

HB

540

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 540
 Title: "..claims against a contractor's payment bond"
 Sponsor: Rep. Bettisworth
 Requestor: House Labor & Commerce
 Date of Request: 2/10/84

FISCAL DETAIL

Agency Affected: Labor
 Program Category Affected: Public Protection
 BRU, Program or Subprogram(s) Affected: Labor Standards & Safety

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not Applicable

ANALYSIS: Attach a separate page for analysis

Prepared By: Robert J. Bacolas, Sr. Phone: 465-4870
 Division: Labor Standards & Safety Date: 2/13/84
 Approved by Commissioner: Jim Robison Date: 2/13/84
 Agency: Labor

Distribution (by Agency preparing fiscal note):

Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

12/1/83

Bill No. House Bill No. 540

Date February 13, 1984

Title "An Act relating to claims against
a contractor's payment bond"

Contact: Eileen Plate, 465-2700
Bob Bacolas, 465-4870

The bonding requirements of AS 36.25 are designed to provide persons performing labor or furnishing material on a public construction project with remedies comparable to those that are available to persons performing work or furnishing material on a private sector construction project. With respect to private construction, the following points are relevant:

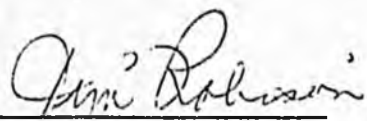
1. A person who performs work or supplies materials on a private project may lien the property for recovery of monies owed for wages or materials;
2. A lien on the property may be filed for up to 90 days after the last date on which the person performed labor or furnished materials; and
3. The property is lienable by workers and suppliers of the general contractor or any subcontractor.

Public property, on the other hand, cannot be liened, and the bonding requirements of AS 36.25 evolved as an equitable alternative, with the only difference being the vehicle used for recovery -- on public construction, the contractor's bond; on private construction, lienable real property.

The amendments to AS 36.25.020(b), as set out in House Bill No. 540, propose to disrupt the equity presently provided by discriminating against the person who performs labor or furnishes material to a subcontractor on a public construction project. In fact, the proposed provision that these workers or suppliers must initiate their claims against the contractor's bond within ten days from the first date labor was performed or materials were furnished effectively denies them use of the system specifically designed to assist them. Few workers or suppliers would fear that money owed them was in jeopardy after only ten days. Further, the requirements of AS 36.25.010(a)(2) clearly contemplate that the general contractor is responsible for the protection of all persons who supply labor and material in connection with the construction contract. Therefore, the proposal to treat a subcontractor's workers and suppliers differently than those of a general contractor is not only without justification, but is also contrary to the spirit of the bonding law itself.

House Bill 540 is not in the best interest of Alaska's workers, and the department opposes its passage.

APPROVED:



Jim Robison
Commissioner

POSITION PAPER/Department of Labor

~~Revised~~

Draft

TESTIMONY OF

ALASKA CHAPTER

THE ASSOCIATED GENERAL ^RCONTACTORS OF AMERICA

TO THE

HOUSE LABOR AND COMMERCE COMMITTEE

ON

VARYING THE NOTICE PROVISIONS TO PRIME CONTRACTORS

BY

SUBCONTRACTOR SUPPLIERS (HB 540)



1084

Draft

The change proposed in HB540 would not preclude claims of a subcontractor's supplier against a general contractor's payment bond. However, timely notice to the general contractor of the supplier's status and existence will become a prerequisite to filing a claim. This notice requirement will allow a general contractor to ensure that a subcontractor has paid all suppliers.

Under proposed HB540, a general contractor will know which persons may possibly have claims against his payment bond prior to a claim being made. Under existing law, a general contractor cannot determine, in advance of a claim being filed, which persons may be eligible to file a claim.

HB540 proposes a system somewhat analogous to the Alaska lien law (AS 34.35). In 1978 the lien laws for the State of Alaska were substantially revised. The revisions still provide protection to the subcontractor and material supplier but now subcontractor and suppliers have to take the initiative in assuring that the owner and lender are aware of their existence and ability to lien the project.

In summary, the A.G.C. believes HB540 will continue to provide protection to subcontractor suppliers but in a more enlightened and commercially reasonable manner. The A.G.C. urges this committee to consider all of the offered testimony and pass HB540 on to the next committee of referral.

Draft

The Alaska Chapter Associated General Contractors of America represents more than 800 companies including most of general contracting companies engaged in commercial construction. We appreciate the opportunity to present A.G.C.'s views on HB540.

The A.G.C. supports HB540 and offers the following brief explanation of the effect of the proposed change as we understand its intent.

Under existing law, a person with no direct contractual relationship with a general contractor, but who supplies labor or material to a subcontractor, may make a claim against the payment bond by giving the general contractor written notice within 90 days from the last date on which the person performed labor or furnished material. A general contractor has no way of knowing who may have supplied labor or materials to a subcontractor. Accordingly, a general contractor has no easy way to assure that a subcontractor has paid all his suppliers. Certification by a subcontractor that all labor and materialmen have been paid is no assurance if the certifying subcontractor is or becomes insolvent. The only "iron clad" safeguard for a general contractor is to delay payment to all subcontractors until 90 days after they have supplied labor or materials. This solution would do little to harmonize relations and increase cooperation between general contractors and subcontractors.

STATE OF ALASKA
THE LEGISLATURE

POUCHY - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3400

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 27, 1984

SUBJECT: Sectional analysis of HB 540

TO: Representative John Cowdery
Chairman, House Labor and
Commerce Committee

FROM: Edward H. Hein *EHA*
Legislative Counsel

Under AS 36.25.010(a)(2), a general or specialty contractor, as a condition of being awarded a contract for a public building or public works project exceeding \$100,000, must post a payment bond for the protection of all persons who supply labor and materials provided for in the contract.

Under AS 36.25.020(b), a supplier of labor or materials under a contract with a subcontractor, who has no contractual relationship with the prime contractor, has a right of action against the payment bond if the supplier notifies the prime contractor within 90 days after completing the work or the delivery of all materials.

The bill amends this section to provide that the supplier would have to give notice within 10 days after beginning performance. The goal is to give prime contractors earlier notice of claims that might be made against the payment bond so that the contractors can withhold adequate amounts from the subcontractors to assure that the suppliers will be paid.

Because the bill would require that notice be given in most cases before work is completed, it will often be impossible for the supplier to "state with substantial accuracy the amount claimed", as is now required in AS 36.25.020(b). Thus, that language is deleted at lines 16 - 17 of the bill. The new language inserted at lines 18 - 23 require that the notice also identify the project, describe the work or material furnished, and state the date on which performance began.

EHH:ojb
J3/005

APRIL 17, 1984

To: JOHN
FROM: KEN
RE: HB 540

HB 540 MAKES CHANGES IN THE STATUTES DEALING WITH A CONTRACTORS PAYMENT BOND ON PUBLIC CONSTRUCTION AND PUBLIC WORKS PROJECTS. UNDER PRESENT STATUTE IF LABOR OR MATERIALS ARE SUPPLIED TO A PROJECT FOR USE BY A SUBCONTRACTOR WHO WAS HIRED BY THE GENERAL CONTRACTOR; THE PERSON OR COMPANY SUPPLYING THE LABOR OR MATERIALS HAVE UP TO 90 DAYS FROM THE LAST DATE SUCH MATERIALS OR LABOR WERE FURNISHED TO FILE A CLAIM AGAINST THE CONTRACTORS PAYMENT BOND, SHOULD THE SUBCONTRACTOR NOT PAY HIS BILLS. THE COMMITTEE SUBSTITUTE FOR HB 540 WOULD CHANGE THE STATUTE TO READ 30 DAYS FROM THE FIRST DATE LABOR OR MATERIALS WERE FURNISHED.

QUESTIONS:

1. WHAT IS WRONG WITH THE STATUTE NOW ? WHY IS SUCH A RADICAL CHANGE NEEDED ?

2. WOULD THIS CREATE AN UNNECESSARY AMOUNT OF ADDED PAPERWORK FOR THOSE SUPPLYING MATERIALS TO A CONSTRUCTION JOB ?

3. WOULDN'T THIS LEGISLATION REALLY BE FORCING THE MATERIAL SUPPLIERS, LABORERS AND SUBCONTRACTORS TO BE DOING THE GENERAL CONTRACTORS WORK. BY THAT I MEAN POLICING THE JOB ?

4. HAS THE SUPPLIERS OF BUILDING MATERIALS WORKED WITH YOU ON THIS NEW COMMITTEE SUBSTITUTE ?

ImPhase feb

UNITED Lumber Co., Inc.

WHOLESALE
P.O. BOX 1318
KENT, WA 98301
(206) 872-7788

Building Supply & Home Center

CORPORATE HEADQUARTERS
P.O. BOX 6509 • ANCHORAGE, AK 99502
TELEPHONE (907) 243-4545

ANCHORAGE
5011 JEWEL LAKE RD.
ANCHORAGE, AK 99502
243-4545

EAGLE RIVER
P.O. BOX 458
EAGLE RIVER, AK 99845
894-2764

PALMER
P.O. BOX 1270
PALMER, AK 99845
745-2410

SOLDOTNA
P.O. BOX 2109
SOLDOTNA, AK 99689
282-9081

BETHEL
P.O. BOX 1888
BETHEL, AK 99559
543-2034

HOME CENTER
501 W. RASPBERRY RD.
ANCHORAGE, AK 99502
349-7518

March 8, 1984

The Honorable John J. Cowdery
Pouch V
Juneau, Alaska 99811

Dear Representative Cowdery:

I, in my capacity as ~~Secretary/Treasurer and Controller for UNITED LUMBER COMPANY, INC.~~, have recently had the opportunity to review HB 540 which amends AS 36.25.020 (called the Little Miller Act). The proposed amendment adds subsection (d) which imposes certain notice requirements on suppliers of materials, equipment to be given to general contractors in order to preserve a right of action under the Act.

I have ~~discussed the ramifications of HB 540 with some of my colleagues in the retail/wholesale lumber industry, including representatives of Spenard Builders Supply and Superior Millwork, Inc. We are unanimous in our view that the proposed amendment (copy attached) would increase the cost of our business by placing additional account functions on suppliers. Therefore, we would urge you to vote against the passage of HB 540.~~

By way of background, in recent years the burden of preserving Mechanic's Lien rights for material suppliers and subcontractors has, in our view been unfairly shifted from those in the most logical and least burdened position to protect everyone's lien rights to the subcontractors and material suppliers.

For example, the Mechanics Lien Law was amended in 1979 and 1980 which resulted in changing priority between a Mechanic's Lien and a Deed of Trust securing the interim construction loan. The amendments further created the burden upon subcontractors and material suppliers to obtain an "acknowledgement of right to lien" from the owner if we were not selling directly to the owner. ~~It has generally been the view in the retail/wholesale lumber industry that the interim financing institutions could easily monitor construction draws to insure proper disbursement to subcontractors and material suppliers, yet this burden of notice was shifted to us.~~

~~We view HB 540 as another example of such unfair and unnecessary shifting of such burdens. Certainly the general contractor on a State funded project is in the best position to determine with whom his subcontractors are dealing with in the purchase of materials. Such could be a condition of draws by the subcontractors, and checks can be made payable jointly.~~

MILLWORK & TRUSS
180 W. 68TH
ANCHORAGE, AK 99502
243-4545

MANUFACTURING PLANT
MILE 7½ OLD SEWARD HWY.
ANCHORAGE, AK 99502
344-7812

UNITED COMPONENT & BUILDING SYSTEMS PLANT
PALMER INDUSTRIAL PARK
PALMER, AK 99845
745-3052

SAWMILL
147½ STERLING HWY.
STARISKY, AK 99839



March 8, 1984
Page 2

Speaking from personal experience, the staff in our Credit Department doubled in order to keep up with the new notice requirements of the amended Mechanics Lien Law. Now we are faced with additional notice requirements under AS 36.25.020 if HB 540 is passed in order to protect our rights under the Little Miller Act. Additionally, the proposed amendment under HB 540 requires that we give notice to the general contractor by registered mail, a costly and time-consuming method.

We would urge consideration by you as to the effect of this unnecessary and costly amendment. We would welcome the opportunity to meet with you personally if you are in Anchorage during this current session. In the alternative, please don't hesitate to call me collect if you have any questions or if I can further elaborate upon the position of the retail/wholesale lumber suppliers.

Sincerely Yours,

UNITED LUMBER COMPANY INC.

A handwritten signature in cursive script, appearing to read "O. Holmstrom".

O. Holmstrom
Secretary/Treasurer

mak
Attachment

Alaska State Legislature



REPRESENTATIVE

POUCH V
JUNEAU, ALASKA 99811

ROBERT H. "BOB" BETTISWORTH

211 CUSHMAN STREET
FARBANKS, ALASKA 99701

Memorandum:

From: Rep. Bob Bettisworth *RHB*

To: John Cowdery, Chairman House Labor and Commerce Committee

Re: Bill Analysis: HB 540 "An act relating to claims against a contractor's payment bond"

The purpose of the bill is to change the timing required for notice of a claim to a contractor by a third party having a contractual relationship with a subcontractor but no contractual relationship with the contractor.

At present a person furnishing labor or materials has 90 days after the last date the person provided labor or materials to make notice of a claim. In this situation the contractor often faces claims, against its payment bond from persons or businesses, which were filed long after the contractor has paid the subcontractor. The proposed bill will require notice by the person providing labor or materials within 10 days of the date they first provide labor or materials. This will not prevent claims against the payment bond. However, it will give the contractor notice of those people or businesses which may have claims so that the contractors will be able to take measures to insure that persons furnishing labor or materials are paid when the subcontractors are paid.

The bill also eliminates the requirement to state the amount claimed. In its place is a requirement to provide the nature of the materials or work provided and the date work or materials were first provided. This is necessary because the exact amount of the claim would not be known in all cases.

Alaska State Legislature



REPRESENTATIVE

POUCH V
JUNEAU, ALASKA 99811

ROBERT H. "BOB" BETTISWORTH

211 CUSHMAN STREET
FARBANKS, ALASKA 99701

Memorandum:

From: Rep. Bob Bettisworth

RHB

To: John Cowdery, Chairman House Labor and Commerce Committee

Re: Bill Analysis: HB 540 "An act relating to claims against a contractor's payment bond"

The purpose of the bill is to change the timing required for notice of a claim to a contractor by a third party having a contractual relationship with a subcontractor but no contractual relationship with the contractor.

At present a person furnishing labor or materials has 90 days after the last date the person provided labor or materials to make notice of a claim. In this situation the contractor often faces claims, against its payment bond from persons or businesses, which were filed long after the contractor has paid the subcontractor. The proposed bill will require notice by the person providing labor or materials within 10 days of the date they first provide labor or materials. This will not prevent claims against the payment bond. However, it will give the contractor notice of those people or businesses which may have claims so that the contractors will be able to take measures to insure that persons furnishing labor or materials are paid when the subcontractors are paid.

The bill also eliminates the requirement to state the amount claimed. In its place is a requirement to provide the nature of the materials or work provided and the date work or materials were first provided. This is necessary because the exact amount of the claim would not be known in all cases.