

ALASKA LEGISLATURE COMMITTEE FILES 1983 - 1984 8672

2730 SLC HB 535 - HB 654 (FILE 1)

**Sec. 39.30.080. Definitions.** In AS 39.30.010 — 39.30.080

- (1) "department" means the Department of Administration;
- (2) "employee" includes an officer of a political subdivision of the state;
- (3) "employment" means any service performed by an employee of a political subdivision of the state, except (A) service which in the absence of an agreement entered into under AS 39.30.010 — 39.30.080 would constitute "employment" as defined in the Social Security Act; or (B) service which under the Social Security Act may not be included in an agreement between the state and the Federal Security Administrator entered into under AS 39.30.010 — 39.30.080;
- (4) "Federal Insurance Contributions Act" means subchapter A of chapter 9 of the Federal Internal Revenue Code as amended;
- (5) "Federal Security Administrator" includes an individual to whom the Federal Security Administrator has delegated any of his functions under the Social Security Act with respect to coverage under that act of employees of states and territories and their political subdivisions;
- (6) "political subdivision" includes an instrumentality of the state or of a political subdivision, or of the state and a political subdivision, but only if the instrumentality is a juristic entity legally separate and distinct from the state or the political subdivision and only if its employees are not, by virtue of their relation to the juristic entity, employees of the state or the political subdivision;
- (7) "Social Security Act" means the Act of Congress approved August 14, 1935, chapter 531, 49 Stat. 620, cited as the "Social Security Act," (including regulations and requirements issued under it), and its amendments;
- (8) "wages" means remuneration for employment, including the cash value of remuneration paid in any medium other than cash, except that "wages" does not include that part of remuneration which, even if it were for "employment" within the meaning of the Federal Insurance Contributions Act, would not constitute "wages" within the meaning of that act. (§ 2 ch 95 SLA 1951; am §§ 82, 83 ch 59 SLA 1982)

Effect of amendments. — The 1982 amendment substituted "a" for "the state or" in paragraph (2), and, deleted "the state, or" preceding "a political subdivision" in paragraph (3).

**Article 2. Group Life and Health Insurance.**

**Section**

- 90. Procurement of group insurance
- 95. Group health and life benefits fund

**Sec. 39.30.090. Procurement of group insurance.** The Department of Administration may obtain a policy or policies of group insurance covering state employees, persons entitled to coverage under AS

14.25.168, AS 22.25.090, AS 39.35.535 or former AS 39.37.145, or employees of other participating governmental units, subject to the following conditions:

- (1) A group insurance policy shall provide one or more of the following benefits: life insurance, accidental death and dismemberment insurance, weekly indemnity insurance, hospital expense insurance, surgical expense insurance, dental expense insurance, audiovisual insurance, or other medical care insurance.
- (2) Each eligible employee of the state, the spouse and the unmarried children chiefly dependent on the eligible employee for support, and each eligible employee of another participating governmental unit shall be covered by the group policy, unless exempt under regulations adopted by the commissioner of administration.
- (3) A governmental unit may participate under a group policy if
  - (A) its governing body adopts a resolution authorizing participation, and payment of required premiums;
  - (B) a certified copy of the resolution is filed with the Department of Administration; and
  - (C) the commissioner of administration approves the participation in writing.
- (4) Repealed by § 37 ch 137 SLA 1982.
- (5) Repealed by § 37 ch 137 SLA 1982.
- (6) The Department of Administration shall obtain the insurance policy from any insurer authorized to transact business in the state under AS 21.09 and AS 21.90.
- (7) The Department of Administration shall make available bid specifications for desired insurance benefits to all insurance carriers licensed in the state and qualified to provide the desired benefits. The specifications shall be made available on or before July 1, 1965, and at least once every succeeding five years. The lowest responsible bid submitted by an insurance carrier with adequate servicing facilities shall govern selection of a carrier under this section.
- (8) If the aggregate of dividends payable under the group insurance policy exceeds the governmental unit's share of the premium, the excess shall be applied by the governmental unit for the sole benefit of the employees.
- (9) A person receiving benefits under AS 14.25.110, AS 22.25, AS 39.35, or former AS 39.37 who is not 65 years of age may continue the life insurance coverage that was in effect under this section at the time of termination of employment with the state or participating governmental unit.
- (10) Repealed by § 37 ch 137 SLA 1982.
- (11) Repealed by § 37 ch 137 SLA 1982.
- (12) A person electing to have insurance under (9) of this section shall pay the cost of this insurance.

(13) Repealed by § 37 ch 137 SLA 1982.

(14) For each permanent part-time employee electing coverage under this section, the state shall contribute one-half the state contribution rate for permanent full-time state employees, and the permanent part-time employee shall contribute the other one-half.

(15) A person receiving benefits under AS 14.25, AS 22.25, AS 39.35, or former AS 39.37 may obtain auditory, visual, and dental insurance for that person and eligible dependents under this section. The level of coverage for persons over 65 shall be the same as that available before reaching age 65 except that the benefits payable shall be supplemental to any benefits provided under the federal old age, survivors, and disability insurance program. A person electing to have insurance under this paragraph shall pay the cost of the insurance. The commissioner of administration shall adopt regulations implementing this paragraph. (§ 2 ch 151 SLA 1955; am § 1 ch 168 SLA 1959; am § 1 ch 105 SLA 1965; am § 1 ch 70 SLA 1968; am § 66 ch 69 SLA 1970; am § 1 ch 123 SLA 1970; am § 1 ch 159 SLA 1972; am §§ 1, 2 ch 46 SLA 1973; am §§ 13, 14 ch 47 SLA 1974; am § 2 ch 27 SLA 1976; am § 39 ch 177 SLA 1978; am § 1 ch 55 SLA 1979; am § 1 ch 62 SLA 1981; am § 37 ch 137 SLA 1982)

**Effect of amendments.** — The 1981 amendment substituted "AS 22.25" for "or" preceding "AS 39.35" and added "or former AS 39.37" preceding "may obtain" in paragraph (15).

The 1982 amendment substituted "persons entitled to coverage under AS 14.25.168, AS 22.25.090, AS 39.35.535 or former AS 39.37.145, or" for "and" in the introductory paragraph; substituted "the" for "his" preceding "spouse" and "unmarried children" and substituted "the eligible employee" for "him" in paragraph (2); deleted "or" following "AS 22.25", inserted "or former AS 39.37" and "coverage that was in effect," and substituted "continue the" for "obtain major medical and" and "at the time of termination of employment with the state or participating governmental unit" for "for himself and any dependents who have not reached the age of 65 years" in paragraph (9); repealed paragraphs (10), (11), and (13), which read, respectively, "A person receiving benefits under AS 14.25.110, AS 22.25.010 — 22.25.090 or AS 39.35.010 — 39.35.690 who is 65 years of age or older but who has dependents who are under 65

may obtain major medical insurance for these dependents under this section," "A person receiving benefits under AS 14.25.110, AS 22.25.010 — 22.25.090 or AS 39.35.010 — 39.35.690 may obtain major medical and prescription drug insurance under this section for himself and any dependents to cover costs which are not covered by the federal old age survivor's and disability insurance program," and "No person may elect for coverage under (9), (10) or (11) of this section unless he was or is presently eligible for coverage under this section"; deleted "(10, or (11)" following "under (9)" in paragraph (12); substituted "that person and eligible dependents" for "himself" in the first sentence of paragraph (15); and substituted "any benefits provided" for "those afforded" and deleted "if any" following "disability insurance program" in the second sentence of paragraph (15).

**Editor's notes.** — As to the purpose of the 1978 amendatory act, see § 1, ch. 177, SLA 1978 as amended by § 7, ch. 46, SLA 1982, in the 1982 Temporary and Special Acts and Resolves.

**Sec. 39.30.095. Group health and life benefits fund.** (a) The commissioner of administration shall establish the group health and life benefits fund as a special account in the general fund to provide for

group life and health insurance under AS 39.30.090 and 39.30.160. The commissioner shall maintain accounts and records for the fund. The fund consists of employer contributions, employee contributions, appropriations from the legislature, and interest earned on investment of the fund as provided in (d) of this section.

(b) After obtaining the advice of an actuary, the commissioner of administration shall determine the amount necessary to provide benefits under AS 39.30.090 and 39.30.160 and shall set the rate of employer contribution and employee contribution, if any. The commissioner of administration shall pay premiums and claims in accordance with the insurance policies in effect under AS 39.30.090 and 39.30.160 with money in the fund.

(c) The commissioner of administration or the designee of the commissioner is administrator of the fund.

(d) If the commissioner of administration determines that there is more money in the fund than the amount needed to pay premiums or benefits for the current fiscal year, the surplus, or so much of it as the commissioner of administration considers advisable, may be invested by the commissioner of revenue in the same manner as retirement funds are invested under AS 39.35.110.

(e) In this section, "fund" means the group health and life benefits fund. (§ 38 ch 137 SLA 1982)

#### Article 4. Supplemental Employee Benefits on Withdrawal from Social Security.

##### Section

##### 153. Repayment of contributions

**Sec. 39.30.153. Repayment of contributions.** Upon termination of employment the amount held on behalf of a terminating employee in the supplemental benefits account established under AS 39.30.160 shall be paid to the employee under the terms of the State of Alaska Supplemental Annuity Plan. A terminating employee may defer receipt of payment under this section at the employee's option. (§ 39 ch 137 SLA 1982)

**Effective dates.** — Section 78, ch. 137, SLA 1982, provides: "AS 39.30.153 enacted in sec. 39 of this Act and sec. 77 of this Act take effect on the amendment of the plan by the plan administrator after receipt of a favorable tax ruling by the United States Internal Revenue Service."

Section 77, ch. 137, SLA 1982, makes this section retroactive to January 1, 1980.

**Editor's notes.** — Section 76, ch. 139, SLA 1982, provides: "The plan administra-

tor of the State of Alaska Supplemental Annuity Plan shall apply to the United States Internal Revenue Service for a ruling that an amendment to the plan to allow participants to receive an annuity benefit as provided in § 39.30.153 at any age will not adversely affect the deferral of taxes and, on receipt of a favorable ruling, shall amend the plan in accordance with the provisions of AS 39.30.153 enacted in sec. 39 of this Act."

HB

540

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

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

REQUEST

Bill/Resolution No.: CSHB 540(L&C)  
 Title: "..claims against a contractor's payment bond"  
 Sponsor: Rep. Bettisworth  
 Requestor: House Labor & Commerce  
 Date of Request: 2/10/84

FISCAL DETAIL

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
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						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not Applicable

ANALYSIS: Attach a separate page for analysis

Prepared By: Robert J. Bacolas, Sr. Phone: 465-4870  
 Division: Labor Standards & Safety Date: 2/13/84  
 Approved by Commissioner: Jim Robison Date: 2/13/84  
 Agency: Labor

Distribution (by Agency preparing fiscal note):

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

12/1/83

Fiscal Note

Bill No. Committee Substitute for House Bill No. 540 Date 5/21/84  
(L&C)  
Title "An Act relating to contractors' payment Contact: Eileen Plate  
bonds." bonds." 465-2700  
Bob Bacolas  
465-4870

Committee Substitute for House Bill No. 540 makes editorial changes to provisions in Title 36 with respect to action against a contractor's payment bond by persons performing labor for subcontractors on public construction projects. In this regard, the bill provides a sample form for a person performing labor for a subcontractor to notice the contractor when a claim for payment of labor is filed against the contractor's bond. The sample form will assist persons performing labor in filing adequate notice as it depicts the specific information which must be included.

The committee substitute also contains a number of more significant changes to Title 36 with respect to action against a contractor's payment bond by persons who supply materials, supplies, or equipment to subcontractors on public construction projects. Inasmuch as persons who supply materials, supplies or equipment on public construction projects fall outside of the department's authority or responsibility as far as collection of monies due them, we have no comments on these particular provisions.

The Department's position on Committee Substitute for House Bill 540 is neutral. It will not have a fiscal impact on the Department.

APPROVED

*Robert W. Jordan, Asst. Comm.*  
for Jim Robison  
Commissioner

H 540 TITLE & SPONSOR SUMMARY 17:15 6/04/04 PAGE 1 OF 3  
 RENDEED TITLE: SOND 540(L&C)  
 ACT RELATING TO CONTRACTORS' PAYMENT BONDS  
 PRIME SPONSOR: BETTEWORTH,  
 CO-SPONSORS:  
 CURRENT STATUS: 5/22/04 IN (3) JUDICIARY

H 540 HOUSE ACTION 17:16 6/04/04 PAGE 2 OF 3  
 DATE SEQ PAGE LEGISLATIVE ACTION

DATE	SEQ	PAGE	LEGISLATIVE ACTION
4/25/04	01	2350	FIRST READING -- COMMITTEE REPORTS
4/16/04	02	3370	L&C -- 0202, PR03
4/16/04	03	3370	L&C BY NOTE EQUALS ZERO
5/05/04	04	3305	SECOND READING
5/05/04	05	3305	L&C IS ADOPTED BY UNAN CONSENT
5/05/04	06	3305	ADVANCED TO 3RD READING BY UNAN CONSENT
5/05/04	07	3305	THIRD READING
5/05/04	08	3305	PASSED BY DIV 24-10-05
5/05/04	09	3305	NOTICE OF RECONSIDERATION GIVEN
5/06/04	10	3741	POSTPONED UNTIL 05/07/04 BY UNAN CONSENT
5/07/04	11	3741	PASSED ON RECONSIDERATION BY DIV 24-10-05
XXXX	XX	XX	XXX XXX XXX

S 540 SENATE ACTION 17:16 6/04/04 PAGE 3 OF 3  
 DATE SEQ PAGE LEGISLATIVE ACTION

DATE	SEQ	PAGE	LEGISLATIVE ACTION
5/08/04	12	3268	FIRST READING -- COMMITTEE REPORTS
5/23/04	13	3210	L&C -- 0203, PR01
			JUDICIARY
			RULES
XXXX	XX	XX	XXX XXX XXX

COMMITTEE REPORT

SENATE

FURTHER:

Date 2/1/19

Mr. President

The Committee on [ ] considered [ ]

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- [x] do pass
[ ] do pass with attached amendment(s)
[ ] replace with/or adopt CS for
[ ] new title
[ ] same title and recommends
[ ] and attached a "LETTER OF INTENT" [ ] NEW FISCAL NOTE
[ ] reports it back without recommendation
[ ] recommends referral to Committee

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS

[Handwritten signatures]

[Handwritten signatures]

Chairman

Chairman recommendation



POSITION PAPER OF  
ALASKA CHAPTER  
THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA  
TO THE  
SENATE LABOR AND COMMERCE COMMITTEE  
ON  
VARYING THE NOTICE PROVISIONS TO PRIME CONTRACTORS  
BY  
SUBCONTRACTOR SUPPLIERS (HB 540)



The Alaska Associated General Contractors of America represents more than 800 companies including most of general contracting companies engaged in commercial construction. We appreciate the opportunity to present A.G.C.'s view on HB 504.

The A.G.C. supports the inclusion of a "second tier notice" provision in the Little Miller Act.

Under existing law, a person with no direct contractual relationship with a general contractor, but who supplies labor or material to a subcontractor, may make a claim against the payment bond by giving the general contractor written notice within 90 days from the last date on which the person performed labor or furnished material. A general contractor has no way of knowing who may have supplied labor or materials to a subcontractor. Accordingly, a general contractor has no easy way to assure that a subcontractor has paid all his suppliers. Certification by a subcontractor that all labor and materialmen have been paid is no assurance if the certifying subcontractor is or becomes insolvent. The only "iron clad" safeguard for a general contractor is to delay payment to all subcontractors until 90 days after they have supplied labor or materials. This solution would do little to harmonize relations and increase cooperation between general contractors and subcontractors.

Under existing law, a general contractor cannot determine, in advance of a claim being filed, which persons may be eligible to file a claim. Timely notice to the general contractor of the supplier's status and existence will allow a general contractor to assure that a subcontractor has paid all suppliers.

In summary, the A.G.C. believes that the notice provisions of HB 540 will ensure that commerce is conducted in a more enlightened and commercially reasonable manner. The A.G.C. urges this committee to pass HB 540 on to the next committee of referral.

# UNITED Lumber Co., Inc.

WHOLESALE  
P.O. BOX 1318  
KENT, WA 98301  
(208) 872-7788

## Building Supply & Home Center

CORPORATE HEADQUARTERS  
P.O. BOX 6808 • ANCHORAGE, AK 99502  
TELEPHONE (907) 243-4545

ANCHORAGE  
6011 JEWEL LAKE RD.  
ANCHORAGE, AK 99502  
243-4545

EAGLE RIVER  
P.O. BOX 458  
EAGLE RIVER, AK 99845  
894-2784

PALMER  
P.O. BOX 1270  
PALMER, AK 99845  
745-2410

SOLDOTNA  
P.O. BOX 2109  
SOLDOTNA, AK 99860  
282-9091

BETHEL  
P.O. BOX 1888  
BETHEL, AK 99559  
543-2034

HOME CENTER  
501 W. RASPBERRY RD.  
ANCHORAGE, AK 99502  
349-7516

March 8, 1984

The Honorable John J. Cowdery  
Pouch V  
Juneau, Alaska 99811

Dear Representative Cowdery:

I, in my capacity as Secretary/Treasurer and Controller for UNITED LUMBER COMPANY, INC., have recently had the opportunity to review HB 540 which amends AS 36.25.020 (called the Little Miller Act). The proposed amendment adds subsection (d) which imposes certain notice requirements on suppliers of materials, equipment to be given to general contractors in order to preserve a right of action under the Act.

I have discussed the ramifications of HB 540 with some of my colleagues in the retail/wholesale lumber industry, including representatives of Spenard Builders Supply and Superior Millwork, Inc. We are unanimous in our view that the proposed amendment (copy attached) would increase the cost of our business by placing additional account functions on suppliers. Therefore, we would urge you to vote against the passage of HB 540.

By way of background, in recent years the burden of preserving Mechanic's Lien rights for material suppliers and subcontractors has, in our view been unfairly shifted from those in the most logical and least burdened position to protect everyone's lien rights to the subcontractors and material suppliers.

For example, the Mechanics Lien Law was amended in 1979 and 1980 which resulted in changing priority between a Mechanic's Lien and a Deed of Trust securing the interim construction loan. The amendments further created the burden upon subcontractors and material suppliers to obtain an "acknowledgement of right to lien" from the owner if we were not selling directly to the owner. It has generally been the view in the retail/wholesale lumber industry that the interim financing institutions could easily monitor construction draws to insure proper disbursement to subcontractors and material suppliers, yet this burden of notice was shifted to us.

We view HB 540 as another example of such unfair and unnecessary shifting of such burdens. Certainly the general contractor on a State funded project is in the best position to determine with whom his subcontractors are dealing with in the purchase of materials. Such could be a condition of draws by the subcontractors, and checks can be made payable jointly.

MILLWORK & TRUSS  
160 W. 68TH  
ANCHORAGE, AK 99502  
243-4545

MANUFACTURING PLANT  
MILE 7 1/2 OLD SEWARD HWY.  
ANCHORAGE, AK 99502  
344-7812

UNITED COMPONENT & BUILDING SYSTEMS PLANT  
PALMER INDUSTRIAL PARK  
PALMER, AK 99845  
745-3052

SAWMILL  
147 1/2 STERLING HWY.  
STARISKY, AK 99830

Letter of Opposition



March 8, 1984  
Page 2

Speaking from personal experience, the staff in our Credit Department doubled in order to keep up with the new notice requirements of the amended Mechanics Lien Law. Now we are faced with additional notice requirements under AS 36.25.020 if HB 540 is passed in order to protect our rights under the Little Miller Act. Additionally, the proposed amendment under HB 540 requires that we give notice to the general contractor by registered mail, a costly and time-consuming method.

We would urge consideration by you as to the effect of this unnecessary and costly amendment. We would welcome the opportunity to meet with you personally if you are in Anchorage during this current session. In the alternative, please don't hesitate to call me collect if you have any questions or if I can further elaborate upon the position of the retail/wholesale lumber suppliers.

Sincerely Yours,

UNITED LUMBER COMPANY INC.

A handwritten signature in cursive script, appearing to read "O. Holmstrom".

O. Holmstrom  
Secretary/Treasurer

mak  
Attachment

MEMORANDUM RE VARYING NOTICE PROVISION  
TO PRIME CONTRACTORS BY SUBCONTRACTOR SUPPLIERS

A.S. §36.25.020 specifies the rights of recovery against the payment bond on public works (and hence against the prime contractor). It reads as follows:

Sec. 36.25.020. Rights of persons furnishing labor or material. (a) A person who furnishes labor or material in the prosecution of the work provided for in the contract for which a payment bond is furnished under AS 36.25.010 and who is not paid in full before the expiration of 90 days after the last day on which labor is performed or material is furnished for which the claim is made, may sue on the payment bond for the amount unpaid at the time of the suit.

(b) However, a person having direct contractual relationships with a subcontractor but no contractual relationship express or implied with the contractor furnishing the payment bond has a right of action on the payment bond upon giving written notice to the contractor within 90 days from the last date on which the person performed labor or furnished material for which the claim is made. The notice must state with substantial accuracy the amount claimed and the name of the person to whom the material was furnished or for whom the labor was performed. The notice shall be served by mailing it by registered mail, postage prepaid, in an envelope addressed to the contractor at any place where the contractor maintains an office or conducts business, or the contractor's residence, or in any manner in which a peace officer is authorized to serve summons.

(c) A suit brought under this section shall be brought in the name of the state or the political subdivision of the state for the use of the person suing in the superior court. No suit may be started after the expiration of one year after the date of final settlement of the contract. The state or political subdivision of the state is not liable for costs or expenses of the suit.

Subsection (a) relates to those who furnish labor or material directly to the contractor.

Back-up Provided by A. J. C.

Subsection (b) relates to those who furnish labor or materials directly to the subcontractor. It is with subsection (b) that this memorandum concerns itself.

A reading of that subsection discloses that people furnishing subcontractors materials (which includes equipment) even at some remote site which are ultimately on the project are entitled to recover against the bond if notice of claim is given to the prime contractor within 90 days from the last date on which the labor or material was furnished. With this provision the situation often arises that the first notice is received long after the time when the prime contractor could have done the necessary to protect itself.

A common, more enlightened provision is included in the Washington Public Works Statute, it providing for notice within ten days of first furnishing such materials, it reading as follows:

39.08.065 Notice to contractor condition to suit on bond when supplies are furnished to subcontractor. Every person, firm or corporation furnishing materials, supplies or provisions to be used in the construction, performance, carrying on, prosecution or doing of any work for the state, or any county, city, town, district, municipality or other public body, shall, not later than ten days after the date of the first delivery of such materials, supplies or provisions to any subcontractor or agent of any person, firm or corporation having a subcontract for the construction, performance, carrying on, prosecution or doing of such work, deliver or mail to the contractor a notice in writing stating in substance and effect that such person, firm or corporation has commenced to deliver materials, supplies or provisions for use thereon, with the name of the subcontractor or agent ordering or to

whom the same is furnished and that such contractor and his bond will be held for the payment of the same, and no suit or action shall be maintained in any court against the contractor or his bond to recover for such material, supplies or provisions or any part thereof unless the provisions of this section have been complied with.

RECOMMENDATION: The Washington statute RCW 39.08.065 could replace subsection (b) of A.S. 36.25.020.

Alternatively, probably the easiest modification to subsection (b) would be to merely strike out a few words of the first sentence and add a few as follows:

(b) However, a person having direct contractual relationships with a subcontractor but no contractual relationship express or implied with the contractor furnishing the payment bond has a right of action on the payment bond, only upon giving written notice to the contractor within 90 10 days from the last-first date on which the person performed labor or furnished material for which the claim is made.

NOTE: You will note that this section applies to claim against the payment bond. It says nothing about claim against the prime contractor. Under subsection (a) the supplier always has a claim against the prime contractor if it is dealing directly. If it is dealing indirectly as through a subcontractor (subsection (b)) it never would have and does not now have a claim against the prime contractor directly -- only the surety, which in essence is the same if the prime is solvent. A form of notice used in Washington is attached.

DATED this 1st day of December, 1983.

Bruce T. Rinker

SECTION IX: WASHINGTON FORMS  
FORM NO. WA-3

NOTICE TO CONTRACTOR BY SUBCONTRACTOR'S MATERIALMAN

(Washington Public Works)

TO \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Name and address of Contractor)

YOU ARE HEREBY NOTIFIED that the undersigned has, at the request of \_\_\_\_\_  
\_\_\_\_\_, contracted to deliver and furnish materials, supplies, and/or  
equipment, for use in the construction, alteration and/or repair of that certain building or  
structure known as \_\_\_\_\_ which is located upon the property  
described as \_\_\_\_\_  
(Address or description)

You are further notified that the contractor and his bond and retained percentage will be held for  
payment for such materials, supplies or equipment so furnished.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

Name of Firm \_\_\_\_\_  
Address of firm \_\_\_\_\_  
Signature of owner or officer \_\_\_\_\_  
Title \_\_\_\_\_

(There is contractor registration fee, with whom return requested.)

HB

610

Original sponsor: Furnace

Yellow compares to  
new CS

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2

CS FOR HOUSE BILL NO. 610 (Finance)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

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

7

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 read:

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(b) A general contractor may not allow a person required to be registered under this chapter to begin work for the general contractor as a specialty contractor unless the person is registered under this chapter.

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

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

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

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Sec. 08.18.051. IDENTIFICATION REQUIREMENTS [REGISTERED NAME].

23

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

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(b) All advertising, contracts, correspondence, cards, signs, posters, papers and documents prepared by a contractor for the contracting 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 at all times while acting in the capac-  
8 ity of a contractor or performing related activities.

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

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

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

18 Sec. 08.18.117. INVESTIGATIONS AND ISSUANCE OF CITATIONS. (a)  
19 The department shall provide investigative services to enforce the  
20 provisions of this chapter. An employee of the department designated  
21 by the commissioner to conduct investigations under this subsection  
22 may issue a citation for a violation of this chapter if the employee  
23 has probable cause to believe a person has violated this chapter.  
24 Each day a violation continues after a citation for the violation has  
25 been issued constitutes a separate violation.

26 (b) A person cited under this section for failing to possess a  
27 license may provide the prosecutor proof that the license has been  
28 obtained. The prosecutor shall void the citation and notify the court  
29 if the proof is provided.

deleted in CS



1 (F) If the form of citation issued under this chapter includes  
2 information and is sworn to as required under the laws of this state  
3 in respect to a complaint charging commission of the offense alleged  
4 in the citation, then the citation when filed with a court having  
5 jurisdiction is considered to be a lawful complaint for the purpose of  
6 prosecution.

7 Sec. 08.18.119. FAILURE TO OBEY CITATION. Unless the citation  
8 has been voided or otherwise dismissed by the magistrate, judge, or  
9 prosecutor, a person who fails to appear in court to answer a citation  
10 issued under this chapter, regardless of the disposition of the charge  
11 for which the citation was issued, is guilty of a class B misdemeanor.

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

13 (f) If the commissioner of labor or the commissioner of commerce  
14 and economic development determines that a person is acting as a  
15 contractor in violation of this chapter, the commissioner of commerce  
16 and economic development shall give written notice prohibiting further  
17 action by the person as a contractor. The prohibition continues until  
18 the person has submitted evidence acceptable to the commissioner of  
19 commerce and economic development [OF LABOR] showing that the viola-  
20 tion has been corrected.

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

22 (g) A person affected by an order issued under this chapter may  
23 seek equitable relief preventing the commissioner of commerce and  
24 economic development [OF LABOR] from enforcing the order.

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

26 Sec. 08.18.131. INJUNCTION. In an action instituted in the  
27 superior court by the commissioner [OF LABOR OR THE COMMISSIONER'S  
28 REPRESENTATIVE], a person acting in the capacity of a contractor in  
29 violation of this chapter may be enjoined from doing so. In addition

1        to other relief, a civil penalty not to exceed \$250 may be imposed for  
2        each violation. Each day that an unlawful act continues constitutes a  
3        separate violation.

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

5                Sec. 08.18.141. MISDEMEANOR. A person acting in the capacity of  
6        a contractor in violation of this chapter is guilty of a class A  
7        misdemeanor.

8        \* Sec. 10. AS 08.18 is amended by adding a new section to read:

9                Sec. 08.18.163. PROHIBITION ON STATE LOANS. A state agency,  
10       corporation, or authority may not lend money for construction of a  
11       project or building that is constructed in violation of AS 08.18.011.  
12       The state agency, corporation, or authority shall make reasonable  
13       efforts to determine whether construction is proceeding in accordance  
14       with AS 08.18.011 before releasing money under a construction loan.

15       \* Sec. 11. AS 08.18.171 is amended by adding a new paragraph to read:

16                (4) "department" means the Department of Commerce and  
17       Economic Development.

18       \* Sec. 12. Sections 1, 2 and 4 - 11 of this Act take effect July 1,  
19       1984.

20       \* Sec. 13. Section 3 of this Act takes effect July 1, 1985.

Bill No. CSHB 610 (Finance)

Date May 15, 1981

Title "An Act relating to construction  
contractors. . . ."

Contact: Eileen Plate  
465-2700

Bob Bacolas  
465-4856

Currently the registration of construction contractors is primarily within the jurisdiction of the Department of Commerce and Economic Development. The Department of Labor's role is limited to conducting on-site investigations of contractor licensing, issuing cease and desist orders, and seeking court injunctions against unregistered contractors.

This bill attempts to deal with the problem of unlicensed contractors by creating a new comprehensive enforcement scheme under the authority of the Department of Commerce and Economic Development. It seems appropriate, therefore, that the Department of Labor's enforcement responsibilities under current statutes be replaced by those of the Department of Commerce and Economic Development. Under this bill, the Department of Labor would continue to monitor for contractor licensing compliance during its on-site inspections, but any violators found would be referred to the Department of Commerce and Economic Development for further enforcement.

The Department believes that the new enforcement scheme created by this bill would be a more effective allocation of the State's resources. It would allow the Department of Labor's investigators and inspectors to devote more of their time to mechanical code compliance, wage and hour enforcement, and occupational safety and health enforcement, which are the primary responsibilities of the Department. Accordingly, the Department of Labor supports the Finance Committee Substitute for House Bill 610.

This bill is not expected to have any fiscal impact upon the Department.

APPROVED:

  
for Jim Robison  
Commissioner

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

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

REQUEST

Bill/Resolution No.: CSHB 610 (Fin)  
 Title: "An Act relating to construction contractors . . ."  
 Sponsor: Representative Furnace  
 Requestor: Senate Labor & Commerce  
 Date of Request: May 14, 1984

FISCAL DETAIL

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
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						

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						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Robert J. Bacolas Phone: 465-4870  
 Division: Labor Standards & Safety Date: 5/15/84  
 Approved by Commissioner: Robert W. Sanderson, Deputy Date: 5/15/84  
William Robinson  
 Agency: Labor

LEG:B:15  
 Distribution (by Agency preparing fiscal note):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

3 610 TITLE & SPONSOR SUMMARY 17:15 6/04/84 PAGE 1 OF 3

ENDED TITLE: CSMB 610(FIN)  
ACT RELATING TO CONSTRUCTION CONTRACTORS, AND PROVIDING  
R AN EFFECTIVE DATE

GENERAL DOLLARS: \$127,000 SF. NOTES

THE SPONSOR: FURRAGE,

OTHER DOLLARS: 00

7 SPONSORS:  
CURRENT STATUS: 5/23/84 IN (S) FINANCE

3 610 HOUSE ACTION 17:15 6/04/84 PAGE 2 OF 3

DATE SEQ PAGE

LEGISLATIVE ACTION

5/13/84	01	2544	FIRST READING - COMMITTEE REPORTS
5/03/84	02	3100	L&C -- 0202, NR04
5/03/84	03	3100	L&C F/NOTE H&E SUPPL H&E
5/07/84	04	3710	FIN -- 0203, NR04
5/08/84	05	3752	SECOND READING
5/08/84	06	3752	FIN CS ADOPTED BY UNAN CONSENT
5/08/84	07	3752	ADVANCED TO 3RD READING BY UNAN CONSENT
5/08/84	08	3752	THIRD READING
5/08/84	09	3752	PASSED BY DIV 34-08-00
5/08/84	10	3752	EFF DATE CHANGES VOTE SAME UNAN CON
***	**	**	*** ** *

4 610 SENATE ACTION 17:15 6/04/84 PAGE 3 OF 3

DATE SEQ PAGE

LEGISLATIVE ACTION

5/10/84	11	3004	FIRST READING -- COMMITTEE REPORTS
5/23/84	12	3211	FIN COMM REFERRAL ADDED BY UNAN CONSENT
5/23/84	13	3210	L&C -- 0203, NR04
			FINANCE
			RULES
***	**	**	*** ** *

COMMITTEE REPORT

SENATE

FURTHER:

Date: 1-21-88

Mr. President:

The Committee on COMMERCE has had 100-0-00

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for 100-0-00  same title  
 new title
- and recommends 100-0-00
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
CHAIRMAN





Glenn Criner D/BA

General Contractor

# STEVENSON TRUCKING

LOADING and HAULING CONTRACTORS

P.O. Box 516

CORDOVA, ALASKA 99574

Phone: (907) 424-3562

March 8, 1984

State of Alaska

Department of Labor and Commerce

Pouch V

Juneau, Ak. 99811

Re: H.B. 610

Gentlemen:

I oppose proposed House Bill # 610, on the creation of a board of builders.

Passage of the bill would increase unnecessary regulations and expense on established businesses.

As the present bill reads, it would give broad powers to this board and delegate the Department of Labor's authority to them.

A creation of board of builders is too expensive and not necessary to enforce what is already law.

I agree there is a problem with the number of contractors operating without a license, but present law could be enforced, without penalizing the established businesses.

Sincerely,

  
Glenn Criner

THE FOREMAN'S, INC.  
P. O. BOX 4-1576  
ANCHORAGE, ALASKA 99509-1576  
(907) 279-1736

Alaska Construction Contractor -  
Electrical - License No. AA 484

May 19, 1984

✓ The Honorable Richard L. Eliason, Chairman  
Alaska Senate Labor and Commerce Committee

The Honorable Bob Mulcahy, Vice-Chairman

The Honorable Don Bennett, Member

The Honorable Patrick Rodey, Member

The Honorable John C. Sackett, Member

Alaska State Legislature  
Pouch V (MS 3100)  
Juneau, Alaska 99811

Gentlemen:

Representative Walt Furnace's Labor and Commerce Committee and  
the House of Representatives have done a good job with House  
Bill No. 610 (L&C) relating to Construction Contractors.

Please don't let the Legislature adjourn until the Senate pass-  
es this legislation and sends it to the Governor!

Respectfully yours,

THE FOREMAN'S, INC.

*Helen G. Foreman*

Helen G. Foreman  
Secretary-Treasurer  
hgf/s

cc Representative Walter Furnace

THE FOREMAN'S, INC.  
P. O. BOX 4-1576  
ANCHORAGE, ALASKA 99509-1576  
(907) 279-1736

Alaska Construction Contractor -  
Electrical - License No. AA 484

May 19, 1984

The Honorable William Sheffield, Governor  
Third Floor, State Capital  
Pouch A  
Juneau, Alaska 99811

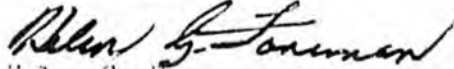
Sir:

Please recognize the good work of the Legislature and  
especially Representative Walt Furnace's House Labor  
and Commerce Committee.

We respectfully request that you support and sign  
House Bill No. 610 (L&C) relating to Construction  
Contractors.

Respectfully yours,

THE FOREMAN'S, INC.

  
Helen G. Foreman  
Secretary-Treasurer  
hgf/s

cc: Representative Walter Furnace  
✓ Senator Richard L. Eliason

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 7, 1984

SUBJECT: Construction Contractors  
(CSHB 610(Fin))

TO: Representative Walt Furnace

FROM: Tamara Brandt Cook *TBC*  
Deputy Director  
Division of Legal Services

Here is the section by section analysis that your requested of CSHB 610(Fin).

Section 1 prohibits a general contractor from allowing a person required to be registered to begin work as a specialty contractor unless he is registered.

Section 2 prohibits the issuance of a certificate of registration or renewal of the registration of an applicant whose registration has been revoked or suspended or against whom a fine has been imposed until the period of revocation or suspension has expired and the fine paid.

Section 3 requires a contractor to include a mailing address and address of principal place of business on documents prepared for the contracting business, as well as information required under existing law. Advertising and contracts are also required to include the registration number of the contractor.

Section 4 increases the amount of a bond for a general contractor to \$10,000 and the amount of a bond for a specialty contractor to \$5,000.

Section 5 requires the Department of Commerce and Economic Development to provide investigative services to enforce AS 08.18. Certain department employees are authorized to issue a citation for a violation of that chapter. A person cited for failing to possess a license may provide the prosecutor proof that the license has been obtained and the

prosecutor shall void the citation. The procedure for issuance of a citation and its disposition is set out. A person who fails to appear in court to answer a citation is guilty of a class B misdemeanor.

Section 6 requires the commissioner of commerce and economic development to give written notice prohibiting further action by a person as a contractor if either the commissioner of labor or the commissioner of commerce and economic development determines that a person is violating AS 08.18.

Section 7 replaces a reference to the commissioner of labor with the commissioner of commerce and economic development in an enforcement provision.

Section 8 replaces a reference to the commissioner of labor with the commissioner of commerce and economic development in an enforcement provision. "Commissioner" is defined for the chapter as the commissioner of commerce and economic development. A civil penalty of \$250 is authorized for each violation.

Section 9 provides a person acting in the capacity of a contractor in violation of AS 08.18 is guilty of a class A misdemeanor.

Section 10 prohibits a state agency from lending money for construction of a project that is constructed in violation of the requirement that construction contractors be registered.

Section 11 adds a definition of "department" to the chapter.

Section 12 ties the effective date to the beginning of the next fiscal year for most of the bill.

Section 13 makes the section dealing with identification requirements effective July 1, 1985.

TBC:ojb  
J7/033

THE ALASKA SMALL & SPECIALTY CONTRACTORS SUPPORT GROUP

Dear Legislator, -

We request that you do everything possible to get House Bill No. 610 (an act relating to construction contractors) through the House and Senate and approved by the Governor this session.

Be advised we will be fully organized by Election time and will muster all possible support for those legislators who work for our cause. Give us reason to support you.

Signatures

Addresses

*[Handwritten Signature]*

Box 1705 SITKA

THE ALASKA SMALL & SPECIALTY CONTRACTORS SUPPORT GROUP

Dear Legislator,

We request that you do everything possible to get House Bill No. 610 (an act relating to construction contractors) through the House and Senate and approved by the Governor this session.

Be advised we will be fully organized by Election time and will muster all possible support for those legislators who work for our cause. Give us reason to support you.

Signatures

Addresses

*[Handwritten Signature]*

803 Holinet Point Road  
Sitka

Support for Legislation

FROM: KEN HELEH, SITKA ELECTRIC INC.  
BOX 1609  
SITKA, AK 99835

I SUPPORT-HB 610, DEALING WITH CONTRACTING LAWS.

\*\*\*SITKA LIO, 5/8, 43355\*\*\*\*\*

April 17, 1984

M E M O R A N D U M

TO: House Finance Committee Members  
Rep. Al Adams, Chairman

FROM: Karla Forsythe *Karla Forsythe*  
General Counsel  
Alaska Court System

SUBJECT: CSHB 610, relating to construction contractors

The Alaska Court System requests that the committee consider an amendment to CSHB 610.

Background

The intent of this measure is to provide an effective means of requiring unlicensed contractors to obtain a license. The bonding and insurance requirements of the licensing procedure are in turn designed to protect the public in dealing with contractors.

The committee substitute adopted by the Labor and Commerce committee amends the original bill by authorizing issuance of citations and adoption of a bail forfeiture schedule by the supreme court.

The ultimate goal of this legislation is to require contractors to obtain licenses. A bail schedule may not provide the best mechanism for reaching this goal.

At present, the legislature has authorized the supreme court to adopt a bail schedule only in the area of traffic and motor vehicle violations, although legislation introduced this session would also authorize a fish and game bail forfeiture schedule. The idea behind adoption of a traffic bail schedule was to reduce the volume of traffic prosecution through the district court, at the same time providing effective enforcement of traffic laws by permitting defendants to plead guilty and mail in a bail forfeiture amount, while persons who plead not guilty would still stand trial.

Under the bail schedule approach to contractor licensing violations, a contractor would be cited, and would then plead guilty and pay a bail schedule amount, or plead not guilty and go to trial. Although a bail forfeiture

*Support for Proposed Amendment*

schedule would not impact judicial resources beyond the time required for the supreme court to develop and adopt it, additional clerical staff would be required to process the numerous citations and payments, especially during the summer months.

In contrast, the suggested amendment set forth below would require the contractor to obtain a license. If the contractor failed to do so, the violation would then be handled as a misdemeanor.

Harry Traeger, Director of the Occupational Licensing Division of the Department of Commerce and Economic Development, anticipates that almost all contractors who are cited will obtain a license. Trials as a result of a not guilty plea or further criminal proceedings as a result of failure to obtain a license would be few in number. Thus, the proposed amendment would lessen the impact on the court system, while promoting the intent of the legislature.

Proposed amendment

The court system's amendment would eliminate paragraphs (b) through (e) of section 5, and would insert the following language:

A person who violates a provision of this chapter by failing to obtain a license may provide ~~a peace officer or a designated employee~~ of the department proof that a license has been obtained. If the proof is provided within 5 working days after the issuance of a citation, the ~~officer or employee~~ <sup>Department</sup> shall void the citation and notify the court of the action taken.

This amendment will be proposed.

This language is analogous to the provisions of AS 28.15.131, which permits dismissal of citations for failure to produce a drivers license upon proof of a license, and 13 AAC 06.050, which permits dismissal of a citation for a motor vehicle equipment violation upon proof of correction.

Thank you for your consideration of this amendment. The court system will be glad to provide any additional information required.

cc: Rep. Furnace  
Rep. Cowdery  
Harry Traeger



ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY

Chwiczaj

Pouch Y. State Capitol  
Juneau, Alaska 99811  
(907) 465-3991

January 10, 1984

MEMORANDUM

TO: Representative Jack McBride

FROM: Nancy Pease  
Legislative Analyst

RE: Licensing and Bonding of Contractors in Other States  
Research Request 83-251

Rena Bukovich of your staff requested information on the licensing and bonding of contractors in other states. Specifically, she asked how certain contractors--plumbers, electricians, builders and specialty contractors--are licensed and regulated in the following states: California, Colorado, Idaho, Michigan, Montana, Ohio, Oregon, and Washington.

Regulation of Contractors in the Eight States

Licensing. Altogether, 28 states license contractors. The licensing and bonding requirements for contractors in the eight states about which you inquired are summarized in the attached chart (see Attachment A). Of these states, Ohio is the only state which does not license contractors in any of the trades you specified (electrical work, plumbing, or general or specialty contracting). Colorado does not license general or specialty construction contractors, and Idaho and Montana require licenses of construction contractors only if they wish to bid on public works. With these exceptions, the states generally require contractors to be licensed.

Bonding. California, like Alaska, requires that all contractors post bonds with the state as a prerequisite for license approval. Washington and Michigan require bonding for electricians; the other states do not require electricians or plumbers to post bonds in order to obtain a license. Four of the eight states--California, Michigan, Oregon, and Washington--require general or specialty construction contractors to post bonds with the state. The largest bonds are required by Michigan, where a residential building contractor must post a bond of \$10,000 to obtain a license.

Regulations. As requested, we are providing copies of the other states' statutes for the trades of electrical work, plumbing, and general and specialty contracting.

Background Info

Representative McBride  
January 10, 1984  
Page 2

In some instances, we have included license applications and printed regulations supplied by the states' trade boards. Please let us know if you require further analysis of the statutes and regulations; we will be happy to summarize and compare them if needed.

#### Requirements for a Contractor's License

Licensing requirements for contractors vary from trade to trade and from state to state. The procedure for obtaining a license may require the applicant to complete some of the following steps:

- pass a written or oral examination;
- submit a financial statement;
- submit references from material suppliers and/or bank;
- attest to ownership of equipment and/or experience related to the given field;
- report an in-state business address;
- report personal or corporate bankruptcies;
- obtain bonding; or
- obtain insurance covering public liability, property damage, and workers' compensation.

Exemptions. Some states exempt from licensing those contractors whose contracts do not exceed a specified dollar amount. Other states waive the license requirement if a person intends to work only on his personal property. For example, Alaska does not require a person to license himself to repair his own property, while Arizona requires that work on personal property be performed by a licensed and bonded contractor if the building is to be rented or sold within one year of completion of the work. Two states, Kansas and Nebraska, license only nonresident contractors, and Delaware licenses contractors for revenue purposes only.

Limited and reciprocal licenses. In skilled trades such as plumbing and electrical work, states frequently issue licenses that limit the licensee to working at a particular skill level for which he has demonstrated competency or proven his experience. For example, Colorado licenses electrical workers at four skill levels: trainee, residential wireman, journeyman electrician, and master electrician.

In granting a license to a contractor, some licensing boards also: (1) determine the construction classification at which the contractor may work (i.e. industrial, commercial, residential, public works); and (2) set a contract bid limit based on the contractor's working capital, i.e., he may not bid over \$200,000 on a single contract or over \$500,000 on separate, concurrent bids.

A few states have agreed to reciprocally recognize other states contractors' licenses; for example, Michigan and Indiana permit plumbers licensed in either state to do contract work in both states.

#### Licensing Boards

In states which thoroughly review the qualifications of contractor applicants, the licensing procedure is usually handled by a licensing board. Typically, this board is composed of licensed, experienced contractors who are appointed by the governor or the state legislature and who convene intermittently throughout the year. Recently, many states have included members of the general public on regulatory boards so that the boards are not composed exclusively of representatives of the regulated industry or profession.<sup>1</sup>

#### Bonding Requirements

Of the 28 states that license contractors, eleven states require the contractor to be bonded as a condition of license approval.<sup>2</sup>

As you may know, Alaska requires a surety bond of \$5,000 for a general contractor and \$2,000 for a specialty contractor, or an equivalent cash deposit.<sup>3</sup> The surety bond, also termed a "license bond", is intended to assure payment of (1) taxes, (2) employees and suppliers, and (3) any judgments against the contractor for negligent or improper work, breach of contract, or damage to public facilities.

The bonds that some states require before they will license contractors are independent from the bonds that construction clients may require before they will accept a contractor's bid. Construction clients may

---

<sup>1</sup>State of Tennessee: "Program Evaluation on the Board for Licensing Contractors", Division of State Audit, July 1978.

<sup>2</sup>Ibid

<sup>3</sup>AS 08.18.071.

require (1) performance bonds to guarantee that the work will be completed on time and according to specifications; (2) payment bonds to guarantee that suppliers and employees will be paid; and (3) bid bonds to guarantee the sincerity of the bid.

#### Penalties and Enforcement

Penalties. AS 08.18.141 states that "a person acting in the capacity of a contractor in violation of this chapter is guilty of a misdemeanor." The contractor is usually given a hearing before the trade or licensing board, and if found guilty, he may be fined in addition to having his license revoked. This same penalty appears to be common among states that require contractors to be licensed.

The method of recovering damages from bonded contractors in Alaska also appears to be normal procedure in other states. The surety bond issuer is not liable for claims in excess of the amount of the bond, and claims for breach of contract are assigned a lower priority than claims for labor costs and taxes which may be owed to government units.

Enforcement. Most states share with local governments the responsibility for monitoring contractors. For example, Colorado plumbing laws prescribe that cities with populations of over 70,000 must appoint inspectors of plumbing to their local boards of health to help report violations of plumbing laws to the State Examining Board of Plumbers. In addition, Colorado's State Examining Board of Plumbers is authorized to hire its own plumbing inspectors.

In states which have a single board of licensing for contractors in all trades, enforcement duties may be divided among state agencies as well as between state and local agencies. For example, in Tennessee, the Board for Licensing Contractors only investigates complaints about licensing, while violations of the technical rules of a particular trade are dealt with by the appropriate trade board or by state health and safety agencies.

\* \* \*

I hope you find this information useful. If we can be of further assistance, please let us know.

NP

Attachments

Attachment A  
Table 1

LICENSING AND BONDING OF CONTRACTORS IN EIGHT STATES

	<u>Electrical work</u>	<u>Plumbing</u>	<u>General Building Contracting<sup>1</sup></u>	<u>Speciality Contracting</u>
California <sup>2,3</sup>	license bond (\$5,000)	license bond (\$5,000)	license bond (\$5,000)	license bond (\$5,000)
Colorado	license ---	license ---	--- ---	--- ---
Idaho	license ---	license ---	license for public works ---	license for public works
Michigan	license bond <sup>4</sup>	licens ---	license for residential builders ---	license <sup>5</sup> bond (\$2,000-\$10,000)
Montana	license ---	license ---	license for public works ---	license for public works ---
Ohio <sup>5</sup>	--- ---	--- ---	--- ---	--- ---
Oregon	license ---	license ---	license for bldg. construction bond (\$6,000)	license bond (\$4,000)
Washington	license bond (\$3,000)	license ---	license bond (\$4,000)	license bond (\$2,000)

Footnotes: See Next Page

#### FOOTNOTES TO TABLE 1

- 1 AS 8.18.171 defines "general contractor" as a contractor whose business operations require the use of more than two distinct trades whose work the general contractor superintends; the terms "general contractor" and "builder" are synonymous; a "specialty contractor" is a contractor whose operations do not fall within the definition of "general contractor". Contractors are persons who undertake or bid for projects to construct, alter, repair, move or demolish a building, highway, road, railroad, or a type of fixed structure, including excavation, site development and erection of scaffolds.
- 2 A bond of three to ten times this amount is required for the licensing of applicants who have been a party to business infractions resulting in the revocation of their own or other contractors' licenses (CRS 7071.8). Swimming pool contractors must post a bond of \$10,000.
- 3 The co-owner of a licensed firm, or the subsidiary or joint venture partner of a licensed firm, may in some circumstances be required to post an additional bond of \$2,500. CRS.7068 and CRS.7071.9.
- 4 The bond takes the form of a deposit to the Homeowners Construction Lien Recovery Fund. The required amount of the bond varies. MCL 338.883.
- 5 Contractors in the fields of residential building, maintenance, or alteration must post bonds of \$2,000 for each trade for which they are licensed, not to exceed a total of \$10,000. MCL.338.1504.
- 6 ORC 3781.102 delegates the licensing of contractors in Ohio to local governments. However, legislation is now pending before the Ohio General Assembly to establish requirements for state licensing of electrical contractors.

# Crackdown sought on no-license contractors

By PAUL LAIRD  
AJC Editor

Earl Carlyle is a painting contractor who's mad as hell and isn't going to take any more.

A licensed painting contractor who's mad as hell and isn't going to take any more.

The owner of Earl's Custom Home Painting in Anchorage, this uncaped crusader is conducting a one-man campaign to mobilize licensed specialty contractors throughout Alaska and force the state to crack down on unlicensed contractors in all trades.

"I don't know about doing research," he said. "I do know about raising a lot of hell. I'm tired of living in a trailer and not being able to prosper even after seven years in business."

What he lacks in research expertise he compensates for in ability to match names in a state directory of licensed contractors against names of contractors listed in the Yellow Pages of the Greater Anchorage telephone directory.

State law prohibits unlicensed contractors from advertising. Nonetheless, Carlyle says he's found nearly 500 contractors without licenses advertised in the phone book.

State Rep. Walt Furnace, R-Anchorage and chairman of the House Labor & Commerce Committee, said many contractors don't bother to secure state licenses because the process is time-consuming.

"The process isn't cumbersome, but it is time-consuming," he said. "We all have a thing about filling out forms."

While requirements for contractors' licenses aren't that stringent, they do require somewhat of a commitment from the applicants. To secure licenses, contractors must have bonding, insurance and workers' compensation programs.

Carlyle said that by avoiding those requirements, unlicensed contractors are able to underprice those with licenses, and they also sidestep accountability for their work.

He said his investigation of the problem through classified advertising in daily newspapers and bidding forms published by general contractors for their projects leads him to believe the 500 unlicensed contractors in the Yellow Pages are only the tip of the iceberg.

During the summer, there could be as many as 2,000 unlicensed contractors operating in the Municipality of Anchorage, he said.

Furnace said most unlicensed contractors in the Anchorage area seem to be subcontractors. It's licensed companies operating in a subcontractor capacity that seem to be injured

Carlyle said some licensed contractors in Alaska have been forced out of business by price undercutting from unlicensed competition, both from within Alaska and Outside. Others have been forced to live indefinitely from one job to the next.

"Fly by nighters" who "guarantee their work right up to the time when the plane leaves" cost his business about \$500,000 in jobs during his first five years of painting contracting, he said. Now he's beginning to live off referrals.

"These fly by nighters bring their out-of-state prices with them, and a licensed contractor can't compete," he said. "They don't keep books, they don't pay taxes and they don't incur the expenses of doing business here during the winter."

"They just come in the spring and split in the fall when it gets cold. They don't have to eat their mistakes; the consumer does."

Earlier this year he engineered a write-in campaign of more than 1,000 of the state's specialty contractors to the governor, key legislators and other state officials. Goal of the campaign was to build awareness of the problem and to prompt stricter enforcement of state law barring unlicensed contractors from working in Alaska.

One legislator reported receiving more than 1,000 letters from specialty contractors throughout Alaska.

"There must mean there are 1,000 specialty contractors who are as mad as I am," Carlyle said. "I think we're starting to get some attention now."

Although the Anchorage painting contractor said he's contemplating another mailing blitz, the first one apparently found its mark.

Furnace said his committee is studying the problems of local hire and unlicensed contractors before the next legislative session begins in January, and public hearings will be scheduled for Anchorage, Fairbanks, Ketchikan or Juneau and possibly Bethel or Kotzebue sometime this month.

"At this point we don't know what the overall effect of unlicensed contractors operating

in the state is, and we don't know how severe the income loss is to licensed contractors," Furnace said. "That's what we hope to determine from testimony at these hearings."

Carlyle blames the unlicensed contractor problem on spotty enforcement by the state, and Furnace agrees. The Anchorage legislator said the Department of Commerce & Economic Development division responsible for enforcement—the Division of Occupational Licensing—has been stymied by man-

people responsible for keeping track of too many things in the division," Furnace said. He added he believes the problem is not a lack of money in the department's budget, but rather questionable priorities of how the money is spent.

"There's never been a shortage of money (in the department)," he said. "The shortages in enforcement manpower have been the result of the way the money is allocated."

A number of approaches to the problem are being considered, and notification of this month's hearings will be mailed to nearly 2,000 specialty contractors statewide to generate responses to existing proposals and other ideas.

The Anchorage painting contractor said he expects widespread support for the move to push for stricter enforcement, but he also anticipates resistance from some general contractors who capitalize on the availability of cheaper unlicensed subcontractors.

He said he's encountered a handful of subcontractors afraid to become active in the involvement for fear general contractors will refuse them work.

Established contractors' organizations won't resist the move, he said, but some individual general contractors who use unlicensed subcontractors will lobby against it.

"We're going to need strong organization before the legislative session starts if we want to accomplish anything," he said.

Though shoddy workmanship and lack of accountability are major problems with unlicensed contractors, Carlyle said the state should not institute written examinations to assure competency.

"Some real artists and craftsmen couldn't pass a written test, but they could certainly pass a test on the job," he said.

Carlyle received an assurance from a special assistant to Gov. Bill Sheffield late in the spring that the Division of Occupational Licensing has been working with the Department of Law to develop a citation program to enforce regulations restricting unlicensed contractors.

The special assistant wrote Carlyle that some names he supplied to the division indeed are practicing without licenses, and those violators were sent warning letters.

"The list of names will be monitored for compliance and are potentially the first to be cited when the program begins if they are not licensed," the special assistant wrote.

Furnace said he believes many of the violators simply don't know they're not complying with state regulations, and he hopes to avoid an enforcement approach that will be punitive.

"Some contractors think all they need is a business license," he said. "It's one of the problems of the easy entrance and

Alaska."

He added he hopes the problem can be addressed at least partially without adding to state statutes.

"The main thing is that we have to prevent unlicensed people from posing as experts by advertising," he said.

A possible solution, the Anchorage legislator said, is soliciting voluntary cooperation from newspapers of general circulation and from the people who compile the Yellow Pages.

By screening unlicensed contractors from advertising, those sources could prevent unlicensed contractors from posing as experts, Furnace said. One Anchorage daily already operates under that policy, he added, but the other doesn't.

"We'd like not to have to put that kind of thing into statute form, but we do need the help of the private sector in attacking the problem," Furnace said.

He added he doesn't believe the licensing process on the books now is in need of revamping.

An aide to Furnace said the following list of solutions is being studied, but some are believed unworkable. The legislator's office is soliciting reactions to and suggestions about these proposals:

- Require all contractors to include contracting license numbers in all advertising.
- Require contractors to place signs on both sides of their vehicles stating company names and contracting license numbers.
- Increase bonds for specialty contractors to \$5,000 and for general contractors to \$15,000.
- Give enforcement inspectors authority to check identification and issue citations.
- Establish a state division for policing contracting laws.
- Mandate that enforcement officers to police newspapers, Yellow Pages, television and radio for violators.
- Adopt legislation requiring telephone utilities to disconnect service for unlicensed contractors.
- Impose stiffer penalties for violators.
- Prohibit state agencies from contracting with unlicensed contractors and licensed contractors who subcontract to unlicensed subcontractors. Prohibit projects using unlicensed contractors or subcontractors from taking advantage of state financing or refinancing for one year.
- Have a computerized list of contractors available on demand that would include the kind of contractor, license number, company name and address.

Proposals for ensuring compliance with local hire laws include requiring the submission and monitoring of a statement of the percent of work force to be hired locally when state funds are involved, requiring quarterly filings of compliance statements and the use of spot audits and penalties.

LICENSED AND BONDED CONTRACTORS MEETING  
NOVEMBER 29, 1983  
2:00 PM

The meeting was called to order my Rep. Furnace. Persons present at the meeting were:

Rep. Furnace  
Rep. Cowdery  
Rep. Uehling  
Allair  
Ken Johnson  
Steve Levi  
Dianna Smith  
Earl Carlyle  
Ray D. Agen  
James N. Malapanes  
Clay Porter

Earl Carlyle passed out a paper with 15 suggestions to support specialty contractors and these suggestions were discussed in detail and the following recommendations were made:

1. Come up with a modified definition of a "Contractor". Make it mandatory for all licensed contractors to include their license number in all advertisements; including business cards, signs, newspaper ads, television ads, radio ads, and yellow pages for easier identification by the license enforcement investigator.
2. Put in the statutes that the contractors license number or administrators license number should appear on all vehicles used in the conduct of business.
3. Bonds should be increased to \$5,000 and \$10,000 on the initial draft.
4. Concern was expressed over the lack of enforcement offered by the Dept. of Labor and the suggestion was made to transfer the enforcement function to Dept. of Commerce and Economic Development, Division of Occupational Licensing which is a more reasonable, supervisory governmental unit. It was noted that we should give the inspectors more ability of checking for violations. Concern was also expressed with the regard to the ability of the enforcing agency to issue citations with "teeth". For further information, staff was advised to contact, Ron Watts with the Municipality at 786-8307.

5. Establishment of a statewide Board of Builders which shall meet on a monthly basis and shall include a membership of the following:
  - 1) Speciality Contractor
  - 2) Remodeling Specialist
  - 3) Private Sector Representative
  - 4) Local Government Representative
  - 5) Two General Contractors
  - 6) One Heavy Highway Contractor
6. This statement is already covered in number one.
7. It was recommended that House Counsel examine the constitutionality of legislation to terminate phone service for those companies who are in violation of the licensing and bonding provisions of the statutes and regulations. House Counsel was contacted and staff has been informed that there is probably no constitutional question involved in the discontinuance of telephone service for those businesses which advertise falsely or falsely portray themselves as bonafied businesses. The only difficulty that could arise would be the instance in which a business phone and a personal phone are used for the same purpose and for some reason the individual could not disassociate the two entities.
8. It was noted that the laws for violators are there and the problem we are having is with enforcement. It was recommended that a monetary fine of not more than \$250 a day for contractors in violation of the law (see page 15 of the Oregon law).
9. This statement is covered in suggestion number one, but it was recommended to maybe include a monetary fine of \$250 a day.
10. It was noted that since there is some support for this issue, we would propose this to the drafters and let them work with some language as to how we can best do this. The general contractor is already covered, we want to reach the subcontractor.
11. It was noted that a list can be obtained, but that it takes a long time to get. A person requesting a list of contractors you should be able to get one within a certain period of time that is fairly predictable. It was recommended that we should advise that a list is available upon request for a nominal fee, if any, and that the list can be expected to be received within a two week or 30 day time frame. It was suggested that we may want to contact, Dick Lyon with the Dept. of Commerce and Economic Development to further discuss the possibilities of this of instigating this.

12. It was noted that this statement should have been on a separate sheet of paper and is not to be included under this heading because it pertains to the motor vehicle laws.
13. It was recommended that we restate this in whatever new section we develop on general contractors and specialty contractors.
14. It was recommended that a owner/builder can only build one home or one structure per year to take advantage of the owner-builder option to remain unlicensed.

T. U. L. S. ...  
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1982 ...

NAME  
Ray W. Agen

JAMES N. MALAPANES

C. LAI PORTER, NCP CONST.

FRANK J. CARLYLE

John Couding

P.O. Box 871370  
WASILLA, AK 99687

PO Box 872040 WASILLA AK

118 E. INTER. AIRPORT RD.

541 E 25<sup>th</sup>

~~541~~ 8020 LAKO OTIS

376-3313

3765130

562-2283

2761724

344 2407



ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY

Pouch Y, State Capitol  
Juneau, Alaska 99811  
(907) 465-3991

September 6, 1983

MEMORANDUM

TO: Representative Walt Furnace  
FROM: David Teal  
Legislative Analyst *Teal*  
RE: Licensed/Bonded Contractors  
Research Request 83-213

Steve Levi, of your staff, asked whether or not Alaska had the least restrictive standards for licensed and bonded contractors. We contacted the Council of State Governments, the National Conference of State Legislatures and the Associated General Contractors of America to determine Alaska's standing in this regard. We discovered that training/experience requirements in Alaska are minimal relative to other states which require licensing and bonding of contractors, but that nearly half of all states do not require contractors to be licensed. Further, fewer than half of the 50 states require contractors to be bonded.

This memorandum discusses standards for contractors from three perspectives: when a licence is required; requirements for obtaining a license; and the consequences of failure to meet legal standards. Each of these topics is discussed below.

Who must obtain a contractors' license?

The attached table shows that 28 states require contractors to be licensed and that only 11 of those states require licensed contractors to be bonded.<sup>1</sup> From the perspective of whether or not a license is required to operate as a contractor, Alaska's standards are clearly more restrictive than those imposed by some states. However, relative to other states that require contractors to be licensed and bonded, Alaska is more liberal than some states. For example, no license is required for an Alaskan to repair his own property, while Arizona requires that work on personal property be performed by a licensed and bonded contractor if the building is rented or sold within one year of completion of the work.

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<sup>1</sup>The table is from a 1978 document prepared by the State of Tennessee. Much of the information appears to be outdated. More reliable information will be forwarded to you when it is received.

APPENDIX IX



U.S. SMALL BUSINESS ADMINISTRATION  
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR

JULY 2, 1974

Mr. Victor L. Lowe  
Director  
United States General Accounting Office  
Washington, D.C. 20548

Dear Mr. Lowe:

This is in response to your request for comments on the draft report entitled "Surety Bonds in Federal Construction: A Study of Their Application and Effectiveness."

[See GAO note 1, p. 40.]

Operation of the Program

Before we get into the specific areas listed, we must bear in mind that the report itself is 14 months old, and we should like to provide an update on the statistical data listed in the report as of March 31, 1973, and bring that up to May 20, 1974. The Surety Bond Guarantee Program is the fastest growing program of the SBA. Following is a table indicating levels of activity:

APPENDIX IX

2. Refers the contractor to SBA loan specialists for consideration of either a working capital loan or the revocable, revolving line of credit, which was designed specifically for construction contractors.
3. Refers contractor to our management assistance personnel.

If the surety decides that a bond can be issued with our guarantee, they will forward to our office a copy of the contractor's financial statement, together with a copy of our Surety Bond Guarantee Underwriting Review, SBA Form 994-B. The SBA Form 994-B is primarily a checklist of virtually all of the normal underwriting requirements that a surety would check out prior to issuing a bond, be it with SBA or on their own. Upon receipt of the Underwriting Review, the financial statement, and the surety's recommendation, the SBA makes its own underwriting review, and, if favorable, completes the guarantee agreement and returns it to the surety.

The following is an update on our claims and defaults. We compute our loss ratios on a quarterly basis, the last of which was as of April 20, 1974. At that time we had 548 default notifications, with 393 of these that have established incurred loss of \$9,260,217. The incurred loss figure included paid losses plus reserves. In computing our loss ratios, we use our average sized contract of \$68,000 and prorate the contract over a 10 month period. In other words, our \$68,000 contract is 50 percent completed in 5 months and 100 percent complete in 10 months. Our loss ratio, based on completed commitments, is 1.24 percent.

SBA  
loss  
ratio

The sureties compute their loss ratios on an earned premium basis rather than commitments. An average contract of \$68,000 would carry a 1 percent premium. Therefore, the industry loss ratio, based on earned premiums, would be 124 percent versus 1.24 percent on commitments.

We break down our loss ratio by region as well as by surety. At any given time we can determine the loss ratio of a specific surety company, either nationwide or in any region.

All claims are handled out of our Central Office. Our field office sends us a copy of the complete underwriting file. A desk audit is made on each claim submitted. In addition to normal verification and audit of claims data, we also assure that the surety made no misrepresentations, etc., as well as attempting to establish reasons for default. We have found that the reasons our contractors go into default are basically the same as those that the sureties sustain under normal programs - insufficient capitalization to carry them over when they run into trouble, and going beyond their capacity. Only about 3 percent of our contracts go into default. Therefore, we have a success rate of 97 percent.

## APPENDIX IX

One factor which makes it difficult to establish formal underwriting guidelines for the sureties is that these guidelines can be used to turn down applicants, as well as to make them eligible. As a rule of thumb, for construction contractors, many sureties require a ratio of 1 to 10 of the contractor's net quick assets to his total work in progress. There are cases where the surety may want a 1 to 5 ratio. There are other cases where another surety may go 1 to 20 on a specific contractor. Availability of additional credit, size of the job, and the amount to be subcontracted are all elements that enter into a decision on net quick asset requirements. If we were to establish a standard of, say 1 to 15, a ratio of less would automatically trigger a decline by the surety industry. It would become too complex to establish these types of standards. The industry itself has general guidelines in their normal underwriting; we expect them to use their guidelines, consider that these are marginal contractors, and that the SBA will accept risks that the industry would normally decline. All we ask them to do is to give us the normal underwriting data with all of the facts and their opinion as to whether the contractor can perform the specific contract. Based on that analysis, SBA will further analyze the facts presented and make a subjective judgment.

We have even had cases where we have extended our guarantee where the contractor had a deficit net worth and where he performed successfully. However, we could not write a guideline that would permit the issuance of a guarantee to a contractor with a deficit net worth. Such a determination would depend upon the individual contractor and circumstances of the specific case.

A contractor has every right to appeal to SBA for assistance should he be turned down by a surety, and, as a matter of fact, frequently does. We have met with several minority contractor associations throughout the country. There is a favorable consensus among these groups.

The question of "graduation" is a difficult one. The sureties do not notify us when they take a contractor out of our program and put him into their own. The only assumption we can make is that, if there is no activity in a particular file for 6 months to a year, we can assume that the contractor, if he has not gone into claim, has gone into the surety's normal business. We do, however, have certain guidelines for our surety bond personnel in the field. As an example, a valid reason for keeping a contractor in our program after he completes several jobs could be that his financial statements show insufficient earnings to justify bonding him without SBA support. Another reason is that the contractor is increasing the size of job or total work program beyond what the surety would accept in its standard business. Again, this is a form of graduating from small contracts to larger contracts.

There are many factors to consider. Why are the major companies willing to participate in the program at a loss? Is it because their big business clients are applying subtle pressure to eliminate competition? Is it because they know that the smaller sureties cannot remain in the program at a loss?

To remain in the program with higher fees or a lesser guarantee, the smaller sureties would have to tighten up on their underwriting. What would the effect be on the minority contractor? The loss rate on his business is 1.8 percent versus 1.1 percent for nonminority. With a tightening of underwriting standards, the benefits of the program would be denied to those who need it most.

We are not prepared to adjust either the fees or percentages of guarantee at this time. We will, however, make adjustments at such a time as our continuing analyses might justify.

We are enclosing a list of all the sureties participating in our program as of May 20, 1974 (from the inception of the program). This list includes the number of contracts and the dollar values by region and total. As you will note, there are many sureties listed that are national companies but have written very few bonds through our program in the almost 3 year period since its inception.

The report also states that the maximum allowable premium rate that SBA permits was \$20.00 a thousand and a change to \$15.00 a thousand under contemplation. Our maximum allowable rate as of March 1973 is \$15.00 per thousand for the first \$50,000 and \$10.00 per thousand on amounts in excess of \$50,000. Therefore, we only allow the additional 1/2 percent on the first \$50,000. Any surety that is using the standard 1 percent in their normal business, because of filing with the various state insurance departments, must use the same rate for the business with the SBA program. Therefore, there are very few companies charging the 1-1/2 percent rate, though it is true that a substantial amount of our volume comes from sureties which charge the higher rate. We have no quarrel with those sureties which are in the program for profit. Profit, if kept within reasonable bounds, is a perfectly legal and proper incentive.

#### Lack of Incentives

Our experience in the program alone seems to dispute this point.

1. For the surcharge rate companies, their records show that a contractor, on the average, has 1-1/2 contracts prior to leaving them.



ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY

Pouch Y, State Capitol  
Juneau, Alaska 99811  
(907) 465-3991

MEMORANDUM

July 1, 1980

TO: Representative Patrick O'Connell  
FROM: Anne DeVries, Issues Analyst *AD*  
RE: Availability of Contract Bonding  
Research Request No. 147

This memorandum is in response to your request for research on the availability of contract bonding for small contractors. I understand you are interested in possible legislative action to relieve the problems some contractors face in obtaining contract bonds in amounts over \$500,000.

Summary of Findings

Briefly, there are three major findings from this research:

Overall, contractors are able to get bonding in the amounts for which they are qualified. It is not evident that sureties are denying bonds to contractors on the basis of criteria which are irrelevant to their ability to complete a contract.

A State reinsurance program is the major way in which bonding could be made more available. The primary problem of such a program is that it would expose the State to financial losses on defaulted contracts.

The availability of bonding is important to contractors because bonds are required for most public works contracts. An alternative to making bonds more available is to modify access to public contracts. The State has two main alternatives: to raise the amount of the contract below which no bonding is required, or eliminate bonding altogether. There are two problems with these alternatives: they expose the state to financial losses from defaulted contracts and they shift the responsibility of determining contractor qualifications from a non-political body, the surety, to the State. These are the same problems that the surety system was designed to eliminate.

Representative Patrick O'Connell  
July 1, 1980  
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Obviously, those contractors who have no trouble obtaining bonds do not necessarily see their interests enhanced by measures making it easier for other contractors to secure the same means of access to work.

The Sureties: As a group, sureties share an interest in making money. However, there are two types of surety companies with distinctly different ways of making money:

- Standard sureties make money by writing all the bonds they can. However, as they are not compensated for risk, they adhere to underwriting criteria that are established based on the presumption of "no losses".

- Specialty sureties make money by exploiting the government subsidy inherent in the Small Business Administration's re-insurance program. This is discussed in greater detail later in the memorandum.

The Construction Clients: Demand for bonding originates primarily from the public sector, all discussion in this memorandum will focus on the interests of municipal, state and federal construction clients. As a group, these entities share two interests:

- They want to protect the taxpayers' interests by obtaining the best quality construction work at the lowest price.

- In order to insure the lowest feasible costs, state and federal governments want to insure adequate competition among qualified contractors by removing any artificial impediments to competition, such as minority discrimination.

- They want to protect themselves from the claims of suppliers or laborers who were not compensated by a contractor on a public works job. Bonds are necessary as public works are not subject to liens designed to protect suppliers and laborers on private jobs.

The State: The State, as a protector of its citizens, wants to:

- Insure that citizens are not prevented from enjoying their livelihoods by the arbitrary acts of others, such as a private company discriminating against minorities.

Representative Patrick O'Connell  
July 1, 1980  
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Awarding a contract to the "lowest qualified bidder" increases the risks of a project, for the contractor who wins the job is given himself the smallest possible financial cushion with which to absorb the cost of any problems.

The construction client recognizes that these problems can occur and he has two alternative ways to protect his interests:

If a contractor fails to perform, the client can arrange to complete the job himself and take legal action against the contractor.

He can require that the contractor secure the backing of another party who will assure the client that he will suffer no financial loss from a contractor failure. This third party may be an individual or a corporate surety.

Under either alternative, the client pays for the cost of this protection. In the former instance, he incurs the costs directly; in the latter, the cost of the surety's bond is included in the bid price.

Types of Bond Required: Three types of contract bonds are generally required:

Performance bonds guarantee that the work will be completed in accordance with the plans and specifications and at the contract price.

Payment Bonds guarantee that the suppliers and employees of the contractor will be paid. Payment bonds are required on all public works projects because that property cannot be made subject to a Mechanics and Materialmen's Lien which protects these interests on private projects. A payment bond also makes it easier for suppliers to get credit, as they are assured of being paid.

Bid Bonds guarantee the sincerity of the bid. A bid bond in the amount of 10% to 25% of the bid is usually required. If a contract is awarded to a bidder who is then unable to secure the other required bonding or for some reason cannot enter into a contract, the bid bond is forfeited. A surety will usually issue a bid bond only when it is prepared to issue payment and performance bonds, as required.

An underwriter evaluates two aspects of the contractor's financial status: the amount of working capital he has in relation to the dollar volume of his projected workload and his net worth. Sufficient working capital is necessary to cover cash outlays for which the contractor will be reimbursed later. Contractors are usually paid on work as it is completed, therefore they must finance each portion of the work themselves. In addition, clients retain a portion of the payment, usually 10%, until the project is completed in order to guarantee performance. The contractor has to finance that 10% for the duration of the project. Without adequate working capital, a contractor may have to stop work on the project and be in default on the contract. A contractor's net worth, total assets less total liabilities, is the second component of his financial status that is important to a surety. The surety relies on a contractor's net worth as the primary loss paying fund, should the contractor default on the contract and the surety incurs losses in completing the contract.

Cost of Bonding: Contractors are charged a premium for the bonds they are issued. The premium is determined by the amount of the bond, the duration of the bond obligation and the type of contract being bonded: as the amount of the bond increases, the cost per thousand dollars of bonding declines; as the duration of the bond obligation lengthens beyond a specified period, the cost of the bond increases; and as the complexity of the construction task increases, the cost of the bond increases. The Surety Association of America has established rates which are used by most standard sureties; in its rate setting manual, it divides construction contracts into three major groups:

- Class B            These are the most difficult types of construction involving architectural building construction, most engineering construction, concrete and excavation work performed underground or in or under water, etc.
  
- Class A            These are general contracts and subcontracts of generally less difficult nature than those included within ~~Class B~~ such as most earthmoving work of a non-excavation nature, etc.
  
- Class A-1          Contracts of this description include those generally less difficult than "B" or "A" of the construction classification and contracts for furnishing and installing, or installing only, or providing various services and equipment, such as a data processing contract.

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There are about 3,000 contractors licensed by the State to operate in Alaska. About half of these are general contractors, the remainder are specialty contractors.\*

According to AS 8.16, in order for a construction contractor to operate in the state, he must be issued a certificate of registration by the Department of Commerce and Economic Development. The following are required before a certificate is issued:

- a completed application
- a registration fee of \$100 for a general contractor and \$50 for a specialty contractor
- a surety bond of \$5,000 for a general contractor and \$2,000 for a specialty contractor or an equivalent cash deposit
- public liability and property damage insurance no less than \$20,000 for property damage, \$50,000 for injury or death to one person and \$100,000 for injury or death to more than one person.

The surety bond, also termed a "license bond", is intended to assure payment of:

- all taxes and contributions due the state and political subdivisions
- payments to all persons furnishing labor or material or renting or supplying equipment
- payments for all amounts that may be adjudged against the contractor by reason of negligent or improper work, breach of contract or damage to public facilities occurring in the course of a construction project.

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\* AS 8.18 defines a contractor as "a person who, in the pursuit of an independent business, undertakes or offers to perform, or claims to have the capacity to perform, or submits a bid for a project to construct, alter, repair, move or demolish a building, highway, road, railroad, or any type of fixed structure, including excavation and site development and erection of scaffolding; a "general contractor" is a contractor whose business operations require the use of more than two distinct trades whose work the general contractor superintends." A specialty contractor is one involved in only one or two distinct trades.

Representative Patrick O'Connell  
July 1, 1980  
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certified by a public accountant . . . demonstrating that the contractor has a net worth of not less than 20% of the amount of the contract for which the bid is submitted.

The total amount of all contracts which the contractor anticipates performing during the term of performance of the contract for which a bid is submitted does not exceed the reported net worth by more than seven times.

The Federal statutes, the Miller Act, served almost verbatim as a model for the State statute. There are only two differences: the Federal government requires bonds for all contracts in excess of \$2,000 and it leaves the amount of the performance bond to the discretion of the contracting officer.

While the State statute requires a combination of payment and performance bonds amounting to 100% of the contract amount on jobs under \$1,000,000, 80% on jobs between \$1,000,000 and \$5,000,000, and a flat bond of \$5,000,000 on jobs over \$5,000,000, in practice 100% bonding is required on all projects over \$50,000. On projects which involve federal money, a 100% performance bond and a 100% payment bond is usually required. Municipal practices differ with the municipality and the source of funds it is spending; however, they are usually at least as strict as the state practices.

The Alaska Bond Market: Contracts bonds are supplied by 71 companies licensed to do business in Alaska. All are regulated by the Division of Insurance of the Department of Commerce and Economic Development, to which they must submit their premium rates for approval.

There are three types of firms: the standard companies, the specialty companies which are involved in the SBA reinsurance program, and sub-standard companies. This last group is able to supply bonds for the most marginal contractors by charging higher rates. It is not a significant part of the market.

The standard companies dominate the bonding market. The four largest companies, Travellers, Firemen's Fund, Fidelity and Deposit of Maryland, and Safeco, control over 50% of the Alaska market. Forty-nine companies, each writing less than \$50,000 in premium annually, account for only 5% of the market.

In 1978, the last year for which data is available, \$5.6 million of

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the late 1960's, a company entered the Alaska market aggressively seeking business by writing bonds more readily than the existing companies. It offered larger bonds and larger bonding capacities to firms in order to take business away from competitors. The other companies were forced to match its tactics in order to retain customers. By the mid-1970's, this company, which had followed the same strategy across the country, was incurring large losses and decided to leave the surety business.

The problem of losses due to loosened underwriting standards was exacerbated by the recession in the mid-1970's. High interest rates affected a contractor's ability to get financing and inflation adversely affected his ability to project costs for materials and labor; both could lead to default on a contract.

As a response to these problems, some sureties chose to leave the Alaska market, while the remaining ones revised their underwriting criteria. One broker characterized this as a return to normal underwriting practice after a period of too-loose underwriting. He noted that the market in Alaska is "coming back". The current market has been characterized as the best one in Alaska for years; the comment that "any qualified contractor can get bonding" was made repeatedly by the surety representatives interviewed.

#### Means of Increasing Bond Availability

It is the question of what constitutes a "qualified contractor" which is central to the issue of availability. For the client, bonding serves a twofold purpose: it protects him from financial loss and it is a means of pre-qualifying contractors who want to bid on work. The client is protected by the surety's financial stake in only bonding qualified contractors. Because contract bonding is both a form of credit and a pre-qualification process, there are always some contractors who are unable to secure bonding for jobs which, in the opinion of the surety, exceed their financial or technical capability. Consequently, it is impossible to judge whether the contractors who have been experiencing problems in bonding are being subjected to unfair discrimination or are simply not sufficiently qualified to warrant the surety's financial commitment. If, through additional extensive research, it is found that there is some significant pattern of discrimination against a particular type or class of contractor, the State has two types of approaches to relieve their dilemma:

Representative Patrick O'Connell  
July 1, 1980  
Page No. 15

market - are more liberal in their underwriting criteria because the federal government is subsidizing the defaults of less "qualified" contractors who are bonded through the program.

The contractor pays a higher price for SBA bonding than he would if he qualified for bonding in the standard market. Table 2 presents a comparison of the premiums charged for bonds of different amounts under the standard surety rates and the SBA rates. The standard surety charges 1.2% of the contract amount for the first \$500,000 and .0725% for up to the next \$2,000,000 of bonding. In return for this premium, the surety is obligated to the full extent of the contract amount. These are the maximum rates charged for the most risky class of contract according to the Surety Association of America rate filing.

For the specialty surety, the maximum premium is 1.5% on amounts less than \$250,000 and 1.0% on the balance of the bond. In addition, the SBA charges .2% of the contract amount as a service fee. Therefore, on a \$250,000 bond issued by the SBA, the contractor pays 1.7% of the contract amount, compared to 1.2% for similar standard bond. The surety retains 80% of the premium and the remainder goes to the SBA. For its 80% premium, the surety takes 20% of the risk of default (10% if the bond is less than \$250,000). The SBA assumes 80% of the risk of default (90% if the bond is less than \$250,000) and receives 20% of the premium and the .2% service charge.

The SBA makes it attractive for sureties to bond contractors through its program by taking a disproportionately large share of the risk for the premium it receives. Table 3 illustrates the cost of this reinsurance program to the SBA. Table 3 assumes a 1.25% loss rate on each bond; this is the loss experience for the Pacific Northwest over the life of the SBA program. This loss is divided between the surety and the SBA and then compared to the premium income each received. For instance, on a \$500,000 bond the loss is assumed to be \$6250 or 1.25% of the bond. The SBA would cover 80% of that, or \$5000. In issuing this bond the SBA received \$1250 in premium and \$1000 in service fees, a total of \$2250. The SBA incurs a loss/premium ratio of 225% by assuming the larger share of the risk while the specialty surety has a more moderate 25% loss ratio. Overall, the loss ratio is 86.2%. This compares unfavorably with the national average of 5% to 10% and the most recent Alaskan performance of 4%. Table 3 also illustrates why some contractors have trouble getting SBA bonding over \$250,000. The loss ratio doubles on these larger bonds because the government is assuming less of the risk; therefore, the specialty sureties have lost some of their incentive to take chances on weaker contractors.

Representative Patrick O'Connell  
July 1, 1980  
Page No. 17

It has not been possible to provide an extensive analysis of the SBA program within the time frame of this research. The detailed questions which would require answers before any State program is considered, are:

- Why are contractors in the SBA program unable to get bonding elsewhere? (Minorities excluded)
- Why is the loss ratio so high? How does this relate to the composition of contractors in the SBA program?
- How many contractors are able to grow out of the SBA program into the standard surety market?
- What are the administrative costs of the program?
- Based on a range of assumptions about the scope of the program, the amount of the risk assumed by the State and loss experience, what are the potential costs to the State?

#### Modifications of Bonding Requirements

The State has another alternative way of addressing the problems some contractors face in obtaining bonds, and hence access to public work: it could eliminate all bonding on State jobs or it could increase the contract amount below which no bonding is required. There are two problems with this approach. First, the State would have to duplicate the capabilities of existing sureties. It would require personnel to arrange for the satisfactory completion of contracts in default and to bring legal action against defaulting contractors for any losses it incurred. In addition, it would require the development of criteria to determine which contractors were qualified to bid on State contracts. One of the reasons for the creation of the surety system was to remove the "qualifying" process from the potential distortions of the political process. If the State became its own surety, on some or all contracts, its loss experience would primarily be determined by the appropriateness of its qualifying criteria in relation to contract requirements.

As this memorandum has shown, underwriting is a subjective process. It has been impossible to determine, within the time frame of this work, whether any conditions exist which limit bonding available in a way that warrants action by the State to increase availability of bonding. The standards that sureties established are intended to protect the client,

COMPARISON OF LOSS/PREMIUM RATIOS FOR THE SPECIALTY SURETY AND THE SBA

	<u>BOND AMOUNTS</u>				
	<u>\$249,999</u>	<u>\$250,000</u>	<u>\$500,000</u>	<u>\$750,000</u>	<u>\$1,000,000</u>
<u>SPECIALTY SURETY</u>					
-Loss	312	625	1,250	1,875	2,500
-Premium	3,000	3,000	5,000	7,000	9,000
-Loss/Premium	10.4%	20.8%	25.0%	26.8%	27.8%
<u>SBA</u>					
-Loss	2,812	2,500	5,000	7,500	10,000
-Premium	750	750	1,250	1,750	2,250
-Service Charge	<u>500</u>	<u>500</u>	<u>1,000</u>	<u>1,500</u>	<u>2,000</u>
-Premium + Service Charge	1,250	1,250	2,250	3,250	4,250
-Loss/Premium + Service Charge	225.0%	200.0%	222.2%	230.8%	235.3%
<u>OVERALL:</u>					
-Loss/Premium + Service Charge	73.5%	73.5%	86.2%	91.5%	94.3%

House Research Agency

July 1, 1980



ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY

Pouch Y, State Capitol  
Juneau, Alaska 99811  
(907) 465-3991

MEMORANDUM

July 16, 1980

TO: Representative Patrick O'Connell

FROM: Anne DeVries *ADV*  
Issues Analyst

RE: Contract Bonding  
Research Request No. 147 (Additional Material)

I have enclosed three excerpts from a report on the use of surety bonds in federal construction prepared by the General Accounting Office and submitted to the U.S. Congress. This report concluded that the government should not eliminate bonding and become its own self insurer. In addition, the report found problems in the ability of the SBA program to meet its objective of providing a transitional program for a marginal contractor.

One problem facing the SBA which I did not address was the involvement of organized crime in the specialty surety business. Recently, NBC Nightly News examined abuse of the SBA program in Chicago, where it is believed that fraudulent claims are being submitted by sureties fronting for organized crime. I do not know much about this beyond the NBC news story. However, if the State does consider a SBA-like program, this potential type of abuse may need to be examined more closely.

AHD/bf  
Enclosure



# REPORT TO THE CONGRESS

Use Of Surety Bonds  
In Federal Construction  
Should Be Improved

Multiagency

BY THE COMPTROLLER GENERAL  
OF THE UNITED STATES

LCD-74-319

JAN. 17, 1975

in trouble. Most Federal agencies, if they could develop the necessary capabilities, it would probably prove costly to the Government.

Although we do not recommend eliminating the current bonding system, we feel that the Government is not benefiting as much as it could from surety bonds. Chapter 5 discusses those areas where the Federal construction agencies can improve their participation in the system.

CLAIMS OF SUBCONTRACTORS,  
SUPPLIERS, AND LABORERS

The basic purpose of the Miller Act is to provide a means of recourse for subcontractors, suppliers, and laborers on Federal construction projects. Payment bonds provide the means by which subcontractors, suppliers, and laborers can submit claims against contractors, even in the absence of defaults.

We examined selected project files at 9 Federal construction agencies, including files relating to 75 defaulted contracts. For 17 of the defaults, we examined the project files at both the Federal agency and the cognizant surety company. In many instances, subcontractors, suppliers, or laborers submitted claims or voiced complaints directly to the Federal agencies. Because these projects were bonded, the Federal agencies simply referred the complaints to the appropriate surety company. The fact that sureties handled the claims removed potentially major legal and administrative problems from the Federal construction agencies.

The surety industry has said that it does not keep overall statistics on the amount of claims submitted and paid on Federal construction projects. To ascertain the prevalence of claims, we reviewed selected surety companies. Presented below are examples of the situations we found.

Example 1

On a \$36,000 Navy contract, a subcontractor submitted a claim for \$25,000 to the surety company, citing non-payment by the contractor. The surety maintains that,

provide in-house technical assistance to a contractor. However, the agencies currently have no legal means, administrative machinery, or resources to provide financial aid to contractors in trouble.

As shown in the following examples, the surety companies can and do provide financial assistance to contractors.

#### Example 1

A contractor involved in a Federal dam project for the Corps of Engineers, Department of the Army, experienced a serious cash shortage that threatened its ability to continue operations. The surety elected to support the contractor and secured a \$1 million line of credit for the contractor at a commercial bank. The surety guaranteed advances under the line of credit. As a result of the surety's aid, the contractor avoided default and completed the project.

#### Example 2

The contractor exhausted its capital at the time it was involved with nine bonded projects, including eight Federal jobs. The surety provided the contractor with enough capital to pay construction costs and to satisfy outstanding bonded job obligations. Surety payments on the Federal jobs totaled \$138,500, plus legal and other expenses of over \$5,000. The surety eventually was reimbursed.

It was evident from our study that the decision to provide financial aid to contractors was generally based strictly on sureties' concern for minimizing potential losses. If the surety determined that immediate financial aid would be less costly than the loss from default, the aid was provided. However, if the surety felt that it would be potentially less costly to take over the contract, the contractor was allowed to default.

#### DEFAULTS ON FEDERAL CONSTRUCTION

From the nine Federal agencies reviewed, we tried to obtain detailed data on the default history for a 10-year

The above approach does not consider:

1. The costs related to the other services provided by sureties, particularly paying claims and providing financial aid to contractors.
2. What the default ratio would be if surety bonds were eliminated.

If bonds were eliminated, these two issues would become particularly important. Unless some substitute method was devised to handle claims and provide contractors with financial aid, defaults would increase.

Other factors affect the ratio of losses to premiums earned. When a default occurs, sureties try to minimize their losses through various legal sanctions against the defaulting contractor, such as attachment and subsequent liquidation of the contractor's equipment and personal assets. If the Government became a self-insurer, it would have to take similar actions or face the prospect of higher loss ratios.

Most agencies expressed satisfaction with sureties' efforts on defaulted contracts. Our review of defaulted contracts at both the Federal agencies and the surety companies generally supported the agencies' observations. Sureties were usually prompt in attempting to reach agreements with the agencies regarding arrangements for completing the projects. Generally the sureties (1) cooperated with the agencies in completing the projects and (2) honored the agencies' claims for reimbursement of additional contract costs incurred in completing the projects. As discussed in chapter 5, we believe the agencies, besides being reimbursed for increased contract costs, should also be reimbursed for the administrative costs incurred in handling defaults.

#### CONCLUSIONS

Because of the unavailability of cost data and the Government's inexperience in providing certain surety-type services, we could not quantitatively determine:

## CHAPTER 6

### SBA BOND GUARANTEE PROGRAM

As part of our study, we examined SBA's bond guarantee program. The program's basic objectives are to (1) provide bonds for small and minority contractors who cannot obtain bonds in the open market and (2) increase the viability of these contractors so they can make the transition ("graduate") to the regular bonding system. We believe that the program would be more effective if SBA developed formal criteria for graduating participating contractors and established a monitoring system to insure that sureties are complying with such criteria.

#### PROGRAM OPERATION

*of this is out of date*

The bond guarantee program, established pursuant to Public Law 91-609 (15 U.S.C. 694a-b), allows SBA to guarantee for a fee, any surety company against up to 90 percent of its losses resulting from a small contractor's breach of the terms of a bid, performance, or payment bond. To qualify, a contractor must be a small business with annual sales under \$750,000 and be able to show that a surety bond is required and could not be obtained on reasonable terms and conditions without an SBA guarantee. The guarantee is limited to surety bonds on contracts up to \$500,000.

SBA stated that, as of May 20, 1974, it had guaranteed bonds on 15,093 contracts having a total value of about \$1 billion. As of that date, 99 sureties were participating in the program.

To obtain a bond, a contractor applies to a bond broker of its choice. The contractor furnished the broker with the necessary financial data, work history, and other information. If the broker decides that the contractor may be bondable, he refers the application to surety companies he represents until he finds a surety willing to bond the contractor.

A surety company which is interested in the contractor application decides whether to (1) bond the contractor without an SBA guarantee, (2) bond with an SBA guarantee, or (3) not bond under any circumstances. If the surety determines an SBA guarantee is necessary, it sends a letter with supporting data to the appropriate SBA regional office.

consequently, sureties participating in the program incur only a 10-percent risk for 90 percent of the bond premiums collected.

The authorizing legislation stated that SBA could guarantee up to 90 percent of the penal amount of the bond in return for a reasonable portion of the premiums collected from the contractors. The disparity in the relationship of risk to premiums resulted from the uncompromising position taken by the surety industry during negotiations. According to SBA officials, the surety industry dictated the terms under which it would participate in the program. One condition the industry insisted on was that SBA had to agree to accept 90 percent of any loss for no more than 10 percent of the premiums collected. SBA agreed, and the industry indicated a willingness to reassess the adequacy of SBA's 10-percent share after 2 years of experience.

In February 1974, SBA met with surety representatives to reassess the "90-10" ratio. No change resulted from the meeting.

SBA's apparent lack of forcefulness in dealing with the industry was explained as being the result of the industry's take it or leave it proposition for SBA. SBA officials made the following observations.

- If SBA had not been willing to accept 90 percent of the risk, the industry would not have been willing to participate in the program.
- The surety's premium on the average guaranteed bond is not large and has to be shared with SBA and the broker.
- The 10-percent risk the surety faces makes it more responsible than it would be if it bore no risk whatsoever.

Sureties are allowed to charge higher premium rates for guaranteed bonds. Normally, bonds cost contractors \$10 per \$1,000 for contracts up to \$100,000. However, for bonds issued under the SBA program, sureties were allowed to charge a rate up to \$20 per \$1,000. In March 1973, the rate

After receiving its comments, we asked SBA to provide us with a copy of the established criteria. SBA officials stated that there was no written criteria, just an understanding among SBA's field offices to review a contractor's file when a surety applies for a guarantee.

The officials acknowledged that SBA has no systematic method for determining whether a contractor has, in fact, graduated. It should be recognized that "marketplace conditions" could produce results other than graduation, such as a contractor no longer being in business or maybe being involved in projects that do not require bonds.

We still believe the program would be more effective if our recommendation were implemented. Following are comments from those Federal construction agencies--GSA, Transportation (DOT), and NASA--that discussed the SBA section of the report.

GSA--"Since the recommendations directed primarily toward SEA would generate certain benefits for the procuring agencies participating in the small business programs, we also support those recommendations."

DOT--"We do not object to the recommendations concerning the Small Business Administration's involvement in the Surety Bond Guarantee Program."

NASA--"We believe the GAO findings to be accurate and their recommendations sound."

Our report was also reviewed by representatives from the Surety Association of America, the American Insurance Association, the Reinsurance Association of America, the National Association of Surety Bond Producers, and several surety companies. All the representatives stated that the SBA section of the report was an accurate description of the SBA program and how it is currently operating.

After carefully considering SBA's informative response, we still believe our report accurately reflects the current state of the bond guarantee program, a view supported by the Federal construction agencies and the surety industry. We believe that implementation of our recommendations will make the program more effective and its goals more readily attainable.

STATE OF ALASKA

WALT FURNACE, CHAIRMAN  
RICK UEHLING, VICE CHAIRMAN  
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POUCH V  
JUNEAU, ALASKA 99811  
(907) 485-3892

HOUSE LABOR AND COMMERCE COMMITTEE

To: All members of the House Labor and Commerce Committee

From: Representative Walt Furnace, Chairman

Date: September 21, 1983

RE: Licensed/Bonded Contractors

Enclosed please find a selection of materials you may find informative for the meetings on September 26 and October 3.

Protection Office can intervene legally on the consumer's behalf. Often when the consumer finds out this is not the case, he/she may file directly in court or go to Occupational Licensing or the Department of Labor without filing a written complaint with Consumer Protection. In fact, the more serious or legally urgent the contractor complaint, the more strongly we urge seeing a private attorney and then we often do not get a written consumer complaint on those cases.

In reviewing our phone logs, our information officer estimates that at least 55-60 additional contractor complaints were received by the Consumer Protection Office in 1981. These complaints are not reflected in the previously discussed charts because written complaints were not formally processed in these phone-in cases. Total estimated contractor complaints (not including plumbers, electricians, etc.) for 1981 alone could be 87-92.

There is a high percentage of contracting businesses which shut down, enter bankruptcy, or simply disappear after a consumer complaint is filed, making any kind of resolution of a complaint pretty impossible.

Complaints About Quality of Contractor's Work  
(1979-1982 sample from 97 total  
number of written complaints)

Major delays	12
*Deviation from Original Plan	6
*Extra Charge/Cost Overruns	5
*Defective Work/Major/ Structural	35
*Defective Work/Finish/ Cosmetic	22
*Defective Work/Code Violation	6
*Defective Work/Operational	11
*Incomplete Work/Major	9
*Incomplete Work/Finish/ Cosmetic	26
*Incomplete Work/Operational	4
*Clean-Up	4
<hr/>	
Total	140

The figures available for 1982 reflect that 8 complaints have already been filed with the Consumer Protection Section. Projected over the course of the year the 1982 total could be 48 complaints, a 33% increase over the next highest year, 1980. This would seem to be a conservative projection, as there will be approximately 4,500 housing starts in Anchorage alone this year. With this increased building activity it is likely that there will be a substantial increase over the year.

A breakdown by area is as follows:

Anchorage	76
Outlying areas (Willow, Wasilla, Palmer)	8
Kenai area	8
Bush	4
Fairbanks	1
<hr/>	
Total	97

The following is a list of dwelling unit starts in Anchorage for 1980 and 1981. Also listed is the projected number of starts for 1982.

Dwelling Unit Starts

1980	1,071
1981	2,601
1982 (projected)	4,000-4,500

The figures almost speak for themselves. The projected growth in dwelling unit starts for the Anchorage area will be between 35% and 43%.

The impact of this increased activity upon the consumer is obvious. More contractors will be competing for this new business and our experience with the oil pipeline boom indicates that many of these new contractors will be "take the money and run" types.

HB

654

#1



## Speaker of the House of Representatives

Pruch V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-3720

Official Business

FEBRUARY 11, 1984  
FOR IMMEDIATE RELEASE

Contact: Rep. Joe Hayes or  
Jeff Day  
465-3721

HAYES PROPOSES STATE OFFICE IN KOREA

House Speaker Joe Hayes will introduce legislation Monday that would establish an Alaskan office in Seoul, Korea. The Korean office would operate in a similar fashion to the state office established in Tokyo.

Hayes noted that in October of 1983 the Governor headed a trade delegation to Korea and Japan. The Governor later stated that Alaska desired more Korean participation in developing Alaska's natural resources. "Korean business and government leaders have expressed desires to assist in such enterprises as road building, pipeline and steel tower construction and natural gas development. Establishment of an Alaskan office in Korea would facilitate a stronger working relationship," Hayes said.

Hayes also noted the exchange of trade delegations in 1981, 1982 and 1983 and that efforts have also been launched to establish at least two free trade zones in Alaska by the Alaska-Korea Business Council toward a goal of encouraging development of steel rolling and fabricating facilities for pipelines and refineries.

"There have been ongoing discussions between Alaska Legislators and Koreans regarding increased tourism and exportation of Alaskan crude oil, natural gas, coal and other minerals," Hayes said. Korea Electric Power Corporation plans to begin export of about 800,000 tons per year of Usibelli coal later this year.

"The purpose of the state's Asian office has been to encourage a closer working relationship with Pacific Rim countries, primarily with Japan. The concerns of Japan and Korea are similar regarding investment in Alaska. While Korea has demonstrated a desire to invest in Alaska, no such effort at establishing closer ties via a permanent state office in Korea has been undertaken," Hayes said. "While the Asian office's duties include encouraging our Korean interests, I think the time has come to devote specific and greater attention to Korea than is currently possible through the Tokyo office."

A recent report from the House Research agency noted that not one state has established a state office in Korea. "Alaska was the first state to open an official state office in Japan in 1965. I think we should follow tradition and be the first state to open an office in Korea. Such an office will clearly demonstrate to Koreans that we believe their country has much to offer us, and we have many resources from which they can benefit as well," Hayes added.

The Department of Commerce and Economic Development recently noted that \$1.3 billion worth of Alaskan resources were sold in 1982 in East Asia and Pacific Rim countries. Most of that was sold in Japan, particularly in the areas of liquified natural gas, seafood and timber. About \$96 million worth of resources were sold to Korea with fertilizer, timber and seafood dominating the list.

"While the Asian Office has had it's share of controversies over the years, it is now proving to be an effective link between Alaska and Japan as evidenced by increased trade. The potential for increased trade with Korea is as great, and establishment of an office in Seoul would help bring that potential about," Hayes said.

# # # # #

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: 2/24/84

Page 1 of 3

REQUEST  
Bill/Resolution No.: HB 654  
Title: An act relating to  
Alaska Foreign Offices  
Sponsor: Hayes  
Requestor:  
Date of Request:

FISCAL DETAIL  
Agency Affected Com. and Econ Dvo.  
Program Category Affected:  
BRU, Program or Subprogram(s) Affected:  
Economic Development Advocates BRU  
International Trade Component

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		125.3	131.5	138.1	145.1	152.4
200 TRAVEL		15.0	15.8	16.6	17.4	18.3
300 CONTRACTUAL		180.7	189.7	199.2	209.2	219.7
400 SUPPLIES		14.0	14.7	15.4	16.2	17.0
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		335.0	351.7	369.3	387.9	407.4
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		335.0	351.7	369.3	387.9	407.4
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

In FY 85 funds to offset the establishment of the office could come from the 750.0 the administration has proposed for a luxury cruise to show Alaska to Pacific Rim Officials. The establishment of a Korean office would have greater and longer lasting effect.

ANALYSIS: Attach a separate page for analysis

Prepared By: Jeff Day Phone: 465-3720  
Division: House Speaker's Office Date: 2/24/84  
Approved by Commissioner: Date: 2/24/84  
Agency: Speaker

Distribution (by Agency preparing fiscal note):

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

Fiscal Note by House Speaker 1871/83

The Labor and Commerce fiscal note anticipates only one state employee as the director. Based on several studies regarding our Asian office, it has been suggested that there be a second in command available so as not to interrupt the continuity of the office when the director is away. Proposed changes in the fiscal note reflect the following.

PERSONAL SERVICES

Director	Range 26 A	\$4961/ mo x 12
Dep. Director	Range 19 A	<u>\$3193/ mo x 12</u>
SUBTOTAL		\$97,848/ year
benefits 28%		<u>27,400</u>
TOTAL		\$125,248/ year

TRAVEL

reduce from 25.0 to 15.0

This will allow quarterly returns to the state for either the director or deputy and travel within Korea. There will be little if any need for staff to travel in other countries outside of Korea as the Asian office is currently doing since the Korean office is only concerned with Korea. The Asian office staff has been traveling to Korea and China since the responsibilities are supposed to include those countries.

CONTRACTUAL

Reduce Space Expense from 90.0 to 50.0. This covers expense for office space but not for staff apartment.

Reduce Funds for contract nationals from 78.0 to 40.0. This should provide for a bilingual executive secretary and a translator/ research analyst. This should be quite adequate in view that a deputy director is proposed as well.

It should also be noted that there are active university programs teaching students about Pacific Rim countries and these students might be available for internship use through cooperation with Alaskan universities. This would be added staff potential for the office.

Eliminate other contractual funds in the amount of 17.9 unless there is adequate justification.

Reduce Hospitality from 37.3 to 20.0. This may be reduced further. It's inconceivable that this expense should equal the current hospitality activities of the Asian Office.

TOTAL REDUCTION IN CONTRACTUAL

from 293.9 to 180.7

Fiscal note for succeeding years assumes a 5% inflation rate at continuing level of service.

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

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

(Page 1 of 2)

REQUEST

Bill/Resolution No.: HB 654  
 Title: "An Act relating to Alaska Foreign Offices ...."  
 Sponsor: Hayes  
 Requestor: House Labor/Commerce  
 Date of Request: \_\_\_\_\_

FISCAL DETAIL

Agency Affected: Commerce & Economic Development  
 Program Category Affected: \_\_\_\_\_  
Economic Development  
 BRU, Program or Subprogram(s) Affected: \_\_\_\_\_  
Economic Development Advocates BRU  
International Trade Component

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		101.1	106.2	111.5	117.1	123.0
200 TRAVEL		25.0	26.3	27.6	29.0	30.5
300 CONTRACTUAL		293.9	308.6	324.0	340.2	357.2
400 SUPPLIES		14.0	14.7	15.4	16.2	17.0
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		434.0	455.8	478.5	502.5	527.7
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		434.0	455.8	478.5	502.5	527.7
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		1.0	1.0	1.0	1.0	1.0
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Lois Cook, Director Phone: 465-2505  
 Division: Administrative Services Date: \_\_\_\_\_

Approved by Commissioner: Richard A. Lyon Date: 2/22/84  
 Agency: Commerce & Economic Development

Distribution (by Agency preparing fiscal note):

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

Fiscal Note by Dept of Comm 12/1/83