

SB

110

Alaska State Legislature

PRESIDENT

907-465-3755



Senate

M
JAN FAIKS
POST OFFICE BOX V
JUNEAU, ALASKA 99811

February 13, 1987

MEMORANDUM

TO: Senator Tim Kelly, Chairman
Senate Labor & Commerce Committee

FROM: Senator Jan Faiks, *Jan Faiks*
President of the Senate

SUBJECT: Background on Senate Bill 110
An Act relating to regulation of architects.

Senate Bill 110 has been referred to your committee for consideration. The purpose of this bill is to increase enforcement of existing Alaska laws relating to the practice of architecture by unlicensed individuals.

I am concerned that individuals in Alaska who are not architects and who have not received training to become architects, are in effect practicing architecture without a license. They classify themselves under a variety of titles, such as building designers, and provide services similar to those of an architect, yet do not have the education or certification necessary to assure safety to the public. These individuals are actually misleading the public as to their competency, which can have catastrophic results. This problem is enhanced by licensed architects who will stamp the work product of these individuals, for a fee, without the "direct supervision" required by statute. Although that architect assumes liability for the work, there is no assurance that the work is sound. Ultimately, it is the public who suffers.

Senate Bill 110 strengthens the existing statutes which regulate architects in the following manner:

OUT OF SESSION

6060 YUKON DRIVE ANCHORAGE, ALASKA 99516 907-274-6611

Section 1. AS 08.48.101(a) is amended to establish civil penalties, up to \$2,000 per violation, for the unlawful practice of architecture

Section 2. AS 08.48.281 is amended to include a new subsection which prohibits a licensed architect from aiding an unlicensed individual in the practice of architecture.

Section 3. AS 08.48. is further amended to include new sections which provide civil penalties for the unlawful practice of architecture and the procedure for contesting citations issued.

Since this bill was filed, further research was conducted by my staff. I ask that the committee consider these changes to the bill which are of concern.

AS 08.48.221 needs to be amended to eliminate that language which tends to negate the liability of the architect who stamps the work of others. Specifically, I ask the committee to consider deleting the phrase "...unless the registrant certifies on the face of the document to the extent of the registrant's responsibility."

AS 08.48.281, relating to prohibited practices, needs to be amended to add language which will prohibit the use of an architect's seal by a non-licensed individual.

I would also encourage the Committee to consider penalties which are stronger than the \$2,000 maximum fine provided by Section 1 of this bill. I propose a maximum fine of \$5,000, as this would have a greater deterrent effect. There is language in Alaska case law which indicates that the court would allow that amount as a maximum fine levied by a board without the necessity of a court trial.

In addition, I propose that this bill be expanded to apply to engineers and land surveyors as well as architects. These professionals are all governed by the same board and are regulated by the same statutes. In order to maintain consistency of enforcement and better regulate those individuals who practice these professions, I ask that the committee include them in its consideration of the bill.

Department of Commerce
& Economic Development / POSITION PAPER

CSSB 110: An Act relating to the practice of architecture, engineering and land surveying.

The department supports CSSB 110 which amends AS 08.48 relating to the registration of architects, engineers and land surveyors.

Section one increases the enforcement power of the board by authorizing the board to set civil penalties not to exceed \$5,000.00 for unlawful practice. This provision will increase the disciplinary actions available to the board.

Section two authorizes the department to issue citations to stop unlicensed practice. Under current law, the department is only authorized to issue cease and desist orders which are ineffective because they provide for a hearing under the Administrative Procedures Act. Hearings are a very time consuming and expensive process. Citations, on the other hand, require a mandatory court appearance and provide for penalties should the individual continue to practice without a registration.

for John Beaman
Anthony Smith, Commissioner

DATE: 3-27-87

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32787b

SB 110: An Act relating to regulation of architects.

SB 110 proposes to amend Alaska Statutes 08.48 relating to the Registration of Architects, Engineers and Land Surveyors. However, the amendments throughout the bill are directed only to architects. Because the provisions in SB 110 will be administered by the board, the department would like to suggest that the bill also include engineers and land surveyors.

Section 1 establishes civil penalties, not to exceed \$2,000 for violations of the licensing statute. The department supports the implementation of civil penalties since it increases the enforcement power of the board over registered individuals only. Many states effectively utilize civil penalties either singly or in combination with other disciplinary sanctions. The department has proposed an amendment to the centralized licensing act, AS 08.01, to authorize all boards the authority to set civil penalties up to a maximum of \$5,000. Civil penalties apply to registered individuals only and should not be confused with the penalties established under AS 08.48.291 for unlicensed activity.

Section 2 prohibits a licensee from providing aid to an unlicensed individual not authorized to practice architecture. The department supports the intent of this section since problems have existed in the past whereby unlicensed individuals have solicited the endorsement of a licensee through use of the individual's seal. However, the language as written may be too restrictive since it prohibits a licensed individual from supervising a person trying to obtain the necessary hours of supervised practice required for licensure. Therefore, the department suggests that an exemption be made for licensees and employees of the licensee.

Section 3 provides the board authority to appoint an investigator who may issue citations. Under the centralized licensing act, AS 08.01.070(4), boards have the authority to request, through the department, investigation of violations of its laws and regulations. The department is concerned about granting a particular board the authority to appoint an independent investigator for the following reasons:

1. Currently, only investigators employed by the State and board members are covered by the State's liability provisions;
2. If the board were to appoint an investigator, additional resources would be required to fund the position;
3. Coordination between the investigative efforts of the department and an outside investigator would be difficult at best.

The department would therefore recommend the language in section 08.48.283(a) be amended to read:

"(a) The board shall request, through the department, [APPOINT] a person to investigate complaints of the unlawful practice of architecture by a licensed architect or an unlicensed person acting in the capacity of an architect."

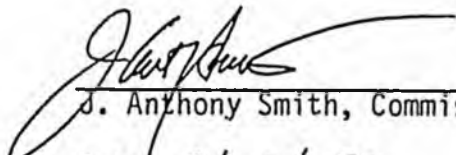
POSITION PAPER
SB 110
(Continued)

The department supports the concept of utilizing citations as a means of controlling unlicensed activity. Under current law, the department is only authorized to issue cease and desist orders to stop unlicensed activity except for construction contractors.

Cease and desist orders are not effective because they provide for a hearing under the Administrative Procedure Act, which is a very time consuming and expensive process. Citations, on the other hand, require a mandatory court appearance and provide for penalties should the individual continue to practice the unlicensed activity. The department has also requested amendments to the centralized licensing act which would authorize the department to issue citations for all licensed occupations. The department's citation proposals are attached.

The proposal in section 08.48.285 for contesting a citation or civil penalty provides for a hearing before the board. Issuance of citations is a misdemeanor process which should be adjudicated only by the courts. Under current law, the board serves as the final authority on litigation licensing matters. The department is concerned that the board's control over a citation process will prejudice the members in passing judgment on licensing matters. Essentially, the dual role of adjudicating contested citations and taking licensing action requires the board to be both prosecutor in initiating the citation, and judge and jury in passing the final judgment.

In summary, the department supports the concept of establishing civil penalties and citation authority applicable to all licensing occupations. To maintain standardization, the department recommends the language in the attached proposed amendments be incorporated into SB 110.



J. Anthony Smith, Commissioner

Date: 2/18/87

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____

Bill Version : SB 110
Publish Date : 2/6/87

Revision Date: _____
Title: An Ac relating to regulation
of architects.
Sponsor: Senator Faiks
Requestor: _____

Agency Affected: Commerce & Economic Dev.
BRU: Occupational Licensing

Components : All

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 87 | FY 88 | FY 89 | FY 90 | FY 91 | FY 92 |
|------------------------|------------|------------|------------|------------|------------|------------|
| PERSONAL SERVICES | -0- | -0- | -0- | -0- | -0- | -0- |
| TRAVEL | -0- | -0- | -0- | -0- | -0- | -0- |
| CONTRACTUAL | -0- | -0- | -0- | -0- | -0- | -0- |
| SUPPLIES | -0- | -0- | -0- | -0- | -0- | -0- |
| EQUIPMENT | -0- | -0- | -0- | -0- | -0- | -0- |
| LAND & STRUCTURES | -0- | -0- | -0- | -0- | -0- | -0- |
| GRANTS, CLAIMS | -0- | -0- | -0- | -0- | -0- | -0- |
| MISCELLANEOUS | -0- | -0- | -0- | -0- | -0- | -0- |
| TOTAL OPERATING | -0- | -0- | -0- | -0- | -0- | -0- |

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| CAPITAL | | | | | | |
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|---------|-----|-----|-----|-----|-----|-----|
| REVENUE | -0- | -0- | -0- | -0- | -0- | -0- |
|---------|-----|-----|-----|-----|-----|-----|

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|------------|------------|------------|------------|------------|------------|
| GENERAL FUND | -0- | -0- | -0- | -0- | -0- | -0- |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | -0- | -0- | -0- | -0- | -0- | -0- |

POSITIONS:

| | | | | | | |
|-----------|---|---|---|---|---|---|
| FULL-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS : (Attach a separate page if necessary)

SB 110 is not expected to require new funding to be implemented. Civil penalties assessed will be received as revenues but cannot be estimated at this time. The authority to impose civil penalties is granted to the board. Guidelines will need to be established before a civil penalty is imposed in order to maintain consistency from case to case.

Prepared by: Jennifer Strickler, Management Analyst *JS* Phone: 465-2144
Division: Occupational Licensing *JS* Date: 2/17/87

Approved by Commissioner: J. Anthony Smith *JAS* Date: _____
Agency: Commerce & Economic Development

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

If an investigator other than current department resources is used to investigate complaints, a fiscal impact will be created. The citation process is already in place for another licensed occupation and is administered by current enforcement resources. Adding the architects, engineers and land surveyors to this process is not expected to require new funding.

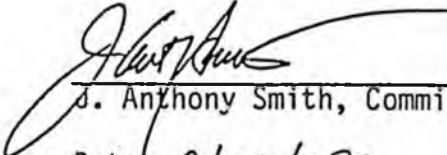
POSITION PAPER
SB 110
(Continued)

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Cease and desist orders are not effective because they provide for a hearing under the Administrative Procedure Act, which is a very time consuming and expensive process. Citations, on the other hand, require a mandatory court appearance and provide for penalties should the individual continue to practice the unlicensed activity. The department has also requested amendments to the centralized licensing act which would authorize the department to issue citations for all licensed occupations. The department's citation proposals are attached.

The proposal in section 08.48.285 for contesting a citation or civil penalty provides for a hearing before the board. Issuance of citations is a misdemeanor process, which should be adjudicated only by the courts. Under current law, the board serves as the final authority on litigation licensing matters. The department is concerned that the board's control over a citation process will prejudice the members in passing judgment on licensing matters. Essentially, the dual role of adjudicating contested citations and taking licensing action requires the board to be both prosecutor in initiating the citation, and judge and jury in passing the final judgment.

In summary, the department supports the concept of establishing civil penalties and citation authority applicable to all licensing occupations. To maintain standardization, the department recommends the language in the attached proposed amendments be incorporated into SB 110.



J. Anthony Smith, Commissioner

Date: 2/18/87

AS 08.01 is amended by adding new sections to read:

Sec. 08.01.107. CITATIONS FOR UNLICENSED PRACTICE. The department may issue a citation for a violation of a license or registration requirement of a board or profession listed in AS 08.01.010, if the department has probable cause to believe that a person has practiced a profession for which a license or registration is required without holding the license or registration. Each day a violation continues, after a citation for the violation has been issued, constitutes a separate violation.

Sec. 08.01.108. PROCEDURE AND FORM OF CITATION ISSUANCE. (a) A citation issued under AS 08.01.107 must be in writing. A person receiving the citation may not be required to sign a promise to appear in court.

(b) The time specified in the notice to appear on a citation issued under this chapter must be at least five days, not including weekends and holidays, after the issuance of the citation, unless the person cited requests an earlier hearing.

(c) The department is responsible for the issuance of books containing appropriate citations, and shall maintain a record of each book and each citation contained in it. The department shall require and retain a receipt for every book issued to an employee of the department designated to provide investigative service to enforce the provisions of this chapter.

(d) The department shall deposit the original or a copy of the citation with a court having jurisdiction over the alleged offense. Upon its deposit with the court, the citation may be disposed of only by trial in the court or other official action taken by the magistrate, judge, or prosecutor. The department may not dispose of a citation or copies of it, or of the record of its issuance, except as required under this subsection and (e) of this section.

(e) The department shall require the return of a copy of every citation issued under this chapter and of all copies of every citation that has been spoiled or upon which an entry has been made but which was not issued to an alleged violator. The department shall also maintain, in connection with every citation issued, a record of the disposition of the charge by the court in which the original or copy of the citation was deposited.

(f) If the form of citation issued under this chapter includes information and is sworn to as required under the laws of this state in respect to a complaint charging commission of the offense alleged in the citation, then the citation, when filed with a court having jurisdiction, is considered to be a lawful complaint for the purpose of prosecution.

Sec. 08.01.109. FAILURE TO OBEY CITATION. Unless the citation has been voided or otherwise dismissed by the magistrate, judge, or prosecutor, a person who fails to appear in court to answer a citation issued under this chapter, regardless of the disposition of the charge for which the citation was issued, is guilty of a class B misdemeanor.

Sec. 08.01.110. DISCIPLINARY POWERS OF THE BOARD. (a) A board may take the following disciplinary actions, in combination or alternatively:

(1) permanently revoke a license, permit, or certificate of registration;

- (2) suspend a license for a determinate period of time;
 - (3) censure a licensee;
 - (4) issue a letter of reprimand;
 - (5) imposition of limitations or conditions on the professional practice of a licensee;
 - (6) imposition of peer review;
 - (7) imposition of professional education requirements until a satisfactory degree of skill has been attained in those areas determined by the board to need improvement;
 - (8) imposition of probation requirements and require the licensee to report regularly to the board upon matters involving the basis of probation;
 - (9) impose a civil fine of not more than \$ 5,000.00.
- (b) The board may withdraw probationary status if it finds that the deficiencies that required the sanction have been remedied.
- (c) The board may summarily suspend a license before final hearing or during the appeals process if the board finds that the licensee poses a clear and immediate danger to the public health and safety if the licensee continues to practice. A person whose license is suspended under this section shall be entitled to a hearing by the board no later than seven days after the effective date of the order. The person may appeal the suspension after a hearing to a court of competent jurisdiction.
- (d) The board may reinstate a license that has been suspended or revoked if the board finds after a hearing that the applicant is able to practice with skill and safety.
- (e) The board shall seek consistency in the application of disciplinary sanctions, and significant departure from prior decisions involving similar situations shall be explained in findings of fact or orders.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 3, 1987

SUBJECT: Draft CS SB 110 (L&C)
Architecture, engineering and land surveying

TO: Senator Tim Kelly

FROM: George Utermohle *GU*
Legislative Counsel

Enclosed is the draft Committee Substitute for SB 110 requested by Mark Johnson, staff to the Senate Labor and Commerce Committee.

The draft contains the substance of the changes requested for the committee substitute, except in sec. 2 of the bill. In sec. 2, no provision is made for the board to adopt regulations to set standards for supervision of unlicensed persons by licensed architects, engineers or, land surveyors, because the board already has ample authority under AS 08.48.101 and 08.48.221 to adopt any regulations that are necessary.

However as another matter, the entire sec. 2 duplicates the provisions of AS 08.48.221. AS 08.48.221 currently prohibits a licensed person from taking responsibility for the work of an unlicensed person unless the license directly supervised the unlicensed person. Also under AS 08.48.221, the board may adopt regulations governing the use of seals by a licensee; under this authority the board could adopt regulations defining the degree of supervision required before a licensee could sign and seal the work of an unlicensed person. Thus in my opinion sec. 2 of the Committee Substitute is redundant.

GU:csh
c7/075

Enclosure

5-0292B
Utermohle
3/3/87

Original sponsor: Faiks

BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 110 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the practice of architecture,
7 engineering, and land surveying."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 08.48.101(a) is amended to read:

10 (a) The board may adopt regulations to carry out the purpose of
11 this chapter, including, but not limited to

12 (1) describing the contents of an examination;

13 (2) establishing the conduct of an examination;

14 (3) establishing a minimum score for passing an examina-
15 tion;

16 (4) establishing bylaws governing its meetings and activ-
17 ities;

18 (5) publishing a code of ethics or professional conduct for
19 those persons regulated by this chapter, including corporations under
20 AS 08.48.241;

21 (6) establishing procedures for the notice, hearing, as-
22 essment, and appeal of civil penalties for the unlawful practice of a
23 profession regulated under this chapter;

24 (7) establishing civil penalties, not to exceed \$5,000 for
25 each violation, for the unlawful practice of architecture, engineer-
26 ing, or land surveying that gives due consideration to the severity of
27 the violation.

28 * Sec. 2. AS 08.48.281 is amended by adding a new subsection to read:

29 (b) A person licensed under this chapter may not affix or permit

1 a seal and signature to be affixed to final drawings, specifications,
2 surveys, plats, plates, reports, and other similar documents, unless
3 the documents were prepared by the person licensed under this chapter
4 or under the supervision of the person licensed under this chapter.

5 * Sec. 3. AS 08.48 is amended by adding a new section to read:

6 Sec. 08.48.283. CITATION FOR UNLICENSED PRACTICE. (a) An
7 employee of the department designated by the commissioner to enforce
8 the provisions of this chapter may issue a citation to a person if the
9 employee has probable cause to believe that the person has practiced a
10 profession regulated under this chapter without obtaining a license.
11 A citation issued under this section shall be in the same form and
12 shall be processed in the same manner as a citation issued under
13 AS 12.25.180 - 12.25.230.

14 (b) Each day a violation continues after a citation for the
15 violation has been issued constitutes a separate violation.

16 * Sec. 4. AS 08.48.431 is amended by adding new paragraphs to read:

17 (14) "commissioner" means the commissioner of commerce and
18 economic development;

19 (15) "department" means the Department of Commerce and
20 Economic Development.

21 * Sec. 5. AS 12.25.190(c) is amended to read:

22 (c) The person cited for the crime shall give a written promise
23 to appear in court by signing at least one copy of the written cita-
24 tion prepared by the peace officer and the officer shall deliver a
25 copy of the citation to the person. The written promise requirement
26 of this subsection does not apply to motor vehicle and traffic cita-
27 tions under AS 28.05.151, fish and game citations for which a basil
28 schedule has been established under AS 16.05.165, citations issued
29 under AS 18.35.341, citations for the unlicensed practice of

1 architecture, engineering, or land surveying under AS 08.48.283, and
2 citations issued in state park and recreational facilities under
3 AS 41.21.960.
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Original sponsor: Faiks

1 IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

2 CS FOR SENATE BILL NO. 110 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the practice of architecture,
7 engineering, and land surveying."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 08.48.101(a) is amended to read:

10 (a) The board may adopt regulations to carry out the purpose of
11 this chapter, including, but not limited to

12 (1) describing the contents of an examination;

13 (2) establishing the conduct of an examination;

14 (3) establishing a minimum score for passing an examina-
15 tion;

16 (4) establishing bylaws governing its meetings and activ-
17 ities;

18 (5) publishing a code of ethics or professional conduct for
19 those persons regulated by this chapter, including corporations under
20 AS 08.48.241;

21 (6) establishing procedures for the notice, hearing, as-
22 essment, and appeal of civil penalties for the unlawful practice of
23 architecture, engineering, or land surveying;

24 (7) establishing civil penalties, not to exceed \$5,000 for
25 each violation, for the unlawful practice of architecture, engineer-
26 ing, or land surveying that give due consideration to the severity of
27 the violation.

28 * Sec. 2. AS 08.48 is amended by adding new sections to read:

29 Sec. 08.48.283. ISSUANCE OF CITATIONS. The department may issue

1 a citation to a person if there is probable cause to believe the
2 person has violated AS 08.48.281. Each day a violation continues
3 after a citation for the violation has been issued constitutes a
4 separate violation.

5 Sec. 08.48.285. PROCEDURE AND FORM OF CITATION ISSUANCE AND
6 PROCEDURE. (a) A citation issued under this chapter shall be in
7 writing. A person receiving the citation is not required to sign a
8 notice to appear in court.

9 (b) Unless the person cited requests an earlier hearing, the
10 time specified in the notice to appear on a citation issued under this
11 chapter shall be at least five days, not including weekends and
12 holidays, after the issuance of the citation.

13 (c) The department is responsible for the issuance of books
14 containing appropriate citations and shall maintain a record of each
15 book issued and each citation contained in it. The department shall
16 require and retain a receipt for every book issued to an employee of
17 the department.

18 (d) The department shall deposit the original or a copy of the
19 citation with a court having jurisdiction over the alleged offense.
20 Upon its deposit with the court, the citation may be disposed of only
21 by trial in the court or other official action taken by the magis-
22 trate, judge, or prosecutor. The department may not dispose of the
23 citation or copies of it or of the record of its issuance except as
24 required under this subsection and (e) of this section.

25 (e) The department shall require the return of a copy of every
26 citation issued by the department under this chapter and of all copies
27 of every citation that has been spoiled or upon which an entry has
28 been made and not issued to an alleged violator. The department shall
29 also maintain, in connection with every citation issued by the

1 respective department, a record of the disposition of the charge by
2 the court where the citation was deposited.

3 (f) If the form of citation issued under this chapter includes
4 the essential facts constituting the offense charged, and if the
5 citation is sworn to as required under the laws of this state for a
6 complaint charging commission of the offense alleged in the citation,
7 then the citation when filed with a court having jurisdiction is
8 considered to be a lawful complaint for the purpose of prosecution.

9 Sec. 08.48.287. FAILURE TO OBEY CITATION. Unless the citation
10 has been voided or otherwise dismissed by the magistrate, judge, or
11 prosecutor, a person who without lawful justification or excuse fails
12 to appear in court to answer a citation issued under this chapter,
13 regardless of the disposition of the charge for which the citation was
14 issued, is guilty of a class B misdemeanor.

15 * Sec. 3. AS 08.48.431 is amended by adding a new paragraph to read:

16 (14) "department" means the Department of Commerce and
17 Economic Development.

SEC. 2. (b)

"A person ~~or corporate~~ licensed to practice architecture, engineering, or land surveying under this chapter shall not seal* the work of a person not licensed without having supervised the work as required by this chapter."

* alternate phrase - "take responsibility for..."

SEC 5.

Delete appointment of outside person. Should use Dept. of Commerce investigators.