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# COMMITTEE REPORT

## HOUSE

4/2/81

FURTHER: TRANSPORTATION  
(Added 4/20)

(5)

Date: \_\_\_\_\_

Mr. Speaker:

The Committee on LABOR & COMMERCE has had HR 455

"An Act relating to the regulation of contractors."

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for HR 455  same title  
 new title
- and recommends \_\_\_\_\_
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

\_\_\_\_\_  
Terry Macdonald No Rec  
Terry Macdonald No Rec  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
CHAIRMAN

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 455  
 Title An Act relating to the regulation of contractors.  
 Requested by Labor & Commerce Committee Date 4-2-81

II. FISCAL DETAIL

Agency Affected Department of Commerce & Economic Development  
 Program Category Affected Public Protection  
 BRU, Program, or Subprogram(s) Affected Regulation & licensing of professions - investigations.  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL		2.9	3.3	3.7	4.1	4.6
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
<b>TOTAL</b>		<b>2.9</b>	<b>3.3</b>	<b>3.7</b>	<b>4.1</b>	<b>4.6</b>

FUNDING (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
GENERAL FUND		2.9	3.3	3.7	4.1	4.6
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
FULL TIME	0	0	0	0	0	0
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

200 - TRAVEL - 12% inflation factor projected.

Additional travel by investigators (Juneau/Anchorage), not budgeted for in FY'82, to investigate unlicensed contracting activity.

2 investigators, 1 day per diem/mo @ \$67.00 per day	\$ 1,608.00
" 1 trip every 3 mos. @ \$160.00 per trip	1,280.00
	<b>\$ 2,888.00</b>

*Marjorie Odland*

IV. DATE 4-23-81 PREPARED BY Marjorie Odland, Regulations Specialist  
 AGENCY Division of Occupational Licensing  
 Original: Legislative Finance PHONE 465-2535  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)

COMMITTEE REPORT FOR CSHB 455

CSHB 455 amends AS 08.18 by adding two new sections related to the regulation of bidding procedures by contractors. This bill is designed primarily to eliminate the practice of "bid shopping." Currently, general contractors force principal subcontractors to lower the amount originally stated for services, or services and materials, in a bid by bid shopping after the bid is awarded. This results in increased and unwarranted profits for the general contractors, and creates an untenable economic climate for subcontractors.

In order to prevent general contractors from bid shopping, this bill requires that general contractors make contracts with the principal subcontractors before the bid is awarded and that those contracts contain a liquidated damage provision equal to 15 percent of the amount of the principal subcontractor's services, or services and materials, which have been included in the general contractor's bid. If after the bid is awarded the general contractor breaches the contract without cause, the general contractor will be required to pay this fixed amount to the principal subcontractor. By requiring that all contracts with principal subcontractors contain a liquidated damage clause, the amount of profit a general contractor may gain by bid shopping will be offset by the amount of damages that contractor will be required to pay.

CSHB 455 ensures compliance with this contract by providing that a general contractor must file a list of principal subcontractors with the commissioner when the bid is submitted. This will allow the parties, after the award of the contract, to verify whether a principal subcontractor was included in the original bid. This provision does not give the state enforcement powers. Rather, the private parties will be required to enforce their rights under this statute. However, it will provide a mechanism for verification in a subsequent dispute. Furthermore, because a bid is void if the filing is not made, the general contractor will be forced to file with the commissioner and to enter into contracts with the principal subcontractors before the award of the bid.

Because the requirements imposed by AS 08.18.065 and 08.18.067 are self-enforcing, CSHB 455 also makes inapplicable to AS 08.18.065 and 08.18.067 the provision in AS 08.18.101 making a violation of AS 08.18 a misdemeanor. Definitions of the terms "registered contractor" and "principal subcontractor" have also been included in CSHB 455 in order to clarify the applicability of the new requirements.

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Vernon L. Huribert, Chairman  
House Labor & Commerce Committee

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CSHB 455

Title An Act relating to the regulations of contractors.

Requested by Labor & Commerce Committee

Date 5-14-81

II. FISCAL DETAIL

Agency Affected Department of Commerce & Economic Development

Program Category Affected Public Protection

BRU, Program, or Subprogram(s) Affected Regulation & licensing of professions - Administration

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES		9.5				
200 TRAVEL		0				
300 CONTRACTUAL		6.0	2.0	2.1	2.2	2.3
400 COMMODITIES		1.0	1.0	1.0	1.0	1.0
500 EQUIPMENT		.5				
600 LAND & STRUCTURES		0				
700 GRANTS, CLAIMS, ETC.		0				
<b>TOTAL</b>		<b>17.0</b>	<b>3.0</b>	<b>3.1</b>	<b>3.2</b>	<b>3.3</b>

FUNDING (Thousands of Dollars)

GENERAL FUND		17.0	3.0	3.1	3.2	3.3
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

May 6, 1981

Honorable Vernon L. Hurlbert  
Alaska State Legislature  
Pouch V, State Capitol  
Juneau, AK 99811

Re: HB 455 (regulation of  
contractors)  
Our file no. J-77-120-81

Dear Representative Hurlbert:

Attached are a proposed committee substitute for HB 455 and a committee report on it. The proposed committee substitute will correct the constitutional infirmities noted in my April 27, 1981 letter on HB 455, a copy of which is also attached.

The proposed committee substitute for HB 455 requires that registered contractors file with the commissioner a list of all principal subcontractors whose services, or services and materials, are included in the registered contractor's bid. This filing requirement will enable the state to ensure that the registered contractor complies with the other requirements imposed by this version of the bill.

The constitutional problems noted in regard to HB 455 have been corrected in the proposed committee substitute by requiring that registered contractors have contracts with the principal subcontractors before the bid is awarded. Additionally, this proposed committee substitute allows termination of the contract with a principal subcontractor for any reason, but requires that all contracts contain a liquidated damage provision allowing a subcontractor to collect fifteen percent of the amount of that subcontractor's services or services and materials, included in the registered contractor's bid if the registered contractor breaches the contract without cause. This requirement will operate to prevent "bid shopping" because any advantages gained by bid shopping will be offset by the damages which the principal subcontractor will be entitled to under the contract.

May 6, 1981

Lastly, the proposed committee substitute establishes that violation of these requirements will not constitute a misdemeanor under AS 08.18.141. Because of the damage provisions in proposed AS 08.18.067, it is unnecessary to further penalize the conduct through the misdemeanor provision, and the uncertainty of a justifiable or unjustifiable breach of contract, would be unconstitutionally vague.

Sincerely,

WILSON L. CONDON  
ATTORNEY GENERAL

By:

Leslie J. Ludtke  
Assistant Attorney General

LJL:wjp  
Enclosure

2

MSG 81-00014670 PRY 1 04/29/81 14:26:55 ORIG: LA00 IN= 0017 OUT= 0077  
FROM: CAROL, ANCH. TO: JUNEAU INFO  
TARGET: LJH2 SUBJ: PUBLIC OPINION MESSAGE PAGE 0002

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TO: REP. VERN HURLBERT, CHAIRMAN, HOUSE LABOR AND COMMERCE COMMITTEE  
FROM: OVERHEAD DOOR CO.  
WALT KAMSTRA  
P.O. BOX 4-1145  
ANCHORAGE, AK 99509 274-0606

WE SUPPORT HB 455: RE REGULATION OF CONTRACTORS.



Official Business

# Alaska State Legislature

## House of Representatives

Pouch V  
State Capitol  
Juneau, Alaska 99811

April 28, 1981

The Honorable  
Wilson L. Condon  
Attorney General  
Pouch K, State Capitol  
Juneau, Ak 99811

RE: HB 455

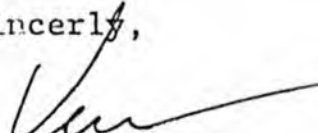
Dear Attorney General Condon:

I am in receipt of a letter from you dated April 27, 1981 referencing the above.

Based upon the opinion, I am requesting that your office assist us in re-drafting HB 455 so it will meet constitutional questions.

I am thanking you in advance.

Sincerely,

  
Rep. Vern Hurlbert  
Chm., House Labor  
and Commerce

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

April 27, 1981

Honorable Vernon L. Hurlbert  
Alaska State Legislature  
Pouch V, State Capitol  
Juneau, AK 99811

Dear Senator Hurlbert:

You have asked this department to comment on the constitutionality of HB 455. This bill requires general contractors to submit the names of all principal subcontractors included in a contract bid. Upon award of the bid to the general contractor, the general contractor may change a principal subcontractor, which was included in the bid, only for cause.

HB 455 raises three constitutional issues which are: (1) whether a general contractor may in light of the right to privacy be required to submit the names of all principal subcontractors in a bid; (2) whether the provision that allows termination only for cause violates the constitutional right to freedom of contract; and (3) whether limiting the bill to cover only general contractors violates the equal protection clause.

The right to privacy guaranteed by Art. I, § 22 of the Alaska Constitution must be balanced against the regulatory interest in requiring disclosure of the information. This bill requires disclosure of the principal subcontractors in order to prevent the general contractor from obtaining a bid, and then pressuring the subcontractors to work for less than the amount included in the bid. Therefore, the regulatory motivation behind this disclosure requirement is to prevent "bid shopping" by general contractors. Because the information sought relates only the business activities of the general contractor, the regulatory interest in requiring disclosure of the names of the principal subcontractors may outweigh the privacy interest of the general contractor in not disclosing the names.


The second constitutional issue raises far more serious questions. The fourteenth amendment of the U. S. Constitution and Art. I, § 7 of the Alaska Constitution guarantee the rights of liberty and property. The right to freely contract may be impinged upon only when there is a legitimate state interest. For example, contracts against public policy may be forbidden by law because there is a legitimate police power interest in prohibiting persons from entering into these type of contracts. However, in this instance the bill requires that the general contractor enter into contracts with principal subcontractors which can be terminated only for cause upon award of the bid. The requirement severely limits a general contractor's right to choose which subcontractors to contract with and what kind of contracts to make with those subcontractors. In Opinion of the Justices, 108 N.E. 807, (Mass 1915), the question of whether a statute may impose a requirement that an employee of a railroad corporation be given a full hearing before discharge was discussed. In holding that that statute constituted an unwarranted infringement upon the right to contract, the Justices focused on the employer's basic right to discharge employees. However, the Justices did state that the requirement of hearing before discharge could be imposed upon civil service employers. Similarly we think that the contractual restrictions contemplated by HB 455 could be imposed in connection with bids for state contracts. The imposition of the requirement that the general contractor execute a contract, only terminable for cause, with a principal subcontractors included in the bid violates the constitutional right to freedom of contract.

The third constitutional issue raised by HB 455 involves the equal protection clause of the constitution. Art. 1, § 1 of the Alaska Constitution and the fourteenth amendment of the U.S. Constitution guarantee equal treatment under law for all persons. However, a regulatory statute may pertain only to one group of persons provided that there is a reasonable basis for the classification. The application of the requirements of HB 455 only to general contractors in the State meets the rational basis test under Art. I, § 1 of the Alaska Constitution and the Fourteenth Amendment of the U.S. Constitution.

Therefore, we conclude that the only significant constitutional problem with HB 455 is the limitation it imposes upon a general contractor's right to freely contract. On this basis we think HB 455 is unconstitutional.

Sincerely,

WILSON L. CONDON  
ATTORNEY GENERAL

By:   
Leslie J. Ludtke  
Assistant Attorney General

Recd

Introduced: 4/2/81  
Referred: Labor & Commerce

BY THE LABOR AND COMMERCE  
COMMITTEE BY REQUEST

1 IN THE HOUSE

2 HOUSE BILL NO. 455

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the regulation of contractors."

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

8 \* Section ~~1~~. ~~AS 08.18.141~~ is ~~ded~~ to read:

9 Sec. ~~08.18.141~~. MISDEMEANOR. A person who violates [ACTING IN  
10 THE CAPACITY OF A CONTRACTOR IN VIOLATION-OF] ~~this chapter is guilty of~~  
11 a misdemeanor.

12 \* Sec. 1. AS 08.18 is amended by adding a new section to article 4 to  
13 read:

14 Sec. 08.18.155. SUBCONTRACTORS TO BE NAMED IN A BID. When sub-  
15 mitting a bid for a contract, including a bid for a state contract, a  
16 general contractor shall name each principal subcontractor he intends  
17 to use in performing the contract. After a contract is awarded, a  
18 general contractor may change a principal subcontractor named in the  
19 bid only for cause. For purposes of this section "principal subcon-  
20 tractor" means a specialty contractor who, in the performance of a  
21 contract awarded to the general contractor, supplies materials and  
22 services with a value equal to at least five percent of the total value  
23 of the contract.

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*J*

MSG 81-00014076 PRTY 1 04/24/81 17:46:47 ORIG: LA02 IN= 0007 OUT= 0108  
FROM: ROBERTA TO: JUNO INFO  
TARGET: LJH2 SUBJ: POMS PAGE 0004

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TO: REPRESENTATIVE HURLBERT  
FROM: JOHN TAULMAN, TAULMAN PAINTING, 934 W 72ND, ANC 99502; 344-7123 .  
I AM IN FAVOR OF HB 455.

MSG 81-00014076 PRTY 1 04/24/81 17:46:47 ORIG: LA02 IN= 0007 OUT= 0108  
FROM: ROBERTA TO: JUNO INFO  
TARGET: LJH2 SUBJ: POMS

PAGE 0003

TO: REPRESENTATIVE HURLBERT

FROM: GARY STEPHENS, STEPHENS BROTHERS BLUMING, 7339 ARCTIC BLVD, ANCH 99502,  
349-1539

WE SUPPORT HR 455 AND URGE ITS PASSAGE.

2

MSG 81-00013537 PRY 1 04/22/81 14:01:51 ORIG: LA02 IN= 0005 OUT= 0079  
FROM: ROBERTA TO: JUNO INFO  
TARGET: LJH2 SUBJ: POMS PAGE 0001

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TO: REPRESENTATIVE HURLBERT  
FROM: HAROLD BEATY, 3701 EUREKA, ANC 99503; 274-6479  
I DO SUPPORT YOUR HB 455.

MSG 81-00012390 PRTY 1 04/14/81 16:37:10 ORIG: LA03 IN= 0010 OUT= 0110  
FROM: EFFIE TO: JUNEAU INFO  
TARGET: LJM2. SUBJ: P.O.M. ----- PAGE 0001

TO: REP. VERN HURLBERT

FR: MR. CHARLIE BROWN, INTERNATIONAL STEEL ERECTORS  
1801 W. 49TH AVENUE  
ANCHORAGE, AK 99503 248-2600

SENT BY CAROLYN J. BROWN

PLEASE WORK ON PASSAGE OF HD. 455.

MSG 81-00012413 PRTY 1 04/14/81 17:31:53 ORIG: LA00 IN= 0021 OUT= 0123  
FROM: LOU TO: JNU INFO  
TARGET: LJM2 SUBJ: FOM PAGE 0002

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TO: REPRESENTATIVE HURLBERT

FROM: RAY PRICHARD, DIOMEDE ENTERPRISES, 7217 ARTIC BLVD., ANC. 99502 342-4772

REF: HD-455

I AM VERY MUCH IN FAVOR OF THE PROPOSED CHANGES TO THIS LAW.

M

MSG 81-00012609 PRTY 1 04/15/81 16:31:57 ORIG: L400 IN= 0009 OUT= 0024  
FROM: LOU TO: JNU INFO  
TARGET: LJH2 SUBJ: POM PAGE 0003

TO: REPRESENTATIVES HURLBERT, HAYES AND MONTGOMERY

FROM: VINCENT J. DORAN, 2132 RAILROAD AVE., ANC. 99504 276-4303

RE: HD-455  
A GENERAL CONTRACTOR IS AWARDED A JOB IF HIS BID IS LOW. PLEASE SUPPORT HD-455  
SO SUBCONTRACTORS CAN RECEIVE THE SAME FAIR TREATMENT.

LA11 1339 17.33 JAD1 0014 17.33 04/14/81

TO JUNEAU INFO FROM MARCIE, ANC INFO RE: POM

TO: REPRESENTATIVE HURLBERT

FROM: KEN SPEARIN, P. O. BOX 10-1756, ANC 79511 (345-0816)

AM VERRY MUCH IN FAVOR OF HOUSE BILL 455.