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HB 211 File Contents
House Labor and Commerce Committee

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M E M O R A N D U M

TO: All Members, House Labor and Commerce Committee

FROM: Roger Poppe, Committee Staff

DATE: February 28, 1985 Thursday

SUBJECT: Overview, HB 211

On February 29, 1985, the House Labor and Commerce Committee met in Room 102 of the Capitol Building on HB 211, An Act relating to Contractor's payment of bonds.

There was a bill submitted last year, HB 540 by Bettisworth, that dealt with this issue, and received the support of AGC. Initially, this bill said that workers or suppliers must make any claims against the contractor within 10 days from the time that materials were furnished or work commenced. The Department of Labor was opposed to this bill for this and other points, and so the bill was revised, but it died in Senate Judiciary.

The bill before you is in essence the revised version of HB 540 from last year, according to the Department of Labor. As it reads now, it will not impact them and so they have no opposition to it. Apparently, in the private sector, workers and suppliers can put a claim against the property itself; this bill deals with the public sector, where the only real recourse deals with putting a claim in against the contractor's bond.

INTRODUCTION OF BILLS (House)(cont'd)

HB 210 (cont'd)

payment shall, subject to appropriation, be paid the the surviving spouse by the right of survivorship unless a different beneficiary is designated. If no spouse survives and no beneficiary is named the lump sum shall be paid to the decedent's estate. The payment must include all permanent fund dividend contributions made by the individual, plus interest, but shall not include any credits to the account made following appropriations by the legislature to the annuity investment fund or interest on the annuity credits (Senate version provides for equitable distribution of the decedent's lump sum payment among the accounts of all individuals of the same age).

Introduced February 18 and referred to State Affairs, Judiciary, Finance.

Contractors'
Payment Bonds
(materials,
equipment &
supplies)

HOUSE BILL NO. 211, by Reps. Frank, Clocksin, M. W. Miller, Navarre and Rieger. Would require a contractor who is bidding on a state job that exceeds \$100,000 to furnish a payment bond for the protection of all persons who supply labor, materials, supplies or equipment (currently the bond must cover people who supply labor and material). The bond becomes binding upon the award of the contract. The person furnishing labor, materials, supplies, or equipment who is not paid in full 90 days after the work is completed or materials, supplies or equipment is furnished, may sue on the payment bond for the amount unpaid at the time of the suit (currently covers only lab and material).

Section outlining the rights of a contractor furnishing labor or material is rewritten (AS 36.25.020(b)) to more specifically spell out the rights of a person who contracts with a subcontractor, but who has no contractual relationship with the contractor. That person has a right of action on the payment bond for materials, supplies or equipment furnished if proper notice is given. Notice must be given not later than 30 days after the first date on which the materials, supplies or equipment were provided and must state that the person has supplied or is supplying materials, supplies or equipment for which the person may make a claim. The notice must name the subcontractor and building or project for which materials, etc., have been supplied, give a general description and must state that the bond may be held for payment if the person supplying materials, supplies or equipment is not paid.

The person contracting with the subcontractor also must give notice not later than 90 days after the last day materials, supplies or equipment for which the claim is made, stating the name of the subcontractor, the building or project and a description of materials, and must state with substantial accuracy the amount claimed.

Does not provide an effective date (takes effect 90 days after Governor signs bill).

Introduced February 18 and referred to Labor & Commerce, Judiciary, Finance.

SECTIONAL ANALYSIS OF HB211: "An Act relating to contractors' payment bonds." By Frank, Clocksin, M.W. Miller, Navarre and Rieger

SECTION 1: This section clarifies the current statutes by adding supplies and equipment.

Any contractor, prior to entering into a contract (exceeding \$100,000) for construction, alteration or repair, on any public project shall furnish a performance bond and a payment bond. The payment bond serves as protection for persons who supply labor, materials, supplies and equipment to the subcontractor for work provided for in the contract.

SECTION 2: This section, as does section 1, clarifies the current statutes by adding supplies and equipment.

In the event a person, who has furnished labor, materials, equipment or supplies, has not been paid in full by the subcontractor before 90 days after the last day labor is performed or materials equipment or supplies are furnished, the person may sue on the contractors payment bond for the amount owed him.

SECTION 3: This section changes the notice provisions in this statute.

The present law only requires a notice 90 days after material equipment or supplies were last provided. This bill requires an additional notice be given to contractors. This addition is a notice of right to claim which must be made within 30 days of the first date materials supplies or equipment were furnished (so that contractors will be aware of potential claims against their payment bond). Notice of actual claim is still required within 90 days of the date materials, supplies or equipment were last provided (as is currently in statutes).

This bill would not affect persons supplying labor. That is to say they would still have 90 days, after the last date they supplied labor, to file a claim without a requirement to provide prior notice.

Representative Steve Frank
February 15, 1985

Bill Summary:

"an act relating to contractor's bonds" HB 211

Under existing law on public projects, a person having no direct contractual relationship with a general contractor, but who supplies labor or material to a sub-contractor, may make a claim 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 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 does little to harmonize relations and increase cooperation between general contractors and subcontractors.

The change proposed in the bill will 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 will become prerequisite to filing a claim. This notice requirement will allow a general contractor to ensure that a subcontractor has paid all suppliers.

As proposed, 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.

The proposed revisions will still provide protection to the subcontractor's material and equipment suppliers however, to take advantage of that protection, the material and equipment suppliers must take the initiative in assuring that the contractor is aware of their existence.

The bill will put some responsibility on the supplier, because they are the beneficiary of the system. These suppliers are business people with the ability to provide notice as a normal part of a business transaction and it should not be an undue burden on the supplier.

NOTE: This bill would not affect persons supplying labor to a subcontractor. That is to say they would still have 90 days, after the last date they supplied labor, to file claim without a requirement to provide prior notice.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HR 211
 Title: "An Act relating to contractors' payment bonds."
 Sponsor: Frank, Clocksin et al.
 Requestor: House Labor & Commerce
 Date of Request: 2/19/85

FISCAL DETAIL

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
500 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: ^{NS} Robert J. Bacolas, Jr. *R. Bacolas* Phone: 465-4870
 Division: Labor Standards & Safety Date: 2/21/85

Approved by Commissioner: *Jim Robinson* Date: 2/21/85
 Agency: Labor

Distribution (by Agency preparing fiscal note):

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

Bill No. House Bill No. 211
Title "An Act relating to contractors' payment bonds."


Date February 26, 1985
Contact: Eileen Plate
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Bob Bacolas
465-4870

House Bill No. 211 makes editorial changes to provisions in Title 3; with respect to action against a contractor's payment bond by persons performing labor for subcontractors on public construction projects.

The bill also contains a number of more significant changes to Title 36 with respect to action against a contractor's payment bond by persons who furnish materials, supplies, or equipment to subcontractors on public construction projects. Inasmuch as persons who furnish 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 House Bill 211 is neutral. It will not have a fiscal impact on the Department.

APPROVED:


Jim Robison, Commissioner
Department of Labor



CONSTRUCTION, INC.

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February 26, 1985

Representative Mike Navarre
House Labor & Commerce Committee
Juneau, Alaska 99801

Dear Sir:

The Little Miller Act provides for employees, all tiers of subcontractors, suppliers and materialmen to seek relief by filing a lien against the general contractor's payment bond on public works projects, if such notice is filed within 90 days of the last acts or charges. As the law now stands these people are allowed to seek this relief regardless of the circumstances, including negligence on their part, disputes, or any other reason if they have not been paid.

In many instances the projects are completed and paid in full by the general contractor before this ninety day period expires.

A case that happened to our company which is still in litigation, documentation can and will be furnished if you request, happened like this. A subcontractor on one of our projects leased a piece of equipment from an equipment dealer. The equipment was leased for a minimum guaranteed ninety days with option to purchase within the ninety days. A major portion of the lease payments to apply to the purchase if the purchase option was exercised. Our company was not privy to this agreement.

Seven and one half months after the equipment arrived jobsite we received notice from the equipment dealer of non payment and of his intent to file lien against our bond. At that time the subcontractor had received all monies due him on this contract. We feel that if the notifications of intent was required to be filed sooner, say within 15 days of the first act or charge that problems such as this would not happen or if they did it would be negligence on the part of the general contractor instead of the equipment dealer, who, in this case will probably win this litigation.

Your help in correcting this deficiency in the Little Miller Act would be greatly appreciated.

If there are any questions please call.

Very truly yours,

G.J.M. Construction, Inc.

Derrall McBirney
Derrall McBirney
DM/bg



RECORDS CERTIFICATION



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James O. Smith
Signature of Camera Operator

9/5/89
Date