

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

April 7, 2015

1:29 p.m.

**MEMBERS PRESENT**

Senator Mia Costello, Chair  
Senator Cathy Giessel, Vice Chair  
Senator Gary Stevens  
Senator Johnny Ellis

**MEMBERS ABSENT**

Senator Kevin Meyer

**COMMITTEE CALENDAR**

CONFIRMATION HEARING

Department of Labor and Workforce Development  
Heidi Drygas, Commissioner

- CONFIRMATION ADVANCED

SENATE BILL NO. 76

"An Act relating to private actions and remedies against real estate licensees for licensee relationships, disclosures, and activity before January 1, 2005; and providing for an effective date."

- MOVED SB 76 OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: SB 76

SHORT TITLE: REAL ESTATE BROKERS; LIABILITY

SPONSOR(S): JUDICIARY

03/18/15	(S)	READ THE FIRST TIME - REFERRALS
03/18/15	(S)	L&C, JUD
03/31/15	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)
03/31/15	(S)	Heard & Held
03/31/15	(S)	MINUTE(L&C)

**WITNESS REGISTER**

HEIDI DRYGAS, Commissioner designee  
Department of Labor and Workforce Development (DOLWD)  
Anchorage, Alaska

**POSITION STATEMENT:** Testified as commissioner designee for the Department of Labor and Workforce Development.

GENEVIEVE WOJTUSIK, Staff  
Senator McGuire  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Provided supporting information for SB 76 on behalf of the sponsor.

JEFFREY PICKETT, retained counsel for the Senate Judiciary Committee  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions related to SB 76.

#### **ACTION NARRATIVE**

[1:29:56 PM](#)

**CHAIR MIA COSTELLO** called the Senate Labor and Commerce Standing Committee meeting to order at 1:29 p.m. Present at the call to order were Senators Ellis, Giessel and Chair Costello.

#### **Confirmation Hearing**

#### **Commissioner, Department of Labor and Workforce Development**

[1:30:20 PM](#)

CHAIR COSTELLO announced the first order of business would be a confirmation hearing for Heidi Drygas as Commissioner of the Department of Labor and Workforce Development (DOLWD). She noted that this was the fifth and final hearing on governor appointments. She asked Commissioner designee Drygas to provide opening remarks.

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HEIDI DRYGAS, Commissioner designee, Department of Labor and Workforce Development (DOLWD), said she is a lifelong Alaska. She attended UAF and received a degree in history. She then attended Willamette University and received a law degree in 2003. She moved to Anchorage in 2004 and worked as an insurance defense attorney for a year before she was offered a position as general counsel for the Alaska District Council of Laborers. She held that position until she was appointed to this position on December 19, 2014. She said she's enjoying the work and is

impressed with the employees. They are a dedicated group and it's an honor to lead the department, she said.

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SENATOR STEVENS joined the committee.

SENATOR ELLIS asked for an update on the job centers.

COMMISSIONER DRYGAS said DOLWD has been downsizing the number of job centers over the past several years because the federal funding sunsets this year. However, the department recognizes they are an important resource for communities and is working to partner with regional entities and communities so that job center services aren't entirely removed from locations. Both the Eagle River and Muldoon job centers will remain open for FY2016 with reduced staffing; AVTEC will take over the responsibilities of the job center in Seward; and the City of Barrow will assume the job center services that the department has previously provided. The ongoing effort is to ensure that if the department doesn't offer the job center services, someone in the area does.

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SENATOR GIESSEL referenced the minutes from a recent Alaska Gasline Development Corporation (AGDC) board of directors meeting and asked what decision points she had considered in reaching a yes vote on the resolution [to study the cost to expand the size of the ASAP pipeline].

COMMISSIONER DRYGAS explained that she wanted to ensure that the resolution reflected the intent of the board regarding whether or not to support expanding the capacity of the Alaska Stand Alone Pipeline (ASAP). She said everyone agrees that the priority is to develop AKLNG, but it's important to have a viable, economic backup. The timing of the resolution was important because the technical team that has the expertise to study the issue might be disbanded. She posited that it was part of due diligence to study the matter now rather than later time.

SENATOR GIESSEL asked if the board was apprised of the estimated cost of the study.

COMMISSIONER DRYGAS answered no, but they were told that it would be more expensive to request the study after the technical team had disbanded.

SENATOR GIESSEL asked what preparations are being made for the estimated 10,000-15,000 jobs that would be created by the large AKLNG pipeline.

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COMMISSIONER DRYGAS said the current estimate is that between 8,000 and 9,000 workers will be needed to construct the AKLNG pipeline and about 1,000 workers to maintain it. The producers have expressed interest in working with DOLWD on an integrated labor study looking at whether the state can meet the workforce needs to build the project. She stressed that having a skilled and ready workforce is a number one goal of the governor and one of her primary goals as commissioner.

COMMISSIONER DRYGAS said the new workforce development plan will draw from previous models and will include input from stakeholders from industry and labor as well as the Alaska Workforce Investment Board. The intent is to have a targeted timeline to identify needs and to put systems in place to meet those needs. She said the department has hit the ground running to ensure that the systems are in place to develop a skilled Alaskan workforce that is ready to meet the needs of industry when the AKLNG project is built. The situation was different when the Trans Alaska Pipeline System in that the state didn't have a trained and ready workforce.

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SENATOR GIESSEL highlighted the differences in the state between the 1970s and now.

COMMISSIONER DRYGAS responded that she was in Alaska because her father worked on TAPS.

SENATOR GIESSEL asked her thoughts on the confidentiality agreement concept for an AGDC board member.

COMMISSIONER DRYGAS explained that the administration was concerned about transparency and ensuring that Alaskans know at each step what is happening with their resource. That being said, she was ready to work on and sign a confidentiality agreement that the administration and AGDC board members agreed to.

SENATOR GIESSEL asked if she received an explanation of instate consumption capacity and what would happen to the extra gas if the small instate line was expanded.

COMMISSIONER DRYGAS acknowledged that there would be challenges associated with marketing the gas in a meaningful way. She said the administration and the AGDC board would like to see the AKLNG line come to fruition, but if that fails this would be a backup to provide gas to Alaskans and another revenue stream for years to come.

SENATOR GIESSEL expressed appreciation for the answers and highlighted the concern that the smaller pipeline is not an integrated project and has no export component.

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SENATOR STEVENS commented on the importance of timing all training and asked who will train the workforce.

COMMISSIONER DRYGAS replied the department will work with partners and regional training centers. Apprenticeship programs will also be increased. The timing of the training will be part of the workforce development plan and will depend on that timeline. The multiple systems will work together to meet the different timeframes.

DOLWD will have collaborative meetings with the regional training centers to work on career and technical education and look at program needs. The department, the university and the Department of Education convened a taskforce to further develop a career and technical education (CTE) plan to eliminate duplication and identify critical industries that need more trained workers. The focus is to enhance the oil and gas workforce but they'll also look at growing new industries. She noted that DOLWD is working with the federal government to submit an American Apprenticeship grant application that could bring in \$2.5 million to \$5 million for non-traditional apprenticeships.

SENATOR STEVENS reiterated the importance of timeliness in training a workforce and thanked Commissioner Drygas for her efforts.

SENATOR COSTELLO asked Commissioner Drygas if she saw the AGDC resolution for the first time on the same day she voted on it. She noted that Mr. Halford testified to the Senate Resources Committee that he hadn't seen it before the meeting.

COMMISSIONER DRYGAS said she hadn't seen the resolution before but had discussed the concept with another board member. She

wasn't surprised to see it but wanted to make sure it was thoroughly discussed and reflected the intent of the body.

CHAIR COSTELLO quoted Commissioner Drygas' comments during the 3/15/15 AGDC board meeting. "And I think I'd feel comfortable if we took the time to make sure that if we vote on this, we give a clear direction to staff in the resolution, not just necessarily what's on the record." She asked Commissioner Drygas if she values getting conversations on the record because it seems that a lot of questions went unanswered.

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COMMISSIONER DRYGAS recalled there was discussion during the meeting about what the board intended the staff to study, but her feeling was that specific directions for the staff should be included in the resolution. The ultimate decision was that the staff had sufficient direction. She didn't recall off-record conversations which are prohibited under the public meetings law.

CHAIR COSTELLO advised Commissioner Drygas to think independently and consider the effect of what the resolution is communicating. She asked how she can justify spending money on a secondary plan when there's already a backup on the books that everybody likes.

COMMISSIONER DRYGAS clarified that there is no current intention to expand the size of the Alaska Stand Alone Pipeline (ASAP). The AGDC board is looking to study whether that is a viable option. That's never been done; it's only been looked at as a smaller diameter line. She said she doesn't take the cost of the study lightly but as a board member and Commissioner she has a fiduciary responsibility to the people of Alaska to look at the option to see if it's economically feasible. "While we continue with the study, hopefully AKLNG continues to progress," she said.

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CHAIR COSTELLO expressed concern that the study to expand the size of ASAP would put the larger pipe at risk. She urged waiting a year to give AKLNG time to move to the next stage. She pointed out that Senate Bill 138 was signed into law after 51 hearings and thorough discussion. That project will bring from 15,000 to 20,000 jobs and there's a duty to Alaskans to follow the law which is laid out very clearly. AKLNG is the star player but if it doesn't work out, ASAP is the backup.

She expressed appreciation for the questions Commissioner Drygas asked during the AGDC Board meeting and encouraged her to view herself as an independent member who can ask the larger questions such as what are the board actions communicating to the market.

SENATOR GIESSEL underscored the importance of waiting to see if the producers and the state, as equal partners, can make this large project economic. "We don't want to be trying to craft something now when we don't know what the fail points are for this smaller backup," she said.

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COMMISSIONER DRYGAS replied she appreciates the concerns but she doesn't believe that there is time to wait to look at the fail points before looking at the options for the backup plan. She continued to say:

Alaska needs a new revenue stream and we don't have the time to wait. I think it is important to continue both of these projects together, as they have been. There has been a lot of collaboration and working together. There's a lot of shared data involved that's been really helpful and beneficial and ultimately I think the board and the governor would like to see these eventually merge into one.

SENATOR GIESSEL pointed out that the two projects have fundamentally different goals. The ASAP line was for instate use and not considered for export, whereas the AKLNG has always been an export line. She cautioned that making a policy change on the instate line creates a conflict and a problem.

CHAIR COSTELLO added that the AKLNG project has offtake opportunities for instate gas.

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CHAIR COSTELLO found no further comments and read the following:

In accordance with AS 39.05.080 the Senate Labor and Commerce Committee reviewed the following and recommends the appointment to be forwarded to a joint session for consideration.

[2:19:06 PM](#)

CHAIR COSTELLO called an at ease to sign the paperwork.

**SB 76-REAL ESTATE BROKERS; LIABILITY**

[2:21:06 PM](#)

CHAIR COSTELLO reconvened the meeting and announced the consideration of SB 76. "An Act relating to private actions and remedies against real estate licensees for licensee relationships, disclosures, and activity before January 1, 2005; and providing for an effective date." She noted that this was the second hearing.

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GENEVIEVE WOJTUSIK, Staff, Senator McGuire, summarized that SB 76 addresses notification requirements for real estate transactions before January 1, 2005 when the licensee represents both the buyer and seller. The original statute did not specify remedies if a real estate licensee violated its provisions and had no timeline. In 2002 a lawsuit was brought and it became a class action suit in 2010. SB 76 broadens the language in [AS 08.88.396(e)] to help with that suit.

During the previous hearing, Senator Giessel asked what the law said in 1998 regarding dual representation. At that time, AS 08.88.396(c) said: "A person licensed under this chapter may act as an agent for both the prospective seller and a prospective buyer of real estate, only after the licensee informs both the seller and the buyer of the dual agency and receives written consent to the dual agency from both principals." The statute did not include a timeline for obtaining the written consent to the dual representation.

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CHAIR COSTELLO recalled previous testimony that prospective homeowners were making on the spot offers after viewing the properties. As a result, a situation came up where a buyer felt he/she made an offer without receiving communication from the agent about their dual representation.

MS. WOJTUSIK confirmed that two people felt that they were not informed that the real estate licensee represented both the buyer and seller. They brought legal action in 2002.

CHAIR COSTELLO asked why the new language on page 1, line 6, striking the term "for" and inserting "arising out of" is a clarification.

MS. WOJTUSIK deferred to Mr. Pickett.

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JEFFREY PICKETT, retained counsel for the Senate Judiciary Committee, explained that the term "arising out of" is a more broadly interpreted term by Alaska courts and would cover both common law and statutory actions. This would clarify the legislature's intent in 2003 when it limited damages to actual damages for violations of the dual agency notice requirement.

CHAIR COSTELLO asked if this change might bring consumer protection concerns.

MR. PICKETT replied he has heard nothing on the consumer advocate side that would indicate concern with this change. He explained that the change is focused on the damages a consumer is entitled to if the dual representation was not properly disclosed. Should forfeiture be allowed as a remedy for failure to properly disclose, some 3,500 transactions that took place during this timeframe would be at risk. That would gravely damage the entire industry.

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CHAIR COSTELLO asked how the bill clarifies the will of the legislature in 2003.

MR. PICKETT replied the will of the legislature is determined by courts after a review of the legislative history. This includes testimony, written comments and anything put on the record. His understanding is that the legislature in 2003 was trying to clarify the same thing that SB 76 seeks to clarify. That is that permitting forfeiture as a remedy for violations of the dual agency provisions would have a very disruptive impact on the real estate industry.

CHAIR COSTELLO asked Senator Ellis if he had supplemental information.

SENATOR ELLIS replied the previous comments reflect his memory.

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SENATOR STEVENS asked why the bill is retroactive [to January 1, 1991], if anyone would be harmed by the retroactivity and how they would be harmed.

MR. PICKETT explained that the bill is necessarily retroactive so it applies to cases and claims brought since the 1998 amendment made disclosure of dual agency a requirement. The bill makes it clear to the courts that the intent of the legislature

in 2003 was that only actual damages would be awarded to a consumer if provisions of the dual agency requirement were violated.

SENATOR STEVENS asked if there are ongoing court cases to which this would apply and if it would provide a definitive answer for any court decisions.

MR. PICKETT confirmed that a case has been ongoing since 2010 could be affected, and others could be brought based on transactions between 1998 and 2003. He said the ambiguity in the law is related to whether the limitation to actual damages applies to common law actions. It clearly applies to statutory actions. The pending case could be affected because the bill would require the courts to apply the limitation to actual damages in any case arising out of the failure to disclose dual agency representation.

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CHAIR COSTELLO asked how to rationalize a retroactive effective date when one legislature is not able to bind another legislature.

MR. PICKETT explained that retroactivity is a permitted power of a sitting legislature. One legislature may not bind a future legislature, but it is permissible for a legislature to change what an earlier legislature has done.

SENATOR STEVENS asked for an explanation of actual damages as opposed to other types.

MR. PICKETT explained that actual damages are out-of-pocket losses a buyer or seller might have suffered as a result of not understanding that the agent was representing both parties. The claimants in the pending case are seeking the punitive damage of forfeiture. Those claimants would like the real estate agents that didn't technically comply with the disclosure requirement to disgorge the commissions and fees that they earned.

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CHAIR COSTELLO found no further questions or testimony and closed public testimony.

[2:37:24 PM](#)

SENATOR STEVENS motioned to report SB 76 from committee with individual recommendations and attached fiscal note(s).

CHAIR COSTELLO announced that without objection, SB 76 is reported from the Senate Labor and Commerce Standing Committee.

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There being nothing further to come before the committee, Senator Costello adjourned the Senate Labor and Commerce Standing Committee at 2:37 p.m.