

HB

540

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: CSHB 540(L&C)
 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

Fiscal Note

Bill No. Committee Substitute for House Bill No. 540 Date 5/21/84
(L&C)
Title "An Act relating to contractors' payment Contact: Eileen Plate
bonds." bonds." 465-2700
Bob Bacolas
465-4870

Committee Substitute for House Bill No. 540 makes editorial changes to provisions in Title 36 with respect to action against a contractor's payment bond by persons performing labor for subcontractors on public construction projects. In this regard, the bill provides a sample form for a person performing labor for a subcontractor to notice the contractor when a claim for payment of labor is filed against the contractor's bond. The sample form will assist persons performing labor in filing adequate notice as it depicts the specific information which must be included.

The committee substitute also contains a number of more significant changes to Title 36 with respect to action against a contractor's payment bond by persons who supply materials, supplies, or equipment to subcontractors on public construction projects. Inasmuch as persons who supply materials, supplies or equipment on public construction projects fall outside of the department's authority or responsibility as far as collection of monies due them, we have no comments on these particular provisions.

The Department's position on Committee Substitute for House Bill 540 is neutral. It will not have a fiscal impact on the Department.

APPROVED

Robert W. Jordan, Asst. Comm.
for Jim Robison
Commissioner

H 540 TITLE & SPONSOR SUMMARY 17:15 6/04/04 PAGE 1 OF 3
 RENAMED TITLE: SBHD 540(L&C)
 ACT RELATING TO CONTRACTORS' PAYMENT BONDS
 PRIME SPONSOR: BETTECHORTH,
 CO-SPONSORS:
 CURRENT STATUS: 5/22/04 IN (3) JUDICIARY

H 540 HOUSE ACTION 17:16 6/04/04 PAGE 2 OF 3
 DATE SEQ PAGE LEGISLATIVE ACTION

 4/25/04 01 2350 FIRST READING -- COMMITTEE REPORTS
 4/16/04 02 3370 L&C -- 0202, PR03
 4/16/04 03 3370 L&C BY NOTE EQUALS ZERO
 5/05/04 04 3305 SECOND READING
 5/05/04 05 3305 L&C IS ADOPTED BY UNAN CONSENT
 5/05/04 06 3305 ADVANCED TO 3RD READING BY UNAN CONSENT
 5/05/04 07 3305 THIRD READING
 5/05/04 08 3305 PASSED BY DIV 24-10-05
 5/05/04 09 3305 NOTICE OF RECONSIDERATION GIVEN
 5/06/04 10 3741 POSTPONED UNTIL 05/07/04 BY UNAN CONSENT
 5/07/04 11 3741 PASSED ON RECONSIDERATION BY DIV 24-10-05
 XXXX XX XX XXX XXX XXX

S 540 SENATE ACTION 17:16 6/04/04 PAGE 3 OF 3
 DATE SEQ PAGE LEGISLATIVE ACTION

 5/08/04 12 3268 FIRST READING -- COMMITTEE REPORTS
 5/23/04 13 3210 L&C -- 0203, JR01
 JUDICIARY
 RULES
 XXXX XX XX XXX XXX XXX

COMMITTEE REPORT

SENATE

FURTHER:

Date 2/1/19

Mr. President

The Committee on [] considered []

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

- [x] do pass
[] do pass with attached amendment(s)
[] replace with/or adopt CS for
[] new title
[] same title and recommends
[] and attached a "LETTER OF INTENT" [] NEW FISCAL NOTE
[] reports it back without recommendation
[] recommends referral to Committee

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS

[Handwritten signatures in the DO PASS column]

[Handwritten signatures in the OTHER RECOMMENDATIONS column]

Chairman

Chairman recommendation

POSITION PAPER OF
ALASKA CHAPTER
THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA
TO THE
SENATE LABOR AND COMMERCE COMMITTEE
ON
VARYING THE NOTICE PROVISIONS TO PRIME CONTRACTORS
BY
SUBCONTRACTOR SUPPLIERS (HB 540)



The Alaska 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 view on HB 504.

The A.G.C. supports the inclusion of a "second tier notice" provision in the Little Miller Act.

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.

Under existing law, a general contractor cannot determine, in advance of a claim being filed, which persons may be eligible to file a claim. Timely notice to the general contractor of the supplier's status and existence will allow a general contractor to assure that a subcontractor has paid all suppliers.

In summary, the A.G.C. believes that the notice provisions of HB 540 will ensure that commerce is conducted in a more enlightened and commercially reasonable manner. The A.G.C. urges this committee to pass HB 540 on to the next committee of referral.

UNITED Lumber Co., Inc.

WHOLESALE
P.O. BOX 1318
KENT, WA 98301
(208) 872-7788

Building Supply & Home Center

CORPORATE HEADQUARTERS
P.O. BOX 6808 • ANCHORAGE, AK 99502
TELEPHONE (907) 243-4545

ANCHORAGE
6011 JEWEL LAKE RD.
ANCHORAGE, AK 99502
243-4545

EAGLE RIVER
P.O. BOX 458
EAGLE RIVER, AK 99845
894-2784

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

SOLDOTNA
P.O. BOX 2109
SOLDOTNA, AK 99860
282-9091

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

HOME CENTER
501 W. RASPBERRY RD.
ANCHORAGE, AK 99502
349-7516

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
160 W. 68TH
ANCHORAGE, AK 99502
243-4545

MANUFACTURING PLANT
MILE 7 1/2 OLD SEWARD HWY.
ANCHORAGE, AK 99502
344-7812

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

SAWMILL
147 1/2 STERLING HWY.
STARISKY, AK 99830

Letter of Opposition



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

MEMORANDUM RE VARYING NOTICE PROVISION
TO PRIME CONTRACTORS BY SUBCONTRACTOR SUPPLIERS

A.S. §36.25.020 specifies the rights of recovery against the payment bond on public works (and hence against the prime contractor). It reads as follows:

Sec. 36.25.020. Rights of persons furnishing labor or material. (a) A person who furnishes labor or material in the prosecution of the work provided for in the contract for which a payment bond is furnished under AS 36.25.010 and who is not paid in full before the expiration of 90 days after the last day on which labor is performed or material is furnished for which the claim is made, may sue on the payment bond for the amount unpaid at the time of the suit.

(b) However, a person having direct contractual relationships with a subcontractor but no contractual relationship express or implied with the contractor furnishing the payment bond has a right of action on the payment bond upon giving written notice to the contractor within 90 days from the last date on which the person performed labor or furnished material for which the claim is made. The notice must state with substantial accuracy the amount claimed and the name of the person to whom the material was furnished or for whom the labor was performed. The notice shall be served by mailing it by registered mail, postage prepaid, in an envelope addressed to the contractor at any place where the contractor maintains an office or conducts business, or the contractor's residence, or in any manner in which a peace officer is authorized to serve summons.

(c) A suit brought under this section shall be brought in the name of the state or the political subdivision of the state for the use of the person suing in the superior court. No suit may be started after the expiration of one year after the date of final settlement of the contract. The state or political subdivision of the state is not liable for costs or expenses of the suit.

Subsection (a) relates to those who furnish labor or material directly to the contractor.

Back-up Provided by A. J. C.

Subsection (b) relates to those who furnish labor or materials directly to the subcontractor. It is with subsection (b) that this memorandum concerns itself.

A reading of that subsection discloses that people furnishing subcontractors materials (which includes equipment) even at some remote site which are ultimately on the project are entitled to recover against the bond if notice of claim is given to the prime contractor within 90 days from the last date on which the labor or material was furnished. With this provision the situation often arises that the first notice is received long after the time when the prime contractor could have done the necessary to protect itself.

A common, more enlightened provision is included in the Washington Public Works Statute, it providing for notice within ten days of first furnishing such materials, it reading as follows:

39.08.065 Notice to contractor condition to suit on bond when supplies are furnished to subcontractor. Every person, firm or corporation furnishing materials, supplies or provisions to be used in the construction, performance, carrying on, prosecution or doing of any work for the state, or any county, city, town, district, municipality or other public body, shall, not later than ten days after the date of the first delivery of such materials, supplies or provisions to any subcontractor or agent of any person, firm or corporation having a subcontract for the construction, performance, carrying on, prosecution or doing of such work, deliver or mail to the contractor a notice in writing stating in substance and effect that such person, firm or corporation has commenced to deliver materials, supplies or provisions for use thereon, with the name of the subcontractor or agent ordering or to

whom the same is furnished and that such contractor and his bond will be held for the payment of the same, and no suit or action shall be maintained in any court against the contractor or his bond to recover for such material, supplies or provisions or any part thereof unless the provisions of this section have been complied with.

RECOMMENDATION: The Washington statute RCW 39.08.065 could replace subsection (b) of A.S. 36.25.020.

Alternatively, probably the easiest modification to subsection (b) would be to merely strike out a few words of the first sentence and add a few as follows:

(b) However, a person having direct contractual relationships with a subcontractor but no contractual relationship express or implied with the contractor furnishing the payment bond has a right of action on the payment bond, only upon giving written notice to the contractor within 90 10 days from the last-first date on which the person performed labor or furnished material for which the claim is made.

NOTE: You will note that this section applies to claim against the payment bond. It says nothing about claim against the prime contractor. Under subsection (a) the supplier always has a claim against the prime contractor if it is dealing directly. If it is dealing indirectly as through a subcontractor (subsection (b)) it never would have and does not now have a claim against the prime contractor directly -- only the surety, which in essence is the same if the prime is solvent. A form of notice used in Washington is attached.

DATED this 1st day of December, 1983.

Bruce T. Rinker

SECTION IX: WASHINGTON FORMS
FORM NO. WA-3

NOTICE TO CONTRACTOR BY SUBCONTRACTOR'S MATERIALMAN

(Washington Public Works)

TO _____

(Name and address of Contractor)

YOU ARE HEREBY NOTIFIED that the undersigned has, at the request of _____
_____, contracted to deliver and furnish materials, supplies, and/or
equipment, for use in the construction, alteration and/or repair of that certain building or
structure known as _____ which is located upon the property
described as _____
(Address or description)

You are further notified that the contractor and his bond and retained percentage will be held for
payment for such materials, supplies or equipment so furnished.

Dated this _____ day of _____, 19____

Name of Firm _____
Address of firm _____
Signature of owner or officer _____
Title _____

(There is contractor registration fee, with whom return requested.)