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IN THE HOUSE

BY MR. REED

HOUSE BILL NO. 183

IN THE LEGISLATURE OF THE STATE OF ALASKA

SECOND LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act to provide for the licensing of contractors in Alaska; to create a Contractors' State License Board; to prescribe its powers and duties; and to provide for an effective date."

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

ARTICLE I

CONTRACTORS' STATE LICENSE BOARD

Section 1. CREATION OF BOARD. There is hereby created a Contractors' State License Board consisting of five members appointed by the governor.

Sec. 2. MEMBERSHIP. Members of the board shall be contractors actively engaged in the contracting business, have been so engaged for not less than three years preceding the date of their appointment, and shall continue in the contracting business during the term of their office. Each member of the board shall be a licensed contractor except those first appointed, and they shall be eligible to be licensed under this Act. One member of the board shall be a general engineering contractor, two members shall be general building contractors, and two members shall be specialty contractors.

Sec. 3. OFFICERS. The board shall elect annually a chairman and a secretary-treasurer from its members.

Sec. 4. QUORUM. A majority of the board shall constitute

1 a quorum for the transaction of business.

2 Sec. 5. EMPLOYEES. The board may employ personnel and
3 arrange for the assistance it may require for the performance of
4 its duties.

5 Sec. 6. RULES AND REGULATIONS. The board may make the
6 rules and regulations reasonably necessary to carry out the pro-
7 visions of this Act. The rules and regulations shall be adopted
8 in accordance with the provisions of the Administrative Procedure
9 Act.

10 Sec. 7. POWERS AND DUTIES. The board is vested with all
11 the powers and duties relating to the administration of this Act.
12 The board may make or cause to be made any special inspection or
13 investigation into the work of any licensee which may be deemed
14 necessary, and shall have the power to issue subpoenas and pro-
15 cess compelling the attendance of any person and the production
16 of any papers or books, for the purpose of such investigation
17 and examination, and shall have the power to administer oaths
18 when required, and to petition any court of this state to enforce
19 such subpoenas and process or to compel such testimony.

20 Sec. 8. SEAL. The board shall adopt a seal for its own
21 use. The seal shall have the words "Contractors' State License
22 Board, State of Alaska."

23 Sec. 9. BOARD RECORDS. The board shall keep records of its
24 proceedings and in any proceeding in court, civil or criminal,
25 arising out of or founded on any provision of this Act, copies of
26 records certified as correct under the seal of the board shall be
27 admissible in evidence as tending to prove the content of those
28 records.

29 ARTICLE II

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1 CLASSIFICATION OF CONTRACTORS

2 Sec. 10. DEFINITION OF CONTRACTOR. Within this Act, "con-
3 tractor" means a person, firm, partnership, corporation, associ-
4 ation or other organization, or a combination of any of them,
5 who, for either a fixed sum, price, fee, percentage, bonus or
6 other compensation other than actual wages, undertakes to or
7 offers to undertake to, or purports to have the capacity to
8 undertake to, or submits a bid to, or does himself or by or
9 through others, construct, alter, repair, add to, subtract from,
10 improve, move, wreck or demolish any building, highway, road,
11 railroad, excavation or other structure, project, development or
12 improvement, or to do any part thereof, including the erection
13 of scaffolding or other structure or works in connection there-
14 with. The term contractor includes subcontractors and specialty
15 contractors.

16 Sec. 11. CLASSIFICATION OF CONTRACTORS. For the purpose
17 of classification, the contracting business shall include:

18 (1) General building contracting. A general building
19 contractor is a contractor whose principal contracting business
20 is in connection with a structure built, being built, or to be
21 built, for the support, shelter and enclosure of persons,
22 animals, chattels or movable property of any kind, requiring in
23 its construction the use of more than two unrelated building
24 trades or crafts, or to do or superintend the whole or a part
25 thereof. This does not include anyone who merely furnishes
26 materials or supplies under Sec. 13 (6) without fabricating them
27 into, or consuming them in the performance of the work of the
28 general building contractor.

29 (2) General engineering contracting. A general engin-
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1 eering contractor is a contractor whose principal contracting
2 business is in connection with fixed works for any or all of the
3 following divisions or subjects: irrigation, drainage, water
4 power, water supply, flood control, inland waterways, harbors,
5 railroads, highways, tunnels, airports and airways, sewerage and
6 bridges.

7 (3) Specialty contracting. A specialty contractor is
8 a contractor whose operations as such are the performance of
9 construction work requiring special skill and whose principal
10 contracting business involves the use of specialized building
11 trades or crafts.

12 Sec. 12. RULE-MAKING POWERS FOR PURPOSES OF CLASSIFYING
13 CONTRACTORS. a. The board may adopt rules and regulations
14 necessary to effect the classification of contractors in a
15 manner consistent with established usage and procedure as found
16 in the construction business, and may limit the field and scope
17 of operations of a licensed contractor within any of the branches
18 of the contracting business, as described in this Act, to those
19 divisions thereof in which he is classified and qualified to en-
20 gage.

21 b. A licensee may make application for classification and
22 be classified in more than one classification or division thereof
23 after the licensee meets the qualification prescribed by the
24 board for such additional classification or classifications.
25 Separate applications shall be required and separate license fees
26 shall be charged for qualifying or classifying a licensee in
27 additional classifications.

28 c. Nothing in this Act shall prohibit a specialty contract-
29 or from taking and executing a contract involving the use of two

1 or more crafts or trades if the performance of the work in the
2 crafts or trades other than those in which he is licensed is
3 incidental and supplemental to the performance of work in the
4 craft for which the specialty contractor is licensed.

5 ARTICLE III

6 LICENSING

7 Sec. 13. EXEMPTIONS. This Act does not apply to:

8 (1) An authorized representative of the U. S. Govern-
9 ment, the State of Alaska, or any incorporated city, borough or
10 other municipal or political corporation or subdivision of this
11 state;

12 (2) Officers of a court when they are acting within the
13 scope of their office;

14 (3) Any construction, repair or operation incidental
15 to the discovering or producing of petroleum or gas, or the drill-
16 ing, testing, abandoning or other operation of a petroleum or
17 gas well, when performed by an owner or lessee;

18 (4) Public utilities on construction, maintenance and
19 development work incidental to their own business;

20 (5) Owners of property, building or improving struc-
21 tures on it for the occupancy of the owner and not offered for
22 sale. In all actions brought under this Act, proof of the sale
23 or offering for sale of these structures by the owner-builder,
24 within one year after their completion, is presumptive evidence
25 that the structure was undertaken for purposes of sale;

26 (6) The sale or installation of finished products,
27 materials or articles of merchandise, which are not actually
28 fabricated into and do not become a permanent fixed part of the
29 structure;

1 (7) Construction, alteration, improvement or repair
2 of personal property;

3 (8) Construction, alteration, improvement or repair
4 carried on within the limits and boundaries of a site or reser-
5 vation, the title of which rests in the federal government.

6 (9) Work or operation on one undertaking or project
7 by one or more contracts, the aggregate contract price for which
8 for labor, materials, and all other items, is less than \$100.00,
9 that work or operations being considered as of casual, minor or
10 inconsequential nature. This exemption does not apply in a case
11 where the work of construction is only a part of a larger or
12 major operation, whether undertaken by the same or a different
13 contractor, or in which a division of the operation is made in
14 contracts of amounts less than \$100.00 for the purpose of evasion
15 of this Act, or otherwise. This exemption does not apply to a
16 person who advertises or puts out a sign or card or other device
17 which might indicate to the public that he is a contractor or
18 that he is qualified to engage in the business of contractor. -

19 (10) Farming, dairying, agriculture, viticulture,
20 horticulture, or stock or poultry raising, or clearing or other
21 work upon the land in rural districts for fire prevention pur-
22 poses, except when performed by a licensee under this Act.

23 (11) An owner who contracts for a project with a
24 licensed contractor or contractors.

25 (12) A licensed architect or a registered civil or
26 professional engineer acting solely in his professional capacity
27 or to a licensed structural pest control operator acting within
28 the scope of his license.

29 (13) A person who only furnishes materials or supplies

1 without fabricating them into, or consuming them in the perfor-
2 mance of, the work of the contractor.

3 (14) A person who engages in the activities regulated
4 in this Act as an employee with wages as his sole compensation.

5 Sec. 14. EXAMINATION OF APPLICANTS: QUALIFICATIONS. a.
6 No contractor's license shall be issued under this Act except by
7 act of the board. The board may investigate, classify and
8 qualify applicants for contractors' license by written or oral
9 examination, or both.

10 b. To obtain a license under this Act, the applicant shall
11 file the required fee and meet the following requirements:

12 (1) He shall submit to the board, on forms the board
13 prescribes and in accordance with rules and regulations adopted
14 by the board, a verified application, including a complete state-
15 ment of the general nature of his contracting business, and if
16 an individual, his name and address, or if a partnership, the
17 names and addresses of all the partners, or if a corporation,
18 association or other organization, the names of the president,
19 vice president, secretary and chief construction managing officer
20 or officers, and if a corporation not organized under the laws of
21 this state, a statement showing that the corporation is qualified
22 to do business by completing all acts required for such qualifi-
23 cation in this state. The application shall contain the certifi-
24 cation of two reputable citizens of the locality in which the
25 applicant resides that he is of good reputation, recommending
26 that the license be granted.

27 (2) He shall be of good reputation, and the board shall
28 require him to show by written examination experience in the kind
29 of work he proposes to contract, his general knowledge of the

1 building, safety, health and lien laws of the state, of the rudi-
2 mentary administrative principles of the contracting business
3 and of the rules and regulations promulgated by the board pur-
4 suant to this Act.

5 (3) He shall never have been refused a license or had
6 a license revoked for reasons that should preclude granting a
7 license, or shall not have engaged in the contracting business
8 without obtaining a license as required by this Act within one
9 year prior to making the application.

10 (4) He shall not have been adjudicated bankrupt with-
11 in one year preceding the filing of his application.

12 (5) The application for a license for branches of any
13 division thereof of general engineering, building or specialty
14 contracting shall be accompanied by the fee and bond required
15 under this Act.

16 c. Applicants who have been engaged in the contracting
17 business in Alaska for one year or more prior to the effective
18 date of this Act, shall upon making satisfactory showing of quali-
19 fications to the board, be licensed without examination.

20 Sec. 15. RESIDENCE REQUIREMENTS. a. No application may be
21 made by a foreign corporation which has not complied with the
22 laws of this state setting forth qualifications to do business in
23 this state, or by any foreign corporation which has not maintain-
24 ed an office in this state for at least 90 days preceding the
25 making of application for a license, nor shall a license be
26 issued to an individual, or to a firm, partnership or corporation
27 if at least one of the principals is not a resident of this state
28 for at least 90 days, unless the person, firm, partnership or
29 corporation has maintained an office in this state for at least

1 90 days preceding the filing of an application for a license.

2 b. The board may issue a license at any time to specialty
3 contractors, without regard to resident qualification, when it
4 is shown that there are insufficient contractors, as determined
5 by the board, operating in the state licensed to do the type of
6 specialty contracting involved in a particular application.

7 c. The board may waive or reduce the residence or local
8 office requirements imposed by Subsec. a. of this section for an
9 applicant whose domicile is another state, to correspond with
10 the residence or local office requirements imposed upon residents
11 of this state who are applicants for similar licenses in such
12 other state.

13 Sec. 16. ISSUANCE OF LICENSE. a. Upon receipt by the
14 board of the fee required by this Act and an application for fur-
15 nishing complete information as required by the board, and upon
16 applicant's taking the examination required by Sec. 14, the board
17 shall notify the applicant of the action taken on his application,
18 and if the board determines that the applicant is qualified to
19 hold a license in accordance with the provisions of this Act, it
20 shall issue a license to the applicant permitting him to engage
21 in business as a contractor under the terms of this Act for the
22 balance of the fiscal year following the application.

23 b. Licenses issued under this Act and any annual renewals
24 thereof shall be signed by board or their designated representa-
25 tive and by the licensee. The license shall be nontransferable,
26 and satisfactory evidence of the possession thereof shall be ex-
27 hibited by the licensee upon demand. The license number appear-
28 ing on any licenses held by the licensee shall be posted in a
29 conspicuous place on premises where any work is being performed

1 and shall be placed on all written bids submitted by the con-
2 tractor.

3 c. If an application for a license is denied for any
4 reason provided in this Act, or if an applicant, after having
5 been notified to do so, fails to appear for the examination there-
6 for within six months from the date of filing his application,
7 the fee paid by the applicant upon filing the application shall
8 be forfeited. A reapplication for a license shall be accompanied
9 by the fee fixed by this Act.

10 Sec. 17. RENEWAL OF LICENSES. a. Licenses issued under
11 this Act shall expire June 30 each year. Applications for renew-
12 al of current licenses for the branches or any divisions thereof
13 of general engineering contracting, general building contracting
14 and specialty contracting, accompanied by the required fee,
15 received before June 30, shall authorize the licensee to operate
16 as a contractor until actual issuance of the renewal license for
17 the ensuing fiscal year.

18 b. Applications for renewal of licenses shall be filed with
19 the board not later than July 30 each year. Upon failure to so
20 file, the licenses shall thereupon be suspended and shall be re-
21 newable only upon payment of a fee in double the amount provided
22 for in this Act, and unless so renewed shall remain suspended for
23 the remainder of the fiscal year. When a license has been sus-
24 pended, as provided in this Act, for one or more fiscal years, a
25 new application for license must be made and a new license issued
26 in accordance with this Act.

27 Sec. 18. FEES. a. The license fees prescribed by this Act
28 shall be as follows:

29 (1) Application fee for an original license for the

1 branches or any division thereof of general engineering contract-
2 ing and general building contracting, \$125.00, annual renewal fee,
3 \$100.00;

4 (2) Application fee for an original license for the
5 branch or any division thereof of specialty contracting, \$100.00,
6 annual renewal fee, \$75.00.

7 b. The penalty for failure to apply for renewal of a
8 license within the time prescribed by this Act shall be double
9 the annual renewal fee prescribed in this section. The board
10 may increase the application and renewal fees for any fiscal year
11 by an amount not exceeding fifty per cent of that provided for
12 in this section and may reduce such fees for any fiscal year in
13 an amount not exceeding 25% of the fees provided for in this
14 section.

15 ARTICLE V

16 REGULATION

17 Sec. 19. ENGAGING IN CONTRACTING WITHOUT LICENSE PROHIBITED.

18 It is unlawful for a person, firm, partnership, corporation,
19 association or other organization, or a combination of any of
20 them, to engage in the business, act or offer to act in the
21 capacity, or purport to have the capacity of contractor without
22 having a license therefor as provided in this Act, unless the
23 person, firm, partnership, corporation, association or other or-
24 ganization is exempt as provided in this Act. Evidence of secur-
25 ing a permit from a governmental agency or the employment of a
26 person on a construction project shall be accepted in any court
27 as prima facie evidence of existence of a contract.

28 Sec. 20. PROOF OF LICENSE AS PREREQUISITE TO CIVIL ACTION.

29 No contractor shall act as agent or commence or maintain any

1 action in any court of the state for collection of compensation
2 for the performance of any act for which a license is required
3 by this Act without alleging and proving that he was a duly
4 licensed contractor when the contract sued upon was entered into
5 and when the alleged cause of action arose.

6 Sec. 21. GROUNDS FOR SUSPENSION OR REVOCATION OF LICENSE.

7 The board may, upon its own motion, and shall upon the verified
8 complaint in writing of any person, investigate acts of a con-
9 tractor in this state, and may temporarily suspend or permanently
10 revoke a license issued under this Act if the licensee is guilty
11 of or commits any of the following acts or omissions:

12 (1) Abandonment of a contract or refusal to perform
13 after submitting a bid on work without legal excuse therefor;

14 (2) Diversion of funds or property received for pro-
15 secution or completion of a specific contract, or for a specified
16 purpose in the prosecution or completion of a contract, and their
17 application or use for any other contract, obligation or purpose,
18 where the contractor does not have immediately available other
19 funds to complete the original contract;

20 (3) Fraudulent, gross or negligent departure from or
21 disregard of plans or specifications in any material respect,
22 without consent of the owner or his duly authorized representa-
23 tive;

24 (4) Willful and deliberate disregard and violations of
25 rules and regulations promulgated by the board to carry out the
26 provisions of this Act pertaining to construction of buildings,
27 or of safety laws or labor laws of the federal government or the
28 state, or failure to carry unemployment and social security
29 insurance, workmen's compensation insurance, or failure to pay

1 premiums or charges for workmen's compensation insurance before
2 they become delinquent;

3 (5) Failure to keep records showing all receipts and
4 disbursements of the licensee in all his transactions as a con-
5 tractor, as that term is defined in this Act;

6 (6) Misrepresentation of a material fact by the appli-
7 cant in obtaining a license;

8 (7) The doing of a willful, fraudulent act by the
9 licensee as a contractor resulting in another person being sub-
10 stantially injured;

11 (8) Filing a voluntary petition in bankruptcy;

12 (9) Conviction of a felony;

13 (10) Failure in a material respect by the licensee to
14 complete a construction project or operation for the price stated
15 in the contract therefor, or in any modification of the contract;

16 (11) Aiding or abetting an unlicensed person to evade
17 the provisions of this Act or knowingly combining or conspiring
18 with an unlicensed person, or allowing one's license to be used
19 by an unlicensed person or action as agent, partner, associate or
20 otherwise, of an unlicensed person with intent to evade provisions
21 of this Act;

22 (12) Willful or deliberate failure by a licensee or
23 agent or official thereof to pay monies when due for materials or
24 services rendered in connection with his operations as a con-
25 tractor when he has the capacity to pay or when he has received
26 sufficient funds therefor as payment for the particular construc-
27 tion work project or operation for which the services or materials
28 were rendered or purchased;

29 (13) Failure of a contractor to comply with any safety

1 laws or code of the state.

2 Sec. 22. FILING OF COMPLAINT: SERVICE OF NOTICE: FAILURE
3 TO ANSWER. Upon the filing of a verified complaint with the
4 board charging a licensee with the commission, within two years
5 prior to the date of filing the complaint, of an act which is
6 cause for suspension or revocation of a license, the board shall
7 proceed under the Administrative Procedure Act.

8 Sec. 23. RIGHTS OF CONTRACTOR AFTER SUSPENSION OF LICENSE.

9 a. After suspension of the license upon any of the grounds set
10 forth in Sec. 21, the board shall renew it upon proof of compli-
11 ance by the contractor with provisions of the judgment relating
12 to renewal of the license, or in the absence of a judgment or
13 provisions therein as to renewal, upon proper showing that all
14 loss caused by the act or omission for which the license was
15 cancelled has been fully satisfied.

16 b. After cancellation of a license upon any of the grounds
17 set forth in Sec. 21, the license shall not be renewed or re-
18 issued for one year after final determination of cancellation
19 and then only on proper showing that all loss caused by the act
20 or omission for which the license was cancelled has been fully
21 satisfied.

22 c. The board may require, as a condition precedent to the
23 issuance or renewal of a license to an applicant whose license
24 has been suspended or revoked, that the applicant file or have on
25 file with the board a cash deposit or a bond issued by a surety
26 company in a sum to be fixed by the board based upon the magni-
27 tude of the operations of the applicant and running to the State
28 of Alaska, to be conditioned upon his compliance with all the
29 provisions of this Act. When the cash deposit or bond is requir-

1 ed, every person injured by the unlawful acts or omissions of
2 that contractor may bring an action in a proper court on the
3 bond or a claim against the cash deposit for the amount of the
4 damage he suffered as a result thereof to the extent covered by
5 the bond or the cash deposit.

6 Sec. 24. EFFECT OF ACT UPON MECHANIC'S LIEN. Nothing in
7 this Act shall be deemed to affect the mechanic's lien law.

8 Sec. 25. EFFECT OF ACT UPON FEDERAL AID CONTRACTS. If any
9 provision or condition contained in this Act conflicts with any
10 provision of federal law, or a rule or regulation made under
11 federal law pertaining to federal aid contracts, such provision
12 in conflict with the federal law, rule or regulation shall not
13 apply on federal aid contracts to the extent such conflict exists,
14 but all provisions of this Act with which there is no such con-
15 flict shall apply to federal aid contracts.

16 Sec. 26. VIOLATIONS: PENALTIES. Commission by a contrac-
17 tor of any of the following acts is a misdemeanor punishable by
18 a fine of not less than \$100.00 nor more than \$300.00, by im-
19 prisonment for not to exceed six months, or both:

20 (1) Any act specified in paragraphs 2, 6, 7, or 11 of
21 Sec. 21;

22 (2) Acting in the capacity of a contractor within the
23 meaning of this Act without a license;

24 (3) Conspiring with another person to violate any pro-
25 vision of this Act.

26 Sec. 27. EFFECTIVE DATE. This Act takes effect on the day
27 after its passage and approval or on the day it becomes law with-
28 out such approval.

29