

HOUSE COMMERCE COMMITTEE

Minutes of Meeting
1997 Regular Session
April 21, 1997

I. CALL TO ORDER

Representative John Travis, Chairman of the House Commerce Committee, called the meeting to order at 9:05 a.m. in Committee Room 1 of the State Capitol in Baton Rouge, Louisiana.

II. ROLL CALL

MEMBERS PRESENT:

Representative John Travis,
Chairman
Representative Pete Schneider,
Vice Chairman
Representative Robert Barton
Representative Dan Flavin
Representative Mickey Frith
Representative Herman Hill
Representative Michael Michot
Representative Edwin Murray
Representative Gil Pinac
Representative Diane Winston

MEMBERS ABSENT:

Representative Arthur Morrell
Representative Tank Powell
Representative Sharon Weston

III. STAFF MEMBERS PRESENT

T. Michael White, Attorney
Cindy Mancuso, Attorney
Sandy Painting, Secretary
Jim Haas and Ed Cailleateau, Sergeants at Arms

IV. DISCUSSION

House Bill No. 1639 by Representative Schneider

Representative Schneider appeared before the committee to present House Bill No. 1639, which makes various changes to the New Home Warranty Act.

Mrs. Cindy Mancuso, attorney, House Commerce Committee, explained an amendment to be offered to House Bill No. 1639. She stated that the amendment requires written notice by the owner to the builder within thirty days after knowledge of the manifestation of the defect.

Representative Travis offered the above described amendment to House Bill No. 1639 to which there was no objection. This amendment was adopted by a vote of 9 yeas and 0 nays. Those voting yeas were Representatives Travis, Schneider, Barton, Flavin, Frith, Hill, Murray, Pinac, and Winston.

Representative Schneider stated that this legislation was requested by the home builders and its intent was to clarify some issues in the New Home Warranty Act.

Mr. Johnny Koch, Louisiana Home Builders, appeared before the committee in support of House Bill No. 1639 and stated he would answer any questions.

Representative Murray stated that a higher burden is placed on the homeowner by this legislation.

Mr. Stephen Mogabgab, Louisiana Home Builders Association, 404 E. Gibson, Covington, Louisiana 70433, (504) 892-5953, appeared before the committee in support of House Bill No. 1639. He stated that with the previously adopted amendment, the homeowner will have no obligation to notify the builder until he has knowledge that a defect exists.

Representative Travis offered an amendment to House Bill No. 1639 which would delete the reference to including actions for damages in the exclusion from the application of the Chapter. There was no objection and this amendment was adopted by a vote of 9 yeas and 0 nays. Those voting yeas were Representatives Travis, Schneider, Barton, Flavin, Frith, Hill, Michot, Murray, and Winston.

Representative Barton made a motion to report House Bill No. 1639 with amendments. There was no objection and House Bill No. 1639 was reported with amendments by a vote of 10 yeas and 0 nays. Those voting yeas were Representatives Travis, Schneider, Barton, Flavin, Frith, Hill, Michot, Murray, Pinac, and Winston.

House Bill No. 562 by Representative Travis

Representative Travis appeared before the committee to present House Bill No. 562, which eliminates the grandfather provisions for licensure as a residential building contractor without examination.

Representative Travis offered an amendment to House Bill No. 562 which would make this legislation effective on January 1, 1998. There was no objection and this amendment was

adopted by a vote of 10 yeas and 0 nays. Those voting yea were Representatives Travis, Schneider, Barton, Flavin, Frith, Hill, Michot, Murray, Pinac, and Winston.

Mr. Johnny Koch, Louisiana Home Builders, no address provided, appeared before the committee in support of House Bill No. 562 and stated that the intention of this legislation was to keep the grandfather provisions for licensure as a residential building contractor without examination until January, 1998.

Representative Schneider made a motion to report House Bill No. 562 with amendments. There was no objection and House Bill No. 562 was reported with amendments by a vote of 10 yeas and 0 nays. Those voting yea were Representatives Travis, Schneider, Barton, Flavin, Frith, Hill, Michot, Murray, Pinac, and Winston.

House Bill No. 198 by Representative Travis

Representative Travis appeared before the committee to present House Bill No. 198, which provides for agency relationships in real estate transactions.

Mr. Danny Mackey, Louisiana Realtors Association, 4639 Bennington, Baton Rouge, Louisiana 70808, (504) 923-2210, appeared before the committee in support of House Bill No. 198.

Mr. Mike White, attorney, House Commerce Committee, explained an amendment to be offered to House Bill No. 198 which would change the effective date from July 1, 1998 to March 1, 1998.

Representative Travis offered the above described amendment to House Bill No. 198 to which there was no objection. This amendment was adopted by a vote of 9 yeas and 0 nays. Those voting yea were Representatives Travis, Schneider, Barton, Flavin, Frith, Hill, Michot, Murray, and Winston.

Mr. Mackey stated that this legislation provides that licensees shall be considered to be representing the person they are working with unless there is a written agreement between the broker and the person providing for a different relationship.

Representative Murray asked for clarification on how a client would know if an agent represented the client without written disclosure.

Mr. William Bacque', Louisiana Realtors Association, 107 Souvenir Gate, Lafayette, Louisiana 70501, (318) 267-4003, appeared before the committee in support of House Bill No. 198 and to respond to Representative Murray. He stated that an agent represents the seller if there is absence of a written agreement.

Representative Murray had concerns with agents representing clients with only implied consent and not written or disclosed consent.

Representative Schneider asked why this legislation was needed.

Mr. Bacque' stated that this legislation was needed to allow for buyers to be able to have an advocate in a transaction whether it is done through a contractual agreement or not.

Mr. R. C. McCormick, Louisiana Real Estate Commission, 9071 Interline Ave., Baton Rouge, Louisiana, (504) 925-4771, appeared before the committee for informational purposes only. He stated that under this proposed legislation, a buyer could visit several houses with a broker without signing a contract and be represented by that particular broker.

Ms. Sharon Pruitt, 4268 Tupello, Baton Rouge, Louisiana, (504) 769-3888, appeared before the committee in opposition to House Bill No. 198. She stated she was opposed to the implied status of the relationship between a perspective buyer and a broker or agent and that agency relationships should be clearly defined and in writing.

Representative Flavin made a motion to report House Bill No. 198 with amendments.

Representative Murray made a substitute motion to defer action on House Bill No. 198. Objection was raised and a roll call vote was taken. This motion failed by a vote of 3 yeas and 7 nays. Those voting yea were Representatives Schneider, Frith, and Murray. Those voting nay were Representatives Travis, Barton, Flavin, Hill, Michot, Pinac, and Winston.

There was no objection to Representative Flavin's previous motion and House Bill No. 198 was reported with amendments by a vote of 10 yeas and 0 nays. Those voting yea were Representatives Travis, Schneider, Barton, Flavin, Frith, Hill, Michot, Murray, Pinac, and Winston.

House Bill No. 287 by Representative Rousselle

Representative Rousselle appeared before the committee to present House Bill No. 287, which permits realtors who have been on inactive status to cumulate continuing education hours and apply them toward meeting the requirements to return to active status.

There was no discussion on House Bill No. 287.

Representative Frith made a motion to report House Bill No. 287 favorably. There was no objection and House Bill No. 287 was reported favorably by a vote of 10 yeas and 0 nays.

Those voting yea were Representatives Travis, Schneider, Barton, Flavin, Frith, Hill, Michot, Murray, Pinac, and Winston.

House Bill No. 200 by Representative Travis

Representative Travis appeared before the committee to present House Bill No. 200, which provides relative to real estate agency disclosure.

Representative Travis offered an amendment to House Bill No. 200 which requires a licensee to provide the parties to a real estate transaction with an agency disclosure pamphlet and, where applicable, a dual agency disclosure form and makes failure to do so a ground for censure or revocation of the salesman's license. There was no objection and this amendment was adopted by a vote of 9 yeas and 0 nays. Those voting yea were Representatives Travis, Schneider, Barton, Frith, Hill, Michot, Murray, Pinac, and Winston.

Mr. Dan Mackey, Louisiana Realtors Association, 4639 Bennington, Baton Rouge, Louisiana 70808, (504) 923-2210, appeared before the committee in support of House Bill 200. He stated that this legislation provides for agency disclosure by all licensees in the state of Louisiana.

There was no further discussion on House Bill No. 200.

Representative Schneider made a motion to report House Bill No. 200 with amendments. There was no objection and House Bill No. 200 was reported with amendments by a vote of 9 yeas and 0 nays. Those voting yea were Representatives Travis, Schneider, Barton, Frith, Hill, Michot, Murray, Pinac, and Winston.

House Bill No. 871 by Representative Dimos

Representative Dimos appeared before the committee to present House Bill No. 871, which enacts the Good Funds Settlement Act and applies only to real estate transactions involving a one to four-family residential dwelling or a lot restricted to residential use.

There was no further discussion on House Bill No. 871.

Representative Murray made a motion to report House Bill No. 871 favorably. There was no objection and House Bill No. 871 was reported favorably by a vote of 9 yeas and 0 nays. Those voting yea were Representatives Travis, Schneider, Barton, Flavin, Frith, Hill, Michot, Murray, and Winston.

House Bill No. 2203 by Representative Flavin

Representative Flavin appeared before the committee to present House Bill No. 2203, which provides relative to the licensure of real estate sales persons.

Mr. Mike White, attorney, House Commerce Committee, explained a set of amendments to be offered to House Bill No. 2203 which permit the cumulation of continuing education hours and provides relative to the custody and control of an associate broker's license.

Representative Travis offered the above described amendments to House Bill No. 2203 to which there was no objection. These amendments were adopted by a vote of 8 yeas and 0 nays. Those voting yeas were Representatives Travis, Schneider, Barton, Flavin, Hill, Michot, Murray, and Winston.

Representative Flavin introduced Mr. J. C. Willie to the committee to answer any questions.

Mr. J. C. Willie, executive director, Louisiana Real Estate Commission, 9071 Interline, Baton Rouge, Louisiana, (504) 925-4771, appeared before the committee for informational purposes only and stated that the amendments to House Bill No. 2203 were basically technical changes in the law.

Ms. Carmela Collins, chief investigator, Louisiana Real Estate Commission, 9071 Interline, Baton Rouge, Louisiana, (504) 925-4771, appeared before the committee for informational purposes only and stated that there have been many instances over the last few years of business brokers who have taken advantage of unsophisticated buyers, and sellers who are selling businesses that often include real property and that this legislation was an attempt to bring these cases under the jurisdiction of the Louisiana Real Estate Commission.

Representative Schneider made a motion to report House Bill No. 2203 with amendments. There was no objection and House Bill No. 2203 was reported with amendments by a vote of 9 yeas and 0 nays. Those voting yeas were Representatives Travis, Schneider, Barton, Flavin, Hill, Michot, Murray, Pinac, and Winston.

House Bill No. 2317 by Representative Diez

On behalf of Representative Diez, Mr. Darrall Cohoon, executive vice president, Louisiana Association of General Contractors, 620 North Street, Baton Rouge, Louisiana, (504) 344-0432, appeared before the committee to present House Bill No. 2317, which requires fines for violations collected by the State Licensing Board for Contractors to be transferred to a separate contractor's educational trust fund to be used for educational purposes. He stated that approximately eighteen thousand dollars has been collected since a similar provision was passed.

There was no further discussion on House Bill No. 2317.

Representative Murray made a motion to report House Bill No. 2317 favorably. There was no objection and House Bill No. 2317 was reported favorably by a vote of 9 yeas and 0 nays. Those voting yea were Representatives Travis, Schneider, Barton, Frith, Hill, Michot, Murray, Pinac, and Winston.

House Bill No. 553 by Representative Travis

Representative Travis appeared before the committee to present House Bill No. 553, which disqualifies a person found cheating on a contractor licensing exam from serving as a qualifying party for a licensee. He stated he had an amendment to this legislation.

Mrs. Cindy Mancuso, attorney, House Commerce Committee, explained the amendment to be offered to House Bill No. 553. She stated that the amendment would specify that a person who has engaged in deceptive practices when taking or attempting to take any board examination is prohibited from serving as a qualifying party.

Representative Travis offered the above described amendment to House Bill No. 553. There was no objection and it was adopted by a vote of 8 yeas and 0 nays. Those voting yea were Representatives Travis, Schneider, Frith, Hill, Michot, Murray, Pinac, and Winston.

Ms. Stephanie Laborde, State Licensing Board for Contractors, 9100 Bluebonnet Centre Blvd., Suite 402, Baton Rouge, Louisiana 70809, (504) 291-7300, appeared before the committee for informational purposes only. She stated that this legislation is designed to prevent the hiring of professional test takers in part and cheating on examinations.

Representative Schneider asked if the qualifying person for a contractor

leaves his employ, does the contractor still have a valid license.

Mr. Charles Marceaux, executive director, State Licensing Board for Contractors, 7434 Perkins Rd., Baton Rouge, Louisiana 70808, (504) 765-2301, appeared before the committee for informational purposes only. He stated that the contractor has thirty days to report that the qualifying person has left his employ and thirty days from that time period to provide another qualifying party.

Representative Schneider made a motion to report House Bill No. 553 with amendments. There was no objection and House Bill No. 553 was reported with amendments by a vote of 8 yeas and 0 nays. Those voting yea were Representatives Travis, Schneider, Frith, Hill, Michot, Murray, Pinac, and Winston.

House Bill No. 554 by Representative Travis

Representative Travis appeared before the committee to present House Bill No. 554, which revises the definition of "person".

Ms. Stephanie Laborde, State Licensing Board for Contractors, 9100 Bluebonnet Centre Blvd., Suite 402, Baton Rouge, Louisiana 70809, (504) 291-7300, appeared before the committee for informational purposes only. She stated that this legislation changes the definition of "person" for a contractor who needs to be licensed. She stated that the rules of the State Licensing Board for Contractors currently provide that two licensed contractors can join together as a joint venture to bid on a certain project and because of the term joint venture being included in the definition of a "person", question has been raised as to whether the joint venture needs to apply for and receive a license. She stated that this was never the intent of the law and that this proposed legislation would remove the joint venture portion from the definition of a "person".

There was no further discussion on House Bill No. 554.

Representative Schneider made a motion to report House Bill No. 554 favorably. There was no objection and House Bill No. 554 was reported favorably by a vote of 8 yeas and 0 nays. Those voting yea were Representatives Travis, Schneider, Frith, Hill, Michot, Murray, Pinac, and Winston.

House Bill No. 555 by Representative Travis

Representative Travis appeared before the committee to present House Bill No. 555, which revises the definition of "contractor".

Ms. Stephanie Laborde, State Licensing Board for Contractors, 9100 Bluebonnet Centre Blvd., Suite 402, Baton Rouge, Louisiana 70809, (504) 291-7300, appeared before the committee for informational purposes only. She stated that this legislation makes it clear that someone who provides materials only or equipment only is not considered a contractor.

There was no further discussion on House Bill No. 555.

Representative Pinac made a motion to report House Bill No. 555 favorably. There was no objection and House Bill No. 555 was reported favorably by a vote of 8 yeas and 0 nays. Those voting yeas were Representatives Travis, Schneider, Frith, Hill, Michot, Murray, Pinac, and Winston.

House Bill No. 556 by Representative Travis

Representative Travis appeared before the committee to present House Bill No. 556, which clarifies provisions relative to appointments to the State Licensing Board for contractors from the fields of mechanical and electrical construction.

Ms. Stephanie Laborde, State Licensing Board for Contractors, 9100 Bluebonnet Centre Blvd., Suite 402, Baton Rouge, Louisiana 70809, (504) 291-7300, appeared before the committee for informational purposes only. She stated that this legislation adds the Mechanical Contractors Association of Louisiana as the name of the mechanical trade association that submits the nominees and it takes out the requirement that the list of nominees be submitted annually between June 1 and June 30 and changes it to each year.

There was no further discussion on House Bill No. 556.

Representative Murray made a motion to report House Bill No. 556 favorably. There was no objection and House Bill No. 556 was reported favorably by a vote of 8 yeas and 0 nays. Those voting yeas were Representatives Travis, Schneider, Frith, Hill, Michot, Murray, Pinac, and Winston.

House Bill No. 557 by Representative Travis

Representative Travis appeared before the committee to present House Bill No. 557, which allows the State Licensing Board for Contractors to delegate any of its powers and duties to its staff by board resolution.

Ms. Stephanie Laborde, State Licensing Board for Contractors, 9100 Bluebonnet Centre Blvd., Suite 402, Baton Rouge, Louisiana 70809, (504) 291-7300, appeared before the committee for informational purposes only. She stated that this legislation confirms that the board has the authority to delegate any of its powers and responsibilities to its staff.

There was no further discussion on House Bill No. 557.

Representative Frith made a motion to report House Bill No. 557 favorably. There was no objection and House Bill No. 557 was reported favorably by a vote of 8 yeas and 0 nays.

Those voting yea were Representatives Travis, Schneider, Frith, Hill, Michot, Murray, Pinac, and Winston.

House Bill No. 558 by Representative Travis

Representative Travis appeared before the committee to present House Bill No. 558, which clarifies requirements for issuance of a license and makes changes as to qualifying parties.

Ms. Stephanie Laborde, State Licensing Board for Contractors, 9100 Bluebonnet Centre Blvd., Suite 402, Baton Rouge, Louisiana 70809, (504) 291-7300, appeared before the committee for informational purposes only. She stated that this legislation requires that each contractor must have a net worth of \$10,000 to obtain a license and that the net worth statement must be current within one year.

There was no further discussion on House Bill No. 558.

Representative Schneider made a motion to report House Bill No. 558 favorably. There was no objection and House Bill No. 558 was reported favorably by a vote of 8 yeas and 0 nays. Those voting yea were Representatives Travis, Schneider, Flavin, Frith, Hill, Michot, Murray, and Winston.

House Bill No. 559 by Representative Travis

Representative Travis appeared before the committee to present House Bill No. 559, which provides for payment of litigation expenses and penalties for violations of provisions regulating contractors.

Ms. Stephanie Laborde, State Licensing Board for Contractors, 9100 Bluebonnet Centre Blvd., Suite 402, Baton Rouge, Louisiana 70809, (504) 291-7300, appeared before the committee for informational purposes only. She stated that this legislation invokes the procedures and caps for attorney's fees contained in the Administrative Procedure Act. She stated that there is currently a \$1,000 fine per violation or three percent of the amount of the contract if you are an unlicensed contractor. She stated that this legislation would make the three percent penalty applicable to any violation of the contractors licensing law.

Representative Murray expressed his concerns regarding the caps placed on attorneys' fees. He stated that the cap should be placed on both parties.

There was no further discussion on House Bill No. 559.

Representative Hill made a motion to report House Bill No. 559 favorably. There was no objection and House Bill No. 559 was reported favorably by a vote of 9 yeas and 0 nays. Those voting yeas were Representatives Travis, Schneider, Barton, Flavin, Frith, Hill, Murray, Pinac, and Winston.

House Bill No. 560 by Representative Travis

Representative Travis appeared before the committee to present House Bill No. 560, which allows the State Licensing Board for Contractors to revoke, suspend, or refuse to renew licenses or issue cease and desist orders in certain circumstances.

Ms. Stephanie Laborde, State Licensing Board for Contractors, 9100 Bluebonnet Centre Blvd., Suite 402, Baton Rouge, Louisiana 70809, (504) 291-7300, appeared before the committee for informational purposes only. She stated that currently the law provides that if a qualifying person leaves the employ of a contractor and is not replaced within the required sixty-day period, this is grounds for revocation or suspension of your contractor's license and that this proposed legislation would include failure to maintain any of the requirements for original licensure, not just qualifying party, as grounds for revocation or suspension of license.

There was no further discussion on House Bill No. 560.

Representative Hill made a motion to report House Bill No. 560 favorably. There was no objection and House Bill No. 560 was reported favorably by a vote of 8 yeas and 0 nays. Those voting yeas were Representatives Travis, Schneider, Barton, Frith, Hill, Murray, Pinac, and Winston.

House Bill No. 561 by Representative Travis

Representative Travis appeared before the committee to present House Bill No. 561, which provides for imposition of fines by the State Licensing Board for Contractors for violations of bid procedures. He stated there was an amendment to this legislation.

Mrs. Cindy Mancuso, attorney, House Commerce Committee, explained the amendment to be offered to House Bill No. 561. She stated that the amendment specifies that a violation for which the board may impose a fine upon an awarding authority must be an intentional violation.

Ms. Stephanie Laborde, State Licensing Board for Contractors, 9100 Bluebonnet Centre Blvd., Suite 402, Baton Rouge, Louisiana 70809, (504) 291-7300, appeared before the committee for informational purposes only. She stated that House Bill No. 561 would allow the board to impose a civil fine if, after a hearing, it finds that an awarding authority violated the provisions of the contractors law.

Representative Murray asked who is the awarding authority.

Ms. Laborde stated that an awarding authority is either the owner or the governmental agency or whoever takes bids and awards the contract.

Representative Schneider made a motion to report House Bill No. 561 with amendments. There was objection and a roll call vote was taken. House Bill No. 561 was reported with amendments by a vote of 9 yeas and 1 nay. Those voting yea were Representatives Travis, Schneider, Barton, Flavin, Frith, Hill, Michot, Pinac, and Winston. Representative Murray voted nay.

House Bill No. 563 by Representative Travis

Representative Travis appeared before the committee to present House Bill No. 563, which applies the provisions regulating contractors to public construction projects, as well as private.

Mrs. Cindy Mancuso, attorney, House Commerce Committee, explained an amendment to be offered to House Bill No. 563. She stated that the amendment specifically excepts those entities with expressed statutory authority to construct and those projects such entities undertake.

Representative Travis offered the above described amendment to House Bill No. 563. There was no objection and this amendment was adopted by a vote of 10 yeas and 0 nays. Those voting yea were Representatives Travis, Schneider, Barton, Flavin, Frith, Hill, Michot, Murray, Pinac, and Winston.

Ms. Stephanie Laborde, State Licensing Board for Contractors, 9100 Bluebonnet Centre Blvd., Suite 402, Baton Rouge, Louisiana 70809, (504) 291-7300, appeared before the committee for informational purposes only. She stated that House Bill No. 563 would allow for the board to monitor and investigate both private and public projects. She stated that she was concerned with the amendment which was previously adopted because it will not apply to certain political subdivisions.

Representative Travis made a motion to reconsider the amendment previously adopted and change the amendment to specifically except those state entities with expressed statutory authority to construct and those projects such entities undertake. There was no objection to this motion and this motion passed by a vote of 9 yeas and 0 nays. Those voting yea were Representatives Travis, Schneider, Barton, Frith, Hill, Michot, Murray, Pinac, and Winston.

Representative Travis offered the above described revised amendments to House Bill No. 563 to which there was no objection. These amendments were adopted by a vote of 9 yeas and 0 nays. Those voting yeas were Representatives Travis, Schneider, Barton, Frith, Hill, Michot, Murray, Pinac, and Winston.

Representative Schneider made a motion to report House Bill No. 563 with amendments. There was objection and a roll call vote was taken. House Bill No. 563 was reported with amendments by a vote of 8 yeas and 1 nay. Those voting yeas were Representatives Travis, Schneider, Barton, Frith, Hill, Michot, Pinac, and Winston. Representative Murray voted nay.

V. OTHER BUSINESS

There was no other business discussed.

VI. ANNOUNCEMENTS

There were no announcements.

VII. ADJOURNMENT

There being no further business, the meeting was adjourned at 11:40 a.m.

Respectfully submitted,

John Travis, Chairman

Date Approved: _____