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DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

POSITION PAPER -- SB 123

SB 123: "An Act relating to bonds for out-of-State contractors; and providing for an effective date."

The Department of Commerce and Economic Development would support a legislative change to protect Alaskans from faulty contract work or from fraudulent contractors. Raising the contractor bond requirement to a level sufficient to settle consumer claims is a possible solution.

While the intent of SB 123 is to protect the public from "fly by night" contractors, support of the legislation as written depends on a definition of out-of-state contractors and the constitutionality of a distinction between in-State and out-of-state contractors. The proposed bond requirement, which would cost from \$750.00 - \$2,000.00 more than the present requirement, may eliminate reliable out-of-state contractors from working in Alaska and yet permit poor resident contractors to operate. It may also result in a situation where the incompetent out-of-state contractor will work in Alaska without registering or posting a bond.

The current statutes were enacted in 1968 and 1977. Since that time, costs have increased for both materials and wages. AS 08.18.081 requires a person having a claim bring suit in Superior Court. A suit in Superior Court requires the services of an attorney and, therefore, an added cost to the consumer seeking a contractor claim. The existing requirement of \$5,000.00 and \$2,000.00 is meaningless in settling claims and could reasonably be raised for all contractors, regardless of residency. The current bond requirement, however, is substantially the same as that required by the states of Washington and California.

A second possible solution is to tighten the enforcement statutes that are administered by the Department of Labor. Stronger enforcement ability may be a deterrent to the fraudulent contractors.



Harry D. Treager, Director
Division of Occupational Licensing
Department of Commerce & Economic Development



Department of Commerce & Economic Development

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: SB 123 Date on Bill: 2/11/83
 Title: An Act relating to bonds for out of state contractors
 Sponsor: Senator Ferguson
 Requestor: _____

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating								
Total			0	0	0	0		

b. Revenues:

Revenue								
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2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Darrell Miller *DM* Phone: 465-2535
 Division: Occupational Licensing *2* Date: _____

Approved by Commissioner: Richard A. Lyon *RL* Date: _____
 Department: Commerce and Economic Development

5. Distribution:
- Original to Legislative Finance
 - Copy to OMB
 - Copy to Sponsor
 - Copy to Requestor

2/15/83

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: SB 123 Date on Bill: 2-11-83
 Title: An Act Relating to Bonds for Out-Of-State Contractors: And an Effective Date
 Sponsor: Senator Ferguson
 Requestor: _____

1. Estimated fiscal impacts on: This bill, if enacted, will not have a financial impact on this Department. Perhaps the Department of Transportation and Public Facilities and the Department of Law should review it carefully.

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86
Capital			0	0	0	0
Operating			0	0	0	0
Total			0	0	0	0

b. Revenues:

Revenue						
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2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

4. Disclaimer:
 This statement has not been reviewed by the OMB in the Office of the Governor.

Prepared By: Bob Link *Bob Link* Phone: 465-2250
 Division: General Services & Supply Date: 2-25-83

Approved by Commissioner: *Lisa Rudd* Date: 3/15/83
 Department: Administration

5. Distribution:
 Original to Legislative Finance
 Copy to OMB
 Copy to Sponsor
 Copy to Requestor

2/8/83

SB 123 TITLE & SPONSOR SUMMARY 14:08 5/22/84 PAGE 1 OF 2
AMENDED TITLE:
AN ACT RELATING TO BONDS FOR OUT-OF-STATE CONTRACTORS;
AND PROVIDING FOR AN EFFECTIVE DATE

PRIME SPONSOR: FERGUSON.

CO-SPONSORS:

CURRENT STATUS: 2/11/83 IN (S) LABOR & COM

SB 123 SENATE ACTION 14:08 5/22/84 PAGE 2 OF 2
DATE SEQ PAGE LEGISLATIVE ACTION

02/11/83 01 0170 FIRST READING -- COMMITTEE REPORTS
LABOR & COMMERCE
RULES

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Letter of Intent to Accompany Senate Bill 123

Since there is considerable debate concerning the definition of "out-of-state", it is the intent of the Legislature to allow the Department of Labor to define the term "out-of-state" for the purposes of this bill through the Administrative Procedures Act as outlined in AS 44.62.

Letter of Intent suggested by Sen. Ferguson

Information on Senate Bill 123

Presented by

Senator Frank R. Ferguson

The need for this law is twofold. One, brought to my attention by a constituent, is that that "out-of-state" fly-by-night operators bid on Alaskan projects. Once the project is done and they have left the state, the people left with the project have little recourse to recover damages from faulty work discovered once the project is actually utilized. Therefore, we must do something to prevent the fly-by-night operators from coming into the state.

Second, as documented by the Rural Development Council, capital projects in the state employ few in-state workers. With high unemployment in Alaska we must do something that ensures our local people receive jobs from state funded projects that fuel our economy.

26. Kotzebue Sound Hatchery - 1/1/81 - 4/30/82

61 Payrolls No Local Population

Wick Construction - Out-Of-State

Residence	Number of Wage Payments	Mean
Other Rural	143	2.3
Anchorage	57	.9
Fairbanks	11	.2
Palmer	22	.4
Kenai	22	.4
Ketchikan	47	.8
Urban Subtotal	159	2.6
<u>Out-Of-State</u>	<u>134</u>	<u>2.2</u>
Grand Total/Mean	436	7.1

Thus far individual contracts have been counted. but there are also large amount of State funds associated with these contracts, \$91,749,065 to be precise. The distribution of these funds is detailed in Chart VI. Probably the first thing to attract notice is the difference in the number of firm locations included in this table compared to the previous one. Eighteen entries are incorporated into Chart V, while Chart VI has but thirteen. As noted in the introduction to Part Two of this report, in several instances, information regarding subcontracts was not complete. In fact, the dollar amount contracted for by subcontractors was available only on 29 of 76 subcontracts, thus the discrepancy between the two tables. In compiling Chart VI, all available data, including subcontract totals where recorded, was utilized. The arresting feature to this table is its first entry. The largest share of public contract funds, almost \$31,000,000, was awarded to out-of-state firms. That one third of the appropriations devoted to public capital construction in rural Alaska may be destined for the pockets of out-of-state entrepreneurs should cause one to pause. Perhaps Alaskans concerned about the regional distribution of the State's capital budget should also be asking why continental U.S. contractors are collecting the largest single share of that budget, a share larger than that of Anchorage or Fairbanks contractors. A large portion of the real benefits produced by Alaska's capital budget are not being enjoyed by Alaskans.

this chapter may act in the capacity of a contractor under any other name unless that name also is registered. All advertising, contracts, correspondence, cards, signs, posters, papers and documents prepared by a contractor which show the contractor's name and address shall show the name and address as registered under this chapter. Individual contractors and partners, associates, agents, salesmen, solicitors, officers and employees of contractors shall use their true names and addresses at all times while acting in the capacity of a contractor or performing related activities. (§ 2 ch 100 SLA 1968)

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Sec. 08.18.061. Requirements of political subdivision. A contractor who is licensed by the state under this chapter may not be required to give bond in applying for or holding a license issued by a political subdivision. (§ 2 ch 100 SLA 1968).

Article 2. Bond and Insurance.

Section	Section
71. Bond required	101. Insurance required
81. Claims against contractor	111. Advertising bond and insurance
91. Cancellation of bond	115. Return of cash deposit

Sec. 08.18.071. Bond required. (a) Each applicant shall, at the time of applying for a certificate of registration, file with the commissioner a surety bond running to the State of Alaska conditioned upon the applicant's promise to pay

- (1) all taxes and contributions due the state and political subdivisions,
- (2) all persons furnishing labor or material or renting or supplying equipment to the applicant, and
- (3) all amounts that may be adjudged against the applicant by reason of negligent or improper work or breach of contract in the conduct of the contracting business or by reason of damage to public facilities occurring in the course of a construction project.

(b) If the applicant is a general contractor the amount of the bond shall be \$5,000; if the applicant is a specialty contractor the amount of the bond shall be \$2,000. In lieu of the surety bond the applicant may file with the commissioner a cash deposit or other negotiable security acceptable to the commissioner of commerce, in the amount specified for bonds.

(c) The bond required by this section remains in effect until cancelled by action of the surety, the principal, or the commissioner. No action may be commenced upon the bond later than three years after its cancellation. (§ 2 ch 100 SLA 1968; am § 1 ch 15 SLA 1977)

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Bill Fact Sheet

Date Received 2/11/83

Bill Number SB/23 Title Bonds/Out of State Contractors

Fiscal Note - Date Requested 8/14/83 Date Received 2/24

- Of Whom Katy Wallen - C+ED

Dept. Position Paper - Date Requested 8/14 Date Received 2/24

- Of Whom Katy Wallen - C+ED

Resource People

Initial Hearing - Date Feb 24, 1983

People Contacted

Sen. Ferguson - Mike Scott - Feb 16

DCEd - Katy Wallen - 2/17

Resa King - AGC - 586-1740 - 2/17

Follow-up Hearing - Date _____

Final Action _____ Date _____