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FISCAL NOTE

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STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL

Bill Version: HB 468

(H) Publish Date: 2-26-92

Revision Date: _____
Title: "An Act relating to unfair trade practices by construction contractors."
Sponsor: House Judiciary Committee
Requestor: House Labor & Commerce

Department Affected: Labor
BRU: Workers' Compensation
Component: Workers' Compensation
COMPONENT SERIAL NO. 344

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
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 FUND SOURCE:						
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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						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

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Division: Workers' Compensation

Phone: 264-2452

Date: 2/24/92

Approved by Commissioner: John Abshire, Acting Commissioner

Agency: Department of Labor

Date: 2/24/92

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

COMMITTEE COPY

REPRESENTATIVE DAVE DONLEY

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LABOR AND COMMERCE COMMITTEE

MEMORANDUM

To: Senator Drue Pearce
Chair, Labor and Commerce Committee

MAR 30 1992

From: Representative Dave Donley^D
Chair, House Judiciary Committee

Re: HB 468, An act relating to unfair trade practices by
construction contractors

Date: March 30, 1992

I am writing to request that you please schedule for hearing HB 468, an act relating to unfair trade practices by noncomplying contractors. This legislation addresses concerns both contractors and the labor community have about unfair bidding practices of contractors who are attempting to reduce their bids by misclassifying employees as independent contractors. Misclassification allows the bidder to escape payment of FICA taxes, workers' compensation, and unemployment contributions and resultingly reduce their bid.

The bill has two main provisions.

1. It provides a private cause of action to contractors workers, and unions that suffer damages by loss of a bid to sue winning bidders who reduced their bid by knowingly misclassifying employees as independent contractors. One exception to this provision is that a person who brings an action against a winning bidder may not collect damages if the defendant to the case establishes that the plaintiff also knowingly violated employment law by misclassifying an employee as an independent contractor in their bid for the same contract.

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2. It gives the attorney general authority to bring an action for civil penalties and injunctive relief against a person who knowingly violates the workers' compensation, unemployment contributions, and FICA withholdings by misclassifying an employee as an independent contractor.

While the State presently has the authority to address this misclassification in the bids it receives, many are concerned that the State is too overburdened to discover every case. For example, the IRS has recently estimated that 38% of employers misclassify workers as contractors. Therefore, HB 468 provides this private cause of action. It is similar to a bill presently introduced at the federal level to address this same concern.

HB 468 has the support of the Labor community and is not opposed by the Associated General Contractors.

DD/jmn

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MEMORANDUM

TO: All House Members

FROM: Representative Dave Donley ^{DB}

RE: Questions and Answers regarding HB468, an act relating
to unfair trade practices by construction contractors

DATE: March 11, 1992

1. What is the problem HB 468 will redress?

HB 468 tries to address a growing problem in Alaska and in many other states where there is a high probability contractors are misclassifying employees as independent contractors in order to escape payment of unemployment compensation, workers' compensation insurance, and social security taxes. The problem is so pervasive that in 1990 the Internal Revenue Service estimated that 38% of all employers misclassify employees as contractors. With declining revenues it is nearly impossible for Alaska to effectively monitor employee misclassification. In turn, HB 468 provides an additional solution to this problem by allowing industry participants to bring a private cause of action and police misclassification by their peers.

2. How does HB468 address the problem?

HB468 provides a private cause of action to contractors, workers, or unions that suffers damages by loss of a bid. In their action the person who suffers damages must show that the winning bidder knowingly misclassified employees as independent contractors. If they meet this burden, the plaintiff may collect damages for the loss they suffered and may enjoin award of the bid to the bidder in



violation of these statutes. The plaintiff may not succeed in this action if, in their bid, they also knowingly misclassified employees as independent contractors.

HB 468 also gives the attorney general authority to bring an action for penalties and for injunctive relief against a person who knowingly violates the employee provisions addressed in this bill.

3. What types of construction contracts does this address?

HB 468 would primarily affect public sector construction projects. This legislation applies to all construction contracts that were let out for competitive bid. For this reason the act would apply to projects put out for bid by the state, its political subdivisions, and public corporations, including the Alaska Railroad. If a construction project in the private sector was let out for competitive bid the legislation would conceivably apply.

4. Is there similar legislation in other states?

Connecticut and Oregon have both enacted legislation similar to HB 468. Illinois and California are addressing similar legislation at this time. In addition, there is a bill in the United States Congress to provide for a private cause of action on federal construction projects.

The real impetus for this legislation in other states is parallel to the reason for this legislation in Alaska. The number of contractors failing to secure workers' compensation, failing to make unemployment contributions, and failing to pay social security taxes is too great, and in the face a grave fiscal constraints, the states do not have the budget to address this problem on their own. For example, Connecticut, the first state to enact legislation on this issue, did so in large part because they lacked the state funds to monitor compliance on their own.

Here in Alaska the fiscal constraints are identical. Just as one example, in FY 92 the Workers' Compensation Division laid off the one investigator they had who pursued companies that failed to obtain workers' compensation coverage. While the Wages and Hours Division of the Department of Labor has taken on some of these responsibilities, the amount of effort they can expend on this issue is minimal at best.

BILL NO: House Bill No. 468

DATE: March 2, 1992

TITLE: "An Act relating to unfair trade practices by construction contractors."

CONTACT: Arbe Williams
465-2700

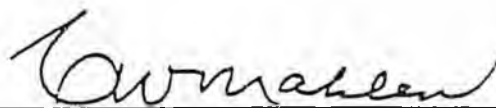
House Bill No. 468 provides that a person who suffers damages as a result of a competitive bid for a construction contract losing to a bid of a person who knowingly violates an employee provision by treating an employee as an independent contractor may bring action for damages or injunctive relief against the person who was awarded the contract. An employee provision as used in this subsection provides for an employer's obligation to pay unemployment insurance contributions, an employer's liability for workers' compensation payments to employees or an employer's obligations under the Federal Insurance Contributions Act.

The bill also provides that the attorney general may bring action in superior court against a person who knowingly violates an employee provision and provides for specific penalties in addition to any other penalty allowed by law.

House Bill No. 468 establishes a civil liability against a contractor or subcontractor who knowingly violates an employee's right to unemployment compensation, workers' compensation coverage or provisions of the Federal Insurance Contributions Act.

The Department of Labor supports this legislation.

APPROVED:

 3/2/92

C. W. Mahlen, Commissioner
Department of Labor

POSITION PAPER/Department of Labor