

Introduced: 4/10/81
Referred: State Affairs, Labor
& Commerce and Judiciary

1 IN THE SENATE

BY FISCHER AND STIMSON

2 SENATE BILL NO. 414

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act establishing a state-operated Small Contractor
7 Surety Bonding Corporation; and providing for an
8 effective date."

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

10 * Section 1. LEGISLATIVE FINDINGS. The legislature finds that

11 (1) many competent small contractors, whether minority or other-
12 wise, experience difficulty or are totally unable to obtain at a reasonable
13 cost the surety bonds necessary to bid on both public and private construc-
14 tion projects, whether as a prime contractor or subcontractor;

15 (2) the resulting inability of these small contractors to meet
16 the bid requirements for these projects reduces competition and contributes
17 to increased costs for public and private construction projects;

18 (3) establishing a state program to provide bonding to small
19 contractors at a reasonable cost would promote increased competition and
20 reduced costs for public and private construction projects while maintaining
21 acceptable risk levels for the contracting agency or company; and

22 (4) the increased ability of small contractors to meet bid re-
23 quirements and compete for public and private contracts would contribute to
24 economic development in the state to the benefit of the people of Alaska.

25 * Sec. 2. AS 45 is amended by adding a new chapter to read:

26 CHAPTER 71. SMALL CONTRACTOR SURETY BONDING CORPORATION.

27 Sec. 45.71.010. SMALL CONTRACTOR SURETY BONDING CORPORATION
28 ESTABLISHED. The Small Contractor Surety Bonding Corporation is a
29 public corporation and government instrumentality in the Department of

1 Commerce and Economic Development, but having a legal existence indepen-
2 dent of and separate from the state.

3 Sec. 45.71.020. BOARD OF DIRECTORS. (a) The corporation is
4 governed by a board of directors, consisting of the commissioner of
5 commerce and economic development and four members appointed by the
6 governor, who serve for a term of four years. Two of the appointed
7 members shall be contractors meeting the requirements of AS 45.71.070(2)
8 and (3) who are licensed in the state and actively engaged in a con-
9 tracting enterprise for the preceding five years, and two members shall
10 be public members who may not be contractors and may not have a direct
11 financial interest in or be associated by legal contract with a licensed
12 contractor except as a consumer of services provided by a contractor.

13 (b) Appointed members serve without compensation but are entitled
14 to per diem and travel expenses provided by law for members of boards
15 and commissions under AS 39.20.180.

16 Sec. 45.71.030. MEETINGS OF THE BOARD. (a) The board shall
17 elect a chairman from among its membership at its first meeting each
18 year. A majority of the members constitutes a quorum for the conduct
19 of corporation business and the exercise of its powers. The board
20 shall meet not less than once each four months. Meetings of the board
21 are subject to AS 44.62.310.

22 (b) The board shall keep minutes of each meeting.

23 Sec. 45.71.040. STAFF. The board shall employ an executive
24 director who may, with the approval of the board, select and employ
25 additional staff as necessary. Employees of the corporation are in the
26 exempt service under AS 39.25.110. In addition to its staff of regular
27 employees, the corporation may contract for and engage the services of
28 consultants, experts, and financial advisors the corporation considers
29 necessary for the purpose of developing information, furnishing advice,

1 or conducting studies, investigations, hearings, or other proceedings.

2 Sec. 45.71.050. LEGAL COUNSEL. The attorney general is the legal
3 counsel for the corporation. He shall advise the corporation in legal
4 matters and represent it in legal actions.

5 Sec. 45.71.060. GENERAL POWERS. In furtherance of its purpose,
6 the corporation has the following powers in addition to its other
7 powers:

8 (1) to sue and be sued;

9 (2) to have a seal and alter it at pleasure;

10 (3) to make and alter bylaws for its organization and inter-
11 nal management, and prescribe regulations and policies in connection
12 with performance of its functions and duties;

13 (4) to maintain an office at any place in the state;

14 (5) issue or participate in the issuance of surety bonds,
15 including bid bonds, performance bonds and payment bonds, to eligible
16 small contractors, whether as prime contractors or subcontractors, if
17 the corporation determines that these bonds are not otherwise available,
18 wholly or in part, from a corporate surety upon reasonably equivalent
19 terms and conditions;

20 (6) guarantee or enter into commitments to guarantee cor-
21 porate sureties against loss as the result of the breach of the terms
22 of a bid bond, performance bond, or payment bond issued to a contractor
23 as the principal of the bond;

24 (7) collect and pay reasonable fees and charges in connection
25 with the making and servicing of surety bonds issued under this chapter
26 or the guarantee of surety bonds issued by a corporate surety to a
27 contractor eligible to purchase a bond from the corporation;

28 (8) process claims and make payments as required to reimburse
29 persons for covered losses as the result of the breach of terms of a

1 surety bond by a principal on a bond issued by or guaranteed by the
2 corporation;

3 (9) make and execute agreements, contracts, and other instru-
4 ments necessary or convenient in the exercise of the powers and func-
5 tions of the corporation under this chapter, including agreements and
6 contracts entered into for the purpose of minimizing financial loss as
7 the result of the breach of the terms by the principal on a bond issued
8 by or guaranteed by the corporation;

9 (10) do all things necessary or convenient to carry out its
10 purpose and to exercise the powers granted in this chapter.

11 Sec. 45.71.070. ELIGIBLE CONTRACTORS. The requirements for
12 eligibility to purchase a bid bond, performance bond, or payment bond
13 from the corporation are as follows:

14 (1) the person who would be the principal on the bond is a
15 contractor or subcontractor who has been doing business in the state
16 for at least one year and has maintained his principal place of business
17 in the state for at least one year before the date of application;

18 (2) the person's gross revenue for the most recently com-
19 pleted fiscal year was not in excess of \$1,000,000;

20 (3) the person can demonstrate independent ownership and
21 operation;

22 (4) the bond is required in order for the person to bid on a
23 contract or to serve as a prime contractor or a subcontractor on a
24 contract;

25 (5) the person is not able to obtain the bond on reasonable
26 terms and conditions from a corporate surety;

27 (6) the executive director determines that there is reason-
28 able expectation that the person will perform the covenants and condi-
29 tions of the contract with which the bond is required; and

1 (7) the contract meets requirements established by the board
2 or the executive director for feasibility of successful completion and
3 reasonableness of cost.

4 Sec. 45.71.080. LIMITATION ON BONDS. The corporation may not
5 issue to a single contractor a bond in excess of \$500,000. If more
6 than one bond is issued to a contractor, the aggregate total of bonds
7 outstanding at one time may not exceed \$500,000.

8 Sec. 45.71.090. FEES AND PAYMENTS BY CONTRACTORS. (a) The board
9 shall establish a schedule of fees and charges which it determines to
10 be reasonable and necessary for surety bonds issued under this chapter,
11 to be paid at the times and under the conditions as determined by the
12 board. The fee schedule shall be periodically reviewed by the board to
13 insure that the lowest fees justified by experience under the program
14 will be placed into effect.

15 (b) The board shall also fix the fees for the processing of
16 applications for surety bonds under this chapter as it determines are
17 reasonable and necessary to pay administrative expenses incurred in
18 connection with processing the applications.

19 Sec. 45.71.100. PAYMENT BY CORPORATE SURETIES. A contract of
20 guarantee issued by the corporation to guarantee a bond issued by a
21 private corporate surety to a contractor shall obligate the corporate
22 surety to pay to the corporation that portion of the bond fee which the
23 executive director determines to be reasonable in light of the relative
24 risks and costs involved.

25 Sec. 45.71.110. CONTRACTOR SURETY FUND. (a) There is a contrac-
26 tor surety fund which may not exceed \$5,000,000 to carry out the pur-
27 poses of this chapter. The fund shall be administered by the board of
28 the corporation.

29 (b) Payments made to the corporation under AS 45.71.080 - 45.71.-

1 090 and other money, property, or assets derived from the operations of
2 the corporation shall be deposited in the fund. All expenses and
3 payments, excluding administrative expenses, for operations of the
4 corporation under this chapter shall be paid from the fund.

5 Sec. 45.71.120. CLAIMS FOR PAYMENT. (a) A person seeking reim-
6 bursement for a loss resulting from the breach of the terms of a
7 surety bond issued by the corporation shall make a claim to the corpor-
8 ation for reimbursement on a form furnished by the corporation. This
9 form shall be executed under penalty of perjury and shall include the
10 information that may be required by the corporation.

11 (b) A copy of a claim filed with the corporation under (a) of
12 this section shall be sent to the contractor alleged to have committed
13 the breach causing the loss, at least 15 days before any hearing held
14 on the claim by the corporation.

15 Sec. 45.71.130. CONSIDERATION OF APPLICATION. (a) Upon receipt
16 of a claim for reimbursement, the corporation may, in considering
17 whether a claim should be granted,

- 18 (1) take and hear evidence pertaining to the claim;
- 19 (2) administer oaths and affirmations;
- 20 (3) compel, by subpoena, the attendance of witnesses and the
21 production of books, papers and documents pertaining to the claim;
- 22 (4) engage the services of an investigator, accountant, or
23 other expert necessary to process the claim.

24 (b) Before the corporation finds that payment should be made from
25 the fund, the principal on the bond shall be afforded an opportunity to
26 file with the corporation, within 10 days after receipt of notification
27 of the claim under AS 45.71.120, either a written statement in opposi-
28 tion to the claim or an application for the presentation of additional
29 evidence.

1 (c) The claimant bears the burden of proof of establishing that
2 he suffered losses as a result of breach of the bond terms and the
3 extent of those losses. All facts shall be established by a prepon-
4 derance of the evidence.

5 (d) The corporation may postpone consideration of a claim until
6 after a pending or contemplated court proceeding is completed.

7 Sec. 45.71.140. FINDINGS AND PAYMENT. (a) At the conclusion of
8 the corporation's consideration of a claim made under AS 45.71.120, it
9 shall make written findings and conclusions on the evidence. If the
10 corporation finds that the claimant has suffered a loss as a result of
11 breach of the bond terms, the corporation may award a claimant reim-
12 bursement out of the fund for his loss up to the amount of the bond.

13 (b) If the liability of the fund as provided in (a) of this
14 section is insufficient to pay in full the valid claims of all persons
15 who have filed claims against a contractor, the amount shall be distri-
16 buted among the claimants in the ratio that their individual claims
17 bear to the aggregate of valid claims, or in another manner that the
18 board considers equitable. Distribution shall be among the persons
19 entitled to share in the recovery, without regard to the order of
20 priority in which their judgments were obtained or their claims filed.

21 Sec. 45.71.150. ORDER OF CLAIM PAYMENT. If the money deposited
22 in the fund is insufficient at a given time to satisfy an authorized
23 claim against the fund, the corporation shall, when sufficient money
24 has been deposited in the fund and appropriated, satisfy unpaid claims
25 in the order that the claims were originally filed, plus accumulated
26 interest at the rate of eight percent a year.

27 Sec. 45.71.160. RIGHT TO SUBROGATION. When the corporation has
28 paid a claimant from the fund, the corporation shall be subrogated to
29 all of the rights of the claimant to the amount paid and the claimant

1 shall assign all of his right, title and interest in that portion of
2 the claim to the corporation. Amounts subsequently realized by the
3 corporation on the claim shall be deposited to the fund.

4 Sec. 45.71.170. REPORTS. The board shall prepare and transmit to
5 the governor and legislature annually a report of its activities under
6 this chapter including a summary of the amount and type of bonds issued
7 and the disposition of claims filed with the corporation.

8 Sec. 45.71.200. DEFINITIONS. As used in this chapter

9 (1) "bid bond" means a bond conditioned upon the bidder on a
10 contract entering into the contract if the bidder receives the award of
11 the contract and furnishing the prescribed payment bond and performance
12 bond;

13 (2) "board" means the board of directors of the Small Con-
14 tractor Surety Bonding Corporation;

15 (3) "corporation" means the Small Contractor Surety Bonding
16 Corporation;

17 (4) "executive director" means the executive director of the
18 corporation employed under AS 45.71.040;

19 (5) "fund" means the small contractor surety fund;

20 (6) "obligee" means

21 (A) in the case of a bid bond, the person requesting
22 bids for the performance of a contract; or

23 (B) in the case of a performance bond, the person who
24 has contracted with a principal for the completion of the contract
25 and to whom the obligation of the surety runs in the event of a
26 breach by the principal of the conditions of a performance bond;

27 (7) "payment bond" means a bond conditioned upon the payment
28 by the principal on the bond of all persons who supply labor and mater-
29 ials in the prosecution of the work provided for in a contract;

1 (8) "performance bond" means a bond conditioned upon the
2 completion by the principal of a contract in accordance with its terms;

3 (9) "principal" means (A) in the case of a bid bond, a
4 person bidding for the award of a contract; or (B) the person primarily
5 liable to complete a contract for the obligee and for whose performance
6 of his obligation the surety is bound under the terms of a performance
7 bond; a principal may be a prime contractor or a subcontractor;

8 (10) "prime contractor" means the person with whom the obligee
9 has contracted to perform the contract;

10 (11) "subcontractor" means a person who has contracted with a
11 prime contractor or with another subcontractor to perform a contract;

12 (12) "surety" means the person who

13 (A) under the terms of a bid bond, undertakes to pay a
14 sum of money to the obligee in the event the principal breaches
15 the conditions of the bond;

16 (B) under the terms of a performance bond, undertakes
17 to incur the cost of fulfilling the terms of a contract in the
18 event the principal breaches the conditions of the contract; or

19 (C) under the terms of a payment bond, undertakes to
20 pay persons who have valid claims against the principal of the
21 bond for labor or materials supplied in the performance of work
22 provided for in the contract.

23 * Sec. 3. AS 39.50.200(b) is amended by adding a new paragraph to read:

24 (44) Small Contractor Surety Bonding Corporation (AS 45.71).

25 * Sec. 4. This Act takes effect immediately in accordance with AS 01.10.-
26 070(c).