

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

February 5, 2018

3:15 p.m.

MEMBERS PRESENT

Representative Sam Kito, Chair
Representative Adam Wool, Vice Chair
Representative Andy Josephson
Representative Louise Stutes
Representative Chris Birch
Representative Gary Knopp
Representative Colleen Sullivan-Leonard

MEMBERS ABSENT

Representative Mike Chenault (alternate)
Representative Bryce Edgmon (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 323

"An Act extending the termination date of the Board of Pharmacy;
and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 64

"An Act adopting the Uniform Environmental Covenants Act;
relating to environmental real property covenants and notices of
activity and use limitation at contaminated sites to ensure the
protection of human health, safety, and welfare, and the
environment; and providing for an effective date."

- MOVED HCS SB 64(L&C) OUT OF COMMITTEE

PRESENTATION: STATE RESIDENTIAL BUILDING CODES

- HEARD

HOUSE BILL NO. 278

"An Act extending the termination date of the Board of Certified
Real Estate Appraisers; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 279

"An Act extending the termination date of the Real Estate Commission; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 280

"An Act extending the termination date of the Board of Marital and Family Therapy; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 323

SHORT TITLE: EXTEND: BOARD OF PHARMACY

SPONSOR(S): REPRESENTATIVE(S) SULLIVAN-LEONARD

02/02/18	(H)	READ THE FIRST TIME - REFERRALS
02/02/18	(H)	L&C, FIN
02/05/18	(H)	L&C AT 3:15 PM BARNES 124

BILL: SB 64

SHORT TITLE: UNIFORM ENVIROMENTAL COVENANTS ACT

SPONSOR(S): SENATOR(S) MICCICHE

02/17/17	(S)	READ THE FIRST TIME - REFERRALS
02/17/17	(S)	CRA, L&C
02/28/17	(S)	CRA AT 3:30 PM BELTZ 105 (TSBldg)
02/28/17	(S)	Heard & Held
02/28/17	(S)	MINUTE(CRA)
03/07/17	(S)	CRA AT 3:30 PM BELTZ 105 (TSBldg)
03/07/17	(S)	Moved SB 64 Out of Committee
03/07/17	(S)	MINUTE(CRA)
03/08/17	(S)	CRA RPT 2DP 2NR
03/08/17	(S)	DP: BISHOP, HOFFMAN
03/08/17	(S)	NR: MACKINNON, STEDMAN
03/14/17	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)
03/14/17	(S)	Heard & Held
03/14/17	(S)	MINUTE(L&C)
03/16/17	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)
03/16/17	(S)	Moved SB 64 Out of Committee
03/16/17	(S)	MINUTE(L&C)
03/20/17	(S)	L&C RPT 1DP 3NR
03/20/17	(S)	NR: COSTELLO, HUGHES, GARDNER
03/20/17	(S)	DP: STEVENS

03/27/17 (S) TRANSMITTED TO (H)
03/27/17 (S) VERSION: SB 64
03/29/17 (H) READ THE FIRST TIME - REFERRALS
03/29/17 (H) CRA, L&C
04/11/17 (H) CRA AT 8:00 AM BARNES 124
04/11/17 (H) Heard & Held
04/11/17 (H) MINUTE(CRA)
04/13/17 (H) CRA RPT 4DP 1NR
04/13/17 (H) DP: WESTLAKE, TALERICO, FANSLER, PARISH
04/13/17 (H) NR: RAUSCHER
04/13/17 (H) CRA AT 8:00 AM BARNES 124
04/13/17 (H) Moved SB 64 Out of Committee
04/13/17 (H) MINUTE(CRA)
04/17/17 (H) L&C AT 3:15 PM BARNES 124
04/17/17 (H) Heard & Held
04/17/17 (H) MINUTE(L&C)
02/05/18 (H) L&C AT 3:15 PM BARNES 124

WITNESS REGISTER

REPRESENTATIVE COLLEEN SULLIVAN-LEONARD
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 323 as prime sponsor.

KRIS CURTIS, Legislative Auditor
Legislative Audit Division
Legislative Agencies and Offices
Juneau, Alaska

POSITION STATEMENT: Presented audit findings and recommendations and answered questions during the discussion of HB 323.

LEIF HOLM, Chair
Board of Pharmacy
Division of Corporations, Business and Professional Licensing (DCBPL)
Department of Commerce, Community, and Economic Development (DCCED)
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 323.

RICHARD HOLT, Vice Chair
Board of Pharmacy
Division of Corporations, Business and Professional Licensing (DCBPL)

Department of Commerce, Community, and Economic Development
(DCCED)

Eagle River, Alaska

POSITION STATEMENT: Testified in support of HB 323.

SENATOR PETER MICCICHE

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented SB 64 as prime sponsor.

KRISTEN RYAN, Director

Spill Prevention and Response

Department of Environmental Conservation (DEC)

Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on SB 64.

JENNIFER CURRIE, Senior Assistant Attorney General

Environmental Section

Department of Law

Anchorage, Alaska

POSITION STATEMENT: Testified on SB 64.

JIM DUNLAP, President

Alaska State Home Building Association (ASHBA)

Juneau, Alaska

POSITION STATEMENT: Introduced the presentation on State Residential Building Codes.

JESS HALL, Vice President

Alaska State Home Building Association (ASHBA)

Juneau, Alaska

POSITION STATEMENT: Presented State Residential Building Codes.

ACTION NARRATIVE

[3:15:47 PM](#)

CHAIR SAM KITO called the House Labor and Commerce Standing Committee meeting to order at 3:15 p.m. Representatives Josephson, Wool, Birch, Knopp, Sullivan-Leonard, and Kito were present at the call to order. Representative Stutes arrived as the meeting was in progress.

HB 323-EXTEND: BOARD OF PHARMACY

[Contains discussion of SB 37]

[Contains discussion of HB 9]

3:16:58 PM

CHAIR KITO announced that the first order of business would be HOUSE BILL NO. 323, "An Act extending the termination date of the Board of Pharmacy; and providing for an effective date."

3:17:24 PM

REPRESENTATIVE COLLEEN SULLIVAN-LEONARD, Alaska State Legislature, presented HB 323 as prime sponsor. She paraphrased the sponsor statement, which reads as follows [original punctuation provided]:

House Bill 323 extends the termination date for the Board of Pharmacy to June 30, 2022. Pursuant to A.S. §08.03.010(c)(16), this Board is scheduled to sunset on June 30th, 2018 if the legislature does not pass legislation extending it.

Legislative Audit reviewed the Board's operations and determined that it is in the best interest of the state to extend this Board considering recent statutory changes that expand the Board's responsibilities in relation to the controlled substance prescription database. Therefore, recommendation is made to extend this Board for 4 years or through June 30, 2022.

The Board of Pharmacy is composed of 7 members; 5 licensed pharmacists actively engaged in the practice of pharmacy in the State for a period of 3 years immediately preceding their appointments and 2 members of the public.

The Board also regulates admission into the practice of pharmacy, establishes and enforces compliance with professional standards and adopts regulations. It also establishes and maintains a controlled substance prescription database and establishes standards for the independent administration by a pharmacist of vaccines, related emergency medications and opioid overdose drugs.

The Board also oversees licensing for pharmacists, pharmacy interns, pharmacy technicians, pharmacies, wholesale drug distributors located inside the state,

licenses drug rooms located inside institutional facilities and also registers pharmacies located outside of the State if a pharmacy ships, mails or delivers prescription drugs to consumers of that state.

These regulations control various aspects of the field, including but not limited to controlling and regulating the practice of pharmacy in Alaska. A.S. §08.80.005 mandates that effective control and regulation is necessary to promote, preserve and protect the public's health, safety and welfare.

3:21:08 PM

KRIS CURTIS, Legislative Auditor, Legislative Audit Division, Legislative Agencies and Offices, reported August 2017 sunset audit findings related to HB 323. She stated the board was licensing effectively and was conducting its meetings in accordance with the laws. She underlined the board was also amending regulations to improve the industry. She informed the board had 3,747 active licenses in March 2017 for a 33 percent increase in licensees since the previous audit in 2009. The board had a surplus of just over [\$]275 thousand and management within DCBPL had communicated that it would be performing a fee analysis at the end of 2017. She explained the division recommended only a 4-year extension in recognition of recent statutory changes that expand the board's responsibilities in relation to the controlled substance prescription database (CSPD).

MS. CURTIS described the 2008 bill [Senate Bill 196] establishing the database. She paraphrased the audit document, entitled "A Sunset Review of the Department of Commerce, Community, and Economic Development, Board of Pharmacy (board)" [included in committee packet], which reads as follows [original punctuation provided]:

The statute requires each dispenser submit to the board, by electronic means, information regarding each prescription dispensed for a controlled substance. The database electronically collects information from in-state and out-of-state pharmacies as well as other dispensers of controlled substance prescriptions. The database allows pharmacists and practitioners to review prescription history prior to prescribing or

dispensing a controlled substance. The database is also to be used to:

- monitor prescribing practices and patterns of prescribing or dispensing;
- identify practitioners who prescribe controlled substances in an unprofessional or unlawful manner;
- identify individuals who may be abusing controlled substances; and
- identify individuals who present forgeries or otherwise false or altered prescriptions to a pharmacy.

[3:23:40 PM](#)

MS. CURTIS identified that there were many problems with the 2008 statute, including that it did not provide the ability to identify all dispensers that must submit information so DCBPL staff could not monitor completeness or identify which specific dispensers were not submitting the required information. She added that regulations required monthly reporting of information; however, monthly reporting was not effective for monitoring prescription practices.

MS. CURTIS presented that the second issue with the 2008 legislation was that there was no requirement that a dispenser or practitioner check the database prior to dispensing, prescribing, or administering medication. She added that according to DCBPL staff, information in the database was not analyzed by the board and forwarded to practitioners or pharmacists because the Department of Law advised that the law did not allow the agency or board to provide unsolicited reports.

MS. CURTIS described how the law had been changed so that currently pharmacists who dispense and practitioners who prescribe, administer, or dispense controlled substances are required to register with the database and the board must notify the applicable occupational boards when practitioners register with the database, thereby allowing a check for completeness and the ability to identify noncompliance. She underlined failure to register is grounds for disciplinary action and dispensers are required to report weekly and this requirement was subsequently changed to report daily.

MS. CURTIS stated that access to the database was expanded to include dispensers, dispenser delegates, and other persons or

entities with a valid business need and the board was authorized to provide unsolicited notification to a pharmacist or practitioner if a patient has received one or more prescriptions for controlled substances inconsistent with generally recognized standards of safe practice. She added unsolicited reports may also be issued to a practitioner's licensing board and new performance measures must be reported to the legislature annually including measures regarding the impact of the database. She stated dispensers and practitioners are now required to check the database prior to dispensing, prescribing, or administering medication, with specific exclusions.

MS. CURTIS said the audit states that with the changes, the board was empowered to serve the public interest; however, DCBPL does not believe this board should be proactively analyzing the database as it is not traditionally the role of an occupational board. She added that DCCED had stated additional resources would be needed if the legislature intends for the board to analyze the data.

[3:26:30 PM](#)

MS. CURTIS presented the two recommendations. She said the first recommendation was that DCBPL's chief investigator should work with the director to improve the timeliness of investigations, and the second was that DCBPL's director should improve procedures to ensure required licensure documentation is appropriately obtained and retained.

MS. CURTIS informed the Office of the Governor agreed with the 4-year extension but had not commented on the database concerns; the department agreed with both recommendations and had indicated it had implemented new procedures to ensure timeliness of investigations and did state that additional resources would be required; and the board chair had agreed with both recommendations.

[3:29:10 PM](#)

REPRESENTATIVE KNOPP asked when the previous audit had been carried out.

MS. CURTIS answered the previous audit had been carried out in 2009. She pointed to a timeline in the audit document. She added there are new reporting requirements on the status of the database.

REPRESENTATIVE KNOPP surmised it would be four years before the next report on the database.

MS. CURTIS answered it would probably be in 2021.

3:30:44 PM

REPRESENTATIVE BIRCH remarked pharmacies do not have a way to be compensated for their expertise and said he thought that in other places pharmacies could be paid for some level of medical support services. He asked whether it would be appropriate to solicit the board for recommendations for advancement of the pharmacy profession.

MS. CURTIS answered the type of audit was unique in that the 11 criteria used were set out in statute. She added unless there are specific complaints heard at a board meeting or news article, other issues would not be addressed in the audit.

3:33:53 PM

LEIF HOLM, Chair, Board of Pharmacy, Division of Corporations, Business and Professional Licensing (DCBPL), Department of Commerce, Community, and Economic Development (DCCED), testified in support of HB 323. He testified the board concurred with the 4-year board extension as it was understood that the board's duties were expanding further.

REPRESENTATIVE BIRCH said he supported the bill proposal but had concerns regarding pharmacists receiving compensation for their expertise. He asked where the board chairman would turn to remedy the situation for pharmacists in the state.

MR. HOLM answered it was a complicated question and underlined the board tries to stay away from matters of financial interest. He emphasized he does not speak as a board member when speaking to PBMs and auditing practices. He said he knows there is an active push for pharmacies to get provider status at the federal level to receive payment for their services. He stated the interest of the board is patient safety.

3:37:08 PM

REPRESENTATIVE KNOPP spoke to the board's database responsibilities and asked how the board could maintain the database with no part- or full-time employees.

MR. HOLM answered it had not been working well, and the board has not had the time or manpower. He added the board had been actively pursuing a bill to license out-of-state wholesalers in the state and had attached an executive administrator position but had not been able to get the bill passed. He added that with Senate Bill 74, the board was allowed to hire an administrator for the Prescription Drug Monitoring Program (PDMP) as well as a board assistant, but he surmised that the position would be solely focused on the PDMP.

[3:39:10 PM](#)

CHAIR KITO spoke to concerns about implementing the PDMP and asked for Mr. Holm's thoughts regarding how the legislature could assist the board.

MR. HOLM testified that since the board hired someone to work on the PDMP progress was being made.

[3:41:05 PM](#)

CHAIR KITO opened public testimony on HB 323.

[3:41:18 PM](#)

RICHARD HOLT, Vice Chair, Board of Pharmacy, Division of Corporations, Business and Professional Licensing (DCBPL), Department of Commerce, Community, and Economic Development (DCCED), testified in support of HB 323. He said he concurred with what Mr. Holm had stated in his testimony regarding the legislative audit. He mentioned other legislation would aid the board in its duties, such as SB 37 and HB 9.

CHAIR KITO held over HB 323.

SB 64-UNIFORM ENVIROMENTAL COVENANTS ACT

[3:43:02 PM](#)

CHAIR KITO announced that the next order of business would be SENATE BILL NO. 64, "An Act adopting the Uniform Environmental Covenants Act; relating to environmental real property covenants and notices of activity and use limitation at contaminated sites to ensure the protection of human health, safety, and welfare, and the environment; and providing for an effective date."

3:43:05 PM

SENATOR PETER MICCICHE, Alaska State Legislature, presented SB 64 as prime sponsor. He paraphrased the sponsor statement, which reads as follows [original punctuation provided]:

A primary interest of this office is to streamline and remove obstacles that inhibit business, commerce or the transfer of property without reducing expectations for public health, safety and a healthy environment. SB 64 achieves that.

In 2003, the Uniform Law Commissioners created a Uniform Environmental Covenants Act to overcome inadequate common law rules. An environmental covenant allows for the sale of property with use limitations to mitigate risk. Alaska is one of only seven states that does not have an environmental covenant law.

SB 64 protects the buyer and seller of contaminated property while allowing the fullest and best use of the property until the contamination reaches safe levels. The bill creates a legal mechanism to safely transfer contaminated property through an environmental covenant.

SENATOR MICCICHE gave an example of a family in his district who had struggled with the issue for 20 years. He mentioned the historic case of Love Canal in New York State. He continued to read from the sponsor statement, which reads as follows [original punctuation provided]:

A covenant provides transparency throughout the life of the property and provides assurances to buyers and sellers that risks will be safely managed. Other states have found that covenants help communities transform blighted property into marketable assets.

A simple process for amending or removing covenants is included in the legislation. A covenant would not supplant or impose current contamination removal standards, which will continue to be managed as they are currently. The act would not affect the liability of the principally-responsible parties, but would provide a method for minimizing exposure to third parties.

[3:46:36 PM](#)

REPRESENTATIVE JOSEPHSON quoted the covenants "would exist until the contamination reaches safe levels" and asked whether remediation would continue through the duration of the covenant or would be discontinued.

SENATOR MICCICHE answered it depends on the contamination. The proposed bill would allow property to be transferred while highlighting that contamination exists and would allow for amending and removing covenants when there is no longer contamination on the site.

REPRESENTATIVE JOSEPHSON said Senator Micciche had indicated the covenant was voluntary and read from page 4, lines 8 through 11 of SB 64, as follows:

(c) In addition to other conditions for the department's approval of an environmental covenant, the department may require a specified person who has an interest in the real property that is the subject of the environmental covenant to sign the environmental covenant.

REPRESENTATIVE JOSEPHSON asked, "What if they won't, and they have an interest in the real property?"

[3:48:48 PM](#)

SENATOR MICCICHE deferred to Kristen Ryan from the Department of Environmental Conservation (DEC) for an answer.

CHAIR KITO announced the department would be brought forward for invited testimony.

REPRESENTATIVE JOSEPHSON mentioned Love Canal and he said it struck him that would be an example of public notice of harm being caused. He said there was a lot of notice at the time, but he did not see a lot of notice for the next-door neighbor. He asked whether the sponsor was amenable to adding that to the proposed bill.

SENATOR MICCICHE answered he was looking for the best outcome for Alaskans and would be amenable to improvements.

[3:50:40 PM](#)

REPRESENTATIVE KNOPP referenced the site in Soldotna, Alaska, and asked whether "a little bit of contamination is a prohibition to sell any or all" of a property.

SENATOR MICCICHE answered that currently the landowners can use institutional controls through DEC because there is knowledge of contamination on that site, but the law does not currently allow for the protection of the buyer and the seller. He stated that currently a scenario in which a buyer is unaware of contamination on a site is possible, whereas the proposed bill would prevent that.

REPRESENTATIVE KNOPP asked whether there was anything in SB 64 that would require the environmental covenant to "go away" once the land is deemed to be clean.

SENATOR MICCICHE answered the proposed bill would not change how the DEC does business but would help future buyers to know about contaminated property before purchase.

[3:53:59 PM](#)

REPRESENTATIVE WOOL asked about the sale of commercial and industrial sites such as those on the North Slope in the event of a costly clean-up.

SENATOR MICCICHE answered it had been considered and the only opposition to the proposed bill was from the federal government which happens to control 51 percent of the active contaminated sites in Alaska. The proposed bill would allow the state to put land use restrictions on federal property.

REPRESENTATIVE WOOL asked what would happen to a depleted field during the transfer with regard to the clean-up responsibility.

SENATOR MICCICHE answered that would be part of an agreement between buyer and seller and added the proposed bill would not displace responsibility. He mentioned the Soldotna, Alaska, land and stated the clean-up would be something the owners could not afford, but he opined it was a great location for a resort and the cost of clean-up would be a minor proportion of the planned investment for the entire site. He said clean-up could be part of a side agreement in the sale.

[3:57:04 PM](#)

REPRESENTATIVE JOSEPHSON referenced language in the bill stating, "The department may maintain a registry that contains all environmental covenants." He said he assumed the covenant would run with the deed, but he thought a website containing information on those properties could be required.

SENATOR MICCICHE deferred to Kristen Ryan, Division Director.

[3:58:14 PM](#)

KRISTEN RYAN, Director, Spill Prevention and Response, Department of Environmental Conservation (DEC), gave a brief overview of the proposed bill. She described the process of managing contaminated sites. She gave the example of a site which was currently a Subway restaurant, but which previously had been a gas station. When the gas station was removed, the gas had leaked, and the contamination was deemed to be safe with institutional controls, meaning the information was entered into a database containing the restrictions placed on the property. She said the buyer was not aware of the contamination as they were unaware of the existence of the database and the information was not included in the deed, which created a larger problem of spreading contamination. She gave examples of situations in which the department would allow contamination to stay on properties with institutional controls. She stated any neighbors would have to be informed of contaminated areas; however, the department did not have a mandate. She remarked the legislation had been proposed over 10 years previously for the transfer of industrial properties with potential contamination.

[4:03:32 PM](#)

REPRESENTATIVE WOOL asked about the industrial application and where the responsibilities lie for a depleted site.

MS. RYAN answered currently industrial sites on the North Slope have a lease agreement which states the land will be returned to its original state as part of the lease arrangement with Department of Natural Resources (DNR).

REPRESENTATIVE WOOL asked whether, if a seller could not afford to remediate the contamination but a buyer could, the responsibility would transfer.

MS. RYAN answered SB 64 would not change the current legal process, and the person who caused the contamination is responsible.

[4:06:21 PM](#)

REPRESENTATIVE JOSEPHSON stated his concern that the proposed bill would stop the current process for remediation and would simply ease the transfer of property, with notice of contamination, from one person to another. He said he thought regulators would "just throw in the towel."

[4:07:28 PM](#)

MS. RYAN answered the proposed bill would not change the current environmental regulation paradigm, just provide a thorough communication tool for future owners.

REPRESENTATIVE JOSEPHSON asked for an explanation of the "**Notice of activity and use limitation.**" [page 9, line 25, of SB 64]. He said it links itself to the environment response project which is part of Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) but "allows the owner to move from one to the other."

MS. RYAN answered the entire section is to accommodate the federal government. She added the state is not allowed to put a covenant on federal property. She indicated over the years states have inherited a lot of contaminated federal land and some had developed the specific tool of putting a notice of use restriction, which is the equivalent of a covenant, on federal property. She added native corporations in particular have inherited a lot of contaminated federal lands through trades and that language is important to ensure communication of contamination was clear.

[4:10:51 PM](#)

CHAIR KITO asked Ms. Ryan to speak to the letters received from the Department of Defense (DoD) and whether DoD is comfortable with the language assuaging their concerns.

MS. RYAN answered it had been an ongoing conversation with DoD and they are uncomfortable with the state giving the federal government restrictions. She stated DoD was compliant with similar language in the state of Colorado. She added DoD was

nervous about the state having enforcement authority on federal property, but they do recognize the need for it.

[4:12:29 PM](#)

REPRESENTATIVE BIRCH asked about the current monetary threshold for a Superfund site.

MS. RYAN answered that getting a site listed as a Superfund site is a process, and there is no dollar amount restriction. She added there were only two listed in state history and it is not something the state feels is a good process as it has negative connotations. She stated the state has robust contaminated site lands regulations, so historically the Environmental Protection Agency (EPA) has let the state take lead on those sites. She remarked the problem with getting a site listed is that it takes the state out of the driver's seat and puts EPA in it. She underlined that a Superfund listing would still require the state to contribute financially.

[4:14:46 PM](#)

CHAIR KITO said he thought it would require an Act of Congress to list a Superfund site.

[4:15:06 PM](#)

CHAIR KITO opened public testimony on SB 64. Upon ascertaining there was no one available to testify, he closed public testimony.

[4:15:41 PM](#)

REPRESENTATIVE JOSEPHSON asked whether the chair would consider an amendment.

CHAIR KITO replied an amendment could be offered.

[4:16:10 PM](#)

REPRESENTATIVE JOSEPHSON moved Amendment 1, adding language as follows:

"Public Comment. Before the commissioner signs an environmental covenant, the department shall provide an opportunity for public comment on the environmental covenant."

SENATOR MICCICHE asked for the page and line in which Representative Josephson thought the language would be appropriate.

REPRESENTATIVE JOSEPHSON answered Legislative Legal and Research Services recommended page 3, following line 4, and said he thought the amendment would become new section 46.04.303.

SENATOR MICCICHE answered the covenant would be a property owner's voluntary decision on whether to place a covenant on their own property and he was not sure of the value of placing a requirement of public comment on the decision.

REPRESENTATIVE JOSEPHSON replied that the bill says that registry is optionally required at the department's discretion. He said that in Anchorage he gets public notice for buildings or widened sidewalks being built around his home. He mentioned that those whom he had invited to comment on the proposed bill, such as Alaska Community Action on Toxics (ACAT), had expressed concerns with notice and had recommended ecology law journals such as Ecology Law Quarterly and a Boston College article.

[4:19:38 PM](#)

REPRESENTATIVE JOSEPHSON read from "The Uniform Environmental Covenants Act-An Environmental Justice Perspective," Andrea Ruiz-Esquide, Ecology Law Quarterly, Volume 31, page 1025, 2004 edition, which read as follows:

Early, ongoing, and meaningful public participation is the hallmark of sound public policy and decision making. The community most directly impacted by a problem or project is inherently qualified to participate in the decision-making process. Mechanisms must be established to ensure their full participation, including training and support for community groups, technical assistance grants, community advisory groups, and others.

REPRESENTATIVE JOSEPHSON said it struck him that "these are significant covenants that interrupt the normal common law" and he thought notice is reasonable.

[4:20:44 PM](#)

SENATOR MICCICHE pointed out page 5 of SB64, starting at line 8, and read from Section 46.04.315, which reads as follows:

Notice of environmental covenant. (a) A copy of the environmental covenant shall be provided by the persons and in the manner required by the department to

- (1) each person that signed the environmental covenant;
- (2) each person holding a recorded interest in the real property subject to the environmental covenant;
- (3) each person in possession of the real property subject to the environmental covenant;
- (4) each municipality or other unit of local government in which real property subject to the environmental covenant is located; and
- (5) any other person the department requires.

SENATOR MICCICHE said he wondered if "may" should be changed to "shall" and "be included in the database," to meet Representative Josephson's objective.

[4:22:31 PM](#)

REPRESENTATIVE JOSEPHSON stated he thought Senator Micciche was referring to page 11, line 29, in the section entitled, "Registry." He deferred to the director for confirmation that the proposed language would make some improvement.

MS. RYAN answered the department had every intent to maintain that database and underlined the database was well used by everyone in the state who was researching contamination, so the department had no issue with changing it into a mandate. She remarked the other changes that Representative Josephson was recommending were more problematic. She said she believed the material Representative Josephson was reading pertained to Superfunds and she did not know whether the proposed bill was the right vehicle for that concern.

[4:24:24 PM](#)

REPRESENTATIVE JOSEPHSON withdrew Amendment 1.

REPRESENTATIVE JOSEPHSON moved to adopt Conceptual Amendment 2, turning "may" to "shall" on line 29 of page 11."

CHAIR KITO objected for the purpose of discussion.

[4:25:04 PM](#)

REPRESENTATIVE SULLIVAN-LEONARD asked Ms. Ryan about the effects of the mandate.

MS. RYAN answered the department continued to maintain the database and that what the bill corrects is that it references that database from the deeds so an individual who doesn't know of the database would get notified. She emphasized changing the language to "shall" would not change how the division operates.

REPRESENTATIVE SULLIVAN-LEONARD surmised that Conceptual Amendment 2 was not necessary.

MS. RYAN reiterated the mandate would not change what the department does.

CHAIR KITO asked Jennifer Currie of the Department of Law to speak to the Conceptual Amendment.

[4:27:09 PM](#)

JENNIFER CURRIE, Senior Assistant Attorney General, Environmental Section, Department of Law, testified there was no change except that it requires the department to maintain the registry.

CHAIR KITO stated at present the statute did not have environmental covenants identified so they would not have to be registered. He read from page 11, line 11, of SB 64 as follows:

Registry. (a) The department may maintain a registry that contains all environmental covenants and notices of activity and use limitation and any amendment or termination of those instruments.

CHAIR KITO asked whether, if "may" was changed to "shall", the department would be required to include all environmental covenants in the database.

MS. CURRIE answered that with "shall" they are required to include environmental covenants, and with "may" the department can include them.

CHAIR KITO stated he saw the benefit of changing "may" into "shall", at least as regards the environmental covenant piece.

[4:29:05 PM](#)

CHAIR KITO withdrew his objection. There being no further objection, Conceptual Amendment 2 was adopted.

[4:29:39 PM](#)

REPRESENTATIVE WOOL moved to report SB 64 as amended out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HCS SB 64(L&C) was moved from the House Labor and Commerce Standing Committee.

[4:30:13 PM](#)

The committee took an at-ease from 4:30 p.m. to 4:33 p.m.

Presentation: State Residential Building Codes

[4:33:31 PM](#)

CHAIR KITO announced that the next order of business would be a presentation entitled, "State Residential Building Codes" by Mr. Jim Dunlap of the Alaska Home Building Association.

CHAIR KITO stated there had been a presentation the previous year regarding state residential building codes and that he had requested the presentation with the aim of determining whether the committee had an interest in drafting related legislation.

[4:34:31 PM](#)

JIM DUNLAP, President, Alaska State Home Building Association (ASHBA), said he and his association would like to introduce legislation for a state residential building code. He turned the presentation over to Jess Hall.

[4:35:40 PM](#)

JESS HALL, Vice President, Alaska State Home Building Association (ASHBA), read from prepared testimony, which reads as follows [original punctuation provided]:

We want to be transparent in our efforts to advocate for the introduction of legislation that adopts a

state residential building code. Alaska currently does not have a state residential code, but the state does have a variety of building codes adopted across multiple state agencies for different kinds of construction.

Here's what we're asking you today: Please consider introducing a bill this session that will establish a state residential building code. We have had many internal conversations amongst ourselves on what this bill should [look] like, and we have appreciated the chance to share those thoughts with Chairman Kito and his office.

Now we want to expand the conversation to legislators and the public. A bill is a good way to put something on the table and let the discussion and the questions begin.

We expect that there will be questions from you, from your constituents, from municipal governments, state agencies, and certainly industry stakeholders.

While we are not an industry that advocates for the growth of government and more regulations, we are a trade association that promotes best practices in residential construction and consumer protection.

We sincerely believe a residential building code can be adopted in a manner that improves the quality of housing for consumers without being onerous and creating burdensome costs.

A state residential building code will improve the quality of construction and housing stock across the entire state.

On January 23rd - just a couple weeks ago - AHFC released the 2018 State Housing Assessment. It includes a lot of good information about the need to improve the quality of construction of housing, especially in the way of energy efficiency and the benefits that result.

Here is what we would like the initial bill to say:

1. We want to identify the residential code within the Alaska Housing Finance Corporation. AHFC has

been a fantastic partner with our industry for many years, and we have [a] good working and trusting relationship. AHFC already requires inspections and code compliance for homes to qualify for financing, so they are already familiar with codes and how they can work and benefit everyone.

2. We [do] NOT want to see enforcement measures and penalties at this time. Alaska isn't ready for mandatory code compliance in every village and town. We simply want to see a code identified that can be a uniform template for housing construction.
3. We believe the International Residential Code, or IRC, is the code that is most universally understood and applicable for our industry and for housing in Alaska.

We believe a bill with these basic items is a good way to start the conversation.

I don't want to take more of your time, but I am happy to try and answer questions. Please know that there are people here in the room from our organization who are experts in building codes, and we will be here in the Capital all day tomorrow to talk to legislators individually and try to answer any questions you have.

[4:39:49 PM](#)

REPRESENTATIVE KNOPP asked why the bill was being sought and to whom it would apply. He remarked other municipalities and organized boroughs had adopted codes.

MR. HALL mentioned Palmer was the one city with a code in the Matanuska-Susitna (Mat-Su) Valley. He said most building in the Mat-Su Valley did not have a code to follow, with the exception of those financed by Alaska Housing Finance Corporation (AHFC). He highlighted that most traditional financiers such as Federal National Mortgage Association and Federal Home Loan Mortgage Corporation do not require building to code. He said it is a consumer problem involving, for example, owner-builders who want to build their own home but don't follow code. He pointed out a person who buys the house later would assume the house was built to code. He said he felt building should be carried out according to a code consistent across the state and Alaska State

Homebuilding Association (ASHBA) wants a consistent code all builders can use for safety and energy efficiency.

[4:43:47 PM](#)

REPRESENTATIVE STUTES said she did not understand how the code would improve the stock or number of houses.

MR. DUNLAP answered that any building that AHFC finances follows the International Residential Code (IRC) already and it is the minimum code in residential construction. He reiterated that the state of Alaska does not have a residential construction code. He pointed out there are 14 municipalities and the proposed code would not impact them. AHFC is financing about 95 percent of rural Alaska. He spoke to loopholes that arise when there are variable codes, wherein workers travel around the state and work with different codes, creating a problem in the workmanship. He underlined the proposed law would simply create uniform residential code requirements, adding that 37 other states already have statewide codes.

[4:46:18 PM](#)

REPRESENTATIVE STUTES asked whether a certain certification would be required to comply with the codes.

MR. DUNLAP answered that in certain municipal areas a builder must have a residential endorsement, but that was a separate standard. He added AHFC requirements are already a standard for the state and the code would simply stipulate it statewide. He added that with the uniformity everyone in the state would learn to build in the same way.

REPRESENTATIVE STUTES said she thought it did not sound like the proposed bill would put any particular hardship on rural Alaska where certain items are not accessible.

MR. HALL answered a lot of the housing built in the bush is financed by AFHC and many of the housing agencies work through AFHC, so about 90 percent of housing is built to IRC standards. He reiterated the code would give home buyers more confidence that the house they buy is safe.

[4:48:54 PM](#)

REPRESENTATIVE BIRCH stated his concern about putting a law into place without enforcement or penalties.

MR. HALL answered the organization is aware of the budgetary constraints the state is under and therefore wants to start with a code and then address enforcement issues. He illustrated that most places hire certified IRC inspectors but in very remote areas it costs much more. He suggested some other technique such as photography or video could be employed during the building process and signed off by the inspector to bring down costs. He said those details need to be worked out by AFHC, but the code is the first step.

[4:53:06 PM](#)

REPRESENTATIVE JOSEPHSON asked whether uncodified law would suffice or whether IRC would be adopted for a template as a starting point.

MR. HALL answered in the affirmative and noted enforcement policies would be added later. He reiterated AFHC already has the code in place, but it was not statewide. He added the Federal Housing Administration (FHA) or rural development financing require the IRC inspection as well. He restated that conventional financing or people who build their own house do not have inspections.

[4:54:48 PM](#)

REPRESENTATIVE WOOL asked whether different codes between city governments would be in conflict if IRC were introduced as the standard.

MR. DUNLAP answered that when there is an existing code, amendments to the code are required to make it equal to or greater than the existing code. He opined a statewide code would be cost effective and would ensure safety for the consumer.

CHAIR KITO asked the committee whether there was interest in drafting a bill.

[5:00:23 PM](#)

REPRESENTATIVE KNOPP stated he would like to know more about the mandate for city governments that have not adopted a code. He expressed a desire for more detailed information from the organization regarding what the legislation should contain.

[5:02:41 PM](#)

CHAIR KITO replied that without a bill before the committee the committee was not building a record on the issue.

REPRESENTATIVE JOSEPHSON stated he would support a draft. He surmised that "nothing would pass this year" but a draft would be a building block for the next year. He said he also thought the committee had a member who was an expert and should take advantage of that.

REPRESENTATIVE KNOPP suggested whatever the committee worked on "would die at the end of the session."

REPRESENTATIVE BIRCH said he would like to learn more and would like to see the housing authority put forward a proposal from which to work, but he was not prepared to move forward as a committee member.

CHAIR KITO commented that a draft must exist in order to move forward.

[5:05:37 PM](#)

REPRESENTATIVE SULLIVAN-LEONARD asked whether a subcommittee could be called to work on the issue.

CHAIR KITO answered that without a document to submit to a subcommittee he did not see how that was possible.

REPRESENTATIVE SULLIVAN-LEONARD suggested the committee could use a draft mirroring what Anchorage uses.

CHAIR KITO reiterated that he did not think an idea could be submitted to a subcommittee without a draft.

REPRESENTATIVE STUTES declared she was not opposed to a draft as a working document and supported working on the document with the understanding "it was very unlikely anything would happen this year."

[5:07:26 PM](#)

REPRESENTATIVE WOOL moved that the House Labor and Commerce Committee authorize the chair to draft a bill establishing a statewide residential building code.

5:07:41 PM

CHAIR KITO objected for the purpose of discussion. He clarified that the vote on the motion did not give consent to the building code, only to the drafting of the bill.

CHAIR KITO removed his objection. There being no further objection, it was so ordered.

5:08:07 PM

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 5:08 p.m.