

HB

75

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P. O. BOX D
JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2500

February 13, 1989

The Honorable Peter Goll
Co-chairman, House Judiciary
Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811


Dear Representative Goll:

Re: HB 75, Construction Contractors

During the recent House Labor & Commerce Committee hearing on HB 75 relating to construction contractor licensing requirements and exemptions, questions were asked regarding the effect of the bill on small businesses who do not now purchase workers' compensation insurance. I am enclosing a response from the Attorney General's office which clarifies this issue.

HB 75 will benefit Alaska employers and employees alike, and I would appreciate having it scheduled for a hearing in the House Judiciary Committee at an early date. Please feel free to contact me if you have questions or wish more information.

Sincerely,


Larry Mercurieff
Commissioner

LM/djd0580p
021089a
Enclosure

MEMORANDUM

State of Alaska
Department of Law

TO Randall Burns, Director
Division of Occupational Licensing
Department of Commerce and Economic
Development

DATE February 15, 1989

TEL NO 465-3600

SUBJECT HB 75 ("An Act relating
to construction
contractor licensing
requirements and
exemptions; and providing
for an effective date.")

Beth
FROM Elizabeth J. Kerttula
Assistant Attorney General
Commercial Section-Juneau

During the House Labor and Commerce meeting last week, there were three questions concerning this bill. I have researched the issues and my analysis follows.

1. SECTION ONE OF HB-75 IS CONSTITUTIONAL.

The first question that was asked was whether section 1 of the bill was constitutional. AS 08.18.101 (1) (B) as written in the bill presents no problem, but since AS 08.18.101 (1) (A) distinguishes between contractors who have insurance from companies who are admitted to do business in Alaska, and contractors who do not, this raises a question whether there might be an equal protection issue under the 14th Amendment of the U.S. Constitution, or under Art. I, §1 of the Alaska Constitution.

I do not find an unconstitutional discriminatory effect in HB-75.

Since there is no discrimination between residents and non-residents, I do not think that equal protection is violated as far as contractors are concerned. The requirement applies to both resident and non-resident contractors alike.

Neither is there discrimination against insurance companies, since any company, resident or non-resident, can become "admitted" to do business in Alaska. Therefore, HB-75 is not requiring the purchase of insurance from resident insurance companies only. Although the bill requires that the insurance company be admitted to do business in Alaska, this is a fairly minimal, and legitimate, requirement.

If HB-75 required that contractors purchase insurance from only resident companies, or if it required residency as a prerequisite to obtain a contractor's license, then there might be a violation of equal protection. Since HB-75 does not, there is no problem.

HAYDEN
see page 3 &
page 6

Even if a court were to analyze this section under equal protection, the section would meet constitutional muster. For purposes of clarification, I have included the following three-step analysis. See, Alaska Pacific Assurance Co. v. Brown, 687 P.2d 264, 269 (Alaska 1984) (helpful explanation of equal protection analysis in Alaska).

A. What is the weight of the constitutional interest impaired? Depending on the primacy of the interest involved the state will have a lesser or greater burden in justifying its legislation.

The interests involved here are economic. Contractors may have to pay more to get proper coverage, and insurance companies will have to be registered in Alaska to be "valid" under the proposed licensing requirement in HB-75. These economic concerns are not very weighty. See, Lynden Transport, Inc. v. State, 532 P.2d 700, 707 (Alaska 1975). Thus, there is a lesser burden on the state in justifying the legislation.

B. What purpose does the statute serve? Depending upon the level of review, the state may be required to show purposes which at the low end of the scale are simply "legitimate objectives" all the way to a "compelling state interest" at the upper end.

Since this is an economic regulation, we have a lower level of review, and probably all the state will have to meet is a "legitimate objective". Id. There can be a number of reasons for the legislation, and since we are at a low level of review the fact that we have one valid reason should suffice. Aiding injured workers through requiring proper workers compensation coverage is a proper purpose.

C. What is the state's interest in the particular means employed to further its goals? The state's burden differs in accordance with the determination of the level of scrutiny under "A", and goes from a "substantial relationship between the means and ends" to a much closer fit.

Here we have the lowest scrutiny, so the state would only have to show that there is a "substantial relationship between the means and the ends" of this statutory requirement. The fit does not have to be absolutely perfect.

The main goal of HB-75 is to provide proper compensation to injured workers. By requiring a contractor to

buy insurance from a company registered to do business in Alaska we assure that we have a method to monitor the type of coverage a contractor has. Without this type of requirement the Department of Labor has not been able to effectively enforce the state's workers compensation laws because there is no way to monitor who has proper coverage and who does not.

Under my initial analysis, section one of the bill passes constitutional muster. Key to this is the fact that any company can be "admitted to do business" in Alaska, and that does not necessarily mean that they have to be resident corporations.

2. WE CAN EXEMPT SOLE PROPRIETORS TO CLARIFY THAT THE LEGISLATION DOES NOT APPLY TO THEM.

The second question was whether this legislation applied to sole proprietors.

I do not think it does, but to be safe we can easily include a provision exempting sole proprietors (and partners). Since sole proprietors and partners can currently opt into the workers compensation program if an insurer will accept them, under AS 23.30.239, people who chose this option should remain within the ambit of the bill. Section 2 of HB-75, dealing with liability, would still apply to sole proprietors.

I suggest re-drafting the bill to include a section "a" after the words "INSURANCE REQUIRED" at line 11, and then adding a section "b" after line 27, to state:

(b) Section a (1) does not apply to sole proprietors or partners who do not elect under AS 23.30.239 to utilize workers compensation coverage as an employee.

This will clarify that sole proprietors (and partners) who are not in the workers compensation program are not required to prove that they have workers compensation coverage before being granted a contractor's license.

3. WE CANNOT REQUIRE FEDERAL CONTRACTORS TO HAVE STATE CONTRACTOR'S LICENSES.

The final question was whether we can repeal AS 08.18.161(7).

This section currently exempts contractors on federal projects from being required to obtain an Alaskan contractor's license.

Randall Burns, Director
Division of Occupational Licensing

February 15, 1989
Page 4

After research I conclude that we cannot require that federal contractors obtain a state license.

As a sovereign, the U.S. government controls federal territory. It also controls its own employees and has jurisdiction over them both. States have no jurisdiction over the government itself, or the governments' employees, unless there is a specific grant of authority from the U.S. government to the states.

Although private contractors are not government employees in the same sense as employees such as postal workers, under 10 U.S.C.A. § 2305, the federal government has preempted any state contracting license requirements that conflict with its own requirements concerning private federal contractors.

In Leslie Miller, Inc. v. Arkansas, 352 U.S. 187 (1956); the U.S. Supreme Court faced the exact question of whether state licensing requirements applied to federal contractors. The Court held that "Subjecting a federal contractor to the Arkansas contractor license requirements would give the State's licensing board a virtual power of review over the federal determination of "responsibility" and would thus frustrate the expressed federal policy of selecting the lowest responsible bidder." Miller at 190.

The court analyzed the federal determination of "responsibility" as including contractors who were economically sound, had experience and were generally qualified. Arkansas's licensing requirement was similar (as is Alaska's).

The court relied on Johnson v. Maryland, 254 U.S. 51, 57 (1920), in reaching their conclusion, and noted that the following rationale was applicable:

It seems to us that the immunity of the instruments of the United States from state control in the performance of their duties extends to a requirement that they desist from performance until they satisfy a state officer upon examination that they are competent for a necessary part of them and pay a fee for permission to go on. Such a requirement does not merely touch the Government servants remotely by a general rule of conduct; it lays hold of them in their specific attempt to obey orders and requires qualifications in addition to those that the Government has pronounced sufficient. It is the

duty of the Department to employ persons competent for their work and that duty it must be presumed has been performed.

If the state requires federal contractors to prove that they have workers compensation and liability insurance (and other requirements) we will be in conflict with the federal law regulating procurement. We too would be "laying hold" of them by "requiring qualifications in addition to those that the Government has pronounced sufficient." Because of this, we cannot require that federal contractors have state licenses.

I have attached Miller v. Arkansas for your information.

Thus, the exemption currently in statute should not be repealed and section 2 of HB-75 should be removed. There would be no applicability to federal contractors even if we repealed the exemption, but the exemption provides clarity.

It is interesting to note that under 40 U.S.C.A. § 290, federal law grants states the right to impose their (the state's) workers compensation laws to federal projects within a state's boundaries. Begay v. Kerr McGee Corp., 682 F.2d 1311, 1319 (1982). States do not have to formally acknowledge this through law to have this power. Capetola v. Barclay White Co., 139 F.2d 556 (1943), cert. den., 321 U.S. 799 (1944). However, because of sovereign immunity and federal jurisdiction, states do not have the power to enforce their workers compensation laws against the federal government itself. Roelofs v. U.S., 501 F.2d 556 (1974), rehearing den., 511 F.2d 1402, cert. den., 423 U.S. 830 (1975).

4. CONCLUSION

I see no constitutional problem with requiring contractors to get their insurance from companies admitted to do business in Alaska. We are not discriminating against nonresidents, and even under an equal protection analysis this section of the bill is valid.

I think that sole proprietors would be excluded from the workers compensation requirements in the bill as drafted, but to be positive I have made suggestions to clarify that they are excluded from this, but not the liability, requirement. They are excluded unless they opt to take part in the workers compensation

Randall Burns, Director
Division of Occupational Licensing

February 15, 1989
Page 6

program (if they can get an insurance company to accept them) as is their present option.

Finally, since we cannot require federal contractors to have a state license, I have suggested deleting section 2 of the bill.

I hope you find this helpful. If I can be of further assistance please do not hesitate to ask.

EJK:jf

cc: Representative Peter Goll
Representative Max Gruenberg
Representative Ann Spohnholz
Representative Dave Donley

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2

HOUSE BILL NO. 75

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to construction contractor licensing requirements and exemptions; and providing for an effective date."

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

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* Section 1. AS 08.18.101 is amended to read:

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Sec. 08.18.101. INSURANCE REQUIRED. ^(a) Each applicant, at the time

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of applying for registration or renewal of registration, shall file

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with the commissioner satisfactory evidence that the applicant has in

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effect

15

(1) either

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(A) workers' compensation insurance that is purchased

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from a private insurer who is admitted to do business in Alaska

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and that shows Alaska coverage, appropriate employee classifica-

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tions, and Alaska rates, or

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(B) has a valid workers' compensation self-insurance

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certificate issued by the Alaska Workers' Compensation Board to

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cover Alaska workers; and

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(2) public liability and property damage insurance covering

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the applicant's contracting operations in Alaska in the sum of not

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less than \$20,000 for damage to property, \$50,000 for injury, includ-

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ing death, to any one person and \$100,000 for injury, including death,

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to more than one person.

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~~* Sec. 2. AS 08.18.101(7) is repealed.~~

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* Sec. ² X. This Act takes effect immediately under AS 01.10.070(c).

HB0075A

- 1 -

HB 75

(b)

section 2 (1) does not apply to ~~persons~~ sole proprietors or partners who do not elect under AS 2.3.30.239 to utilize workers compensation coverage as an employee.

M, 1956.

Court 352 U. S.

reflect the intention of the Senate Report, after giving "judicial review only" had been stricken from the bill. It was not intended to give judicial review in immigration law. (Emphasis supported that after careful study of judicial review" they concluded that the provisions provided in the bill are in the new work and the pattern of the Immigration Act. The safeguard of the Act. The safeguard of the alien in both exclusion and admission. We believe that our inclusion of the alien in both exclusion and admission accord with these significant purposes of the Act. We believe that our inclusion of the alien in both exclusion and admission is a far more expeditious and efficient procedure than the present judgment, as the experience has shown. But that fact may be outweighed by the necessity of arrest and detention. We believe that our inclusion of the alien in both exclusion and admission make his choice of the procedure in challenging his exclusion of the review is that of

Affirmed.

In the problem of judicial review of administrative procedures provided in the bill, the security and the protection of the interests of this country, remain of the Administrative Procedure Act. "The procedure is afforded the alien the same as in the proceedings." (Emphasis supported, 2d Sess., at 127. The action was filed January 19,

LESLIE MILLER, INC., v. ARKANSAS. 187

Opinion of the Court.

LESLIE MILLER, INC., v. ARKANSAS.

APPEAL FROM THE SUPREME COURT OF ARKANSAS.

No. 51. Argued December 5-6, 1956.—Decided December 17, 1956.

Section 3 of the Armed Services Procurement Act of 1947 provides that awards on advertised bids "shall be made to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, price and other factors considered." Appellant was awarded a contract under this section and commenced construction of facilities at an Air Force Base in Arkansas over which the United States had not acquired jurisdiction pursuant to 54 Stat. 19, 40 U. S. C. § 255. Appellant was convicted under Ark. Stat., 1947, §§ 71-701 through 71-721, for submitting a bid, executing a contract, and commencing work as a contractor in the State of Arkansas without having obtained a license for such activities from the State Contractors Licensing Board. *Held*: The state statute is in conflict with the federal statute and the regulations thereunder, and the state statute cannot constitutionally be applied to appellant. *Johnson v. Maryland*, 254 U. S. 51. Pp. 187-190.

225 Ark. 285, 281 S. W. 2d 946, reversed and remanded.

Leffel Gentry argued the cause and filed a brief for appellant.

By special leave of Court *John F. Davis* argued the cause for the United States as *amicus curiae*, urging reversal. On the brief were *Solicitor General Rankin*, *Assistant Attorney General Doub* and *Melvin Richter*.

William J. Smith argued the cause for appellee. With him on the brief were *Tom Gentry*, Attorney General of Arkansas, and *Thorp Thomas*, Assistant Attorney General.

PER CURIAM.

Appellant submitted a bid in May 1954 for construction of facilities at an Air Force Base in Arkansas over

which the United States had not acquired jurisdiction pursuant to 54 Stat. 19, 40 U. S. C. § 255. The United States accepted appellant's bid, and in June appellant began work on the project. In September, the State of Arkansas filed an information accusing appellant of violation of Ark. Stat., 1947, §§ 71-701 through 71-721, for submitting a bid, executing a contract, and commencing work as a contractor in the State of Arkansas without having obtained a license under Arkansas law for such activity from its Contractors Licensing Board. The case was tried on stipulated facts. Appellant was found guilty and fined. The trial court's judgment was affirmed by the Arkansas Supreme Court, 225 Ark. 285, 281 S. W. 2d 946, and the case came here on appeal. 351 U. S. 948. Appellant and the United States as *amicus curiae* contend that the application of the Arkansas statute to this contractor interferes with the Federal Government's power to select contractors and schedule construction and is in conflict with the federal law regulating procurement.

Congress provided in § 3 of the Armed Services Procurement Act of 1947, 62 Stat. 21, 23, 41 U. S. C. § 152, that awards on advertised bids "shall be made . . . to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, price and other factors considered . . ." The report from the Committee on Armed Services of the House of Representatives indicated some of the factors to be considered: "The question whether a particular bidder is a 'responsible bidder' requires sound business judgment, and involves an evaluation of the bidder's experience, facilities, technical organization, reputation, financial resources, and other factors." H. R. Rep. No. 109, 80th Cong., 1st Sess. 18; see S. Rep. No. 371, 80th Cong., 1st Sess. 16. The Armed Services Procurement Regulations,

indicate conflict between this license requirement which Arkansas places on a federal contractor and the action which Congress and the Department of Defense have taken to insure the reliability of persons and companies contracting with the Federal Government. Subjecting a federal contractor to the Arkansas contractor license requirements would give the State's licensing board a virtual power of review over the federal determination of "responsibility" and would thus frustrate the expressed federal policy of selecting the lowest responsible bidder. In view of the federal statute and regulations, the rationale of *Johnson v. Maryland*, 254 U. S. 51, 57, is applicable:

"It seems to us that the immunity of the instruments of the United States from state control in the performance of their duties extends to a requirement that they desist from performance until they satisfy a state officer upon examination that they are competent for a necessary part of them and pay a fee for permission to go on. Such a requirement does not merely touch the Government servants remotely by a general rule of conduct; it lays hold of them in their specific attempt to obey orders and requires qualifications in addition to those that the Government has pronounced sufficient. It is the duty of the Department to employ persons competent for their work and that duty it must be presumed has been performed. . . ."

The judgment of the Supreme Court of Arkansas is reversed and the cause is remanded for further proceedings not inconsistent with this opinion.

Reversed and remanded.



Official Business

COMMITTEE:

HOUSE JUDICIARY

DATE:

2/22/89

SIGN-IN

Subject of meeting:

HB 75 CONSTRUCTION CONTRACTORS
(REVISION)

HB 91 PROTECTION OF CONSTITUTION

NAME

ADDRESS FULL ADDRESS PLEASE

PHONE

REPRESENTING

DO YOU WANT TO TESTIFY? WHICH BILL?

Resa Terrel	104 No. Front St. Anchorage, Alaska	225-1114	State of Alaska	HB 75
Kenneth	PO Box 22151	448-5115	AK Law Lobby	HB 91
David C. Ho	Post Office 201 Juneau, Alaska	447-3000	Dept. of Education	91
Randall Prunty	P.O. Box D-110 Juneau, AK 99801	583-5115	Dept of Commerce	HB 75
Franklin	107 35th St Juneau, Alaska		Dept of Education	HB 75
Jacque McClintock	Juneau	427-790	Dept of Labor W.C. Division	HB 75
Ginger Bain	L+C		AK LIC	HB 91
Kim Elton	Organization Office			HB 91

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to construction contractor licensing requirements and exemptions...
Sponsor: Rules Committee
Requestor: Governor

Agency Affected: Commerce & Economic Dev. BRU, Occupational Licensing
Components: Administration

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICE	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GR. NTS. CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	**					

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach separate page if necessary)

This bill is not expected to increase the operating costs of the division.

**Revenues: Because there is no sure way to find out the actual number of contractors who, in past years, have performed work under AS 08.18.161(8), the federal project exemption, we are unable to estimate the revenues which would be generated through licensing fees from those contractors.

Prepared by: Jennifer Strickler, Admin. Officer Phone: 465-2144
Division: Occupational Licensing Date: 12/19/89

Approved by Commissioner: Larry Merculieff Date: 12/20/89
Agency: Commerce and Economic Development

Distribution (by preparer):

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

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CSHB 75 (Jud.)
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to construction
contractor licensing requirements..."
Sponsor: Rules Committee
Requestor: House Judiciary

Agency Affected: Labor
BRU: Workers' Compensation
Components: Workers' Compensation

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	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	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Jacquie McClintock Phone: 465-2790
Division: Workers' Compensation Date: 2/23/89
Approved by Commissioner: Jim Sampson Date: 2/23/89
Agency: Department of Labor

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

AMENDMENT

BY REP. SPOHNHOLZ

TO: HB 75

Page 1 Line 11 after insurance require (a)

Page 1 Line 27

(b)SECTION A (1) dose not apply to sole proprietors
or partners who do not elect under AS 23. 30.239 to
utilize workers compensation coverage as an employee.

A M E N D M E N T

BY REP. SPOHNHOLZ

TO: HB 75

Page 1, line 11: after "INSURANCE REQUIRED", insert "(a)"

Page 1, line 27: insert a new subsection to read:

"(b) Sec. (a)(1) does not apply to sole proprietors or partners who do not elect under AS 23.30.239 to utilize workers compensation coverage as an employee."

go0639hE
Ford
2/20/89

Original sponsor: Rules/Governor

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 75 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to construction contractor licensing
7 requirements and exemptions; and providing for an
8 effective date."

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

10 * Section 1. AS 08.18.101 is amended to read:

11 Sec. 08.18.101. INSURANCE REQUIRED. Each applicant, at the
12 time of applying for registration or renewal of registration, shall
13 file with the commissioner satisfactory evidence that the applicant
14 has in effect

15 (1) workers' compensation insurance that is purchased from
16 a private insurer who is admitted to do business in the state and that
17 shows coverage in this state, appropriate employee classifications,
18 and rates applicable in this state, or a valid workers' compensation
19 self-insurance certificate issued by the Alaska Workers' Compensation
20 Board; and

21 (2) public liability and property damage insurance covering
22 the applicant's contracting operations in this state in the sum of not
23 less than \$20,000 for damage to property, \$50,000 for injury, includ-
24 ing death, to any one person and \$100,000 for injury, including death,
25 to more than one person.

26 * Sec. 2. AS 08.18.101 is amended by adding a new subsection to read:

27 (b) Subsection (a)(1) of this section does not require evidence
28 of coverage that is not required under AS 23.30, including coverage of
29 a sole proprietor or partner who does not elect workers' compensation

1 coverage as an employee under AS 23.30.239.

2 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

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Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 75 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

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

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

9 * Section 1. AS 08.18.101 is amended to read:

10 Sec. 08.18.101. INSURANCE REQUIRED. Each applicant, at the
11 time of applying for registration or upon renewal of registration,
12 shall file with the commissioner satisfactory evidence that the
13 applicant has in effect

14 (1) to the extent required under AS 23.30, workers' compen-
15 sation insurance that is purchased from a private insurer who is
16 admitted to do business in the state and that shows coverage in this
17 state, appropriate employee classifications, and rates applicable in
18 this state, or a valid workers' compensation self-insurance certifi-
19 cate issued by the Alaska Workers' Compensation Board; and

20 (2) public liability and property damage insurance covering
21 the applicant's contracting operations in this state in the sum of not
22 less than \$20,000 for damage to property, \$50,000 for injury, includ-
23 ing death, to any one person and \$100,000 for injury, including death,
24 to more than one person.

25 * Sec. 2. This Act takes effect immediately under AS 01.10.070(c).
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29

HOLADAY-PARKS, INC.



CORPORATE and SALES OFFICES
616 First Ave., Suite 600, Seattle, WA 98104
(206)292-1160

SEATTLE PLANT
6601 South Glacier St., Seattle, WA 98188
(206)292-1160

ALASKA DIVISION
1820 Marika, Fairbanks, AK 99704
(907)452-7151

HB 75

February 09, 1989

House Judiciary Committee
P.O. Box V
Juneau, AK 99811

Reference: HB-75.

Gentlemen:

I understand this bill either is in your committee at present, or will be, shortly.

I urge you to support HB-75 relating to the requirements for Licensed Contractors to carry Workmens Compensation Insurance. I urge your support for this bill, as written, with no amendments.

I believe this bill, if enacted will do much to "level the playing field" within the construction industry in the State. Repeal of Sec. 2. AS 08.18.161(7) is a very important part of this bill. I also feel there should be no exemptions from the requirements of this act.

Very truly yours,

HOLADAY-PARKS, INC.

Phil Nelson
Vice President

PN:da

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

cc
24B75

January 9, 1989

The Honorable Sam Cotten
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Cotten:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that will make changes to the contractor licensing statutes.

Current law requires that all contractors working in Alaska either be self-insured or carry workers' compensation insurance that covers their employees working here. AS 23.30.075(a). Some out-of-state contractors have been able to avoid this requirement. When these contractors purchase workers' compensation insurance that does not have Alaska coverage, they avoid higher premium costs and thus have a cost advantage over resident contractors and others who comply with the law. Also, the state is deprived of insurance premium taxes, and any employees who are injured in Alaska might not be fully compensated.

While present law also requires contractors to carry certain liability and property damage insurance, it does not specify that this insurance must cover Alaska risks. AS 08.18.101. This can give out-of-state contractors another cost advantage over resident firms.

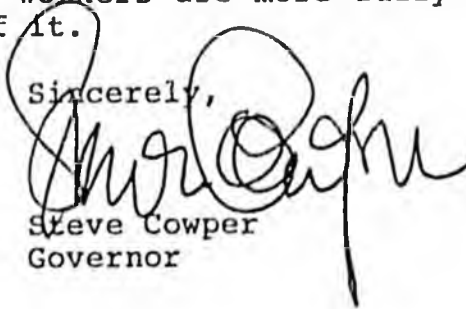
Finally, current law also exempts contractors who work on federal government job sites from our licensing, bonding, and insurance requirements. AS 08.18.161(7). This is another way for out-of-state contractors to compete at a cost advantage and to avoid requirements that protect workers, suppliers, and other creditors.

The first section of the bill will help enforce the insurance requirements by requiring applicants for contractor licenses to show proof of worker's compensation, liability, and property coverage that applies to Alaska. Language has also been added to clarify that the workers' compensation and insurance requirements apply to registration renewals, as well as to initial registration.

The second section of the bill repeals the federal project exemption.

Because this bill will place Alaska contractors on a more equal footing when competing with nonresident contractors and will ensure that injured workers are more fully compensated, I urge your passage of it.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper", written over the typed name below.

Steve Cowper
Governor



ASSOCIATED GENERAL CONTRACTORS of ALASKA

1015-1111 • ANCHORAGE, ALASKA 99501
P.O. BOX 20470 • 455 THIRSDALE AVENUE, STE 20470
TELEPHONE (907) 463-1111 • FAX (907) 463-1111

February 22, 1989

Representative Peter Goll
Co-Chairman
House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Dear Representative Goll:

When I testified today, regarding HB 75, we had sought additional language to require insurance companies to notify the Department of Commerce and Economic Development, Division of Occupational Licensing when workers compensation insurance was cancelled or terminated. As I noted, I had just been informed by the Department of Labor that the language we had suggested conflicted with notice provisions under the Workers Compensation statutes. At your request all of the interested parties met to seek a resolution to the issue.

In our meeting Mr. Burns noted that the agency under AS 08.18.121 (enclosed) has the authority to suspend or revoke a contractor's registration for not having insurance presently required under AS 08.18.101. His agency now receives notices from insurance companies under the existing requirements. This information is provided because on the Department's "Certificate of Insurance Coverage" form (enclosed), that the insurance companies issue, it states in part:

"In the event the above policy is cancelled for any reason, we agree to furnish the Department of Commerce and Economic Development, Construction Contractors' Section at the above address, a NOTIFICATION OF CANCELLATION at least THIRTY (30) days prior to the effective date of such cancellation"

HB 75 adds workers compensation insurance as an additional insurance requirement for registration under AS 08.18.101. Mr. Burns stated that if HB 75 passes into law they plan on having a form similar to the certificate of insurance coverage with the same requirement that the agency is to be notified if the workers compensation insurance is cancelled or terminated.


Representative Goll
February 22, 1989
Page: 2

Originally, we sought a notice provision to insure that the department would be aware of a contractors Alaska Workers Compensation coverage being terminated or cancelled in order for them to notify the contractor to take corrective action. It appears the departments present system of having the notice requirement on the certificate of insurance is working. Mr. Burn assured, those at the meeting, that they intend to administer the addition of workers compensation to existing insurance requirements in the same manner.

Since the Department has an system that appears to be working and plan of administering the addition of workers compensation insurance in the same manner, we withdraw our request for the notice provision to be included in HB 75.

If you have any questions please do not hesitate to contact me.

Sincerely,


Resa Jerrel, Director
Governmental Relations

Enclosures

State of Alaska
Department of Commerce and Economic Development
Division of Occupational Licensing
Construction Contractor's Section
P.O. Box D-LIC, Juneau, Alaska 99811

**CERTIFICATE OF INSURANCE COVERAGE REQUIRED BY
THE CONTRACTORS' REGISTRATION ACT, AS 08.18**

This is to certify that we are a duly authorized casualty insurer eligible to write business in the State of Alaska and have written a public liability policy of not less than the limits required under AS 08.18 on behalf of _____

DBA: _____
for registration as a construction contractor, under policy numbers
_____ effective from _____

to _____. In the event the above policy is cancelled for any reason, we agree to furnish the Department of Commerce and Economic Development, Construction Contractors' Section at the above address, a NOTIFICATION OF CANCELLATION at least THIRTY (30) days prior to the effective date of such cancellation.

Name of Insurance Carrier

Address

Signature of Authorized Agent

Date

the respective department, a record of the disposition of the charge by the court where the original or copy of the citation was deposited.

(f) If the form of citation issued under this chapter includes the essential facts constituting the offense charged, and if the citation is sworn to as required under the laws of this state for a complaint charging commission of the offense alleged in the citation, then the citation when filed with a court having jurisdiction is considered to be a lawful complaint for the purpose of prosecution. (§ 5 ch 83 SLA 1985)

Sec. 08.18.119. Failure to obey citation. Unless the citation has been voided or otherwise dismissed by the magistrate, judge, or prosecutor, a person who without lawful justification or excuse fails to appear in court to answer a citation issued under this chapter, regardless of the disposition of the charge for which the citation was issued, is guilty of a class B misdemeanor. (§ 5 ch 83 SLA 1985)

Sec. 08.18.121. Suspension and revocation of registration. (a) If the insurance required in AS 08.18.101 ceases to be in effect, the registration of the contractor shall be suspended until the insurance has been reinstated.

(b) If a final judgment impairs the liability of the surety upon the bond or depletes the cash deposit so that there is not in effect a bond undertaking or cash deposit in the full amount prescribed in AS 08.18.071, the registration of the contractor involved shall be suspended until the bond liability in the required amount, unimpaired by unsatisfied judgment claims, has been furnished.

(c) If a bonding company cancels its bond of a contractor the contractor's registration shall be revoked. The contractor may again obtain registration by complying with the requirements of this chapter.

(d) If a licensed contractor fails to fulfill the contractor's obligations as set out in AS 08.18.071 the contractor's license shall be suspended for a period of time the commissioner determines is appropriate. After three suspensions the contractor's license may be permanently revoked.

(e) Proceedings to suspend or revoke a license issued under this chapter are governed by the Administrative Procedure Act (AS 44.62).

(f) If the Department of Commerce and Economic Development or the Department of Labor determines that a contractor or a person acting in the capacity of a contractor, is in violation of this chapter, that department may give written notice to the person prohibiting further action by the person as a contractor. The prohibition continues until the person has submitted evidence acceptable to that department showing that the violation has been corrected.

(g) A person affected by an order issued under this chapter may seek equitable relief preventing the Department of Commerce and

Collateral references. — Recovery of money paid to unlicensed person required by law to have occupation or business license or permit to make contract. 74 ALR3d 637.

Sec. 08.18.160. (Repealed, § 1 ch 100 SLA 1964.)

Article 4. General Provisions.

Section
161. Exemptions
171. Definitions

Sec. 08.18.161. Exemptions. This chapter does not apply to:

- (1) an authorized representative of the United States government, the State of Alaska, or a political subdivision or agency of the state;
- (2) an officer of a court when acting within the scope of office;
- (3) a public utility operating under the regulations of the public service commission in construction, maintenance or development work incidental to its own business;
- (4) a construction, repair or operation incidental to the discovering or producing of petroleum or gas, or the drilling, testing, abandoning or other operation of a petroleum or gas well or a surface or underground mine or mineral deposit when performed by an owner or lessee;
- (5) the sale or installation of finished products, materials or articles of merchandise which are not actually fabricated into and do not become a permanent, fixed part of a structure;
- (6) construction, alteration, or repair of personal property;
- (7) construction, alteration, or repair carried on within the boundaries of a site under legal jurisdiction of the federal government;
- (8) a person who only furnished materials, supplies or equipment without fabricating them into, or consuming them in the performance of, the work of the contractor;
- (9) work on one project under one or more contracts, the aggregate contract price of which for labor and materials and all other items is less than \$10,000, this work being considered as of a casual, minor, or inconsequential nature; this exemption does not apply when the work is only a part of a larger or major operation, whether undertaken by the same or a different contractor, or when the work is divided into contracts of amounts less than \$10,000 for the purpose of evasion of this chapter or otherwise; this exemption does not apply to a person who advertises or puts out a sign or card or other device which might indicate to the public that the person is a contractor, or that the person is qualified to engage in the contracting business; a contractor who performs work priced at \$2,500 or more, under this exemption, shall nevertheless keep in force public liability and property damage

person acting in a court of this nature of work or required under this actor was a regis- rformance of the

Op. No. 2259 (File No. P.2d 291 (1981). statutory bar. — The is section may be abro- al contractor's substan- ith AS 08.18.011. Jones Op. No. 2916 (File No. 665 (1985).

where registered name lated. — The penalty for 18.061 is contained in AS makes it a misdemeanor provision of the chapter; should only be applied to hen the contractor has not ll at the time of contract- 'rotection Servs., Inc. v. able, Inc., Sup. Ct. Op. No. 7562, 7609), 680 P.2d 1119

under Little Miller Act is section. — Recovery un- Miller Act. AS 36.25.020, is d not independent of, the ex- of this section. State ex rel. nek Timber, Inc., Sup. Ct. (File Nos. 7170, 7256), 680 P.2d 1119 (1984).

n Fomby v. Whisenhunt, Sup. 2801 (File No. 7434), 630 P.2d Gross v. Bayshore Land Co., No. 3902 (File Nos. S-711, P.2d 1007 (1985).

n Balboa Ins. Co. v. Senco ., Sup. Ct. Op. No. 1468 (File 567 P.2d 295 (1977).

Lost Valley Timber, Inc. v. y Constr., Inc., 809 F.2d 590 (1987).