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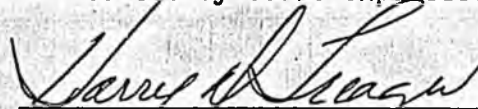
SB 127

SB 127: An Act changing the court jurisdiction of claims against contractors.

The Department of Commerce and Economic Development supports SB 127.

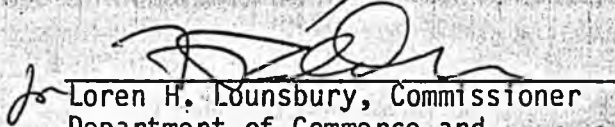
The Bill would allow redress by a consumer to present his/her case in District Court. This would eliminate costly attorney fees and other related costs, thereby allowing available funds to be used toward correcting the construction error.

The present system requires an injured consumer to seek redress through the Superior Court which requires representation by attorneys. Therefore, the amount of the recovery would not be sufficient to cover corrections of the original cause due to costly court expenses.



Harry D. Treager, Director
Division of Occupational Licensing

Date: February 13, 1985



Loren H. Lounsbury, Commissioner
Department of Commerce and
Economic Development

Date: 3/6/85

HDT/kkk/C16

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 31, 1985

SUBJECT: Bill changing jurisdiction of court in which
to bring claims against contractor bonds

TO: Senator Pat Rodey
Chair, Senate Judiciary Committee

FROM: Theresa L. Bannister *TLB*
Legislative Counsel

With this memo I am transmitting to you a draft of the bill which you requested to change the court in which claims can be brought against contractor bonds from Superior Court to District Court.

As I mentioned to Roger Lewis over the phone, limiting the court in which the action can be filed to district court may cause a problem for those claimants whose total claim against the contractor exceeds \$10,000. A bond frequently does not cover in amount the total amount that a consumer has against a contractor for a project; in that case the consumer would want to be able to bring all of his/her claims in one action, and the total claims might exceed the district court's jurisdictional limit. District court is only authorized at this time to award damages up to \$10,000. Even if the amount is increased to \$25,000, some claims may exceed that amount. You may wish to give the claimant a choice of district or superior court.

TLB:ojb
J11/041

Attachment

Editor's notes. — This section was controlled by the revisor of statutes to remove personal pronouns in conformity

with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

a contractor under any other chapter. All advertising, contracts, papers and documents prepared by a contractor's name and address shall be filed under this chapter. Individuals, agents, salesmen, solicitors shall use their true names and shall not operate in the capacity of a contractor (AS 01.05.031(c) and § 4, Chapter 58, SLA 1968).

AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

political subdivision. A contractor under this chapter may not hold a license issued by the commissioner (AS 01.05.031(c) and § 4, Chapter 58, SLA 1968).

Insurance.

Insurance

Insurance required
Advertising bond and insurance
Return of cash deposit

Each applicant shall, at the time of application, file with the commissioner a cash deposit or a surety bond in the amount of the bond required by this section, conditioned upon the applicant's compliance with the provisions of this chapter.

the state and political subdivisions.

material or renting or supplying

against the applicant by reason of breach of contract in the construction project.

contractor the amount of the bond required by this section. If a contractor is a specialty contractor the amount of the bond shall be the amount of the surety bond the applicant may obtain or other negotiable security of equal value, in the amount specified in this section.

tion remains in effect until the death of the contractor, principal, or the commissioner. No later than three years after the death of the contractor (AS 01.05.031(c) and § 4, Chapter 58, SLA 1977).

NOTES TO DECISIONS

Material and equipment excluded from operation of section. — AS 08.18.161(5), which makes the chapter applicable to materials and equipment not incorporated or consumed in the construction of a structure, operates to exclude such material and equipment from

the operation of this section and AS 08.18.081. Balboa Ins. Co. v. Senco Alas., Inc., Sup. Ct. Op. No. 1468 (File No. 3076), 567 P.2d 295 (1977).

Cited in Allison v. State, Sup. Ct. Op. No. 1703 (File No. 3716), 583 P.2d 813 (1978).

Sec. 08.18.081. Claims against contractor. (a) A person having a claim against a contractor for any of the items referred to in AS 08.18.071 may bring suit upon the bond in the superior court of the judicial district in which the work is done or of any judicial district in which jurisdiction of the contractor may be obtained. A copy of the complaint shall be served by registered or certified mail upon the commissioner at the time suit is filed and the commissioner shall maintain a record, available for public inspection, of all suits commenced. Two copies shall be served upon the director of the division of insurance with the payment of \$5 to the director taxable as costs in the action. This service upon the director shall constitute service on the surety and the director shall transmit the complaint or a copy of it to the surety within 72 hours after it has been received. The surety upon the bond is not liable in an aggregate amount in excess of that named in the bond, but in case claims pending at any one time exceed the amount of the bond, the claims shall be satisfied from the bond in the following order:

- 1) labor, including employee benefits;
 - 2) taxes and contributions due the state, city and borough, in that order;
 - 3) material and equipment;
 - 4) claims for breach of contract;
 - 5) repair of public facilities.
- (b) If a judgment is entered against the cash deposit, the commissioner, upon receipt of a certified copy of a final judgment, shall pay the judgment from the amount of the deposit, in accordance with the priorities set out in (a) of this section. (§ 2 ch 100 SLA 1968; am § 9 ch 127 SLA 1974)

NOTES TO DECISIONS

Material and equipment excluded from operation of section. — AS 08.18.161(5), which makes the chapter applicable to materials and equipment

not incorporated or consumed in the construction of a structure, operates to exclude such material and equipment from the operation of AS 08.18.071 and this section.

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 5, 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

- 71. Bond required
- 81. Claims against contractor
- 91. Cancellation of bond

Section

- 101. Insurance required
- 111. Advertising bond and insurance
- 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)

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 5, SLA 1982.

NOT

Material and equipment excluded from operation of section. — Section 08.18.161(5), which makes the chapter inapplicable to materials and equipment not incorporated or consumed in the construction of a structure, operation, or maintenance of such material and equipment.

Sec. 08.18.081. Claims against a contractor. A contractor licensed under 08.18.071 may bring suit up in the judicial district in which the claimant resides or in which jurisdiction of the court is most convenient. The complaint shall be served by the commissioner at the time suit is filed. A record, available for public inspection, additional copies shall be sent to the contractor upon the payment of the insurance with the payment of the action. This service upon the contractor and the director shall be completed within 72 hours after the bond is not liable in an action under the bond, but in case of a claim for the amount of the bond, the claimant shall have the following order:

(1) labor, including employment of the contractor;

(2) taxes and contributions;

(3) material and equipment;

(4) claims for breach of contract;

(5) repair of public facilities.

(b) If a judgment is entered against the contractor, upon receipt of a certificate of judgment from the amount of the bond, the claimant shall have the following priorities set out in (a) of this section. (ch 127 SLA 1974)

NOT

Material and equipment excluded from operation of section. — Section 08.18.161(5), which makes the chapter inapplicable to materials and equipment not incorporated or consumed in the construction of a structure, operation, or maintenance of such material and equipment.

N.B. REVISOR MADE A TITLE
CHANGE IN L&C CS;

Chairman's Information:

- 1) CSSB 127(L&C): "An act relating to claims against contractors"
 - a) Introduced: Senate Judiciary
 - b) Co-Sponsors:
- 2) INTENT: The original bill changed the court in which claims could be brought against a contractor from Superior Court to district court. This change would have eliminated costly attorney fees and allowed a consumer to present his case before a district court. After testimony in the Labor and Commerce committee, a CS was drafted which would allow a person to seek redress in a district court or in Superior court. Additional changes reflecting drafting style were made by Legal Services.

FISCAL NOTE: 0

Note: No effective date on this bill

- 3) COMMITTEE COMMENTS:
- 4) PUBLIC HEARINGS:
 - a) Sponsor: Sen Rodey testified at the first hearing, and Sen Eliason requested the drafting of a CS;
 - b) Public witnesses:
- 5) BILL ACTION:
 - a) Hold in committee?
 - b) Assign to sub committee for further review?
 - c) Move from Committee?
 - d) close public hearings?
- 6) COMMITTEE ACTION:
 - a) amendments?
 - b) CS adoption? Chairman needs to move for the adoption of L&C CS

Original sponsor: Judiciary Committee

1
2 IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

3 CS FOR SENATE BILL NO. 127 (L&C)
4 IN THE LEGISLATURE OF THE STATE OF ALASKA
5 FOURTEENTH LEGISLATURE - FIRST SESSION

6 A BILL

7 For an Act entitled: "An Act relating to claims against contractors."

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

9 * Section 1. AS 08.18.081(a) is amended to read:

10 (a) A person having a claim against a contractor for an item
11 [ANY OF THE ITEMS] referred to in AS 08.18.071 may bring suit on
12 [UPON] the bond in the district court or superior court of the judi-
13 cial district where [IN WHICH] the work is done or where [OF ANY
14 JUDICIAL DISTRICT IN WHICH] jurisdiction of the contractor may be
15 obtained. The person having a claim shall serve a [A] copy of the
16 complaint [SHALL BE SERVED] by registered or certified mail on [UPON]
17 the commissioner at the time suit is filed and the commissioner shall
18 maintain a record, available for public inspection, of all suits
19 commenced. The person shall serve two [TWO] additional copies on
20 [SHALL BE SERVED UPON] the director of the division of insurance with
21 the payment of \$5 to the director taxable as a cost [COSTS] in the
22 action. This service on [UPON] the director shall constitute service
23 on the surety and the director shall transmit the complaint or a copy
24 of it to the surety within 72 hours after it has been received. The surety
25 on [UPON] the bond is not liable in an aggregate amount in excess of
26 that named in the bond, but if the [IN CASE] claims pending at [ANY]
27 one time exceed the amount of the bond, the claims shall be satisfied
28 from the bond in the following order:

- 29 (1) labor, including employee benefits;
(2) taxes and contributions due the state, city and

1
2 borough, in that order;

3 (3) material and equipment;

4 (4) claims for breach of contract;

5 (5) repair of public facilities.
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Introduced: 2/4/85
Referred: Labor & Commerce
and Judiciary

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2

SENATE BILL NO. 127

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act changing the court jurisdiction of claims
7 against contractors."

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

9 * Section 1. AS 08.18.081(a) is amended to read:

10 (a) A person having a claim against a contractor for any of the
11 items referred to in AS 08.18.071 may bring suit upon the bond in the
12 district court [SUPERIOR COURT] of the judicial district in which the
13 work is done or of any judicial district in which jurisdiction of the
14 contractor may be obtained. A copy of the complaint shall be served
15 by registered or certified mail upon the commissioner at the time suit
16 is filed and the commissioner shall maintain a record, available for
17 public inspection, of all suits commenced. Two additional copies shall
18 be served upon the director of the division of insurance with the
19 payment of \$5 to the director taxable as costs in the action. This
20 service upon the director shall constitute service on the surety and
21 the director shall transmit the complaint or a copy of it to the
22 surety within 72 hours after it has been received. The surety upon
23 the bond is not liable in an aggregate amount in excess of that named
24 in the bond, but in case claims pending at any one time exceed the
25 amount of the bond, the claims shall be satisfied from the bond in the
26 following order:

27 (1) labor, including employee benefits;

28 (2) taxes and contributions due the state, city and bor-
29 ough, in that order;

- 1 (3) material and equipment;
- 2 (4) claims for breach of contract;
- 3 (5) repair of public facilities.



STATE OF ALASKA
OFFICE OF THE GOVERNOR
BILL ANALYSIS

DEPARTMENT Commerce & Econ. Dev.	DIVISION Occupational Licensing	BILL NUMBER SB 127	SPONSOR Senate Judiciary Committee
DEPARTMENT POSITION Support with amendment.			
PREPARED BY Harry D. Treaquer, Director	DATE 2/8/85	COMMISSIONER'S SIGNATURE Loren H. Lounsbury	DATE 3/6/85

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Alaska Court System	CONSTITUENT GROUP(S) AFFECTED BY BILL Construction Contractors
ORGANIZATIONAL SUPPORT FOR BILL	ORGANIZATIONAL OPPOSITION TO BILL

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

Currently injured consumers must use the Superior Court system, this requires representation by attorneys. The amount of recovery does not allow for corrections of the original cause because of expense getting into court.

ANALYSIS OF BILL/PROGRAM EFFECTS

This bill would allow a consumer to present his own case in District Court, eliminate attorney and related costs, thereby reducing the amount available to correct construction error considerably.

AMENDMENTS PROPOSED

Page 1, line 19, after payment insert "as prescribed in AS 21.06.250."

1654W2885a

PLEASE ATTACH A SEPARATE SHEET FOR ADDITION

BILL ANALYSIS: DIV. OF
OCCUPATIONAL LICENSING

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 127
 Title: "An Act changing the court jurisdiction of claims against contractors"
 Sponsor: _____
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

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

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						
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

Prepared By: Jennifer Strickler, Management Analyst Phone: 465-2144
 Division: Occupational Licensing Date: February 7, 1985
 Approved by Commissioner: Doren H. Lounsbury Date: 3/6/85
 Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):

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