

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

February 20, 2015

3:17 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."

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

HOUSE BILL NO. 86

"An Act relating to investment of the power cost equalization endowment fund; and providing for an effective date."

- MOVED HB 86 OUT OF COMMITTEE

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
02/11/15	(H)	Heard & Held
02/11/15	(H)	MINUTE(L&C)
02/20/15	(H)	L&C AT 3:15 PM BARNES 124

BILL: HB 86

SHORT TITLE: PCE ENDOWMENT FUND INVESTMENT
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/30/15	(H)	READ THE FIRST TIME - REFERRALS
01/30/15	(H)	L&C, FIN
02/18/15	(H)	L&C AT 3:15 PM BARNES 124
02/18/15	(H)	Heard & Held
02/18/15	(H)	MINUTE(L&C)
02/20/15	(H)	L&C AT 3:15 PM BARNES 124

WITNESS REGISTER

PATRICK DALTON

Delta Junction

POSITION STATEMENT: Testified in opposition to HB 81.

ERIC CLARK

Soldotna, Alaska

POSITION STATEMENT: Testified in support of HB 81.

MIKE COONS

Palmer, Alaska

POSITION STATEMENT: Testified during the discussion of HB 81.

PAMELA GOODE

Delta Junction

POSITION STATEMENT: Testified in opposition to HB 81.

JAMES SQUIRES

Delta Junction

POSITION STATEMENT: Testified in opposition to HB 81.

AL NAGEL, Supervisor

Mechanical Inspection

Division of Labor Standards and Safety

Department of Labor & Workforce Development (DLWD)

Anchorage, Alaska

POSITION STATEMENT: Answered questions 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: Answered questions during the discussion of HB 81.

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

POSITION STATEMENT: Responded to questions during the discussion of HB 81.

ERROL CHAMPION, Chair
Legislative Issues Committee
Alaska Association of Realtors (AAR)
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 81.

KONRAD JACKSON, Staff
Representative Kurt Olson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified and answered questions on HB 81, on behalf of the House Labor & Commerce Standing Committee, Representative Kurt Olson, Chair.

JERRY BURNETT, Deputy Commissioner
Office of the Commissioner
Department of Revenue (DOR)
Juneau, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of HB 86.

ACTION NARRATIVE

[3:17:18 PM](#)

CHAIR KURT OLSON called the House Labor and Commerce Standing Committee meeting to order at 3:17 p.m. Representatives LeDoux, Colver, Tilton, Kito, Josephson, Hughes, and Olson were present at the call to order.

HB 81-EXEMPTION: LICENSING OF CONTRACTORS

[3:17:34 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."

[3:18:03 PM](#)

REPRESENTATIVE TILTON, speaking as prime sponsor, emphasized that HB 81 will not prevent Alaskans from building or selling their own homes or requiring them to obtain a new license. Some questions have arisen in terms of the two-year time limit in the current bill. She explained that HB 81 simply seeks to reasonably include all individuals engaged in home construction as a business to be subject to the existing residential contractor licensure. She characterized this bill as a consumer protection bill.

[3:18:56 PM](#)

REPRESENTATIVE COLVER noticed a discrepancy between the sponsor statement and provisions in AS 08.18. He said the sponsor statement read, "In cases where an owner-builder finds that they need to sell their home for a legitimate reason, there is a provision for the Department of Labor to waive any enforcement action." Thus, the commissioner of the DLWD would need to okay the sale within two years. However, the definitions under AS 08.18 refer to the Department of Commerce, Community & Economic Development (DCCED). He asked for further clarification on who will be doing the enforcement. In response to a question, he replied the language for this provision is the same in the original version and the proposed committee substitute (CS) for HB 81, Version W.

[3:20:01 PM](#)

CHAIR OLSON stated the bill would "trump" the sponsor statement.

[3:20:05 PM](#)

CHAIR OLSON reopened public testimony on HB 81.

[3:20:26 PM](#)

PATRICK DALTON said he found this bill to be disturbing. He works as a specialty contractor and he likes to do the best job he can, but these issues would be better addressed at the city and borough level since the closer the decisions are to the local community, the better. He expressed concern that this bill will be difficult to enforce in rural Alaska. For example, the sponsor statement reads, "In cases where an owner-builder needs to sell [his/her] home for a legitimate reason, there is a provision for the Department of Labor to waive any enforcement action." He pointed out that the Declaration of Independence

originally read, "Life, liberty, and property," which was later changed to "life, liberty, and the pursuit of happiness." Thus property is very important to Americans and some in the unorganized borough really value property and freedom, he said. He expressed his concern that this bill tells people they can't sell their property without being illegal, which he said is close to stealing.

MR. DALTON said although is just a citizen, he has a conscience and it is his moral responsibility to point out to the legislature when bills are drafted that infringe on people's rights and freedoms. Many people live in the unorganized borough because they like freedom. He urged members to keep this type of draconian measure out of the boroughs so people can go and be free to build the way they like. He thanked members for the opportunity to provide his input.

[3:24:18 PM](#)

ERIC CLARK stated that he and his wife, along with ten other homeowners, found themselves in a situation on the Kenai Peninsula. He described his experience, in which he purchased a home from an unlicensed contractor, who built two to three homes per year with substantial construction defects, including a lack of vapor barrier, undersize wiring, absence of venting, and other structural defects. These homes must be stripped to the studs to make the repairs and replace the entire plumbing, which will cost \$100,000 per home to correct. These homes never should have passed inspection, but even the home inspector did not find defects. He said he is currently pursuing the matter by filing a civil lawsuit. However, in an effort to prevent other people from experiencing similar issues, he also filed licensing complaints, but only the builder was fined. He encouraged members to pass HB 81 since the Department of Law has not been able to prosecute unlicensed contractors. He urged members to help prevent other people from experiencing situations such as his by passing HB 81.

[3:29:08 PM](#)

MIKE COONS stated that he has discussed this bill with Representative Tilton and Colver. He related his understanding that the purpose of the bill is to address issues that the previous speaker encountered. However, in terms of real estate, selling more than one home per year requires a real estate license. Thus, it seems that builders would be under the same provisions. For example, builders cannot purchase ten-acre

parcels and build multiple homes for sale and refer to themselves as owner/builders without being in business. He suggested corrective language on [page 2] line 21-25, as follows," ... construction is advertised for sale or sold during the period of construction unless the owner can produce to the department's satisfaction a full list of the contractor's subcontractors used for the construction with full documentation of their licenses, bonding and insurance that then would then protect the future homeowner and integrity of the construction industry." He suggested that Representative Colver has been working on an amendment that works to address his concern, but he did not think Representative Colver's proposed amendment goes far enough.

[3:32:11 PM](#)

PAMELA GOODE asked whether the bill is constitutional, which she thought is questionable. She further asked whether this bill increases or diminishes anyone's individual liberty, which she thinks [the bill] it does. Finally, she asked whether [the bill] would increase the size or power of government and she offered her belief that it does. She said that prefers to err in favor of liberty and freedom. She suggested that bills such as this one are introduced because someone has been wronged, and the person seeks governmental remedies so others won't also be wronged. However, people have the Internet and easy access to newspapers that could forewarn consumers about [unlicensed contractors]. Furthermore, if people can't sell their products, they will go out of business since consumers seek to purchase the best product for the best price. She cautioned that when government is involved it drives costs up through licensing, rules, and regulations. She referred to [page 2, lines 21-25 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" She said she lives in an unfinished home and she knows others who do, as well. She expressed concern that based on this language owners won't be able to sell their homes and in particular, the language "department's satisfaction" is a subjective term. She objected to owners needing to seek approval from the department which diminishes their individual liberty and also fails her litmus test. She appreciated the opportunity to testify.

[3:35:01 PM](#)

JAMES SQUIRES described himself as an "Alaska Constitution Article I, Section 2 Alaskan." He said he is not a contractor but is a certified public accountant by profession. He said he opposes HB 81. He lives remote and off the grid in the unorganized borough and people who live in the urban parts of the state may not realize the unintended consequences of this bill. He quoted Mark Twain as saying, "No man's life, liberty, or property are safe while the legislature is in session." He objected to the language in the bill that states "**two years after the period of construction ends**". He suggested that over one-half of the state is in the unorganized borough and many people pay cash for their land, build as they can afford to, and live safely and comfortably in unfinished structures. Many people have multiple properties and structures, which are often times all unfinished for a variety of reasons. He expressed concern that they could be adversely affected by this bill.

MR. SQUIRES noted that he did not hear any discussion of an instance in which an owner-builder puts up his own capital and doesn't recover it unless the entrepreneur sells it for more than he has invested. This person bears the full risk of the market as compared to the contractor who does not put up capital. He said the dictionary definition of a contractor is one of the parties to a contract, which wouldn't apply to an owner/builder. He suggested that there is a huge difference between the sales contract and the building contract. He quoted Adolf Hitler, who said, "The best way to take control over a people and control them utterly is to take a little of their freedom at a time, to erode rights by a thousand tiny and almost imperceptible reductions. In this way, the people will not see those rights and freedoms being removed until past the point at which these changes cannot be reversed." He said he was also opposed to the bill when it was introduced last year. He suggested that legislators and lobbyists are paid, but he surmised those testifying on this bill are not paid in any form. He further suggested that testifiers must be continually vigilant. He stated that even with a zero fiscal note, it costs the state significant time and money for this bill to be repeatedly dragged through the legislative process, particularly during a time of fiscal crisis. He offered that if this issue creates problems in some urban areas of the state, that it should be handled locally by borough or municipal ordinances. He suggested that the bill may have unintended consequences. He requested that members take a roll call vote when the time comes.

[3:40:01 PM](#)

REPRESENTATIVE JOSEPHSON asked how the changes on page 2, lines 21-25 of HB 81 will improve the chance of enforcement since a limitation of two years exists for an owner/builder.

AL NAGEL, Supervisor, Mechanical Inspection, Division of Labor Standards and Safety, Department of Labor & Workforce Development (DLWD), answered that the concerns stem from within the industry. He said that enforcement will remain consistent with current statute since the prohibition for an owner/builder to start and complete a structure is currently two years. He suggested the more egregious violators hold off for two years before they start building another in a series of homes. He characterized this as a means to "level the playing field" for contractors since unlicensed contractors conduct business without carrying the overhead the licensed contractors carry.

[3:42:31 PM](#)

REPRESENTATIVE JOSEPHSON asked whether this would increase the aforementioned requirement to four years.

MR. NAGEL answered no.

[3:43:17 PM](#)

REPRESENTATIVE HUGHES said the committee has heard testimony expressing concern about individual liberties for owner/builders. She interpreted the bill as allowing typical Alaskans to continue to have the freedom to do so. She related her understanding that an issue would only arise when licensed contractors notice someone is not following the rules and file a complaint that would be investigated by the department. She said she is very supportive of individual liberties; however, there is a misunderstanding of how this bill might impact an Alaskan building his/her home. She suggested that removing all the regulations and requirements would also create a level playing field; however, so long as contractor licensure is required in Alaska, everyone engaging in contracting needs to follow the rules. She asked for comments on how this bill would affect the typical Alaskan building his/her own home.

[3:45:15 PM](#)

GREY MITCHELL, Director, Central Office, Division of Labor Standards & Safety, Department of Labor & Workforce Development (DLWD), stated the proposed change created additional

restrictions for those attempting to evade the licensing requirements for contractors. He said it would not affect Alaskans building their own homes or building and selling their homes. Instead, this bill would assist the department in identifying and prosecuting unlicensed contractors who are building homes and offering them up for sale on a recurring basis. He acknowledged that the bill can help stop this practice to the degree that it is unfairly competing with contractors who compete in the business.

[3:46:27 PM](#)

REPRESENTATIVE HUGHES related her understanding there was nothing onerous in the bill nor any additional administrative steps an owner-builder would need to comply with, for example, as one testifier mentioned in the event spouse dies and the family needs to sell their home. She asked for further clarification on whether an owner-builder will have any problem or need to contact the department or answer to anyone or if the owner/builder would just move forward and sell his/her home.

MR. MITCHELL agreed that was correct, although the wording makes it sound like a person would need to obtain the department's approval; however, he envisioned the practical application of this provision is that the department would only get involved in the event a complaint was filed that raised the issue of unlicensed contracting. He said the department does not have the resources to check into routine home sales.

[3:47:51 PM](#)

REPRESENTATIVE HUGHES asked whether an owner/builder who did not check in with the department will be in violation of the statute.

MR. MITCHELL answered no.

[3:48:09 PM](#)

REPRESENTATIVE LEDOUX related a scenario in which a person sold their home and the buyer later encounters a problem. She asked how the buyer would be protected if the department is not involved.

MR. MITCHELL answered that the language is not designed to catch every case, but is designed to provide one more tool to make it more difficult for someone to operate as an unlicensed

contractor building and selling homes. He reiterated that this language is not intended to apply to owner/builders who build and sell their own homes. The department would only investigate if a complaint triggered one.

[3:49:32 PM](#)

CHAIR OLSON asked whether that would be considered an "as is" sale.

MR. MITCHELL answered that he was not sure.

CHAIR OLSON surmised it would fall under an "as is" sale.

[3:49:48 PM](#)

REPRESENTATIVE LEDOUX asked whether Mr. Clark's situation will be protected or if the same thing could happen.

MR. MITCHELL said the same thing could happen. He stated that the provision in HB 81 will provide the department with one more tool to identify unlicensed contractor activity. It would allow the department the opportunity to investigate whether an unlicensed contractor built and sold three homes in a few years, which would be an enforcement issue. However, an issue would not arise for an owner/builder who built his/her house and was trying to sell it.

[3:50:51 PM](#)

CHAIR OLSON said he was aware of Mr. Clark's situation, which involved ten homes.

[3:51:13 PM](#)

REPRESENTATIVE TILTON stated that she obtained a legal opinion as to whether home sales by an owner who is not a licensed contractor violates any constitutional provisions. She asked permission to pass it out to members.

[3:51:32 PM](#)

The committee took an at-ease from 3:51 p.m. to 3:45 p.m.

[3:54:22 PM](#)

REPRESENTATIVE COLVER commented that the Department of Labor & Workforce Development (DLWD) enforces the statute with respect to home sales; however, the statute is AS 08 which applies to the Department of Commerce, Community & Economic Development (DCCED) and not to Department of Labor & Workforce Development. He asked for further clarification on who provides enforcement.

SARA CHAMBERS, Acting Director, Division of Corporations, Business, and Professional Licensing, Department of Commerce, Community, & Economic Development (DCCED), answered that the Department of Labor & Workforce Development (DLWD) has a reimbursable services agreement (RSA), or contract, to provide enforcement services for construction contractors, mechanical and electrical administrators. She stated that the DCCED uses the DLWD as an efficiency measure since the DLWD's inspectors are already in the field conducting inspections. This effort has been happening successfully for several years.

[3:55:50 PM](#)

REPRESENTATIVE COLVER asked which department would make the determination that the sale of a home would circumvent requirements of this chapter as stated on page 2, lines 21-25 of HB 81.

MS. CHAMBERS answered that the responsibility resides within Department of Commerce, Community & Economic Development (DCCED) in partnership with Department of Labor & Workforce Development (DLWD). She said that the DLWD would be the most likely agency to detect illegal activity and issue a cease and desist order. The final arbitration and licensing action or fine collection and due process rights to appeal the cease and desist order are all elements that would be handled within the DCCED, she said.

[3:57:01 PM](#)

REPRESENTATIVE COLVER asked for clarification on the costs to enforce the regulations in this section. He recalled earlier testimony that indicated the department would need to promulgate regulations outlining under what conditions an owner could sell his/her home within the two-year period. He asked for an estimated cost to administer, prepare regulations, and oversee it.

MS. CHAMBERS said the division's average cost to promulgate regulations was estimated at \$2,500, which includes the cost of legal services and publication. She did not anticipate any

measureable increase in enforcement costs since these are the types of things the division is structured to do. She said she and Mr. Mitchell are "on the same page" in terms of how this statute would be applied. The department would not seek advance permission of owner/builders, but in the event a complaint is filed the department would investigate it to determine whether the owner/builder qualifies for the exemption.

[3:58:25 PM](#)

REPRESENTATIVE COLVER asked for an estimate of the time investigations will take.

MS. CHAMBERS answered that much of the investigative time depends on the complainants' willingness to work with the agency. She said she couldn't really predict; however, she didn't envision any significant increase in enforcement activity.

[3:58:52 PM](#)

REPRESENTATIVE COLVER related his understanding that the existing statute doesn't prohibit sale of an owner constructed home, but that an owner/builder is restricted to build only one newly constructed home within two years. He further understood there would not be any prohibition on owner/builder home sales.

MS. CHAMBERS answered that is correct.

[3:59:45 PM](#)

ERROL CHAMPION, Chair; Legislative Issues Committee, Alaska Association of Realtors (AAR), stated that the AAR is in support of HB 81. He related his understanding that an assistant attorney general has said the current statute is not clear enough to have the Department of Labor & Workforce Development (DLWD) or the Department of Commerce, Community & Economic Development (DCCED) prosecute violators of unlicensed construction contracting. This bill would clarify that the owner/builder cannot have a home for sale, especially if it is listed on a multiple listing service unless properly licensed to do so. In fact, realtors must verify that aspect at the time they take a listing, he said. Contractors must have a construction contractor's license with a residential endorsement, as well as submit to continuing education similar to the ongoing education realtors submit to as a condition of license renewal. Under the bill, the Department of Labor &

Workforce Development (DLWD) can force the owner/builder to obtain the appropriate license or stop building. These changes are not intended to make it more difficult in rural areas, but when homes are "flipped" every two years the intent is clear. He concluded by saying that the AAR supports the adoption of HB 81.

[4:01:19 PM](#)

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

[4:01:39 PM](#)

REPRESENTATIVE HUGHES moved to adopt the proposed committee substitute (CS) for HB 81, Version W, labeled 29-LS0346\W, Nauman/Strasbaugh, 2/16/15 as the working document.

CHAIR OLSON objected for the purpose of discussion.

[4:02:01 PM](#)

KONRAD JACKSON, Staff, Representative Kurt Olson, Alaska State Legislature, explained that page 2, lines 10 of Version W will add language to read, "an existing structure on" and on page 2, line 12, will add, "existing." This language was added at the recommendation of Mr. Mitchell, DLWD, he said.

[4:02:37 PM](#)

REPRESENTATIVE COLVER referred to Mr. Clark's case. He pointed out that the Alaska State Troopers issued a case number 12-7320 dated February 8, 2012.

CHAIR OLSON asked whether this is pertinent to the committee substitute, Version W.

REPRESENTATIVE COLVER answered yes; since the aforementioned case is fraud. He stated that the building inspection was signed off by a home inspector. The police report identified fraud committed by the home inspector, which is much bigger than a licensing issue since the home inspector misrepresented the home that was for sale. He wanted to ensure that the record is clear that this matter has been investigated as fraud and recommended for prosecution by the investigating trooper.

[4:04:16 PM](#)

REPRESENTATIVE COLVER commented on another very sad incident in which a family died of asphyxiation in a Wasilla home. He suggested that the testifier alluded to this as an instance of an owner-built home that resulted in death.

CHAIR OLSON asked whether this is pertinent to the proposed committee substitute, Version W, which is before the committee.

REPRESENTATIVE COLVER answered that it is pertinent since the proposed committee substitute takes action to regulate an activity, but it needs to be very clear that people didn't die because it was an owner-built home, but because the home was modified by the homeowner to vent the family's utility room to the master bedroom to pull excess heat, which resulted in carbon monoxide poisoning. While it is very sad, it is not relevant to whether it was an owner-built or licensed contractor built home, but it was a modification to the heating system that caused that tragedy, he said.

[4:06:15 PM](#)

CHAIR OLSON, in response to a question, asked members to limit comments to the proposed committee substitute (CS) for HB 81, Version W.

CHAIR OLSON removed his objection. There being no further objection, Version W was adopted.

[4:06:38 PM](#)

REPRESENTATIVE TILTON moved to adopt Amendment 1, labeled 29-LS0346\W.1, Strasbaugh, 2/18/15, which read as follows:

Page 1, following line 2:

Insert a new bill section to read:

*** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section to read:

LEGISLATIVE INTENT. It is the intent of the legislature that the exemptions listed in AS 08.18.161, as amended by sec. 2 of this Act, be construed broadly in order to allow individuals the freedom and ability to construct and sell their own homes based on their own discretion."

Page 1, line 3:

Delete "**Section 1**"

Insert "**Sec. 2**"

Renumber the following bill section accordingly.

Page 3, line 2:

Delete "sec. 1"

Insert "sec. 2"

REPRESENTATIVE COLVER objected.

[4:07:08 PM](#)

REPRESENTATIVE TILTON said that Amendment 1 would add legislative intent language to make it clear that this bill is intended to be interpreted in a way to not infringe on the freedom of Alaskans to construct and sell their own homes acting as contractors in a lawful manner.

[4:07:41 PM](#)

REPRESENTATIVE COLVER said that he can't support the intent language since it sounds nice but intent language will only have meaning if the legislative history is reviewed for legislative intent. He said that this language will not have any place in the statutory evaluation in how paragraph [11] is applied. Further, it contradicts the clear language that limits the sale of the home with the statement that it doesn't have any effect on property rights; however, he thinks it does have an effect. The holding by the Alaska Supreme Court is that intent language is merely an intent statement and not law.

[Representative Colver's objection was treated as maintained.]

[4:08:34 PM](#)

A roll call vote was taken. Representatives Hughes, LeDoux, Tilton, Kito, Josephson, and Olson voted in favor of Amendment 1. Representative Colver voted against it. Therefore, Amendment 1 was adopted by a vote of 6-1.

[4:09:20 PM](#)

REPRESENTATIVE COLVER made motion to adopt Amendment 2, labeled 29-LS0346\A.4, Strasbaugh, 2/18/15, which read as follows:

Page 1, following line 2:

Insert a new bill section to read:

"* **Section 1.** AS 08.18.051 is amended by adding new subsections to read:

(d) A residential contractor or the agent of a residential contractor shall prominently display the license number of the residential contractor on all advertising by the contractor for the initial sale of a residential structure constructed by the contractor.

(e) An owner who acts as the owner's own contractor consistent with the exemption provided under AS 08.18.161(11) shall, for two years after construction on a structure begins, state on all advertising for the initial sale of the structure that the owner of the structure acted as the owner's own contractor."

Page 1, line 3:

Delete "**Section 1**"

Insert "**Sec. 2**"

Renumber the following bill section accordingly.

Page 2, line 21, following "years":

Insert "**and shall comply with AS 08.18.051(e)**"

Page 2, lines 21 - 25:

Delete "**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;**"

Page 3, line 2:

Delete "sec. 1"

Insert "sec. 2"

CHAIR OLSON objected for the purpose of discussion.

REPRESENTATIVE COLVER explained Amendment 2. He stated that the bill helps enforce contracting law to achieve better built homes. He said that he thinks we can get better enforcement by requiring disclosure. Amendment 2 would require contractors to display their license number on any advertising of a new home and require owner/builders offering a home for sale within two years to display and disclose that it was built by an owner.

This would keep the government out of it and the Department of Commerce, Community & Economic Development will not make decisions on who can opt out of the two-year sale provision, or the additional staff time by the agency or the Department of Law or Department of Labor & Workforce Development. Finally, Alaskans won't have to ask permission to sell their lawfully built homes. He offered his belief that disclosure and advertising can accomplish the same mission - to avoid having unlicensed builders building homes - since everyone will be aware of the signs. He clarified that Amendment 2 will delete the provision restricting the owner/builders from selling their homes in two years and avoids having the government infringe on individual property rights or place unreasonable burdens on property owners.

[4:11:40 PM](#)

REPRESENTATIVE KITO referred to subsection (d) of Amendment 2, which identifies a residential contractor or the agent of a residential contractor. He asked whether he could explain if the agent of the residential contractor would be a general contractor.

REPRESENTATIVE COLVER answered that agent would refer to a real estate agent.

[4:12:16 PM](#)

REPRESENTATIVE TILTON suggested that subsection [d] is already addressed under AS 08.18 051, related to identification requirements for contractors.

MR. NAGEL answered that the existing statute in AS 08.18.051 requires substantially the same thing that is in subsection (d) of Amendment 2. He acknowledged that it may be clearer in subsection (d) but the requirement is still there in subsection (b) and (c) of the current statute.

[4:14:20 PM](#)

REPRESENTATIVE HUGHES asked how the bill might impact an ordinary Alaskans wanting to build their own homes, noting they wouldn't need to do anything different under current law. However, she said [Amendment 2] would add a requirement for owner/builders. She said that Amendment 2 would actually add onerous requirements on Alaskans who desire to build their homes

and it does not promote individual liberties. Therefore, she will not be supporting Amendment 2, she said.

MR. MITCHELL answered that [Amendment 2] does seem to create another requirement for owner/builders who build their own homes to put some statement to that effect in their advertising.

[4:15:40 PM](#)

REPRESENTATIVE COLVER pointed out the reason the bill is before the committee is to enforce unlicensed contractors. Further, the concern from the industry is that unlicensed builders are selling homes. He offered his belief that the reason most owners build homes is to live in their homes. He said if people do not get a contractor's license, they need to state that they are owner/builders acting as their own contractors. Doing so makes it clear to the public that they are buying homes that were built by owner/builders and not contractors. Further, the advertising is prominently displayed, which is the clarification between the language in [Amendment 2] and the existing statutory language. He characterized it as the "golden seal" since it identifies any homes built by licensed contractors. He acknowledged that home inspections are part of the due diligence performed by the buyers. He offered his belief that [Amendment 2] creates something that is straightforward and simple rather than requiring owner/builders to ask the government permission to sell their homes within two years. This simply requires disclosure and the government will not be involved in the process, he said; instead, the onus is on public and it is similar to how many things are handled.

[4:17:48 PM](#)

REPRESENTATIVE LEDOUX asked for the reason to set up two classes of people, with one group that must be licensed and bonded and another group of people who are [building homes] as a business who don't need to be licensed and bonded. She said she has a problem with this amendment but she likes the bill.

[4:18:40 PM](#)

REPRESENTATIVE JOSEPHSON said he is not likely to vote for Amendment 2, but he did not think the burden in subsection (e) is so egregious. After all, the law already restricts owners to build one home every two years. Thus, current law creates a break on pure liberty interest and restricts owners. He understands the point the sponsor of Amendment 2 attempts to

make, which is to create notice and cure the problem in a different way. He expressed concern with Amendment 2 since a person could be working on a home for two years. Certainly the timeframe could spill in to second year and the notice will be eaten up by the time of construction, since [subsection (e) states it will begin after construction. He said the time could end at time of sale so he was unsure that there would be a "whole lot of" notice.

REPRESENTATIVE COLVER maintained his objection.

[4:20:06 PM](#)

A roll call vote was taken. Representative Colver voted in favor of Amendment 2. Representatives Hughes, LeDoux, Tilton, Kito, Josephson, and Olson voted against it. Therefore, Amendment 2 failed by a vote of 1-6.

[4:20:52 PM](#)

REPRESENTATIVE COLVER moved to adopt Amendment 3, labeled 29-LS0346\A.5, Strasbaugh, 2/18/15, which read, as follows:

Page 2, line 22, following "is":

Insert "in a home rule, first class, or second class borough or unified municipality"

CHAIR OLSON objected.

REPRESENTATIVE COLVER explained that Amendment 3 basically exempts unorganized communities. He said it would apply in a home rule, first class, or second class borough or unified municipality.

[4:21:30 PM](#)

REPRESENTATIVE JOSEPHSON pointed out that as a general rule that some code enforcement will occur in larger communities. He assumed that the problem the sponsor is trying to remedy exists in rural Alaska, as well.

CHAIR OLSON responded that the issues in his district are from areas outside the city limits and not in Kenai or Soldotna.

[4:22:40 PM](#)

REPRESENTATIVE COLVER offered his belief that Amendment 3 will help reduce inspections by the Department of Labor & Workforce Development (DLWD) of owner/builder homes in rural Alaska. He said it does not apply in the Kenai Peninsula Borough, but it will apply in communities such as Tok and Glenallen, as well as areas along the river systems. He suggested that funding doesn't exist to enforce the current law.

[4:23:32 PM](#)

REPRESENTATIVE KITO added that protection is needed in the unorganized areas to protect them from actions.

CHAIR OLSON maintained his objection.

[4:23:52 PM](#)

A roll call vote was taken. Representative Colver voted in favor of Amendment 3. Representatives Hughes, LeDoux, Tilton, Kito, Josephson, and Olson voted against it. Therefore, Amendment 3 failed by a vote of 1-6.

[4:24:39 PM](#)

CHAIR OLSON stated Version W is before the committee.

[4:24:52 PM](#)

REPRESENTATIVE JOSEPHSON said he has spent considerable time on this bill. He acknowledged Representative Colver's point that too much government isn't a good thing and if people are foolish and make bad purchasing decisions that it is on them. They need to be grownups, be vigilant, and look after themselves or basically, caveat emptor - "let the buyer beware". He suggested all of these things apply to this bill. In terms of liberty, if it took someone two years to build, the person could be tied to the home for four years, which somewhat concerns him, but he is not surprised by the Legislative Legal opinion since he has read some of the cases cited. However, there are over 300 million people in the U.S. and our country is much more complicated than when it was founded. He said rules are designed to keep us safer. He said the idea of "meeting the department's satisfaction" as a deciding factor seems arbitrary and capricious since he has no idea what that phrase actually means. He also was not sure how these key lines will help much since enforcement costs money. He pointed out dry cabins can be built outside of Anchorage. Ultimately, what Mr. Green wrote on

February 18, 2015 in a letter in support of HB 81 was persuasive, which read, "If you believe anybody should be able to be a builder, then we need to change and/or do away with the requirements we now place on our licensed general contractors." He said that was the deciding factor for him. Thus, he recommends voting to move HB 81 out of committee with a positive recommendation.

[4:28:02 PM](#)

CHAIR OLSON agreed with the comments of the previous speaker.

[4:28:12 PM](#)

REPRESENTATIVE COLVER said that the issue raised in this bill comes from his community. However, passing this bill won't change the competitive landscape. He suspected that if a few builders are not getting licensed, they will likely get a license, but the "playing field" will not change since there are competitive business models used to gain an advantage. He predicted that what will happen is Alaskans will lose freedom. He said Alaskans don't want to go to the government to ask permission to sell their property just as they don't go to the U.S. Securities and Exchange Commission to ask permission to sell their stocks. Instead, individuals are free to buy and sell as they see fit.

REPRESENTATIVE COLVER said the law allows Alaskans to build their own homes every two years. He suggested that a lack of adequate enforcement exists, which has led to this measure. However, he characterized HB 81 as an overreach that will cost government money. Further, he questioned whether it is the government's decision since it's not clearly defined in the bill when people can sell their homes. He suggested that is yet to be determined, which really needs to be worked out. He said a lot of Alaskans feel strongly about their rights and he joins them. He suggested it is possible to have a competitive landscape and a well-licensed, well-regulated building industry, but many communities, such as the greater Mat-Su Borough do not want building permits. Thus, the approach taken will regulate the industry through another angle, which is to have the state intervene. He offered his belief that some of these issues need to be solved locally. He estimated 60-70 percent of the homes currently being built are owner/builder homes, in which Alaskans buy land, build a home, add on to it, and if they sell, the prospective buyers will obtain their own inspectors.

REPRESENTATIVE COLVER pointed out that an instance of simple fraud and falsified documents led to this bill. He concluded that this bill is overkill. He cautioned members about limiting liberty and asked members to tread lightly on Alaskans' freedom.

4:31:48 PM

REPRESENTATIVE LEDOUX answered that she supports having a level playing field. She understood the argument for individual liberty, which is as important to her as it is to anyone else in this body. However, she suggested that the committee either passes this bill or should simply eliminate licensing requirements for everyone in the industry. She said that for most of this century, the idea of caveat emptor - "let the buyer beware" - did apply to construction contracts; however, the legislature previously made policy decisions to require builders and contractors to be licensed and bonded. Therefore, let's make it for everyone, she said.

4:32:45 PM

REPRESENTATIVE HUGHES said she would not be supportive of the bill if it limited liberty of individual Alaskans. However, this bill does not require individual Alaskans who are owner/builders to seek permission from the government. Further, it does not place any burden on Alaskans who have built their own homes. She agreed with Representative LeDoux that the legislature has previously made policy decisions. She referred to a Legislative Legal Services memo that opines that HB 81 does not constitute any constitutional issues with respect to an unwarranted restraint of trade for an owner/builder who is not a licensed construction contractor.

REPRESENTATIVE HUGHES acknowledged previous testimony related to a home inspector who was being recommended for prosecution; however, there were underlying problems with the home that was built. In fact, policy decisions have been made in order for Alaskans to have safe homes. Although she would love it if the market could take care of the problems, and people can get the best product for the best price, but buyers can't see everything in the walls, nor are all people experts. Certainly people can hire inspectors, but things can be missed. However, buyers need assurances that their homes have been built by someone who knows what they are doing and who is following the rules. She asked to place on the record that this bill does not require individual Alaskans to seek permission from the government and

Alaskans will continue to have the liberty to build and sell their own homes as owner/builders.

[4:35:18 PM](#)

REPRESENTATIVE TILTON stated that she appreciated the questions that have been raised. She stated it is not her desire to prevent people from building or selling their own homes. She said that HB 81 is intended to close a loophole [for unlicensed contracting] and not remove any personal liberties.

[4:36:34 PM](#)

REPRESENTATIVE HUGHES moved to report the proposed committee substitute (CS) for HB 81, labeled 29-LS0346\W, Nauman/Strasbaugh, 2/16/15 [Version W], out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE COLVER objected.

[4:36:47 PM](#)

A roll call vote was taken. Representatives Hughes, LeDoux, Tilton, Kito, Josephson, and Olson voted in favor of moving to report the proposed committee substitute (CS) for HB 81, Version W out of committee. Representative Colver voted against it. Therefore, the CSHB 81(L&C) was reported out of the House Labor and Commerce Standing Committee by a vote of 6-1.

[4:37:14 PM](#)

The committee took an at-ease from 4:37 p.m. to 4:39 p.m.

HB 86-PCE ENDOWMENT FUND INVESTMENT

[4:39:35 PM](#)

CHAIR OLSON announced that the final order of business would be HOUSE BILL NO. 86, "An Act relating to investment of the power cost equalization endowment fund; and providing for an effective date."

[4:39:47 PM](#)

JERRY BURNETT, Deputy Commissioner, Office of the Commissioner, Department of Revenue (DOR), stated that HB 86 would remove "seven percent" from the statute and replaces it with a phrase

that reads, "to meet the objectives of the power cost equalization and rural electric capitalization fund (AS 42.45.100)." He clarified that none of the other funds have a numerical objective in statute, but risk is involved in trying to reach a specific numerical objective over time.

[4:40:59 PM](#)

REPRESENTATIVE JOSEPHSON asked whether anything unfortunate happened to the account or the language is just being adjusted.

MR. BURNETT stated that he has been with the department for 10 years. He recalled that the department suffered some fairly large losses in 2008 in the fund, but relatively speaking there haven't been any bad decisions during that time; however, since he has been with the department, all five commissioners have supported removing the number from statute.

[4:42:01 PM](#)

REPRESENTATIVE KITO said it seemed as though the investment goals may have changed, since enough income is being generated by the fund to pay for the current Power Cost Equalization Program. He said it appeared as though the department wants to manage it and not lose the ability to do so.

MR. BURNETT said it is currently probably less important to be an aggressive investor than it might have been a few years ago. The balance in the fund is over \$950 million and a 7 percent payout is more than what is required to manage the power cost equalization (PCE) expenditures. He suggested it is well within the objectives of the fund to "ratchet down risk" a little bit.

[4:43:06 PM](#)

CHAIR OLSON reported that the committee has received documentation today that since 2000 the PCE fund has averaged 6.05 percent return on investment.

MR. BURNETT said it is a geometric annualized return and not an arithmetic average of the returns year to year, but is a geometric average, which includes the losses.

[4:43:32 PM](#)

REPRESENTATIVE HUGHES asked whether this is now just being brought forward due to the market. She asked for further clarification on the types of investments.

[4:44:01 PM](#)

MR. BURNETT said Gary Bader previously testified on the standard deviation between different types of investments and how having a riskier investment may look like it will reap a higher return, which will happen arithmetically over time, but the geometric return can be reduced due to the losses. He stated that capital market assumptions change each year so the department considers different levels of risk. This year the goal might be a 6 percent return and next year it might be a 9 percent return, depending on the market. He referred to the different types of investments such as stocks relative to bonds, or fixed investment - which currently has little return. He reported that the stock market has been going up for the past six years, but it has never gone up for seven years. It doesn't mean it won't but it has never happened since 1802, he said. This matter was introduced in last legislature, but it did not move through the process, he reported.

[4:45:41 PM](#)

REPRESENTATIVE HUGHES related her understanding that the 7 percent requirement was established in statute since it was what was considered necessary to pay the PCE expenditures. She asked for the target return to meet expenditures.

MR. BURNETT answered that the statute for the payout is 7 percent of the average of the prior three years. He said that this is reported to the Alaska Energy Authority and they use that figure as the maximum that it could request. He recalled that the budget for the PCE is in \$50 million range, which is approximately between a 5-6 percent return.

[4:47:03 PM](#)

CHAIR OLSON, after first determining no one wished to testify, closed public testimony on HB 86.

[4:47:22 PM](#)

REPRESENTATIVE HUGHES moved to report HB 86 out of committee with individual recommendations and the accompanying fiscal

note. There being no objection, HB 86 was reported from the House Labor and Commerce Standing Committee.

4:47:56 PM

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:47 p.m.