

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

April 7, 2004

3:27 p.m.

MEMBERS PRESENT

Representative Tom Anderson, Chair
Representative Carl Gatto, Vice Chair
Representative Nancy Dahlstrom
Representative Bob Lynn
Representative Norman Rokeberg
Representative Harry Crawford
Representative David Guttenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 550

"An Act setting a timeline for decisions of the Regulatory Commission of Alaska; relating to competitive telecommunications markets; and providing for an effective date."

- HEARD AND HELD; ASSIGNED TO SUBCOMMITTEE

HOUSE BILL NO. 542

"An Act relating to specialty construction contractors and to construction contractor exemptions."

- MOVED HB 542 OUT OF COMMITTEE

HOUSE BILL NO. 545

"An Act relating to the extension under the State Procurement Code of terms for leases for real estate and certain terms for certain state contracts for goods and services; and providing for an effective date."

- BILL HEARING POSTPONED

PREVIOUS COMMITTEE ACTION

BILL: HB 550

SHORT TITLE: TELECOMMUNICATIONS & RCA ACTIONS

SPONSOR(S): LABOR & COMMERCE

04/01/04 (H) READ THE FIRST TIME - REFERRALS
04/01/04 (H) L&C, JUD
04/07/04 (H) L&C AT 3:15 PM CAPITOL 17

BILL: HB 542

SHORT TITLE: CONSTRUCTION CONTRACTORS
SPONSOR(S): LABOR & COMMERCE

03/24/04 (H) READ THE FIRST TIME - REFERRALS
03/24/04 (H) L&C
04/02/04 (H) L&C AT 3:15 PM CAPITOL 17
04/02/04 (H) Scheduled But Not Heard
04/07/04 (H) L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

SUE STANCLIFF
House Majority Office
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented HB 542.

EDEN LARSON
Alaska Chapter
Associated Builders and Contractors, Inc. (ABC)
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 542.

ROCKY SMITH, Owner
Preferred Plumbing and Heating;
Member, Alaska Chapter
Associated Builders and Contractors, Inc. (ABC)
Kenai, Alaska
POSITION STATEMENT: Expressed the need for an enforcement
provision in HB 542.

JOHN BITNEY, Lobbyist
for Alaska State Homebuilders Association (ASHBA)
Palmer, Alaska
POSITION STATEMENT: Testified that ASHBA supports HB 542.

ACTION NARRATIVE

TAPE 04-40, SIDE A
Number 0001

CHAIR TOM ANDERSON called the House Labor and Commerce Standing Committee meeting to order at 3:27 p.m. Representatives Anderson, Gatto, Dahlstrom, Crawford, and Guttenberg were present at the call to order. Representatives Rokeberg and Lynn arrived as the meeting was in progress.

HB 550-TELECOMMUNICATIONS & RCA ACTIONS

CHAIR ANDERSON announced that the first order of business would be HOUSE BILL NO. 550, "An Act setting a timeline for decisions of the Regulatory Commission of Alaska; relating to competitive telecommunications markets; and providing for an effective date."

Number 0075

CHAIR ANDERSON assigned HB 550 to a subcommittee consisting of Representative Dahlstrom, chair; Representative Gatto; and Representative Guttenberg. He asked the subcommittee to have interested parties submit written testimony, to filter through the main issues, and then to provide the full committee with a verbal analysis. [HB 550 was held over.]

HB 542-CONSTRUCTION CONTRACTORS

CHAIR ANDERSON announced that the final order of business would be HOUSE BILL NO. 542, "An Act relating to specialty construction contractors and to construction contractor exemptions."

Number 0207

SUE STANCLIFF, House Majority Office, Alaska State Legislature, presented HB 542, sponsored by the House Labor and Commerce Standing Committee. Noting that this is basically consumer-protection legislation, she paraphrased the sponsor statement, which read [original punctuation provided]:

HB 542 lowers the limit of a project cost from \$10,000 to \$5,000, and expands the work that can be done by a specialty contractor. Under current law, exemptions allowed under AS 08.18.161(8) [allow] unlicensed persons to act as contractors, when they are not. In fact, they compete with contractors and are not required to have a bond or insurance. The \$10,000 limit on the value of work they can do makes this an attractive alternative. However, having no bond or

insurance gives the consumer no protection from faulty work.

Occupational Licensing issues these individuals a business licensed under a 2360 code, which says their license is "Construction related Exempt from contractors registration". If they were to show their license to someone, they would probably get the idea that they were licensed contractors.

To help alleviate the problem, Occupational Licensing has created [a] category under the 8101 code, and called them Handymen, which is what they have always been called, yet there is nothing in law or regulations that use that name.

The changes provided in HB 542 will go a long way toward resolving the issue and provide a greater level of consumer protection.

Number 0358

CHAIR ANDERSON posed a situation in which a painter considers himself a specialty contractor painter, rather than a general handyman. He asked what difference [HB 542 would make].

MS. STANCLIFF answered that under current law a handyman can accept a job to paint someone's house for under \$10,000, while the licensed contractor painter can perform any job. Although [the handyman category] is an attractive field, consumer protection is in danger because "a lot of people who don't have the ability to go after someone's faulty work through their bond."

CHAIR ANDERSON surmised, then, that with a lower limit of \$5,000, the [handyman] would have to obtain a specialty contractor designation, and thus there would be a bond and a higher fee.

MS. STANCLIFF agreed. A contractor who is licensed and bonded assures a quality of work, she suggested, whereas a handyman isn't required to [be licensed and bonded]; therefore, lowering the limit will make the playing field more [balanced] and more in line with what is reasonable for a handyman, while providing consumer protection against faulty work.

Number 0507

REPRESENTATIVE GUTTENBERG asked if a history of abuses led to [introduction of this legislation].

MS. STANCLIFF stated her belief that there is [such a history], but deferred to the department and those in the industry with regard to documented cases.

REPRESENTATIVE ROKEBERG related his understanding that HB 542 basically expands the definition of specialty contractor in order to include persons who were formally categorized as handyman when they do work valued in excess of \$5,000. Representative Rokeberg recalled that some states have regulated handymen and provided licensure for them.

MS. STANCLIFF said she believed that was correct. She added that the Division of Occupational Licensing, Department of Community & Economic Development (DCED), hadn't regulated or separately classified handymen and specialty contractors, although that's now the case under [the division's] code 8101.

Number 0639

REPRESENTATIVE ROKEBERG noted concern with regard to raising the bonding limit on specialty contractors. He asked if there has been any discussion with regard to tightening the title of HB 542 so any "mischief" could be kept minimal.

MS. STANCLIFF replied no, but said she'd be open to it, if it's the will of the committee.

REPRESENTATIVE ROKEBERG remarked that he has heard rumors of concern that the bonding level is too low. He expressed interest in knowing the bonding level, especially since one reason given for [HB 542] is consumer protection. However, he noted concern with regard to increasing the bond levels because it will increase costs for specialty contractors, including the newly included home inspectors. He acknowledged there may be a reason to increase the bonding level; however, if there isn't going to be any discussion on the matter, the title shouldn't be written to allow amendments that aren't desired, he said.

CHAIR ANDERSON suggested that once the committee has completed its questions, the [title] could be tightened because he knew there was no intention to impact the bonding.

Number 0765

EDEN LARSON, Alaska Chapter, Associated Builders and Contractors, Inc. (ABC), in response to Representative Rokeberg's earlier question, said the current bond limit for specialty contractors is \$5,000 and \$10,000 for general contractors. She related her understanding that any discussion on raising those bonding limits has been dropped, at least for this year.

MS. LARSON announced that Associated Builders and Contractors, Inc., supports HB 542 as a step in the right direction to enforce licensing requirements. A handyman is intended to be an individual who performs small repair work and light residential work. Ms. Larson said ABC's contractors have experienced handymen-bid commercial work, which is outside the scope of the handyman classification. She clarified that ABC remains concerned that HB 542 doesn't address license enforcement issues, and believes the true issue is that existing licensing requirements aren't enforced thoroughly.

REPRESENTATIVE GUTTENBERG said he could foresee conflicts. He posed an example in which someone installs a deck worth about \$4,000; the homeowner discovers that the septic [system] is shot and the cost of replacement is \$5,000 to \$6,000; the homeowner doesn't want to find a contractor to do it, and therefore asks if the handyman would take care of it. He invited Ms. Larson to comment.

MS. LARSON said examples will always push the limits of the law, but with a septic system, she believes a mechanical contractor might need to be involved. She highlighted that a handyman's license isn't available to any of the licensed trades.

REPRESENTATIVE GUTTENBERG commented that the cost of everything is increasing, although the [limit of a project cost] is being decreased.

Number 0999

REPRESENTATIVE ROKEBERG remarked, "The current loss is when the work is divided into contracts of amounts less than \$10,000, now \$5,000, for the purpose of evasion." Therefore, he related his understanding that it would be the aggregate amount of the contract; it couldn't be split up in order to avoid the cap.

MS. LARSON replied that the problem is that the individuals receiving the handyman license aren't clearly understanding the

limitations intended by that license classification. Therefore, by reducing the limit of the project cost to \$5,000, it's such a small project that it clearly communicates that the intent [of the handyman license] is for very minor work. Returning to Representative Guttenberg's example, she said an individual constructing a deck who also would feel competent to handle repairing a septic system would likely be a candidate for a specialty contractor license rather than a handyman license.

Number 1092

REPRESENTATIVE GATTO posed a scenario in which he purchased an exterior door from an antique shop for thousands of dollars and some mahogany to be installed in his house. Although labor costs might amount to \$500, the material costs amount to \$5,000. Therefore, the price is over the \$5,000 project cost limit. He asked: Still, doesn't it fall under the handyman's [license] because the individual is only being paid \$500 for a few days of work? He suggested separating the costs for [materials and labor]. Representative Gatto opined that if he had purchased the materials, the job would fall under the [handyman license], whereas if the handyman purchased the materials, the job wouldn't fall under it.

MS. LARSON pointed out that HB 542 only addresses the size and scope. If there is concern that the proposed limit of a project cost would cause a much greater number of interpretive challenges, that would be something to consider. However, she said, [ABC's] legislative affairs committee feels HB 542 is a step in the right direction as an educational piece for handymen, and didn't really see a substantive difference between \$5,000 and \$10,000. The issue is in regard to enforcement, she said. She clarified that if the legislative change helps to educate handymen and encourage appropriate licensing for specialty contractors, then [ABC] would support it.

CHAIR ANDERSON pointed out that on page 1, line 11, if the language "and materials" were deleted, then that would address Representative Gatto's concern and target the labor costs.

REPRESENTATIVE GATTO commented that the materials cost isn't an issue. He related his belief that the cost for the handyman's labor is [what the legislation is trying to address].

MS. LARSON, in response to Chair Anderson's suggestion to delete the language "and materials", said she didn't have a strong opinion. She acknowledged that the cost for materials could

consume a large portion of the \$5,000 early in the process. She opined, "I think if you take the materials out, I guess my thinking is, then ... there's no substantive difference between removing 'materials' and reducing it to \$5,000 or leaving 'materials' and leaving it at \$10,000."

Number 1297

REPRESENTATIVE CRAWFORD remarked that \$5,000 worth of labor is quite a bit; if the materials cost wasn't included, the limit would be raised over the present limit [of \$10,000].

CHAIR ANDERSON agreed.

MS. STANCLIFF interjected that the "heart of it" is the contract. She said, "I would think that the department would look at that on a basis of if you're hiring someone only for their labor, or if you're hiring someone to take care of the whole project, perhaps they might interpret it that way like Representative Crawford indicated there too."

CHAIR ANDERSON surmised, then, that if an individual purchases \$2,500 worth of paint and the labor will cost \$3,500, the department probably wouldn't view that as a project requiring a specialty contractor.

MS. STANCLIFF indicated that was her understanding.

REPRESENTATIVE DAHLSTROM remarked that often when her husband bids on projects, the bid includes the price of the equipment because he can purchase that equipment at a better price than the homeowner can.

Number 1398

REPRESENTATIVE CRAWFORD said he agrees with the intent of HB 542, which is to have more people licensed and bonded. He highlighted that under the current \$10,000, there are roofers who aren't licensed or bonded who are installing roofs. Representative Crawford said he'd prefer going with the \$5,000 limit that includes labor and materials.

REPRESENTATIVE ROKEBERG referred to page 1, line 12, which relates the current law. He emphasized that if the [work is only part] of a larger [operation], this exemption doesn't work. However, he wasn't sure it would be enforced. Representative Rokeberg noted his agreement with Representative Crawford, and

pointed out that the committee packet includes a letter from the Alaska State Homebuilders Association (ASHBA) that relates it would be [willing to support lowering the amount] to \$2,500 and [suggested inserting language] to support enforcement.

Number 1485

ROCKY SMITH, Owner, Preferred Plumbing and Heating; Member, Alaska Chapter, Associated Builders and Contractors, Inc. (ABC), related that any solution should contain an enforcement provision. With regard to the earlier septic system example, Mr. Smith informed the committee that someone can't install a septic system in Alaska without being licensed through the Department of Environmental Conservation (DEC). Therefore, it wouldn't be something that a specialty contractor could perform.

CHAIR ANDERSON surmised that Mr. Smith supported HB 542, but was suggesting including an enforcement mechanism. He pointed out that including an enforcement mechanism could create a fiscal note.

MR. SMITH agreed there should be some fine. He suggested perhaps the second fine could be higher than the first. He further suggested the fines could be laid out in law and there would be no need to go to court.

Number 1574

JOHN BITNEY, Lobbyist for Alaska State Homebuilders Association (ASHBA), announced that ASHBA supports HB 542. Mr. Bitney said he would like to echo Ms. Larson's testimony. Although the letter from ASHBA specifies the belief that HB 542 would be better with a lower limit, ASHBA believes passage of HB 542 will do some good. At the time HB 542 was introduced, ASHBA had been discussing this issue from the enforcement angle and had developed some language. He pointed out that the suggested language is attached to the letter from ASHBA. Although the letter relates the possibility of including the suggested language in the legislation, ASHBA's legislative co-chairs have agreed that attaching such language would slow this legislation.

MR. BITNEY explained that ASHBA is requesting that the language not be included, but be considered for another time. The enforcement language would provide the department with civil authority to issue a fine and have a hearing officer within the department assess a fine and a penalty against a violator, rather than the current system of going through the attorney

general's office. Such a system, ASHBA believes, would help with first- and perhaps second-time violators. However, multiple violations would probably need to meet due process requirements and go to the attorney general's office.

CHAIR ANDERSON said he would like to follow Mr. Bitney's recommendation to move HB 542 on to the House floor and review the enforcement issue later.

REPRESENTATIVE CRAWFORD pointed out that an individual who receives a ticket for running a red light can take the matter to court. He said he didn't like allowing a fine to be issued on the spot without recourse. He noted his agreement and support of HB 542 as written, but also noted that going further will require him to rethink it.

Number 1724

REPRESENTATIVE GATTO pointed out that there could be scenarios in which kids home from college are hired to do various projects such as painting a house. He asked: Would the individual hiring that college kid be breaking the law?

MR. BITNEY replied that a person wouldn't be a lawbreaker if the amount was within the aggregate amount of a contract. He pointed out that one would be contracting with someone who is exempt from insurance and safety requirements. Violations and problems in the area reflect on the industry as a whole, and therefore this enters into the consumer protection considerations. The aforementioned is the policy statement being made with this legislation.

REPRESENTATIVE GATTO asked if "handyman" is a legal term that the college kid should [register as] in order to work in the scenario presented earlier.

REPRESENTATIVE CRAWFORD pointed out that when someone hires an individual at \$12 an hour, the hiring party becomes an employer and [should] register, pay social security, and so forth. In the alternative, the employing party could do a contract with the employee because he or she is an independent contractor. Therefore, Representative Crawford opined that if an individual is merely paying someone else \$12 an hour [to perform a job], then the employing individual is a lawbreaker.

REPRESENTATIVE GATTO asked if it would be legal to contract the individual.

AN UNIDENTIFIED SPEAKER interjected, "Under \$600."

REPRESENTATIVE ROKEBERG mentioned the casual labor exemption.

CHAIR ANDERSON closed public testimony.

Number 1873

REPRESENTATIVE DAHLSTROM moved to report HB 542 out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, HB 542 was reported from the House Labor and Commerce Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:00 p.m.