale" signs on their property will need to verify whether they are licensed contractors or owner/builders. He offered that the bill will likely force unlicensed contractors to get the appropriate licenses so they can legitimately post their properties, satisfy their lenders, and sell their homes.

REPRESENTATIVE LEDOUX commented that she was satisfied with his answer.

[3:50:26 PM](#)

KIRK PERISICH, Member, Carpenters Local 1281, viewed regulation of home builders as a good thing. He referred to paragraph 10, of HB 81, which read, "an owner or tenant of commercial property who uses the owner's or tenant's own employees to do maintenance, repair, and alteration work on [UPON] that property;" and asked whether this provision leaves a loophole for commercial work to be done by owners and if the work will be limited by a certain dollar threshold to alter or repair commercial properties. He was curious why there would be a loophole for commercial but not residential properties.

[3:51:29 PM](#)

CHAIR OLSON suggested he discuss this further with the bill sponsor, but noted his point made sense.

MR. PERISICH remarked it might leave a loophole for the commercial industry since some commercial owners have very large properties so the amount of work they could do would be substantial.

REPRESENTATIVE TILTON offered a willingness to discuss this provision further after the hearing.

REPRESENTATIVE LEDOUX pointed out that paragraph (10) was existing law and this bill makes a small editorial change.

[3:52:51 PM](#)

REPRESENTATIVE COLVER suggested that the intent of this provision in existing law was to allow owners to perform maintenance and minor alterations on their commercial property, but it does not include major maintenance since that activity would necessitate using a licensed contractor. He offered that any commercial electrical work will require an electrical administrator's approval since the standards are much higher for commercial electrical and plumbing. He concluded that this language refers to minimal minor maintenance rather than major maintenance.

MR. PERISICH suggested imposing a dollar limit for minor alterations on commercial property.

[3:54:02 PM](#)

GREY MITCHELL, Director, Central Office, Division of Labor Standards & Safety, Department of Labor & Workforce Development (DLWD), with respect to an earlier question on enforcement activity, responded that investigator Al Nagel reported that since fiscal year (FY) 2011 the department has issued 30 administrative fines for owner/builder violations and issued 16 fines in FY 11. These were violations associated with a person building more than one structure within a two-year period, he said, which is what the bill would address. This bill would clarify that the department can investigate when it appears that homes are being sold by unlicensed contractors and not by the homeowners.

[3:56:01 PM](#)

MR. MITCHELL referred to page 2, line 10, to paragraph 10, of HB 81 which read, "(9) [(10)] a person working on that person's own property, whether occupied by the person or not, and a person working on that person's own residence, whether owned by the person or not." Although this is existing law that provides an exemption from contractor licensing, the division has had some situations arise, he said. He stated that previous testifiers identified instances when the attorney general reviewed violations and found some vagueness to the law that precluded enforcement. The department has interpreted this paragraph to

apply to people working on their own property on existing structures, rather than "ground up" or brand new structures; however, the language does not clearly provide the legislative intent nor does a regulation further define it. He suggested one remedy would be to add "existing structures" to avoid any ongoing confusion about owner-builders building new houses versus working on existing homes.

3:58:04 PM

REPRESENTATIVE COLVER asked for further clarification that the aforementioned provision made the two-year restriction unenforceable as interpreted by the attorney general's office. If the language was tightened up by adding "existing structures," he wondered whether it would be an enforceable statute with the prohibition of a two-year waiting period for an owner/builder - without adding the department's review and consideration of the factors that led to the sale. He expressed concern about involving more government and asked whether compliance can be achieved by tightening up that clause in existing statute.

MR. MITCHELL offered that clarifying the aforementioned paragraph (9) would go a long way to resolve the loophole for owner-builders; however, at the same time, testimony indicates problems exist with owner-builders putting up "for sale" signs during construction or immediately after finishing their homes. Currently there isn't a clean way to say the owner-builders are competing with licensed contractors. Thus he suggested the need exists for both changes.

4:00:01 PM

REPRESENTATIVE COLVER recalled earlier testimony about carbon monoxide in a Wasilla home that led to tragic deaths. He asked if it would be possible to get the facts in this case. He related his understanding that the homeowner changed something such as the air intake in his home.

MR. MITCHELL replied that he was unsure because owner-builders can make changes to their property, so that type of case would not typically be something the department will investigate since homeowners have an exemption from contractor licensing. He said it was a tragedy when work is not performed correctly and the department hopes that owner-builders do the work properly and get the guidance to do so.

[4:01:23 PM](#)

REPRESENTATIVE COLVER asked whether he wrote the language with respect to department waivers.

MR. MITCHELL answered no. He recalled his earlier question with respect to how standards will be established and that the Department of Commerce, Community & Economic Development (DCCED) responded by suggesting regulations might be the way to address the standards. A common sense approach might be to look at whether there is any evidence to demonstrate that owner-builders were acting as contractors, for example, a history of past violations of contractor licensing requirements, or of acting as owner-builders on multiple projects. Thus the department can still conduct an investigation, but the owner-builders also have an opportunity to provide legitimate reasons why they are selling their homes. However, owner-builders would only need to demonstrate proof if the department was pursuing an enforcement action. These owner-builders could counter enforcement actions by indicating they have reasons to sell their homes, such as medical situations, family emergencies, divorces or lost jobs. Certainly, if the reasons make sense, the department will accept them. In addition, parties receiving administrative penalties still have the ability to request hearings and supply the facts. For example, if the home was the fourth house an owner-builder built in the last three years, it will likely result in the type of action to stop the owner-builder from using a homeowner exemption and require the owner-builder to obtain the appropriate contractor license.

[4:04:17 PM](#)

CHAIR OLSON, after first determining no one wished to testify, closed public testimony on HB 81.

[HB 81 was held over.]

[4:04:38 PM](#)

The committee took an at-ease from 4:04 p.m. to 4:12 p.m.

HB 9-PRIVATE INVESTIGATORS/AGENCIES

[4:12:02 PM](#)

CHAIR OLSON announced that the final order of business would be HOUSE BILL NO. 9, "An Act providing for the licensing and

regulation of private investigators and private investigator agencies; and providing for an effective date."

4:12:40 PM

REPRESENTATIVE HUGHES, speaking as prime sponsor of HB 9, presented HB 9. She acknowledged she introduced a similar bill to license private investigators last year when it was brought to her attention that a felon could get a business license and operate as a private investigator. She related a situation in which a family lost a daughter and was approached by such an unscrupulous individual. She emphasized that a presumption of authority exists when someone identifies himself/herself as a private investigator. In those instances citizens might offer the private investigator personal information that they might not otherwise give out. She offered her belief that this is something that should be addressed. She described her approach to curb this activity was not to create a costly board, but to pattern private investigator licensing after other professions licensed by the division. Finally, since the fiscal note for licensing private investigators quadrupled from one the division proposed last year, she has questions for the department about the fiscal note, she stated.

4:14:49 PM

GINGER BLAISDELL, Staff, Representative Shelley Hughes, Alaska State Legislature, on behalf of the prime sponsor, presented a section-by-section analysis of HB 9. She stated that Section 1 would include private investigators as one of the specified professions licensed under the Department of Commerce, Community & Economic Development (DCCED) and Section 2 would require private investigators to be licensed in the state. This provision clearly states that person may not practice private investigating unless licensed under this chapter or exempt from being licensed, noting a number of exemptions exist. A person may not use the title of or practice as a private investigator unless the person is registered with the department or it could result in a misdemeanor.

4:15:55 PM

MS. BLAISDELL referred to page 2, line 4, of proposed AS 08.85.110 that outlines the scope of practice for private investigators, including investigating criminal offenses, obtaining information from individuals, or gathering evidence to be used in court. Private investigators working in the state

have advised the sponsor that if someone has not received adequate training, the collection of evidence may not be admissible in court.

[4:16:59 PM](#)

MS. BLAISDELL referred to page 2, line 19, of proposed AS 08.85.120 that outlines the general requirements for a private investigator. She related that in order to obtain a license as a private investigator, an applicant must be a citizen, cannot have been convicted of a felony in the prior 10 years or been convicted of a crime of dishonesty or sexual misconduct, or have received a dishonorable discharge from the military, or have been determined to be mentally incompetent by a court of law. Further an applicant cannot currently be on probation or parole, she said.

[4:17:51 PM](#)

MS. BLAISDELL referred to page 3, line 15, of proposed AS 08.85.130, which would create two classes of license, with a class A license being a more advanced professional level of private investigator and a class B license an entry level position, such as an apprentice who may need additional experience or training to become a class A private investigator. She directed attention to page 4, lines 21-31, through page 6, line 12 of HB 9 to language that identifies the information for the license application, including providing the typical standard information, plus providing criminal history and conviction record, employment records, and a statement that the applicant is free from mental illness. Applicants must submit fingerprints and fees for the criminal history record check, letters of recommendations from three citizens without any prior felony convictions, and the application must be notarized, she said.

[4:19:41 PM](#)

MS. BLAISDELL referred to page 6, line 13, of proposed AS 08.85.170 that would allow the department to conduct background investigations of applicants. She directed attention to page 6, lines 19-28, which would create provisions for reciprocity to allow private investigators licensed in another state, with comparable qualifications, to become licensed in Alaska.

[4:20:28 PM](#)

CHAIR OLSON asked how many states currently license private investigators.

MS. BLAISDELL answered that she was unsure. She recalled that approximately 109 Alaskans have identified themselves as private investigators and approximately 40 out-of-state investigators. In further response, she answered that she was not sure how many other states currently license private investigators.

MS. BLAISDELL clarified that proposed AS 08.85.200 would allow Alaska to recognize private investigators licensed in other states, but she wasn't certain how many states would recognize Alaska's private investigators for reciprocity. In further response, she related that a wide range of licensure programs exist in other states. She recalled that four states do not license private investigators, but some states provide municipal oversight, although others have statewide laws.

[4:21:41 PM](#)

MS. BLAISDELL referred to page 6, lines 29-31 through page 7, line 12, of proposed AS 08.85.210, noting the department would issue an identification card that will list the private investigator's license number, which must be carried while the investigator is performing private investigator duties.

MS. BLAISDELL directed attention to page 7, lines 12-31 through page 8, line 15 of proposed AS 08.85.220, to the requirement for a private investigator agency certificate, noting the department will issue a private investigator agency certificate if the primary employee meets the requirements of possessing a class A license and the agency is insured and bonded. She referred to page 8, lines 16-31 through page 9, line 2, of proposed AS 08.85.230 related to license renewal and nontransferability of licenses. She related that a private investigator license is not transferable, but can be renewed as long as the qualification criteria is still valid; however, approximately every five years a licensee must submit to an additional background check.

[4:22:43 PM](#)

MS. BLAISDELL directed attention to page 9, lines 3-11, of proposed AS 08.85.240, which pertains to firearms training. She explained this provision was added to ensure that people entering into high risk situations would have successfully completed firearms training.

MS. BLAISDELL directed attention to page 9, lines 12-17, which provides confidentiality of licensees' personal identifying information. Under proposed AS 08.85.260, prohibited practices, licensees cannot collect information for illegal purposes. This provision also prevents people from impersonating a private investigator by carrying a badge or uniform, or display flashing vehicle lights.

[4:24:20 PM](#)

MS. BLAISDELL, referring to page 10, line 24 of proposed AS 08.85.270, explained that this basically states that an action may not be brought against a person who files a complaint in good faith against a licensee. She surmised that private investigators may encounter some people who might wish to complain about the legitimate activities of a licensed private investigator. Thus a private investigator can't be sued for damages because he/she located the person he was hired to find. She next referred to page 10, lines 27-28, noting that the regulations will be conducted by administrative procedures by the department.

MS. BLAISDELL directed attention to the exemptions beginning on page 10, lines 29-31 through page 12, line 13, that lists the types of people who are exempt from private investigator licensure, including people who perform professional investigative services in their normal course of business, such as attorneys, law enforcement officers, insurance agents, bank employees, forensic scientists, fire investigators, and paralegals, while acting within the scope of their employment. She characterized these exemptions include a number of professions that do not require additional licensure as a private investigator.

[4:26:12 PM](#)

MS. BLAISDELL stated the bill contains a few definitions, and transitional provisions that allow someone who has met the requirements of this chapter who is operating as a private investigator to continue to do so until the business license renewal. She related that the effective date of the bill is July 2015, although the department would like to postpone the effective date to allow time to adopt regulations.

[4:26:50 PM](#)

REPRESENTATIVE HUGHES emphasized that private investigators cannot wear any type of badge that attempts to portray them as law enforcement officers or some type of state or federal officials.

[4:27:37 PM](#)

CHAIR OLSON asked for clarification on the fiscal note.

MS. BLAISDELL deferred to the department to discuss the fiscal note; however, she pointed out the fiscal note in members' packets refers to House Bill 253, which was a bill introduced last legislature to license private investigators, which did not pass. She included a fiscal note for the aforementioned bill since it provides a basis for discussion for the fiscal note for HB 9.

[4:28:25 PM](#)

REPRESENTATIVE LEDOUX referred to page 3, lines 13-14, to subsection (c), which seems overly vague for a conflict of interest. She suggested it may give the department unfettered authority to establish a conflict of interest as opposed to specifying circumstances.

MS. BLAISDELL stated that this bill was patterned after Colorado law. She said that the applicant may not be currently employed in a position the department determines to represent a conflict of interest for the prospective licensee. The provision specifically restricts licensees from being currently employed as a peace officer or federal, state or local government in the capacity of law enforcement. She suggested that a person might be employed in a profession that could create a conflict of interest, such as someone who is a human resource officer who has access to more information. She suggested there will always be odd circumstances and questions as to whether the department should have the discretion.

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REPRESENTATIVE LEDOUX interjected that she feels uncomfortable with [the department determining any conflict of interest].

REPRESENTATIVE HUGHES welcomed suggestions in improving that provision.

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REPRESENTATIVE JOSEPHSON referred to page 2 of HB 9 to the scope of practice for investigators. He wondered whether proposed AS 08.85.110 would cover all the activities of a private investigator and if the activities listed were based on a model bill.

MS. BLAISDELL explained that the private investigator licensing bill used Colorado's law, which was tweaked by Legislative Legal to comport with other statutory provisions.

REPRESENTATIVE HUGHES reminded members that the previous bill had input and review from private investigators so she thought the private investigators would have pointed out any investigative activities that were missing.

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REPRESENTATIVE JOSEPHSON referred to page 7, to subparagraph (A) to errors and omissions insurance. He asked what is known about private investigator negligence. He stated that private investigators could be liable for errors and he wondered if private investigators can obtain insurance. He said he has never heard of any insurance being offered, but wondered whether private investigators could be sued for such things as reporting that adultery occurred when it actually didn't occur.

MS. BLAISDELL answered that the bill requires surety bonds and errors and omissions insurance, which was set at \$100,000 at the recommendation of a private investigator. She reported that the surety bond is standard practice, that the City of Fairbanks requires licensing for private investigators, as well as requiring a surety bond of \$10,000, or \$20,000 if the private investigators are licensed in two or more states. She was unsure about the errors and omissions insurance, but offered to research this for the committee.

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REPRESENTATIVE JOSEPHSON referred to the concealed handgun provisions and asked whether any second amendment constitutional issues exist.

MS. BLAISDELL replied that she asked for clarification from Legislative Legal Services in terms of the permit to carry a concealed handgun. She reported the legislative legal drafters advised that Alaska law does not prohibit anyone 21 years of age

or older who may legally possess a firearm from carrying a concealed weapon. Thus, anyone can carry a concealed firearm without a special permit or training. Further, Alaska provides that a person may obtain permit to carry a concealed handgun, with the primary reason to obtain an Alaska concealed handgun permit is to be able to carry a concealed handgun in other states. She stated that in order to obtain a concealed handgun permit, a person is required to successfully complete an approved handgun course under AS 18.65.715, typically conducted by the Alaska State Troopers or by several private entities. Last year during discussions on the previous bill, it was deemed important that if private investigators were to carry any weapons while encountering higher-risk situations, that some type of training should be required.

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REPRESENTATIVE JOSEPHSON asked whether the penalties for failure to comply with the investigator certificates [under proposed AS 08.85.220 (e)] was consistent with violations of other professions, for example, if someone calls themselves a nurse, but he/she is not one, whether the person is subject to a class A misdemeanor. He pointed out some of the violations are technical such as in [subsection (c), paragraph (5)] that requires notifying the department within 30 days of any change in the agency's officers, directors, or partners.

REPRESENTATIVE LEDOUX referred to the extensive list of 18 exemptions and wondered why so many exemptions were allowed if horrendous things can happen with unlicensed private investigators. She asked why the bill was only concerned about people conducting investigations with their own individual business, but not for those working for an attorney or an insurance agent.

REPRESENTATIVE HUGHES stated that in many of the exemptions, the professionals conduct investigations as part of their duties and they have some oversight, whereas private investigators are sole practitioners. She suggested that some of the other professions require their own licensing.

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REPRESENTATIVE LEDOUX referred to page 10, line 31 through page 11, line 2, which read, "(1), a person who is employed exclusively or regularly by one employer that is not a private investigator agency and who performs investigations solely in

connection with the affairs of that employer." She offered her belief that could be someone working for an insurance company. She offered her belief that if licensing is going to be required for investigators, that it should cover everyone.

MS. BLAISDELL responded that the business license classification for investigations was very broad, and the types of investigators who seek licensure tend to be the ones who are in business for themselves with broad access to database information. Typically, insurance adjusters work for insurance agencies, and if someone has a concern, he/she could contact the employer.

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REPRESENTATIVE LEDOUX argued that these investigators could be hired by an insurance company or an attorney seeking information. She expressed concern that the investigators might misidentify themselves just to obtain the information, but the employers might not be concerned since their goal is to hire investigators to find out.

REPRESENTATIVE HUGHES suggested that it isn't necessary to license everyone who puts on Band-Aids as licensed practical nurses, that there must be a limit. She explained that people working under these exemptions have employers. Although she understood the concern, she suggested there must be a limit as to who needs licensure. She maintained that the exemptions are for people who work for employers so they have oversight and likely work under a set of requirements in their professions that may address the concerns.

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REPRESENTATIVE LEDOUX agreed the employers might have requirements, but she is not sure that they do, which is her concern.

REPRESENTATIVE HUGHES suggested that the division might be able to provide a response on the exemptions for professions covered by licensure.

CHAIR OLSON asked to discuss the fiscal note.

[4:46:26 PM](#)

SARA CHAMBERS, Acting Director, Division of Corporations, Business, and Professional Licensing, Department of Commerce, Community, & Economic Development (DCCED), said the fiscal note reflects the level of staffing and costs to start a new program, for licensure costs and enforcement. The licensing examiner would need to compile information and determine eligibility and the division's investigators would need to review the information to determine if it is true and accurate and the applicant was not withholding information that will keep them from meeting the threshold for licensure. Certainly, the division would not expect 100 percent of the licensing examiner or investigator's time to be charged back to the private investigator licensing program. Last year the division received three new licensing programs as well as a significant expansion of a program, but failed to ask for additional support within the division. This resulted in the division not being able to absorb the costs, therefore; the division will request the minimum staff it needs for any new programs. She related her understanding that a portion of the licensing staff might be charged to other licensing programs.

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REPRESENTATIVE JOSEPHSON said it sounds like the division will be shifting some of the burden of the private investigator licensing program to some of the other new programs. However, it doesn't seem fair for the private investigators to absorb the 2014 new licensing program costs. He wondered if the division must explain to the other programs why their fees will be increased or whether he is missing the point.

MS. CHAMBERS explained that the division puts forth a certain level of service regardless of the number of staff, which depends on the length of the lag time to process new licenses, for example, if applicants must wait three weeks, six weeks, or a year for licensure. Thus the volume doesn't reflect the activity, but the level of service can be provided. She did not necessarily think there will be additional costs for a specific program, but the division desires to provide a high level of service to the state. For example, the Alaska State Medical Board just completed its renewal period at a time when the division experienced an influx of applications. Having additional staff available allows the division to temporarily assign licensing examiners to programs that need seasonal help, in this instance, to assist the medical board license doctors to ensure that hospitals were fully staffed and able to function. In fact, Alaskans have a high expectation for service and the

division can experience a need for help in any of its licensing programs, she said.

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REPRESENTATIVE HUGHES expressed concern that the fiscal note was nearly quadruple of the fiscal note on a similar bill last legislative session. She recalled during the presentation for the Division of Corporations, Business & Professional Licensing, that Ms. Chambers reported the range for license fees was a minimum of \$50 for some professions to \$1,700 for midwives. However, she reported that page 3 of the fiscal note for HB 9, lists an estimated license fee of \$2,900 for private investigators. She questioned the figures since the fiscal note to license private investigators last year was \$60,000 total instead of \$230,000. She wondered why private investigators were being asked to help cover the expenses for the error of licensing costs for three new professions last year. She explained that it was not her intent to create a bureaucracy. She further questioned the need for 1.5 licensing examiners to license a potentially 140 private investigators in the state. She stated that this program was patterned after some processes in place for other professions, including fingerprinting. She expressed concerned about the proposed costs to license private investigators as well as their proposed biennial fees.

MS. CHAMBERS replied that she did not anticipate the 1.5 staff positions proposed for the program to charge all of their time to the private investigator program. It's possible the proposed private investigator licensing program might need a fulltime investigator for a month, or 80 percent of an investigator's time for three months, or perhaps 60 percent for six months. After the initial licensure period, the investigator's ongoing commitment could be reduced to 30 percent, she said, noting that the fiscal note anticipated the absolute worst case scenario, and took into account the number of exemptions that must be considered as well as potential complaints. However, at this point the division doesn't know how many private investigators will apply for licensure. She described the fee setting process as being very dynamic, one that depends a number of factors outside the division's control. It is more likely that private investigators will pay fees closer to those of midwives, but the projected \$2,900 in biennial fees were based on the information the division has today. Any portion of staff time not used for the private investigator program will be charged to another program. For example, if the licensing examiner assigned to the private investigator program was temporarily assigned to help

medical board process applications or license renewals, the examiner's time will be charged to that program, she said.

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REPRESENTATIVE HUGHES questioned the ratio of 1.5 staff for this program. She asked for further clarification on the number of staff assigned to other non-board professions of similar size - with 150 licensees - since 1.5 staff seems very high.

MS. CHAMBERS answered that it depends on the program. She explained that some programs with under 100 licensees are assigned one fulltime staff; however, other programs may have several thousand licensees but their profession requires minimal requirements for licensure, with little need for investigations. Thus, those professions may be assigned one-half or one fulltime licensing examiner. Certainly, at times the division may assign multiple investigators to work on one investigation. However, for this program, the division envisions that investigating licensees and reviewing the allowable exemptions will initially require quite a bit of "hands on" effort. It seemed highly unlikely the private investigator licensees would be charged \$2,900 in biennial fees or that it would take 1.5 staff to maintain the program. The division will employ the practice of positive timekeeping. She emphasized that the division cannot absorb these program costs so it anticipated the costs for the proposed program.

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REPRESENTATIVE HUGHES maintained her concern over the "quadrupled" fees reflected in the fiscal note. She said she did not wish to have the fiscal note reiterated, but she expressed concern that the bill will not pass with the current fiscal note attached. In fact, she said she will pull the bill rather than add to the bureaucracy in the division.

[HB 9 was held over].

5:00:50 PM

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 5:01 p.m.