

H B

168



Original sponsors: Sund, Taylor  
and Roucher

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 168 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to construction contractors; and  
7 providing for an effective date."

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

9 \* Section 1. AS 08.18.011 is amended by adding a new subsection to  
10 read:

11 (b) A general contractor may not allow a person required to be  
12 registered under this chapter to work for the general contractor as a  
13 specialty contractor unless the person is registered under this chap-  
14 ter.

15 \* Sec. 2. AS 08.18.031 is amended by adding a new subsection to read:

16 (b) The commissioner may not issue a certificate of registration  
17 or renew the registration of an applicant whose registration has been  
18 revoked or suspended or against whom a fine has been imposed under  
19 this chapter until the period of revocation or suspension has expired  
20 and any fine has been paid.

21 \* Sec. 3. AS 08.18.051 is amended to read:

22 Sec. 08.18.051. IDENTIFICATION REQUIREMENTS [REGISTERED NAME].

23 (a) Except as provided otherwise by [STATE] law, a [NO] person who  
24 has registered under one name as required by this chapter may not act  
25 in the capacity of a contractor under any other name unless that name  
26 also is registered.

27 (b) All advertising, contracts, correspondence, cards, signs,  
28 posters, papers and documents prepared by a contractor for the con-  
29 tracting business shall [WHICH] show the contractor's name, mailing

1 [AND] address, and address of the contractor's principal place of  
2 business. Advertising and contracts shall also include the contrac-  
3 tor's registration number [SHALL SHOW THE NAME AND ADDRESS AS REGIS-  
4 TERED UNDER THIS CHAPTER].

5 (c) Individual contractors and partners, associates, agents,  
6 salesmen, solicitors, officers and employees of contractors shall use  
7 their true names and addresses and the true name of the contractor  
8 firm at all times while acting in the capacity of a contractor or  
9 performing related activities.

10 \* Sec. 4. AS 08.18.071(b) is amended to read:

11 (b) If the applicant is a general contractor the amount of the  
12 bond shall be \$10,000 [\$5,000]; if the applicant is a specialty con-  
13 tractor the amount of the bond shall be \$5,000 [\$2,000]. In lieu of  
14 the surety bond the applicant may file with the commissioner a cash  
15 deposit or other negotiable security acceptable to the commissioner  
16 [OF COMMERCE,] in the amount specified for bonds.

17 \* Sec. 5. AS 08.18 is amended by adding new sections to article 3 to  
18 read:

19 Sec. 08.18.116. INVESTIGATIONS. Either the Department of Com-  
20 merce and Economic Development or the Department of Labor may investi-  
21 gate alleged or apparent violations of this chapter. These depart-  
22 ments, upon showing proper credentials, may enter, during regular  
23 hours of work, a construction site where it appears that contracting  
24 work is being done. The departments may make inquiries about the  
25 identity of the contractor or the person acting in the capacity of a  
26 contractor. Upon demand, a contractor or person acting in the capac-  
27 ity of a contractor, or that person's representative, shall produce  
28 evidence of current registration.

29 Sec. 08.18.117. ISSUANCE OF CITATIONS. Either the Department of

1 Commerce and Economic Development or the Department of Labor may issue  
2 a citation for a violation if there is probable cause to believe a  
3 person has violated this chapter. Each day a violation continues  
4 after a citation for the violation has been issued constitutes a  
5 separate violation.

6 Sec. 08.18.118. PROCEDURE AND FORM OF CITATION ISSUANCE AND  
7 PROCEDURE. (a) A citation issued under this chapter shall be in  
8 writing. A person receiving the citation is not required to sign a  
9 notice to appear in court.

10 (b) The time specified in the notice to appear on a citation  
11 issued under this chapter shall be at least five days, not including  
12 weekends and holidays, after the issuance of the citation, unless the  
13 person cited requests an earlier hearing.

14 (c) The Department of Commerce and Economic Development and the  
15 Department of Labor are responsible for the issuance of books contain-  
16 ing appropriate citations, and each shall maintain a record of each  
17 book issued and each citation contained in it. Each department shall  
18 require and retain a receipt for every book issued to an employee of  
19 that department.

20 (d) The department that issues a citation under this chapter  
21 shall deposit the original or a copy of the citation with a court  
22 having jurisdiction over the alleged offense. Upon its deposit with  
23 the court, the citation may be disposed of only by trial in the court  
24 or other official action taken by the magistrate, judge, or  
25 prosecutor. The department that issued the citation may not dispose  
26 of it or copies of it or of the record of its issuance except as  
27 required under this subsection and (e) of this section.

28 (e) The Department of Commerce and Economic Development and the  
29 Department of Labor shall require the return of a copy of every

1 citation issued by the respective department under this chapter, and  
2 of all copies of every citation that has been spoiled or upon which an  
3 entry has been made and not issued to an alleged violator. The  
4 departments shall also maintain, in connection with every citation  
5 issued by the respective department, a record of the disposition of  
6 the charge by the court where the original or copy of the citation was  
7 deposited.

8 (f) If the form of citation issued under this chapter includes  
9 the essential facts constituting the offense charged, and if the  
10 citation is sworn to as required under the laws of this state for a  
11 complaint charging commission of the offense alleged in the citation,  
12 then the citation when filed with a court having jurisdiction is  
13 considered to be a lawful complaint for the purpose of prosecution.

14 Sec. 08.18.119. FAILURE TO OBEY CITATION. Unless the citation  
15 has been voided or otherwise dismissed by the magistrate, judge, or  
16 prosecutor, a person who without lawful justification or excuse fails  
17 to appear in court to answer a citation issued under this chapter, re-  
18 gardless of the disposition of the charge for which the citation was  
19 issued, is guilty of a class B misdemeanor.

20 \* Sec. 6. AS 08.18.121(f) is amended to read:

21 (f) If the Department of Commerce and Economic Development or  
22 the Department of Labor [COMMISSIONER OF LABOR] determines that a con-  
23 tractor or a person [IS] acting in the capacity of [AS] a contractor,  
24 is in violation of this chapter, that department may [THE COMMISSIONER  
25 SHALL] give written notice to the person prohibiting further action by  
26 the person as a contractor. The prohibition continues until the  
27 person has submitted evidence acceptable to that department [THE  
28 COMMISSIONER OF LABOR] showing that the violation has been corrected.

29 \* Sec. 7. AS 08.18.121(g) is amended to read:

1 (g) A person affected by an order issued under this chapter may  
2 seek equitable relief preventing the Department of Commerce and Eco-  
3 nomic Development or the Department of Labor [COMMISSIONER OF LABOR]  
4 from enforcing the order.

5 \* Sec. 8. AS 08.18.131 is amended to read:

6 Sec. 08.18.131. INJUNCTION. In an action instituted in the  
7 superior court by the Department of Commerce and Economic Development  
8 or the Department of Labor, the court may enjoin [COMMISSIONER OF  
9 LABOR OR THE COMMISSIONER'S REPRESENTATIVE,] a person from acting in  
10 the capacity of a contractor in violation of this chapter. In  
11 addition to other relief, the court may impose a civil penalty of not  
12 more than \$250 for each violation. Each day that an unlawful act  
13 continues constitutes a separate violation [MAY BE ENJOINED FROM DOING  
14 SO].

15 \* Sec. 9. AS 08.18.141 is amended to read:

16 Sec. 08.18.141. MISDEMEANOR. (a) A contractor or a person  
17 acting in the capacity of a contractor in violation of AS 08.18.011  
18 [THIS CHAPTER] is guilty of a class B misdemeanor. A person who  
19 violates another provision of this chapter is guilty of a violation  
20 punishable under AS 12.

21 (b) Criminal prosecution for a violation of this chapter does  
22 not preclude the Department of Commerce and Economic Development or  
23 the Department of Labor from seeking available civil remedies.

24 \* Sec. 10. AS 08.18.171 is amended by adding a new paragraph to read:

25 (4) "department" means the Department of Commerce and  
26 Economic Development, unless the context indicates otherwise.

27 \* Sec. 11. Sections 1, 2 and 4 - 10 of this Act take effect July 1,  
28 1985.

29 \* Sec. 12. Section 3 of this Act takes effect July 1, 1986.

1 \* Sec. 13. Section 4 of this Act applies to general contractor and  
2 specialty contractor licenses that are issued or renewed by the Department  
3 of Commerce and Economic Development after July 1, 1985.  
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April 24, 1985

Senate CS for CSHB168 (L&C)- An act relating to construction contractors and providing for an effective date.

OVERVIEW prepared by Rep. John Sund's office

#### HISTORY OF THE BILL

As the law now stands, anyone wishing to work as contractor must have a license. General contractors must have a \$5,000 bond and specialty contractors must have a \$2,000 bond.

Little protection is provided to the consumer who receives shoddy work from an unlicensed contractor. He is likely to find that the contractor has left the state and did not post a bond. Also, an unlicensed contractor who does not comply with the law can operate more cheaply and is likely to outbid a licensed contractor.

Enforcement is the job of the Department of Commerce and Economic Development. However, enforcement has been lax for two reasons:

- 1) a lack of enforcement powers. Cease and desist orders can be issued to a contractor who does not have proper bonding or a license, but criminal prosecution is rare.
- 2) a lack of personnel. Once a cease and desist order has been issued, the investigator might not return to the site until work has been completed and the contractor has left. The department is not able to effectively monitor contractors at their current staffing level.

HB610, introduced in 1984, began as a vehicle for creating a Board of Builders and, as CSHB610, focused on changes which were substantially similar to HB168. It passed the House with a vote of 34 yeas and 6 nays and was left in the Senate upon adjournment.

#### PURPOSE OF THE BILL

Under CSHB168, a general contractor must post a \$10,000 bond and a specialty contractor must post a \$5,000 bond. This essentially doubles the current level required and will allow more adequate compensation for unacceptable work, since the licensing procedure in itself does not guarantee competency.

A contractor must show his registration number in all ads. This is intended to heighten consumer awareness of licensing and bonding requirements when choosing a contractor.

The Department of Commerce and Economic Development and the Department of Labor will have citation authority. They will have the authority to enter work sites to inspect licenses. Working without a license will be a Class B misdemeanor.

A \$117,000 fiscal note provides 2 Investigator positions, in Anchorage and Fairbanks, and travel monies for two existing Juneau positions, to enforce contractor requirements. These provisions will strengthen the enforcement of current regulations.

Senate Committee Substitute for Committee Substitute  
for House Bill 168 (L&C)  
Section-by-Section Analysis

Section 1 imposes criminal and civil liability upon a general contractor for allowing an unlicensed specialty contractor to work for him or her. The unlicensed specialty contractor, of course, would also be in violation of the law as provided by existing statutes [AS 08.18.011(a)].

Section 2 prohibits registration during the period of a previous revocation or suspension of a contractor's license and until a fine imposed under this chapter has been paid.

Section 3 adds the requirement that all advertising, contracts, correspondence, cards, signs, posters, papers, and documents prepared by a contractor for the contractor's business include the mailing address and the address of his or her principal place of business, in addition to the already required name and address. The bill also adds a new requirement that all advertising and contracts include the contractor's registration number.

Section 4 increases the bonding amount required for general contractors from \$5,000 to \$10,000 and for specialty contractors from \$2,000 to \$5,000.

Section 5 gives authority to investigators from the Department of Commerce and Economic Development and the Department of Labor to enter construction sites and issue citations for violations of the construction contracting laws, with special emphasis placed on licensing violations. The form and issuance of citation will be similar to that used by peace officers in their issuance of fish and game citations, park citations and traffic citations. Commerce and Labor investigators will not have the authority to arrest, however.

Sections 6 and 7 of the bill work to give separate enforcement authority to the Department of Labor and the Department of Commerce and Economic Development in the issuance of a stop order.

Section 8 establishes that both departments can institute an injunctive proceeding in the Superior Court. It also sets out that, in addition to other relief and any criminal penalties that may be imposed, a civil penalty not to exceed \$250 may be imposed for each violation as AS 08.18, and that each day an unlawful act continues after an injunction has been issued constitutes a separate violation.

Section 9 provides that an unlicensed person acting in the capacity of a contractor, or a general contractor who hires an unlicensed specialty contractor, is guilty of a class B misdemeanor. A class B misdemeanor carries maximum penalties of 90 days in jail and \$1,000 fine. A criminal prosecution under AS 08.18 does not preclude the department from seeking civil remedies, as well. All other violations of AS 08.18, such as failure to put a mailing address on a business card, will be considered a violation and subject to a fine of no more than \$300.

Sections 10-13 pertain to definitions and effective dates. The amendments made by section 3 would require reprinting of documents used by contractors. Accordingly, the July 1, 1986, effective date for that section will allow current supplies to be used and arrangements to be made for reprinting.

February 18, 1985

SUMMARY OF CONSUMER COMPLAINTS  
INVOLVING CONTRACTOR DISPUTES  
Received by the Consumer Protection Section  
Department of Law

Fiscal year 1984

We received a total of 136 consumer complaints in FY 84 that involved a contractor or specialty contractor. Six of those consumer complaint files are still pending in our section.

We recovered a total of \$15,423.30 for consumers on these complaints. We estimate that we recover only about 10% to 20% of the money consumers claim is due them in these types of complaints, so that the amount actually claimed as consumer loss is estimated to have been approximately \$75,000 - \$150,000. Because of our questionable jurisdiction over real property transactions we believe many consumers do not file complaints with our office who otherwise would. Our overall recovery rate on all types of consumer complaints is near 50%.

Fiscal year 1985

To date in FY 85 we have received 114 consumer complaints and have recovered \$15,448.31 for consumers. Of the 114 complaints filed in FY 85, 41 are still pending. We estimate the total value of these 114 claims as \$60,000 - \$100,000 on the same basis as explained in the FY 84 summary.

Background Info.

Bill No. Senate Committee Substitute for Committee  
Substitute for House Bill No. 168 (L&C)

Date April 22, 1985

Title "An Act relating to construction  
contractors; and providing for an  
effective date."

Contact: Eileen Plate  
465-2700  
Robert J. Bacolas  
465-4870

Senate Committee Substitute for Committee Substitute for House Bill No. 168 seeks to strengthen the contractor licensing enforcement powers of the Department of Labor and the Department of Commerce and Economic Development.

Currently, the Department of Commerce is responsible for the registration of construction contractor, with enforcement being provided by the Department of Labor. The Department of Labor's enforcement is primarily carried out in connection with other inspection/enforcement responsibilities (mechanical inspections, occupational safety and health inspections, and wage and hour investigations). This bill extends enforcement authority to the Department of Commerce in order that it may focus on residential construction and other areas where the Department of Labor is not highly visible. This would bridge the gap that presently exists in contractor licensing enforcement.

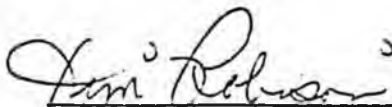
In addition, this bill increases the bonding requirements for both general and specialty contractors, and provides for the issuance of citations, the assessment of civil penalties, and the imposition of injunctive relief for violations of the contractor licensing laws.

The provisions of this bill are designed to combat the proliferation of unlicensed contractors in the state in order to better protect the public from unlicensed and unbonded construction contractors.

A section-by-section analysis of this bill is attached.

The Department of Labor supports passage of this bill. It will not have a fiscal impact on the Department.

APPROVED:

  
Jim Robison, Commissioner  
Department of Labor

**POSITION PAPER/Department of Labor**

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

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

REQUEST SCS CSHB 168 (L&C)  
 Bill/Resolution No.: \_\_\_\_\_  
 Title: "An Act relating to  
 construction contractors..."  
 Sponsor: Sund and Taylor  
 Requestor: Senate Judiciary  
 Date of Request: 4/19/85

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						
600 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: Robert J. Bacolas, Sr. Phone: 465-4870  
 Division: Labor Standards & Safety Date: 4/22/85  
 Approved by Commissioner: Jim Robison Date: 4/22/85  
 Agency: Labor

Distribution (by Agency preparing fiscal note):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

STATE OF ALASKA, 1985 LEGISLATIVE SESSION  
FISCAL NOTE

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

Page 1 of 2

REQUEST

FISCAL DETAIL

Bill/Resolution No.: CSHB 168 (L&C)

Agency Affected: Commerce & Economic Dev.

Title: Act relating to \_\_\_\_\_

Program Category Affected: \_\_\_\_\_

Construction Contractors; \_\_\_\_\_

Consumer Protection \_\_\_\_\_

Sponsor: Representative Sund

BRU, Program or Subprogram(s) Affected: \_\_\_\_\_

Requestor: House Finance Committee

Date of Request: March 19, 1985

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>				
100 PERSONAL SERVICES	69.3	96.9	101.7	106.8
200 TRAVEL	13.8	15.7	16.5	17.3
300 CONTRACTUAL	22.8	23.9	25.1	26.4
400 SUPPLIES	2.7	3.8	4.0	4.4
500 EQUIPMENT	8.4	-0-	-0-	-0-
600 LAND & STRUCTURES				
700 GRANTS, CLAIMS				
800 MISCELLANEOUS				
<b>TOTAL OPERATING</b>	<b>117.0</b>	<b>140.3</b>	<b>147.3</b>	<b>154.7</b>
<b>CAPITAL</b>				
<b>REVENUE</b>				

FUNDING: (Thousands of Dollars)

GENERAL FUND	117.0	140.3	147.3	154.7	162.5
FEDERAL FUNDS					
OTHER					
<b>TOTAL</b>	<b>117.0</b>	<b>140.3</b>	<b>147.3</b>	<b>154.7</b>	<b>162.5</b>

POSITIONS:

FULL-TIME	2.0	2.0	2.0	2.0	2.0
PART-TIME	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-

ANALYSIS: Attach a separate page if necessary

See page 2 Attached for analysis.

Prepared By: Al Adams - Chairman

Phone: 465-3706

Division: House Finance Committee

Date: March 19, 1985

Approved by Commissioner: \_\_\_\_\_

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

Agency: \_\_\_\_\_

Distribution (by Agency preparing fiscal note):

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

*@ Eden*  
*Consumer Protection*  
7/1/84

Current revenues generated by licensing fees charged construction contractors approximate \$436.7. HB 78 provides for additional revenues should costs exceed those presently incurred.

This note provides two positions, one in Anchorage and one in Fairbanks to implement the citation procedure. Existing Headquarters staff from Juneau will service Southeast.

COST ANALYSIS FY 86 - Variable costs @ 9 months.

	<u>ANCHORAGE</u>	<u>FAIRBANKS</u>	<u>JUNEAU</u>
100	Investigator I - 28.0	Investigator III 41.3 <sup>(1)</sup>	-0-
200	3.8	5.0	5.0
300	7.0	9.8 (1)	6.0
400	0.9	0.9	0.9
500	4.2	4.2	-0-

(1) Fairbanks office stands alone, hence higher level investigator and cost of new office space.

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

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

REQUEST

Bill/Resolution No.: CSHB 168 (L&C)  
 Title: An Act relating to  
Construction Contractors  
 Sponsor: Rep. Sund  
 Requestor: \_\_\_\_\_  
 Date of Request: \_\_\_\_\_

FISCAL DETAIL

Agency Affected: Commerce & Economic Dev.  
 Program Category Affected: \_\_\_\_\_  
Consumer Protection  
 BRU, Program or Subprogram(s) Affected: \_\_\_\_\_  
Occupational Licensing

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES		151.8	159.4	167.4	175.8	184.6
200 TRAVEL		40.8	42.8	45.0	47.2	49.6
300 CONTRACTUAL		31.8	33.4	35.1	36.8	38.7
400 SUPPLIES		3.6	3.8	4.0	4.2	4.4
500 EQUIPMENT		13.1	0	0	0	0
600 LAND & STRUCTURES		12.2	0	0	0	0
700 CRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>		<b>253.3</b>	<b>239.4</b>	<b>251.5</b>	<b>264.0</b>	<b>277.3</b>
<b>CAPITAL</b>						
<b>REVENUE</b>		<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

FUNDING: (Thousands of Dollars)

GENERAL FUND		253.3	239.4	251.5	264.0	277.3
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		<b>253.3</b>	<b>239.4</b>	<b>251.5</b>	<b>264.0</b>	<b>277.3</b>

POSITIONS:

FULL-TIME		3	3	3	3	3
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

This bill will enhance the enforcement of unlicensed construction contractors by implementing a citation procedure. The positions requested would provide additional support to the joint enforcement efforts of the Department of Labor and the Department of Commerce and Economic Development. The bill also requires violators to be answerable to a court of law, and makes unlicensed activity a "Class B" misdemeanor.

Prepared By: Jennifer Strickler, Management Analyst Phone: 465-2144  
 Division: Occupational Licensing Date: 2-21-85

Approved by Commissioner: Loren H. Lounsbury Date: 2/21/85  
 Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):

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

*Comm. Eco. Dev.*  
*Occupational Licensing*  
 7/1/84

HOUSE JOURNAL

House Finance Committee  
Letter of Intent  
for  
CSHB 168 (Labor and Commerce)

This bill intends to expand the enforcement authority over contractors by both the Department of Labor and the Department of Commerce and Economic Development. It is the intent that funds provided by the fiscal note be shared by both departments taking into account existing enforcement personnel, capabilities, and office locations.



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Al Adams, Chairman  
House Finance Committee

House Letter of Intent Adopted 3/22/85