

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

3478 HLAB HB 168 - HB 170

354



RECORDS CERTIFICATION



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COMMITTEE REPORT

HOUSE

JUDICIARY

(7)

FURTHER: FINANCE

2/1/85

Date: Feb. 21, 1985

The Committee on LABOR & COMMERCE has had HB 168

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

under consideration and recommends:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HR 168 same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation Zero Fiscal Note Attached
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

<u>Mike Navarre</u> Navarre	
<u>David Pearce</u> Pearce	
<u>Mike Davis</u> Davis	
<u>Bob Proucher</u> Proucher	
<u>John Hanley</u> Hanley	
<u>John Koponen</u> Koponen	

Mike Navarre
CHAIRMAN

Bannister
2/21/85 ✓ ✓

Original sponsors: Sund and Taylor

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 168 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (e) The Department of Commerce and Economic Development and the

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

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

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

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

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

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

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

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

6 Sec. 08.18.131. INJUNCTION. In an action instituted in the
7 superior court by the commissioner [OF LABOR OR THE COMMISSIONER'S
8 REPRESENTATIVE], a person may be enjoined from acting in the capacity
9 of a contractor in violation of this chapter [MAY BE ENJOINED FROM
10 DOING SO]. In addition to other relief, a civil penalty not to exceed
11 \$250 may be imposed for each violation. Each day that an unlawful act
12 continues constitutes a separate violation.

13 * Sec. 9. AS 08.18.141 is amended to read:

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

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

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

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

25 * Sec. 11. Sections 1, 2 and 4 - 10 of this Act take effect July 1,
26 1985.

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

28 * Sec. 13. Section 4 of this Act applies to general contractor and
29 specialty contractor licenses that are issued or renewed by the Department

1 of Commerce and Economic Development after July 1, 1985.
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STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date: _____

REQUESTBill/Resolution No.: CSHB 168Title: An Act relating toConstruction ContractorsSponsor: Rep. Sund

Requestor: _____

Date of Request: _____

FISCAL DETAILAgency Affected: Commerce & Economic Dev.

Program Category Affected: _____

Consumer Protection

BRU, Program or Subprogram(s) Affected: _____

Occupational Licensing

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL						
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REVENUE		0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND		253.3	239.4	251.5	264.0	277.3
FEDERAL FUNDS						
OTHER						
TOTAL		253.3	239.4	251.5	264.0	277.3

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

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

Prepared By: Jennifer Strickler, Management Analyst Phone: 465-2144Division: Occupational Licensing Date: 2-21-85Approved by Commissioner: Loren H. Lounsbury Date: 2/21/85Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and Budget

Impacted Agency(ies)

7/1/84

1.	POSITION TITLE INVESTIGATOR III - Juneau				RANGE/STEP 18A	DEPT. UNIT GGU	PAGE/LINE	COV.	APPROV.	DISAPP.																																			
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION AWA	ELECTION DISTRICT	LEG.																																					
3.	CONTINUATION LEVEL				ADDITION																																								
4.	TYPE OF EXPENDITURE				AMOUNT																																								
	1		2		3																																								
	PERSONAL SERVICES																																												
5.	Salary	37.4																																											
6.	Benefits	6.0																																											
7.	Supplemental Benefits	2.3																																											
8.	Fired Benefits	2.7																																											
9.	TOTAL PERSONAL SERVICES	01		48.4																																									
10.	Travel	02		12.5																																									
11.	Contractual	03		10.2																																									
12.	Commodities	04		1.2																																									
13.	Equipment	05		4.7																																									
14.	Other			4.1																																									
15.	TOTAL COST			81.1																																									
JUSTIFICATION																																													
<p>This position is necessary to implement the provisions of the Construction Contractors Bill as it relates to public protection, investigations and enforcement of the new statute. The new statute addresses a more active and positive approach to eliminate the existing problem of unlicensed contractors.</p> <p>Current resources from the Department of Labor, Division of Labor Standards and Safety, and the Department of Commerce and Economic Development, Division of Occupational Licensing, for enforcement have been overburdened and limited to the investigations and enforcement in the many other licensing and inspection areas.</p> <p>This position would conduct investigations into violations of AS 08.18, throughout the Southeast area of the State.</p>																																													
<table border="1"> <thead> <tr> <th></th> <th>RECEIPT CODE</th> <th colspan="2">FUNDING SOURCE</th> <th></th> </tr> </thead> <tbody> <tr> <td>16.</td> <td></td> <td>Federal Receipts</td> <td>1002</td> <td></td> </tr> <tr> <td>17.</td> <td></td> <td>C.F. Hatch</td> <td>1003</td> <td></td> </tr> <tr> <td>18.</td> <td></td> <td>General Funds</td> <td>1004</td> <td>81.1</td> </tr> <tr> <td>19.</td> <td></td> <td>I-A Receipts</td> <td>1005</td> <td></td> </tr> <tr> <td>20.</td> <td></td> <td>Program Receipts</td> <td>1028</td> <td></td> </tr> <tr> <td>21.</td> <td></td> <td>Other</td> <td></td> <td></td> </tr> </tbody> </table>												RECEIPT CODE	FUNDING SOURCE			16.		Federal Receipts	1002		17.		C.F. Hatch	1003		18.		General Funds	1004	81.1	19.		I-A Receipts	1005		20.		Program Receipts	1028		21.		Other		
	RECEIPT CODE	FUNDING SOURCE																																											
16.		Federal Receipts	1002																																										
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20.		Program Receipts	1028																																										
21.		Other																																											
FOR BSM USE ONLY KEY NUMBER _____																																													

REQUEST FOR
NEW POSITION

AGENCY Commerce & Economic Development

PROGRAM Consumer Protection

BRU Occupational Licensing

COMPONENT Investigations

FY 86

Page 1 of 3
Revised Date _____

1.	POSITION TITLE INVESTIGATOR III - Fairbanks				RANGE/STEP 18A	BARG. UNIT GGU	PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION JBA	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL		ADDITION		JUSTIFICATION					
4.	Type of Expenditure			AMOUNT	<p>This position is necessary to implement the provisions of the Construction Contractors Bill as it relates to public protection, investigations and enforcement of the new statute. The new statute addresses a more active and positive approach to eliminate the existing problem of unlicensed contractors.</p> <p>Current resources from the Department of Labor, Division of Labor Standards and Safety, and the Department of Commerce and Economic Development, Division of Occupational Licensing, for enforcement have been overburdened and limited to the more serious violations. This has been by increased investigations and enforcement in the many other licensing and inspection areas.</p> <p>This position would conduct investigations into violations of AS 08.18, throughout the Northern Interior of the State.</p>					
	1	2	3							
	PERSONAL SERVICES									
5.	Salary	42.8								
6.	Benefits	6.9								
7.	Supplemental Benefits	2.6								
8.	Fixed Benefits	2.7								
9.	TOTAL PERSONAL SERVICES	01	55.0							
10.	Travel	02	15.8							
11.	Contractual	03	11.6							
12.	Commodities	04	1.2							
13.	Equipment	05	4.2							
14.	Other		4.5							
15.	TOTAL COST		92.3							
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts 1002								
17.		G.F. Match 1003								
18.		General Funds 1004		92.3						
19.		I-A Receipts 1005								
20.		Program Receipts 1028								
21.		Other								
FOR BSM USE ONLY KEY NUMBER _____										

REQUEST FOR
NEW POSITION

AGENCY Commerce & Economic Development
PROGRAM Consumer Protection
BRU Occupational Licensing
COMPONENT Investigations

Page 2 of 3
Revised Date _____

FY 86

1.	POSITION TITLE INVESTIGATOR III - Anchorage				RANGE/STEP 18A	BARG. UNIT GCU	PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION EBA	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION					
4.	TYPE OF EXPENDITURE				ALLOTTED					
	1		2		3					
	PERSONAL SERVICES									
5.	Salary		37.4							
6.	Benefits		6.0							
7.	Supplemental Benefits		2.3							
8.	Fixed Benefits		2.7							
9.	TOTAL PERSONAL SERVICES		01		48.4					
10.	Travel		02		12.5					
11.	Contractual		03		10.0					
12.	Commodities		04		1.2					
13.	Equipment		05		4.2					
14.	Other				3.6					
15.	TOTAL COST				79.9					
	RECEIPT CODE				FUNDING SOURCE					
16.					Federal Receipts 1002					
17.					G.F. Hatch 1003					
18.					General Funds 1004					
19.					I-A Receipts 1005					
20.					Program Receipts 1028					
21.					Other					
FOR BSM USE ONLY										
KEY NUMBER _____										

This position is necessary to implement the provisions of the Construction Contractors Bill as it relates to public protection, investigations and enforcement of the new statute. The new statute addresses a more active and positive approach to eliminate the existing problem of unlicensed contractors.

Current resources from the Department of Labor, Division of Labor Standards and Safety, and the Department of Commerce and Economic Development, Division of Occupational Licensing, for enforcement have been overburdened and limited to the more serious violations. This has been caused by increased investigations and enforcement in the many other licensing and inspection areas.

This position would conduct investigations into violations of AS 08.18, throughout the South Central and Western areas of the State.

REQUEST FOR
NEW POSITION

AGENCY Commerce & Economic Development
PROGRAM Consumer Protection
BRU Occupational Licensing
COMPONENT Investigations

FY 86

Page 3 of 3
Revised Date _____

CSHB 168

Amendments to House Bill 168

Page 2: Amend beginning on line 7

their true names and addresses and the true name of the contractor firm, at all times while acting in the capacity of a contractor or performing related activities.

Page 2: Substitute Sec. 08.18.117 with HB151's Sec. 08.18.116 and 08.18.117.

Page 2: Amend beginning on line 28 to read:

writing. A person receiving the citation may not be required to sign a notice to appear in court.

Page 3: Amend beginning on line 3 to read

weekends and holidays after the issuance of the citation unless the person cited requests an earlier hearing.

Page 3: Amend beginning on line 6 to read:

(c) The Department of Commerce and Economic Development and the Department of Labor are each responsible for the issuance of books.

Page 3: Beginning line 20, substitute section (e) with HB151's section (e) on page 4, line 1.

Page 4: Beginning on line 10, substitute (f) with HB151's (f) beginning on page 4, line 22.

Page 4: Amend beginning on line 21 to read:

seek equitable relief preventing the Department [COMMISSIONER] of Labor [LABOR] or the Department of Commerce and Economic Development from enforcing the order.

Page 5: Beginning on line 3, substitute Sec. 08.18.141 with HB151's Sec. 08.18.141, beginning on page 5, line 19.

Page 5: Remove Section 10, beginning on line 6, in its entirety.

Page 5: Amend beginning on line 14 to read:

(4) "department" means, unless the text reads otherwise, the Department of Commerce and Economic Development.

Page 5: Amend AS 08.18.171 beginning on line 16 to read:

Sec. 12. Sections 1, 2 and 5-11 of this act take effect July 1, 1985.

Sec. 13. Section 3 of this act takes effect July 1, 1986.

Sec. 14. Section 4 of this act takes effect for all new and renewal licenses July 1, 1985.

February 20, 1985 Wednesday 1:15 pm 104 Capitol

LABOR AND COMMERCE AGENDA

- 1) CALL MEETING TO ORDER
- 2) NOTE TIME/DAY/HOUR
- 3) NOTE MEMBERS PRESENT AND MEMBERS ABSENT; plus LATE ARRIVALS
- 4) RECOGNIZE ANY VIP'S OR GUESTS PRESENT
- 5) REMIND EVERYONE PRESENT TO SIGN IN AS EITHER A WITNESS OR AS AN OBSERVER
- 6) EXPLAIN THE ORDER OF BILLS BEFORE THE COMMITTEE
 - a. HB 155
 - b. HB 151
 - c. HB 168
- 7) ANNOUNCE FIRST BILL BEFORE THE COMMITTEE, THEN SECOND, ETC.
--- progress of the meeting---
- 8) MAKE SURE ALL MEMBERS SIGN ANY BILL THAT IS PASSED OUT OF COMMITTEE
- 9) ANNOUNCE TIME OF ADJOURNMENT

Note: As each witness comes forth, please request that they state their name and who they represent for the record, and if they are not speaking loudly enough, ask them to speak up.

To: Mike
From: Roger

February 20 Meeting HB 151, HB 168

I checked with Marilyn Twitchell in the Governor's Office; they have no trouble with letting the committee go with Rep. Sund's HB 168 as long as it is amended to include enforcement activity for both the Dept of Labor and the Dept. of Commerce, instead of just Commerce with Sund's bill. I understand from Kitty Rodriguez, Sund's aide, that they will be submitting a proposed draft CS that will do this.

There should be a fair amount of activity on this bill: it happens that the Alaska Homebuilder's Association is having their annual meeting in town and will have people here to testify, including perhaps two of your own constituents that you have a meeting with on Thursday, Mark Passe and Mitch Robinson (it was set up after your conversation with Clark Gruening). I met with some of the AHA people and they seem to be supportive of the bill, and want to see enforcement increased. They even mentioned raising their own licensing fees to help pay for it. (Keep in mind that it is contractors license fee revenues that is currently paying most of the way for support of all the other Occupational Lic. activity. If HB 78 on Occupational Licensing fees is passed, the Dept. of Commerce would be bringing in a huge surplus of extra revenues in contractor's license fees, so there will hardly be a need to raise them). They also wanted some amendments added into the bill, and they are being included in with the amendments proposed by Rep. Sund, whom they met with already on this.

Also, the Associated General Contractors are having their annual Board Meeting in Juneau this week, and so some input from them will be expected, since there are some punitive aspects to these bills in regard to contractors. They will probably be opposed to either bill.

There is a letter we received asking that the bonds required of contractors be raised not to just \$5,000 and \$10,000, but to \$25,000. It seems to me that this is an attempt by larger contractors to cut out the smaller ones from the competitive bid process, so this whole requirement area may be unfair, though the intent is to protect the consumer.

You should resolve what is happening with the Fiscal Note from the Dept. of Commerce: I am hearing two different versions of what is going on with it: a) that Labor will pick up the investigative tab for Commerce so that Commerce will only have a small fiscal note of some \$2,000 to develop and print additional forms for the licensing activities required; and b) that Commerce really needs the extra manpower in the FN of \$253,300 to provide enforcement activities because they are enforcing standards and licensing activities generated from complaints while the Dept. of Labor is enforcing on-site compliance. I think the resolution is simply to establish thru questions to Harry Traeger what would be the appropriate level of enforcement for the Dept. of Commerce—he's afraid that a high fiscal note would kill the bill, so that is why he is pushing for a zero note; it's a policy question that he should not be deciding.

Latest update: I found out that last year this bill as HB 611 went through some 25 hours of committee hearings, so the AGC had a lot of time to massage it into an acceptable shape for them, so they will not be hear in force; though Resa King will be here. Basically, it is a Homebuilders bill, and they will be here in froce.

I also just found out this morning from Kitty that Rep. Sund is not coming in with an amendment to HB 168 to change it to HB 151 language--he wants to introduce the concept, but not the specific wording--a tactical error I think. In any event, the Dept. of Labor in their fiscal note has attached their proposed amendments which essentially change 168 to look like 151 (you might ask them, just to clarify this), so you can go with their wording if you like.

There was a misprint in the Chief Clerk's stating that today was a teleconference hearing, so I dont know what happened; it was a printing error.

· M E M O R A N D U M

TO: All Members, Labor and Commerce Committee

FROM: R. Poppe -- Committee Staff

DATE: February 19, 1985

SUBJECT: Overview; HB 151 & HB 168

On Wednesday, February 19, 1985, at 1:15-2:45 pm in Room 102 of the Capitol Building, the House Labor and Commerce Committee met on HB 151 and HB 168, both of which are titled "An Act relating to construction contractors."

Last year, HB 610 was introduced to the House as a means for creating a new Board of Builders. However, the Governor's Office generally opposes development of new Boards without substantial support, so the bill was greatly revised into a form that is similar to HB 151 and HB 168 which have been introduced this year. HB 610 passed the House last year by a vote of 34 yeas and 6 nays on May 8, 1984, and died in Senate Labor and Commerce Committee.

The thrust of both bills is to increase various enforcement activities of the State in order to protect the public from unlicensed and unbonded contractors who are unscrupulously taking advantage of them. The Governor's Letter of Transmittal gives a sectional analysis of the bill, spelling out the specific areas of increased enforcement activity.

In HB 151, the Governor's version, enforcement activities would be given to both the Dept. of Labor and the Dept. of Commerce to issue citations in the course of their activities. Currently, the Dept. of Commerce has no real enforcement activity in this area, and the Dept. of Labor has only the power of a cease-and-desist order, and then they have to go from there to a contempt order from the courts.

The basic difference between HB 151 and HB 168 by Rep. Sund is that in HB 168, only the Dept. of Commerce would have enforcement powers, a position that is opposed by the Dept. of Labor and the Administration, and should be resolved by amendments proposed by Rep. Sund for HB 168. A check with the Governor's Office indicates that if HB 168 is properly amended, the Governor would have no trouble supporting Rep. Sund's HB 168 instead of his own proposed HB 151.

The key thrust of both bills is that enforcement activity be increased in this problem area. The Dept. of Labor has a zero fiscal note because they already have inspectors on job sites, and so it would cause no extra expense for them to issue citations for violations and in general provide the other enforcement activities necessary. The Dept. of Commerce would need to develop these capabilities, since their current investigative activity is directed to other high priority areas, so they had a fiscal note of \$253,300 in HB 151. If they do not increase their activity, the fiscal note is zero. What needs to be established is the level of enforcement that the legislature desires to be enforced.

XX REPLY TO

— POST OFFICE BOX 110
ANCHORAGE ALASKA 99501
PHONE 1-907-263-2000

— NATIONAL CENTER
100 CANTONMENT ROAD
ANCHORAGE ALASKA 99501
PHONE 1-907-263-2000

— U.S. FEDERAL BUREAU
400 NORTH BROAD STREET
ANCHORAGE
ANCHORAGE ALASKA 99501
PHONE 1-907-263-2000

— STATE GOVERNMENT RECORDS
P.O. BOX 471
ANCHORAGE ALASKA 99501
PHONE 1-907-263-2000

DEPARTMENT OF LAW
OFFICE OF ATTORNEY GENERAL
CONSUMER PROTECTION SECTION

February 15, 1985

The Honorable John Sund
Alaska State Legislature
Attn: Kitty Rodriguez
Pouch V, Mail Stop 3100
Juneau, Alaska 99811

Dear Representative Sund:

Thank you for your interest in protecting consumers through considering increasing the bond requirements for contractors and specialty contractors.

As you know pursuant to AS 45.50.521 of Alaska's Unfair Trade Practices and Consumer Protection Act we cannot reveal the name of any businesses we are investigating or any respondent in a consumer complaint unless we file a lawsuit against that business. Your staff requested some statistical information concerning the numbers of consumer complaints we received in this office against contractors, however, and we can share that information with you.

We have summarized some of this information and it is attached to this letter. Our consumer complaint system is filed on an IBM word processing report pack. We are not computerized, thus the information we are providing is information that is fairly easy to compile. The information you requested, however, on the total dollar amount claimed by consumers as opposed to recovered by our efforts would require us to hand search numerous files to compute that amount. We have instead estimated the amount consumers filing complaints with this office claimed was due them based on comparisons with the amounts actually recovered.

We have also enclosed a copy of a complaint that was filed on behalf of the State of Alaska against John Jarrett d/b/a Kennelly and Associates, Inc. This complaint alleges that the defendant contractor failed to complete work promised Alaskan consumers on their homes or performed shoddy work on consumer homes, during the building season of 1984, then left the state with consumer deposits on work that was not completed or done in a shoddy way. This is the type of case in which a larger contractor's bond would be beneficial.

The honorable John Sund

February 19, 1985
Page 2

Thank you for your interest, if there is anything further we can do for you please let us know.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By:

Linda M. O'Bannon
Assistant Attorney General
Chief, Consumer Protection
Section

LMO/ssr

February 18, 1985

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

Fiscal year 1984

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

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

Fiscal year 1985

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

February 14, 1985

MEMO

TO: Roger Poppe *RP*
Rep. Navarre's Office

FROM: Kitty Rodriguez *KR*
Rep. John Sund's Office

RE: HB 158

Attached are materials for the upcoming Labor and Commerce Committee hearing of HB168. The packet includes:

1. a copy of the bill
2. a copy of the pertinent statute
3. a briefing paper, which includes the history, purpose and sectional analysis of the bill
4. a 1984 research request, which describes licensing and bonding requirements for contractors in other states (I have asked for an update on this material)
5. a 1982 stat sheet from the Consumer Protection Office regarding complaints against contractors (I have asked for an update on this, along with figures on the size of damage claims, if available)

On the 20th, Rep. Sund will lead off the testimony in favor of the bill. We expect to have representatives of the Alaska Homebuilders Association and the Ketchikan Homebuilders Association to testify as well. I will provide you with their names and those of others who wish to testify, as soon as available.

Thanks for all your help. I'll be available next week to review some of this and to pull together our information.

February 13, 1985

BRIEFING PAPER

HB168

An act relating to construction contractors and providing for an effective date.

HISTORY

All entities wishing to work as contractor must have a license. General contractors must have a \$5,000 bond and specialty contractors must have a \$2,000 bond.

No protection is provided to the consumer who receives shoddy work from an unlicensed contractor. He is likely to find that the contractor has left the state and did not post a bond. Also, an unlicensed contractor who does not comply with the law can operate more cheaply and is likely to outbid a licensed contractor.

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

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

HB610, introduced in 1984, began as a vehicle for creating a Board of Builders and, as CSHP 10, focused on changes which were substantially similar to HB168. HB610 passed the House with a vote of 34 yeas and 6 nays and was left in the Senate upon adjournment.

PURPOSE

To work as a contractor, the individual or company must be licensed. A general contractor must post a \$10,000 bond and a specialty contractor must post a \$5,000 bond. This essentially doubles the current level required and will assure more adequate compensation for unacceptable work, since the licensing procedure in itself does not guarantee competency.

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

The Department of Commerce and Economic Development will have citation authority. Working without a license will carry a set civil penalty. A \$253,000 fiscal note provide 3 Investigator III positions, in Juneau, Anchorage and Fairbanks, to enforce contractor requirements. These provisions will strengthen the enforcement of current regulations.

SECTIONAL ANALYSIS

Section 1 makes it unlawful for a general contractor to authorize a specialty contractor to begin work for him, unless that specialty contractor is licensed.

Section 2 prohibits the Commissioner of Commerce and Economic Development from issuing a new or renewal registration to a contractor whose registration is currently revoked or suspended or who has an outstanding fine imposed under this chapter.

Section 3, subsection (a) involves grammatical changes only. Subsection (b) adds the principal place of business and the contractor's registration number to the items required in all advertising and contracts.

Section 4 raises the amount of bonds to \$10,000 for general contractors and to \$5,000 for specialty contractors.

Section 5 adds provisions which require the Department of Commerce and Economic Development to provide investigative services to enforce 08.18. An investigator appointed by the department may issue citations for violation of 08.18 for each day a violation continues. It requires that appropriate records of citations be maintained by the commissioner and that there be at least five days between the issuance of the citation and the notice to appear. A person who fails to appear is guilty of a class B misdemeanor.

Section 6 directs the Commissioner of Labor to notify the Department of Commerce and Economic Development of violations of 08.18.

Section 7 identifies the Commissioner of Commerce and Economic Development, not the Commissioner of Labor, as the person enforcing an order issued under this chapter.

Section 8 allows the Commissioner of Commerce and Economic Development to impose a civil penalty not to exceed \$250 for each violation of this chapter.

Section 9 specifies that a contractor violating 08.18 is guilty of a class A misdemeanor. (A class A misdemeanor is punishable by a term of imprisonment of not more than one year and a fine of not more than \$5,000.)

Section 10 prohibits a state agency, corporation or authority from lending money to a project whose contractors are not in accordance with this chapter.

Section 11 adds a definition of department for purposes of this chapter.

Sections 12 and 13 provide for effective dates.

Proposed Amendment to House Bill 168

Page 5: Amend AS 08.18.141 to read:

Sec. 08.18.141. MISDEMEANOR. A person acting in the capacity of a contractor in violation of this chapter is guilty of a class B [CLASS A] misdemeanor.

Proposed Amendment to House Bill 168

Page 5: Amend AS 08.18.171 beginning on line 16 to read:

Sec. 12. Sections 1, 2 and 5-11 [4-11] of this act take effect July 1, 1985.

Sec. 13. Sections 3 and 4 of this act take effect July 1, 1986.

Proposed Amendments to
House Bill No. 168

Page 2: Amend AS 08.18.117 beginning on line 18 to read:

Sec. 08.18.117. ISSUANCE OF CITATIONS. Either the Department of Commerce and Economic Development or the Department of Labor may issue a citation for a violation if there is probable cause to believe a person has violated this chapter. Each day a violation continues after a citation for the violation has been issued constitutes a separate violation.

Page 3: Amend line 6 to read:

(c) The Department of Commerce and Economic Development and the Department of Labor are each responsible for the issuance of books

Page 4: Amend AS 08.13.121(f), beginning on line 10, to read:

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

Page 4: Amend lines 21 and 22 to read:

Seek equitable relief preventing the Department [COMMISSIONER] of Labor [LABOR] or the Department of Commerce and Economic Development from enforcing the order.

Page 4: Amend line 25 to read:

District [SUPERIOR] court by the Department of Commerce and Economic Development or the Department [COMMISSIONER] of Labor [LABOR OR THE COMMISSIONER'S REPRESENTATIVE].

Page 5: Amend line 14 to read:

(4) "department" means, unless the text reads otherwise, the Department of Commerce

Sum
AB 168
PS 1 min 2-5

17 SECTION.

18 * Sec. 9. AS 08.18.141 is amended to read:

19 Sec. 08.18.141. MISDEMEANOR. (a) A contractor or a person
20 acting in the capacity of a contractor in violation of AS 08.18.011 is
21 guilty of a class B misdemeanor. A person who violates any other
22 provision of this chapter is guilty of a violation punishable under
23 AS 12.

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

Bill No. House Bill No. 168
Title "An Act relating to construction
contractors; and providing for
an effective date."

Date February 20, 1985
Contact: Robert J. Bacolas
465-4870
Eileen Plate
465-2700


House Bill No. 168 attempts to strengthen Alaska's contractor licensing laws by imposing more stringent sanctions against unlicensed contractors; and the Department of Labor supports this effort.

However, the bill also seeks to place enforcement authority in only one state agency, the Department of Commerce; with the Department of Labor retaining responsibility only for monitoring contractor licensing during its on-site inspections and investigations. Any violations found would then be referred to the Department of Commerce and Economic Development for enforcement. Not only would this procedure delay enforcement of the contractor licensing laws, but it would also result in duplicative visits to the job site where the unlicensed contractor is working. It would, therefore, be more expeditious and cost effective for the Department of Labor to retain enforcement authority.

Accordingly, the Department would recommend amendments to House Bill No. 168, as listed on the attached, to effect this.

House Bill No. 168 will not have a fiscal impact on the Department.

APPROVED



Jim Robison, Commissioner
Department of Labor

Proposed Amendments to
House Bill No. 168

Page 2: Amend AS 08.18.117 beginning on line 18 to read:

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(4) "department" means, unless the text reads otherwise, the Department of Commerce

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 168
 Title: "An Act relating to construction contractors..."
 Sponsor: Sund and Taylor
 Requestor: House Labor and Commerce
 Date of Request: 2/15/85

FISCAL DETAIL

Agency Affected: Labor
 Program Category Affected: Public Protection
 BRU, Program or Subprogram(s) Affected: Labor Standards and Safety
Wage and Hour Administration

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: ^{RS} Robert J. Bacolas, Sr. Phone: 465-4870
 Division: Labor Standards and Safety Date: 2/19/85
 Approved by Commissioner: ^{MS} Jim Robison Date: 2/19/85
 Agency: Labor

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

HB 168 File Contents

- 1) Bill Summary -- Legislative Reporting Service
- 2) Overview -- Briefing Paper by Rep. Sund's staff
- 3) Sectional Analysis -- Rep. Sund's staff
- 4) Alaska Statutes 08.18.021-171
- 5) Fiscal Note -- Dept. of Commerce & Econ. Development
(same as for HB 151)
- 6) House Research Agency -- Response to January 10, 1984 request
- 7) 1982 Statistical Sheets -- Consumer Protection Office,
regarding complaints against contractors
- 8) Fiscal Note, Position Statement, Proposed Amendments - Dept.
of Labor

INTRODUCTION OF BILLS (House)(cont'd)

HB 163 (cont'd)

found to outweigh aggravating factors.

Requires the Commissioner of Corrections to establish a procedure for carrying out a death sentence. Requires punishment be inflicted either by hanging or intravenous lethal dose of sodium thiopental. Death sentence to be carried out within a state correctional facility. No effective date (takes effect 90 days after Governor signs bill).

Introduced February 1 and referred to Health, Education & Social Services, Judiciary, Finance.

Pretrial
Agreements
(judicial
approval)

HOUSE BILL NO. 164, by Reps. Taylor and Sund. Amends Criminal Code by adding a new section prohibiting a person who is charged in a criminal case from being placed into a pretrial intervention program that requires a continuation of the trial date beyond the 120-day limitation established in the Alaska Rules of Criminal Procedure, unless a program agreement between the prosecution and the defendant is made a part of the court record and is approved by the court. Does not provide for an effective date (takes effect 90 days after Governor signs bill).

Introduced February 1 and referred to Judiciary, Finance.

Elk
(transplanting)

HOUSE BILL NO. 165, by Reps. Taylor and Sund. Requires the Department of Fish and Game to transplant 150 elk from Afognak Island to Zarembo Island. States the department shall transplant 50 elk a year for three years. Does not provide for an effective date (takes effect 90 days after Governor signs bill).

Introduced February 1 and referred to Resources, then Finance.

Appropriation
(special)
(elk transpl.)

HOUSE BILL NO. 166, by Reps. Taylor and Sund. Makes a special appropriation in the amount of \$50,000 to the Dept. of Fish and Game for the transplantation of elk from Afognak Island to Zarembo Island. The unexpended and unobligated portion of the appropriation lapses into the general fund June 30, 1986. Provides Act takes effect on effective date of HB 165.

Introduced February 1 and referred to Resources, then Finance.

Seine Vessels
(maximum
length)

HOUSE BILL NO. 167, by Reps. Sund, M. M. Miller and Taylor. Repeals AS 16.05.835 (states that salmon seine vessels may not be longer than 50 feet, official Coast Guard register length, and 58 feet overall length, except vessels that have fished for salmon with seines in waters of the state before 1/1/62, as 50-foot, official Coast Guard register length vessels). Provides Act takes effect immediately.

Introduced February 1 and referred to the House Special Committee on Fisheries, then Resources.

Construction
Contractors
page 209

HOUSE BILL NO. 168, by Reps. Sund and Taylor. Tightens up laws relating to construction contractors:

INTRODUCTION OF BILLS (House)(cont'd)

HB 168 (cont'd)

--a general contractor could not allow a specialty contractor to work for him unless the specialty contractor is registered;

--would not allow issuance or renewal of certificate of registration to an applicant whose registration has been revoked or suspended, or against whom a fine has been imposed until period of revocation or suspension has expired or fine has been paid;

--all advertising contracts, correspondence, cards, signs, posters, papers, and documents prepared by a contractor would have to show contractor's mailing address and registration number;

--raises amount of bond for general contractor to \$10,000 (now \$5,000), and specialty contractor to \$5,000 (now \$2,000);

--the Department of Commerce and Economic Development would be required to provide investigative services to enforce contracting provisions, and investigator could issue citations for violations;

--outlines procedure for issuance of citations;

--outlines civil and criminal penalties for violations of citations;

--prohibits state loans to construction projects that violate registration requirements.

Provides varying effective dates.

Introduced February 1 and referred to Labor & Commerce, Judiciary, Finance.

Avalanche &
Fire Weather
Forecasting

HOUSE BILL NO. 169, by the Rules Committee by Request of the Governor. See HB 46, page 51, identical. Provides Act takes immediately.

Introduced February 1 and referred to State Affairs, Resources, then Finance.

In his message transmitting the bill, Governor Sheffield stated:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that will transfer the responsibility for administering Alaska's avalanche warning system from the Department of Public Safety (DPS) to the Department of Natural Resources (DNR). The bill also broadens the "warning" system by changing it to a "forecasting" system and adding fire weather responsibilities.

This change is recommended because DNR personnel have the scientific training and practical experience needed to supervise the collection, analysis, and dissemination of the physical and scientific data involved, in order to maintain an effective avalanche warning system. In fact, money appropriated to DPS to administer the program has, in the past, been transferred to DNR, other state agencies, and the University of Alaska. This bill would place direct responsibility for the administration of the warning system in the agency that is in essence already performing the

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.

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
Total	140



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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.

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.

Representative McBride
January 10, 1984
Page 3

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.¹

Bonding Requirements

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

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.³ 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

¹State of Tennessee "Program Evaluation on the Board for Licensing Contractors", Division of State Audit, July 1973.

²Ibid

³AS 08.18.071.

Representative McBride
January 10, 1984
Page 4

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 Contracting¹</u>	<u>Speciality Contracting</u>
California ^{2,3}	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 ⁴	license ---	license for residential builders ---	license ⁵ bond (\$2,000-\$10,000)
Montana	license ---	license ---	license for public works ---	license for public works ---
Ohio ⁶	--- ---	--- ---	--- ---	--- ---
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.



RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

9/5/89
Date

H B

1 7 0

2/15

COMMITTEE REPORT HOUSE

(7)

FURTHER: JUDICIARY

2/4/85

Date: Feb 15 1985

The Committee on LABOR & COMMERCE has had HB 170

"An Act relating to land surveys."

under consideration and recommends:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note *Sup 18*
- reports it back without recommendation Zero Fiscal Note Attached
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

NAVARRE *[Signature]*

KEITHEN *[Signature]*

HANLEY *[Signature]*

PERDUE *[Signature]*

COLLINS *[Signature]*

DAVIS *[Signature]*

[Signature]
CHAIRMAN

AN ACT RELATING TO LAND SURVEYS.

PRIME SPONSOR: KOPONEN

CO-SPONSORS: SUND, NAVARRE, UEHLING, JENKINS, RINGSTAD, PEARCE

CURRENT STATUS: (H) RLS

DATE		PAGE	ACTION	
02/04/85	(H)	262	READ THE FIRST TIME	
02/15/85	(H)	359	L&C RPT 6DP	
02/15/85	(H)	359	FISCAL NOTE W/L&C RPT	SUP. NO18
02/15/85	(H)	359	FIN REFERRAL ADDED	
03/08/85	(H)	539	JUD RPT W/CS 6DP	
04/30/85	(H)	1181	FIN RPT W/CS, NEW TITLE	9DP 1NR
			RULES	

and reports back as follows: Davis (Chairman), Cotten, Pignalberi, Marrou, Sund, Szymanski and Pourchot recommend confirmation.

INTRODUCTION OF CITATIONS

The following citations were received:

In Memoriam - Dan Joe
by Representative Binkley and Senator Sackett

In Memoriam - Bessie Moses
by Representative Fuller and Senator Ferguson

Honoring - Staff Sgt. Robert H. Kuzicka
by Representative Davis

In Memoriam - Donald Ingalls
by Representatives Hurley and Larson and Senators Kerttula and V. Fischer

The citations were referred to the Rules Committee for placement on the calendar.

INTRODUCTION, FIRST READING AND REFERENCE OF HOUSE BILLS

SSHB 142

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 142 by Cotten, entitled:

"An Act creating the Kroto-Deshka Public Use Area."

was read the first time and referred to the Resources and Finance Committees.

HB 170

HOUSE BILL NO. 170 by Koponen, Sund, Navarre, Uehling, Jenkins, Ringstad and Pearce, entitled:

"An Act relating to land surveys."

was read the first time and referred to the Labor & Commerce and Judiciary Committees.

CONSIDERATION OF THE DAILY CALENDAR

SECOND READING OF HOUSE BILLS

HB 14

HOUSE BILL NO. 14 (making members of the Alaska Territorial Guard eligible for a death gratuity) was read the second time with the State Affairs Committee report (page 105) and the Finance Committee report (page 197).

Representative Clocksin moved and asked unanimous consent that COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 14 (Finance) (making members of the Alaska Territorial Guard eligible for a death gratuity; effective date) be adopted in lieu of the original bill. There being no objection, it was so

(Fin).

Representative Clocksin moved and asked unanimous consent that CSHB 14(Fin) be considered engrossed, advanced to third reading and placed on final passage. There being no objection, it was so ordered.

CSHB 14(Fin) was read the third time.

The question being: "Shall CSHB 14(Fin) pass the House?"
The roll was taken with the following result:

CSHB 14(FIN)

Yeas:	39	Adams, Binkley, Cato, Clocksin, Collins, Cotten, Davis, Duncan, Frank, Fuller, Furnace, Goll, Gruenberg, Grussendorf, Hanley, Herrmann, Hurley, Jenkins, Koponen, Larson, Marrou, Martin, Miller, M.H., Miller, M.W., Navarre, Pearce, Pettyjohn, Phillips, Pignalberi, Pourchot, Rieger, Ringstad, Shultz, Sund, Szymanski, Taylor, Thompson, Uehling, Wallis
-------	----	--

Nays: 0

Excused: 1 Boucher

Absent: 0

And so, CSHB 14(Fin) passed the House.

HB 124

In accordance with statutory requirement a public hearing was held on the review of the Board and the Committee examined the performance audit of the activities of the Board prepared by the Legislative Budget & Audit Division."

The letter was signed by Hurley (Chairman), M.M. Miller, Cato, Boucher, Navarre, Jenkins and Collins.

HB 124 was referred to the Health, Education & Social Services Committee.

HB 126

The Labor & Commerce Committee has considered HOUSE BILL NO. 126 (amending the Alaska Securities Act) and reports it back as follows: Navarre (Chairman), Koponen, Hanley, Pearce, Collins and Davis recommend do pass. The previous fiscal notes appearing in House Journal Supplement No. 8 were approved.

HB 126 was referred to the Judiciary Committee.

HB 152

The State Affairs Committee has considered HOUSE BILL NO. 152 (relating to the status of board members whose term of office has expired; effective date) and reports it back as follows: Jenkins and M.M. Miller recommend do pass; Hurley (Chairman), Navarre, Cato, Boucher and Collins have no recommendation. The previous zero fiscal note was approved and a Letter of Intent was attached.

HB 152 was referred to the Judiciary Committee.

The Letter of Intent signed by Representative Hurley, Chair, appears below:

HOUSE STATE AFFAIRS COMMITTEE
LETTER OF INTENT
FOR
HB 152

"It is the intent of the House State Affairs Committee that in passing HB 152 that the mechanism for replacing board members established in this legislation be used to retain a functioning board until a suitable replacement is found for a member whose term has expired.

The committee remains concerned, however, that the discretion allowed the Governor through HB 152 in making appointments, could be abused and that there may be substantial constitutional questions in allowing a board member to retain a seat beyond their term of appointment.

It is the wish of the committee, therefore, that the House Judiciary committee, in reviewing HB 152, address these concerns and make any amendments appropriate in addressing these problems."

HB 153

The State Affairs Committee has considered HOUSE BILL NO. 153 (relating to state employment), recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 153 (State Affairs) (same title), and reports it back as follows: Hurley (Chairman), Navarre, Collins, Cato, Boucher and M.M. Miller recommend do pass; Jenkins has no recommendation. Two new zero fiscal notes with analyses were attached.

HB 153 was referred to the Finance Committee.

The zero fiscal notes with analyses appear in House Journal Supplement No. 18.

HB 170

The Labor & Commerce Committee has considered HOUSE BILL NO. 170 (relating to land surveys) and reports it back as follows: Navarre (Chairman), Koponen, Hanley, Pearce, Collins and Davis recommend do pass. A fiscal note was attached.

The Speaker added a referral to the Finance Committee to follow the Judiciary Committee referral. HB 170 was referred to the Judiciary Committee.

The fiscal note appears in House Journal Supplement No. 18.

REPORTS OF SPECIAL COMMITTEES

HB 101

The House Special Committee on Oil & Gas has considered HOUSE BILL NO. 101 (relating to allowable depreciation methods for oil and gas producers and pipelines; effective date) and reports it back as follows: Marrou and Pignalberi recommend do pass; Davis (Chairman), Sand, Cotten and Szymanski have no recommendation. The previous zero fiscal note was approved.

HB 101 was referred to the Resources Committee.

HB 103

The House Special Committee on Oil & Gas has considered HOUSE BILL NO. 103 (relating to royalty oil; effective date), recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 103 (Oil & Gas):

"An Act relating to prerequisites for the disposal of royalty oil and gas; and providing for an effective date."

HB 64

The Labor & Commerce Committee has considered HOUSE BILL NO. 64 (elevator safety standards), recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 64 (Labor & Commerce) (same title) and reports it back as follows: Navarre (Chairman), Koponen, Hanley, Pearce, Collins, Boucher and Davis recommend do pass.

A zero fiscal note was attached.

A letter of intent was attached and appears below:

Letter of Intent
for CSHB 64(L&C)

"It is the intent of the House Labor and Commerce Committee that the 1982 Manual of National Safety Practice for the Inspection of Elevators and Escalators is meant to serve as a procedural guideline for the inspectors, as is stated in the preface to the Manual, and is not intended to have the force of law.

/s/Mike Navarre
Representative Mike Navarre, Chairman
House Labor & Commerce Committee"

HB 64 appears on today's calendar.

HB 72

The Community & Regional Affairs Committee has considered HOUSE BILL NO. 72 (relating to municipal government; effective date), recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 72 (Community & Regional Affairs) (same title) and reports it back as follows: Goll (Chairman), Wallis, Koponen, Phillips and Gruenberg recommend do pass. Furnace and Marrou recommend do pass if amended.

HB 72 was referred to the Judiciary Committee.

HB 103

The Finance Committee has considered HOUSE BILL NO. 103 (relating to royalty oil; effective date), recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 103 (Finance):

"An Act relating to prerequisites for the disposal of royalty oil and gas; and providing for an effective date."

HB 103

and reports it back as follows: Ringstad (Vice-Chairman), Binkley, Frank, Riege, Pourchot, Larson, Duncan, and Szymanski recommend do pass. Uehling has no recommendation.

HB 103 appears on today's calendar.

HB 118

The Finance Committee has considered HOUSE BILL NO. 118 (small claims jurisdictional limitation and the duties of magistrates; effective date), recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 118 (Judiciary) (page 410) and reports it back as follows: Ringsad (Vice-Chairman), Binkley, Frank, Rieger, Uehling, Larson, Pourchot, Duncan and Szymanski recommend do pass.

HB 118 appears on today's calendar.

HB 170

The Judiciary Committee has considered HOUSE BILL NO. 170 (relating to land surveys), recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 170 (Judiciary) (same title), and reports it back as follows: M.M. Miller (Chairman), Sund, Gruenberg, Clocksin, Taylor and Phillips recommend do pass.

HB 170 was referred to the Finance Committee.

HB 174

The Health, Education and Social Services Committee has considered HOUSE BILL NO. 174 (requiring training in basic emergency care and the recognition of child abuse for teachers certified in the state), recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 174 (HESS):

"An Act requiring training in emergency care for teachers certified in the state."

and reports it back as follows: Gruenberg (Co-Chairman) and Taylor recommend do pass. Koponen (Co-Chairman), Hurley, Thompson and Hanley have no recommendation.

A zero fiscal note was attached.

HB 174 was referred to the Finance Committee.

CSSB 120(Fin)am

The Resources Committee has considered COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 120 (Finance) amended (relating to agriculture; effective date), recommends it be replaced with HOUSE COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 120 (Resources) (same title) and reports it back as follows: Shultz (Co-Chair), Pearce and M.W. Miller recommend do pass; Cato, Jenkins, Sund, Thompson and Wallis have no recommendation.

CSSB 120(Fin)am was referred to the Finance Committee.

CSSB 122(SA)

The State Affairs Committee has considered COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 122 (State Affairs) (placing division of geological and geophysical surveys petroleum engineers and petroleum geologists in the exempt service and including the professional staff of the Oil and Gas Conservation Commission in the listing of members of the exempt service; effective date) and reports it back as follows: Hurley (Chairman), Cato, Collins, Jenkins, Navarre and Boucher recommend do pass.

CSSB 122(SA) was referred to the Finance Committee.

CSSB 167(L&C)

The Finance Committee has considered COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 167 (Labor & Commerce) (relating to dispensing opticians and optometrists; effective date) and reports it back as follows: Duncan, Uehling, Frank, Larson and Cotten recommend do pass; Ringstad (Vice-Chairman), Rieger, Pourchot and Binkley have no recommendation; Szymanski signed "not needed".

CSSB 167(L&C) was referred to the Rules Committee for placement on the calendar.

CSSB 270(C&RA)am

The Community & Regional Affairs Committee has considered COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 270 (Community & Regional Affairs) amended (relating to durational residency requirement for a candidate for a home rule charter commission; effective date) and reports it back as follows: Goll (Chairman), Koponen, Furnace, Phillips and Marrou recommend do pass; Gruenberg has no recommendation. A zero fiscal note was attached.

CSSB 270(C&RA)am was referred to the Judiciary Committee.

HCR 20

The Finance Committee has considered HOUSE CONCURRENT RESOLUTION NO. 20 (relating to a report on maximizing local hire), recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE CONCURRENT RESOLUTION NO. 20 (Labor & Commerce) (page 850) and reports it back as follows: Szymanski, Duncan, Larson, Pourchot, Rieger, Frank, Binkley and Cotten recommend do pass; Ringstad (Vice-Chairman) and Uehling have no recommendation.

HCR 20 was referred to the Rules Committee for placement on the calendar.

HB 26

The State Affairs Committee has considered HOUSE BILL NO. 26 (relating to verification of residency of candidates for certain public offices) and reports it back as follows: Hurley (Chairman), M.M. Miller, Navarre, Jenkins, Cato and Boucher recommend do pass. A fiscal note and a letter of intent were attached.

HB 26 was referred to the Judiciary Committee.

The Speaker added a Finance Committee referral to follow the Judiciary Committee referral.

The fiscal note appears in House Journal Supplement No. 60.

The letter of intent, signed by the Chair, appears below:

LETTER OF INTENT
FOR
HOUSE BILL NO. 26

"It is the intent of the House State Affairs Committee, in passing HB 26, that the Division of Elections maintain its impartial status.

It is the further intent of the House State Affairs Committee that the Division of Elections restrict residency verification inquiries to inconsistencies between a candidate's sworn affidavit and any documents executed under oath submitted to the State and available for review by the Division of Elections."

HB 170

The Finance Committee has considered HOUSE BILL NO. 170 (relating to land surveys), recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 170 (Finance):

"An Act relating to land surveys; and providing for an effective date."

HB 170

and reports it back as follows: Ringstad (Vice-Chairman), Szymanski, Duncan, Pouchot, Uehling, Kieger, Frank, Cotten and Larson recommend do pass; Binkley has no recommendation.

HB 170 was referred to the Rules Committee for placement on the calendar.

SSHB 181

The Transportation Committee has considered SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 181 (relating to the relocation to Ketchikan of consumable warehousing functions of the Alaska marine highway system and reports it back as follows: Pignatari recommends do pass; Davis (Vice-Chairman), Furnace and Marrou have no recommendation. A fiscal note was attached.

SSHB 181 was referred to the Finance Committee.

The fiscal note appears in House Journal Supplement No. 60.

HB 238

The Judiciary Committee has considered HOUSE BILL NO. 238 (relating to credit for service in the state's retirement systems for certain leave without pay; effective date), recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 238 (Judiciary):

"An Act relating to personal leave for pregnancy, childbirth and adoption; credit for service in the state's retirement systems for certain leave without pay; and providing for an effective date."

and reports it back as follows: M.M. Miller (Chairman), Gruenberg, Clocksin, Taylor and Sund recommend do pass; Phillips has no recommendation.

HB 238 was referred to the Finance Committee.

HB 292

The State Affairs Committee has considered HOUSE BILL NO. 292 (relating to credited service for noncertificated school employees who are members of the public employees' retirement system; effective date) and reports it back as follows: Cato recommends do pass; Collins recommends do not pass; Hurley (Chairman), M.M. Miller, Jenkins, Navarre and Boucher have no recommendation. A zero fiscal note with analysis was attached.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 170
 Title: An act relating to land surveys

Sponsor: Koponen, Sund, Navarre
 Requestor: Dehling, Jenkins, Kingstad,
 Date of Request: & Pearce

FISCAL DETAIL

Agency Affected: Natural Resources

Program Category Affected: NRREC

BRU, Program or Subprogram(s) Affected: Information/Records Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	4.0	4.0	4.0	4.0	4.0	4.0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

It is assumed that approximately 500 documents at \$8.00 each would be recorded each year under this proposed Bill.

Prepared By: Joseph C. Burch
 Division: Technical Services

Phone: 786-2400
 Date: 2/11/85

Approved by Commissioner: Thomas O. Zamora
 Agency: Natural Resources

Date: 2/12/85

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

7/1/84

Alaska Society of Professional Land Surveyors

AFFILIATE OF AMERICAN CONGRESS OF SURVEYING AND MAPPING
MEMBER OF WESTERN FEDERATION OF PROFESSIONAL LAND SURVEYORS



P. O. BOX 2106
ANCHORAGE, ALASKA 99510

January 17, 1985

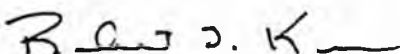
Representative Niilo Koponen
Alaska State House of Representatives
Pouch V
Room C110, State Capitol Bldg.
Juneau, Alaska 99811

Dear Representative Koponen:

The Anchorage Chapter of Alaska Society of Professional Land Surveyors at their annual dinner January 11, gave their unanimous approval to the legislation being proposed by the ASPLS Legislative committee concerning Right of Entry, Recordation, and Admendments to Title 38. We believe these bills to be of extreme importance to the efficient and orderly conduct of surveying and mapping in the State of Alaska. Many hours have gone into preparing this legislation by our State legislative commitee and we respectfully request your review and support of this important legislation in the forthcomming session.

As president of the Anchorage Chapter and member of the legislative committee, I plan to be in Juneau the 23rd and 24th of January with other members of the Alaska Section American Congress of Surveying and Mapping and the Alaska Society of Prifessional Land Surveyors. At this time we would be pleased to meet with you and your staff and discuss any aspects of the proposed legislation.

Sincerely,



Robert T. Kean, President
c/o Kean & Assoc.
6510 Homer Drive
Anchorage, AK 99502
349-6431

RTK/sm



United States Department of the Interior 9658 (920)

IN REPLY REFER TO

BUREAU OF LAND MANAGEMENT

Alaska State Office
701 C Street, Box 13
Anchorage, Alaska 99513

JAN 18 1985

Honorable Niilo Koponen
Alaska State House of Representatives
Pouch V
Room C110, State Capitol Building
Juneau, Alaska 99811

Dear Mr. Koponen:

This letter references and supports the legislation being proposed by the Alaska Society of Professional Land Surveyors (ASPLS) concerning Right of Entry, Recordation, and Amendments to Title 38 of the Alaska Statutes.

The Bureau of Land Management (BLM) fully recognizes the need for the enactments of this legislation to further the orderly conduct of surveying and mapping activities in Alaska. Significant problems are already confronting the citizens and the Federal and State governments in the establishment, administration, and management of property boundaries and their associated records.

The justification which has been written in support of this proposed legislation provides a clear picture of the needs but could have been expanded to convey the impact of the programs affected in the State. The BLM alone has a legislated workload which will require over a half billion dollars of surveying and mapping activities to identify lands for patent to the State, Native corporations and private claimants. Without this legislation the enactment of this work will be fraught with great wastes of human efforts and dollars due to the lack of required records keeping, higher costs to perform surveys and an inevitable increase in boundary legislation.

Your solid support of the enactment of the ASPLS proposed legislation is requested for the benefit of all Alaskans and the efficient use of State and Federal tax dollars.

We would be pleased to respond to any questions or comments you might have regarding this subject.

Sincerely,

Francis D. Eickbush
Deputy State Director
for Cadastral Survey

JUSTIFICATION
AMENDMENTS TO AS 34 (ADDITION OF CHAPTER 65)

Section Authorizing Entry On Land For Survey Purposes

Thousands of survey monuments exist in the State of Alaska identifying section corners, township corners, various property boundaries and serving as geodetic control points in remote areas where no other survey control presently exists. Taxpayers' dollars were utilized to establish these monuments, as they were intended for purposes benefiting the public. Various Federal agencies, primarily the Bureau of Land Management, Coast and Geodetic Survey, Geological Survey, Corps of Engineers and Army Mapping Service and, more recently, various State of Alaska agencies established these monuments. Utilization of this existing monumentation is mandatory if the surveyors, mappers and photogrammetrists in the State are to conduct the surveys required by the public for property boundaries, subdivisions, construction projects and mineral, oil and gas exploration programs. Traditionally, access to this survey control has been available to these professionals as required to conduct these surveys. Access is primarily by foot, air or water and utilization of the station usually involves only the temporary setting up of a theodolite, distance measuring equipment, satellite survey system, photo control panel or in some cases, leaving a small, unmanned, battery-powered transmitter on a small tower or tripod to continuously broadcast signals for offshore or airborne positioning systems. No damage to the monument or its surrounding environment is entailed.

In addition, in the course of conducting surveys, surveyors must often physically traverse adjoining property boundaries or gain access to hilltops, mountain peaks or shorelines so as to gain line of sight or for other technical reasons. Again, the occupancy is limited in nature and normally involves no damage to the environment.

With increasing transfer of lands from the public domain into private ownership, access to these survey control monuments, property boundaries and key terrain features is becoming increasingly curtailed. Owners, applicants and alleged owners of the underlying property on which the monument is located or to which access must be gained, even in extremely remote areas of the State, are now requiring advance permission and often the payment of considerable rental fees to briefly occupy the station or terrain feature. In some cases, there is outright refusal of access if the owners are not in agreement with the program for which a survey is being undertaken, regardless of the fact that the resultant program may be on State, Federal

or third party ownership. To further complicate the matter, often two or more persons or groups claim ownership to the same lands, leaving the surveyor in the position of not knowing from whom to obtain permission or alternatively, obtaining permission from the apparent owner only to be challenged by a second party claiming ownership. As survey monumentation in the remote areas of the State is extremely sparse, this allows the owner or alleged owner of the lands underlying a primary control monument to control developments over a vast area far outside their ownership. In some cases, a single monument may serve as primary control for thousands of square miles so use of alternate monuments is not feasible or even impossible.

This problem, nonexistent prior to five years or so ago, is annually becoming more critical. As much as surveyors, mappers and photogrammetrists wish to see the property rights of all individuals or groups to be properly protected, the time has come for some protection for all of the citizens of the State to utilize the survey monumentation which was established with their tax dollars, and to allow surveyors to determine citizen's property boundaries. Similar legislation has been found necessary in nearly all the other states of the union.

The Alaska Section, American Congress on Surveying and Mapping and the Alaska Society of Professional Land Surveyors and their members feel the time has now arrived that this legislation is mandatory if the rights of all individual citizens of this State are to be protected.

Section Requiring Record Of Survey And Monument Record

A present requirement exists in Alaska that subdivisional plats be recorded with the district recorder so as to be available for use by all citizens of interest. Hundreds of other land surveys are annually conducted, however, defining boundaries and rights-of-way, for which no such recording requirement exists and which presently do not become a part of any public record. Although some informal exchange of information currently takes place between the professional surveyors in the State, there is no official depository for records of this sort where a public or private surveyor can research records of previous surveys prior to undertaking a survey in the same area. This often results in repeated duplication of effort, boundary conflicts (between two surveyors utilizing totally different techniques to approach the same problem) and, at the very least, incursion of unnecessary costs by the surveyor's client if a private survey.

of the public at large if the survey is for public purposes. Similarly, as surveys are undertaken and key monumentation recovered, no current regulation or law requires the surveyor record any public document indicating the existence, lack of existence, condition of, or current status of key control monumentation in the project area. This is especially critical where monumentation will or likely will be destroyed during forthcoming construction following the initial survey. Replacement of these destroyed monuments is extremely costly unless adequate records exist prior to any disturbance, indicating the exact original position of the monument with ties to appropriate accessories.

These professional associations and their members believe it is the duty of all professional surveyors to file a record of survey and monument records for all appropriate surveys they undertake and that an appropriate procedure be established by the State to provide the mechanism for the recording of these documents.

The burden and cost of this recordation will primarily fall upon the surveyor and not the government entity. The sole cost to the State of Alaska or its subentities will be the cost of accepting and maintaining these records. It is estimated the total number of documents would not exceed 1000 per year. This very minor cost would be greatly offset by the value to State agencies, boroughs and municipalities that could make great use of the vast amount of information so recorded and made readily available with no cost of field acquisition whatsoever. Likewise, when individual citizens of the State require survey in the future, they will often achieve a cost saving because of the ready availability of these documents.

The majority of other states currently have statutes requiring recordation of monument and/or survey records. This is especially true in the western states where fewer surveys exist, with the resultant greater distance between monuments and longer time intervals between occasions when monuments may be inspected by professional surveyors.

Introduced: 2/5/85
Referred: Resources
and Finance

BY FAHRENKAMP
BY REQUEST

1 IN THE SENATE

2 SENATE BILL NO. 135

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSI.

5 A BILL

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

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

9 * Section 1. AS 34 is amended by adding a new chapter to read:

10 CHAPTER 65. LAND SURVEYS.

11 Sec. 34.65.010. PURPOSE. The purpose of this chapter is to
12 authorize right of entry on land for certain survey purposes, and to
13 provide a method for preserving evidence of land surveys by filing
14 records of survey and monument records. *leaves out 1 sentence*

15 Sec. 34.65.020. ENTRY UPON LAND BY PROFESSIONAL LAND SURVEYORS.

16 (a) After giving notice, a land surveyor or an employee of a land
17 surveyor may enter public or private land or water in the state only
18 to occupy, locate, relocate, install, or replace survey monuments in
19 the process of locating real estate boundaries and determining geo-
20 detic positions.

21 *Adds* (b) This section does not permit entry on public or private land
22 or water to perform an engineering, design, or topographic survey.

23 *Adds* (c) This section does not authorize any unnecessary interference
24 with private rights.

25 (d) A land surveyor or an employee of a land surveyor is liable
26 to the landowner only for actual damages.

27 (e) The attorney general may bring an action in the name of the
28 state to restrain and prevent the obstruction of entry under (a) of
29 this section.

1 after the activities have ceased; and

2 (3) file a new monument record after restoring or replacing
3 the monument or its accessories.

4 (c) A land surveyor may file a monument record for any monument.

5 (d) A land surveyor who is required to file a monument record
6 under this section shall do so within 90 days of the completion of the
7 survey or of the establishment, reestablishment, or rehabilitation of
8 a monument.

9 (e) A monument record shall be signed and sealed by the land
10 surveyor responsible for the survey.

11 Sec. 34.65.050. WHEN RECORD OF SURVEY IS NOT REQUIRED. A record
12 of survey is not required when a plat of the survey has been filed or
13 will be filed within 18 months after the field survey is completed.

14 Sec. 34.65.060. DUTIES OF THE COMMISSIONER. (a) The commis-
15 sioner shall adopt regulations to implement this chapter.

16 (b) The commissioner shall provide a standard form for a
17 monument record.

18 Sec. 34.65.070. DUTIES OF THE DISTRICT RECORDER. (a) Upon
19 request the district recorder shall provide a copy of a monument
20 record or a copy of a record of survey to the municipal clerk for the
21 municipality in which the monument or survey is located.

22 (b) The district recorder shall keep a proper index of monument
23 records and records of survey.

24 (c) The commissioner may establish a fee for services provided
25 by a district recorder under this section.

26 Sec. 34.65.100. DEFINITION. In this chapter :

27 (1) "accessory" means physical evidence adjacent to a
28 monument used for the future identification and restoration of a
29 monument;

South Dakota Codified Laws

36-18-38. Board inquiries and investigation of violations -- Report and prosecution. It shall be the duty of the board of examiners to inquire into the identity of any person alleged to be engaging in the unlawful practice of architecture, professional engineering or land surveying. It shall be the duty of the board to investigate every alleged violation of the provisions of this chapter, and report to the proper state's attorney any person or case that in the judgment of the board warrants prosecution. It shall be the duty of the attorney general and the several state's attorneys to prosecute violations of this chapter, in the name of and on behalf of the board.

36-18-39. Injunction to prevent violations of chapter -- Election of remedies. The board of examiners may proceed by injunction to restrain violations of the provisions of this chapter, as an alternate to criminal proceedings. The commencement of one proceeding by the board constitutes an election.

36-18-40. Severability of provisions. If any provision of this chapter or the application thereof to any person or circumstances, is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application and to this end the provisions of this chapter are declared to be severable.

B. Powers of Surveyors, Public Utility Corporations, Other Miscellaneous

1-1-9. Map of federal acquisitions to be filed -- Recording of evidence of title. A map of any land acquired by the United States, under the provisions of this chapter, shall be filed and recorded in the office of the secretary of state and the evidence of the United States' title shall be recorded in the county wherein the land is situated as in other cases relating to the transfer of real property.

1-1-10. Land entry authorized to survey boundaries -- Consent required to enter mine -- Damage to property. For the purpose of making surveys required by or essential to the effect of any acts of the United States Congress or of the Legislature of this state or for the determination of boundaries of real estate, any of the duly authorized officers or agents of the United States or of this state, or any engineer or land surveyor duly qualified or registered under the laws of this state, and the persons necessarily and lawfully employed in making any such survey may enter upon lands within the boundaries of this state for such purposes, but this section shall not be construed as authorizing any unnecessary interference with private rights. Nothing in this section shall be construed to permit any person to enter any shaft, tunnel, stope, or underground workings of any individual person engaged in mining for precious metals without consent of the owner or person in possession of such shaft, tunnel, stope, or underground working.

Nothing herein contained shall exempt any person from payment of actual damages done by him while upon such land.

NEW MEXICO

61-23-2. Right of entry on public and private property; responsibility.

The engineers and surveyors of the United States and of the state of New Mexico and registered professional engineers and land surveyors of the state of New Mexico shall have the right to enter upon the lands and water of the state and of private persons and of private and public corporations within the state for the purpose of making surveys, inspections, examinations and maps, subject to responsibility for actual damage to crops or other property, or for injuries resulting from negligence or malice caused on account of such entry so made.

History: Laws 1923, ch. 137, § 2; 1941 Comp., § 51-2457; Laws 1947, ch. 110, § 3; 1953 Comp., § 67-21-27.

Cross-references. — For suit on county surveyor's bond, see 4-4-2 NMSA 1978. As to penalties for interfering with county surveyor, see 4-4-6 NMSA 1978. As to entry for county drain surveys, see 72-4-1 NMSA 1975.

Applies to Army Corps of Engineers. — The U.S.

Army Corps of Engineers may go upon state-owned or private land and make core drilling and surface soil explorations to determine the feasibility of certain oil food control projects in the state of New Mexico. 1954 Op. Atty. Gen. No. 37-221.

Am. r. 2d and C.J.S. references. — 63 Am. Jur. 2d Public Lands § 56 to 64; 73 C.J.S. Public Lands § 36 to 71.

61-23-3. [Violation of reference mark and entry provisions.]

Any person violating any of the provisions of this act (61-23-1 to 61-23-5 NMSA 1975) shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than twenty-five (\$25.00) dollars nor more than one hundred (\$100.00) dollars for each such offense.

History: Laws 1923, ch. 130, § 3; 1941 Comp., § 51-2456; 1953 Comp., § 67-21-25.

61-23-4. Short title.

Article 23 of Chapter 61 NMSA 1978 may be cited as the "Engineering and Land Surveying Practice Act."

History: 1953 Comp., § 67-21-29, enacted by Laws 1957, ch. 211, § 1; 1973, ch. 243, § 1.

The 1973 amendment substituted the provisions of the present section for the former section which read:

This act may be cited as the "Engineering Practice Act."

61-23-5. Declaration of policy.

The legislature declares that it is a matter of public safety, interest and concern that the practice of engineering and of land surveying merit and receive the confidence of the public and that only qualified persons be permitted to engage in the practice of engineering or land surveying, and in order to safeguard life, health and property, and to promote the public welfare, any person in either public or private capacity practicing or offering to practice engineering or land surveying shall be required to submit evidence that he is qualified to so practice and shall be registered as provided; and it shall be unlawful for any person to practice or offer to practice in the state, or to use in connection with his name or otherwise assume, use or advertise any title or description tending to convey the impression that he is a professional engineer or professional land surveyor or land surveyor, unless such person is duly registered or exempt under the provisions of the Engineering and Land Surveying Practice Act. That act shall be construed in accordance with this declaration of policy.

History: 1953 Comp., § 67-21-30, enacted by Laws 1957, ch. 211, § 2; 1973, ch. 243, § 2.

The 1973 amendment substituted "engineering or land surveying" for "engineering and land surveying"

following "to engage in the practice of" near the beginning of the section, and substituted "professional engineer or professional land surveyor or land surveyor" for "professional engineer, professional engi-

NORTH
Dakota

shall be deemed a more necessary public use than use for the same purpose by a private corporation, and whenever a right of way shall have been taken and the person, firm, or corporation taking such right of way shall fail or neglect for five years to use the same for the purpose to which it had been appropriated, the attempt by another person, firm, or corporation to appropriate such right of way shall be considered a more necessary public use;

4. Franchises for toll roads, toll bridges, ferries, and all other franchises, but such franchises shall not be taken unless for free highways, railroads, or other more necessary public use;
5. Any system of waterworks, electric light and power plant, wells, reservoirs, pipelines, machinery, franchises, and all other property of any character whatsoever comprising a waterworks system or an electric light and power system;
6. All rights of way for any and all the purposes mentioned in section 32-15-02 and any and all structures and improvements thereon, and the lands held or used in connection therewith, shall be subject to be connected with, crossed or intersected by any other right of way or improvement or structure thereon. They also shall be subject to a limited use in common with the owner thereof when necessary, but such uses, crossings, intersections, and connections shall be made in the manner most compatible with the greatest public benefit and the least private injury; and
7. All classes of private property not enumerated may be taken for public use when such taking is authorized by law.

32-15-05. What must appear before property taken.--Before property can be taken it must appear:

1. That the use to which it is to be applied is a use authorized by law;
2. That the taking is necessary to such use; and
3. If already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use.

32-15-06. Entry for making surveys.--In all cases when land is required for public use, the person or corporation, or his or its agents, in charge of such use may survey and locate the same, but it must be located in the manner which will be compatible with the greatest public benefit and the least private injury and subject to the provisions of section 32-15-21. Whoever may be in charge of such public use may enter upon the land and make examinations, surveys, and maps thereof, and such entry shall constitute no cause of action in favor of the owner of the land except for injuries resulting from negligence, wantonness, or malice.

Operation and Effect (Court Decisions) In an application for a permit to enter upon private property for the purpose of making a survey and testing soil, plaintiff was required to show only that it was in the category of persons entitled to seek eminent domain, and was not required to prove that at that stage of the proceedings eminent domain was proper, justified and necessary. Square Butte Elec. Cooperative v. Dohn, 219 NW 2d 877 (1974).

2. Arbitration

32-29-01. When arbitration authorized.--Persons capable of contracting may submit to the decision of one or more arbitrators any controversy which might be the subject of a civil action between them, except the question of title to real property in fee or for life. This qualification does not include questions relating merely to the partition or boundaries of real property.

right to install a gate in the fence so as to give the owners a farm crossing. *Hildebrand v. Chicago, B. & Q.R.R.*, 45 Wyo. 175, 17 P.2d 651 (1933).

Jury questions. — Where cattle were injured by entering railroad's property by private gate which was not protected by cattle guards and plaintiff makes out prima facie case independent of former § 37-210, question of negligence is for

jury. *Hildebrand v. Chicago, B. & Q.R.R.*, 45 Wyo. 175, 17 P.2d 651 (1933).

Where railroad has knowledge that gates along right of way are customarily left open and no steps are taken to correct the custom, question of railroad's negligence when cattle are injured is for the jury. *Hildebrand v. Chicago, B. & Q.R.R.*, 45 Wyo. 175, 17 P.2d 651 (1933).

ARTICLE 3. ROADS, DITCHES AND FLUMES; PIPE, ELECTRIC TRANSMISSION, TELEPHONE AND TELEGRAPH LINES

Cross references. — As to telegraph lines generally, see art. 10, §§ 12, 15 to 18, Wyo. Const. For provision that telegraph, telephone or electric light line shall not be constructed within the limits of any municipal organization without the consent of its local authorities, see art. 13, § 4, Wyo. Const. As to incorporation of ditch company, see § 17-12-101. As to incorporation of flume company, see § 17-12-106. As to incorporation of telegraph company, see § 17-12-107. As to mining corporations preempting right-of-way over public lands, see § 30-1-128. As to power of public service commission to direct manner of use of public highways by public utilities, see § 37-3-114.

Editor's note. — This article was not enacted as part of the original Civil Code.

Law review. — See note, "Compensation for Condemnation: Recent Wyoming Development," 17 Wyo. L.J. 246 (1953).

Am. Jur. 2d. ALR and C.J.S. references. — 26 Am. Jur. 2d Eminent Domain §§ 73, 102, 112, 126, 138.

Right to use or permit use for private telegraph or telephone line of street or highway, 34 ALR 405.

Furnishing electricity for telegraph or telephone system as a public use, 44 ALR 752; 58 ALR 757.

29A C.J.S. Eminent Domain §§ 65 to 86.

§ 1-26-301. Right-of-way along public ways granted; permission necessary for new lines.

Corporations organized under the laws of this state or of any other state or of the United States for the purpose of constructing, maintaining and operating telephone, telegraph or electric transmission and distribution lines may set their poles, piers, abutments, wires and other fixtures along, across or under any of the public roads, streets and waters of this state in such manner as not to inconvenience the public in their use. Any telegraph, telephone or other company desiring to place their wires or other fixtures underground in any city shall first obtain consent from the city through the municipal authorities. A person or firm must first obtain permission from the state highway commission or the board of county commissioners in the county where the construction is contemplated before entering upon any state highway or county road for the purpose of commencing the construction of any new telephone, telegraph, or electrical transmission or distribution lines. (Laws 1901, ch. 31, § 1; C.S. 1910, § 3870; C.S. 1920, § 4934; R.S. 1931, § 38-301; Laws 1939, ch. 80, § 1; C.S. 1945, § 3-6201; W.S. 1957, § 1-791; Laws 1977, ch. 188, § 1.)

Chicago, B. & Q.R.R., 45
1 (1933).
has knowledge that
are customarily left open
taken to correct the error,
ad's negligence when cattle are
jury. *Hildbrand v. Chicago, B. & Q.R.R.*, 17 P.2d 651 (1933).

**FLUMES; PIPE,
TELEPHONE
LINES**

— This article was not enacted in the original Civil Code.
— See note, "Compensation for eminent domain in Wyoming Development," 1963.
— ALR and C.S. references. — Eminent Domain §§ 73, 102, 112.

or permit use for private
none line of street or highway.

electricity for telegraph or
as a public use, 44 ALR 752.

Eminent Domain §§ 65 to 86.

granted; permission

of any other state or
maintaining and operating
utility lines may set their
across or under any of
such manner as not to
telephone or other company
and in any city shall first
authorities. A person or firm
ommission or the board
construction is contemplated
road for the purpose of
telegraph, or electrical
lines; C.S. 1910, § 3870; C.S.
1911; C.S. 1945, § 3-6201;

§ 1-26-302. Same: right of entry upon private lands.

(a) The companies may enter upon any land whether owned by private persons or corporations in fee or in any less estate, except railroad rights-of-way, for the purpose of making preliminary surveys and examination as may be necessary to erect poles, piers, abutments, wires or other fixtures for telephone, telegraph or electric transmission or distribution lines. The companies may make such changes of location of the lines as may be deemed necessary, shall have the right of access to construct the line and, as may be required, to make repairs, and may obtain the right-of-way and condemn the land therefor in the manner provided in the Wyoming Rules of Civil Procedure.

(b) If the landowner has not consented to the entry, no entry shall be authorized until the company has deposited with the public service commission a cash or surety bond of two thousand dollars (\$2,000.00). The public service commission shall release the bond to the company upon sufficient showing that the company has reached an agreement for entry with the landowner. If the company causes any damage to a landowner's property prior to reaching an entry agreement, the bond shall be withheld for distribution as determined by a court of law or upon a settlement agreement between the company and landowner. (Laws 1901, ch. 31, § 2; C.S. 1910, § 3871; C.S. 1920, § 4935; R.S. 1931, § 36-302; Laws 1939, ch. 80, § 2; C.S. 1945, § 3-6202; W.S. 1957, § 1-792; Laws 1977, ch. 73, § 2; ch. 188, § 1.)

Cross reference. — For provision as to condemnation of property, see Rule 71.1, W.R.C.P.

The 1977 amendment designated the formerly undesignated provisions of this section as subsection (a), added subsection (b), and in subsection (a), substituted "the Wyoming Rules of Civil Procedure" for "section 38-303" at the end of the subsection and made other minor changes in style.

Editor's note. — Section 1-27-302, which was enacted by § 1, ch. 165, Laws 1977, has been

made subsection (a) of this section and § 1-792(b), W.S. 1957, which was amended by § 2, ch. 73, Laws 1977, has been made subsection (b) of this section. This was a Revisor's change. This section has also been renumbered from § 1-27-302 to § 1-26-302 because of chapter renumbering.

Effective dates. — Section 3, ch. 80, Laws 1939, makes the act effective from and after passage. Approved February 15, 1939.

Section 3, ch. 73, Laws 1977, makes the act effective May 27, 1977.

§ 1-26-303. Right of eminent domain granted.

Whenever any road, ditch, telegraph, telephone or fluming company, or any petroleum or other pipeline company, organized or to be organized under the provisions of this chapter, or any law of this state, or under the laws of any other state and legally doing business in this state, shall not have acquired by gift or purchase, any land, real estate or claim required for the construction or maintenance of their road, ditch, flume, pipe, telegraph or telephone line, or which may be affected by any operation connected with the construction or maintenance of the same, the said corporation shall have the right of eminent domain and may condemn the land, real estate, right-of-way or claim required by the corporation in the manner provided by the Wyoming Rules of Civil

OKLAHOMA

(c) Wherever in those counties the amount of Indian lands or those exempt from taxation by reason of the operation of any federal law is thirty percent (30%) or more of the total area of the county, then the Board of County Commissioners may, upon its own initiative, and if the public interests demand it, move to secure roads over, adjacent to, or for the benefit of all such exempted lands in the following manner: The Board shall call upon the Director as a disinterested party to undertake and make such surveys, plans and estimates and obtain all other essential data and records as are required to make a full and complete statement and report upon the interest involved, and to make such recommendations as in the premises may seem proper. When so prepared, the Department shall then advance the matter to the Department of the Interior of the United States, or to any other federal department concerned, through its proper local representative, if there be one, with the request that the matter be considered and disposed of as speedily as possible. If the project be so approved and authorized, then the work may proceed under the special supervision and direct administration of the Department and subject to such special regulations as the circumstances seem to require.

69 § 651. Section and quarter section corners

The provisions of Sections 1229-1233 of this Code, relating to the marking and obliteration of section and quarter section corners within rights-of-way of State highways, shall apply with full force and effect and in like manner to the Board of County Commissioners of each county, whenever section corners or quarter section corners are obliterated, or may be obliterated by the construction or resurfacing of either low type or high type paved roads of any county highway within the county.

69 § 702. Entry upon premises to make surveys and examinations for establishment or relocation of highways—Notice

The Department, through its authorized agents and employees, may enter upon any lands, waters, and premises in the State for the purpose of making surveys, soundings and drillings, and examinations as may be determined necessary or convenient for the purpose of establishing, locating, relocating, constructing, and maintaining State highways or relocations thereof and facilities necessary and incidental thereto. Such entry shall not be deemed a trespass, nor shall an entry for such purpose be deemed an entry under any condemnation proceedings which may be then pending; but notice shall be given to the owner of or person residing on the premise, personally or by registered mail, at least ten (10) days prior to such entry.

69 § 703. Reimbursement for actual damages

The Department shall make reimbursement for any actual damages resulting to such lands, waters, premises and property as a result of activities pursuant to the preceding Section. In the event of disagreement as to the amount of the damage, either the person damaged or the Department may file a petition with the District Court for the appointment of commissioners to appraise the damages and proceed to have the same determined as in condemnation proceedings.

69 § 704. Commission to complete and revise maps

The Commission may complete the topographic mapping of the State of Oklahoma and revise existing United States Topographic maps of the State, so that a complete and accurate map of the entire State may be complete and obtained by State departments and agencies, the Federal Government, and all persons desiring information relative to the natural resources of the State.

69 § 705. United States Geological Survey, agreements with

The commission may enter into agreements with the Director of the United States Geological Survey, or legal successor thereof, for the purpose of making the necessary surveys and maps, and preparing data covering topographic surveys, so that they may be made available for public use.

69 § 706. Expenses

The Commission shall pay the expenses incurred under Sections 704 and 705 out of the State Highway Construction and Maintenance Fund upon proper vouchers. Provided, that any funds so expended shall be matched by the United States Government, and the total expenditures of State funds shall not exceed Fifty Thousand Dollars (\$50,000.00) in any fiscal year.

69 § 707. Surveys—Lawful to cross premises

For the purpose of carrying into effect the provisions of Sections 704 and 705, it shall be lawful for all persons employed in the making of the topographic survey to enter upon and cross all lands within the State; provided, however, that in so doing no damage shall be done to private property.

69 § 1229. Location and identification of corners within right-of-way

The Department shall, in cooperation with the County Surveyor of the county affected, locate section and quarter section corners within the right-of-way of all State highways when surveys and plans are being made for contemplated new construction or resurfacing, and re-mark such corners in the right-of-way by a suitable marker, of a design to be approved by the Department. Whenever such corners are located on a highway to be hard-surfaced, or resurfaced, the Department shall identify such corners on the roadway by bronze surface markers, of a design to be approved by the Department.

69 § 1230. Obliteration of corners by highway construction

Where any section or quarter section is obliterated, or may be obliterated, by highway construction, the Department shall witness the location of such corners by two or more well defined objects located outside of the contemplated right-of-way limits and shall note such witnesses on the highway construction plans.

69 § 1231. Re-marking of existing corners

The Department shall also re-mark existing section corners and quarter section corners on State Highways that are now paved, with markers similar to those described herein, where reliable reference ties are available.

his deputy a professional engineer; *Provided*, this requirement shall not apply if the county surveyor is both a professional engineer and a Registered Land Surveyor.

Source: Laws 1879, § 127, p. 386; Laws 1905, c. 50, § 1, p. 295; R.S.1913, § 5605; Laws 1921, c. 141, § 1, p. 606; C.S. 1922, § 5015; C.S.1929, § 26-1601; Laws 1939, c. 20, § 16, p. 154; C.S. Supp., 1911, § 26-1601; R.S.1913, § 23-1901; Laws 1969, c. 170, § 1, p. 717.

23-1901.01. **County surveyor; appointment from another county; when.** When there is no qualified surveyor within a county who will accept the office of county surveyor, the county board of such county may appoint a competent surveyor from any other county of the State of Nebraska to such office.

Source: Laws 1951, c. 45, § 1, p. 162.

23-1902. **Chainmen; employment; oath.** All necessary chainmen shall be employed by the person or persons causing the survey to be made. The chainmen shall be disinterested persons, and approved of and sworn by the surveyor to measure justly and exactly, to the best of their knowledge and ability, all lines measured by them.

Source: Laws 1879, § 130, p. 386; R.S.1913, § 5606; C.S.1922, § 5016; C.S.1929, § 26-1602.

23-1903. **Witnesses; attendance and testimony; power to compel; fees.** The county surveyor or his deputy, in the performance of his official duties, shall have the power to summon and compel the attendance of witnesses before him, to testify respecting the location and identification of any line or corner. When any such witness testifies to any material fact, his testimony must be reduced to writing and subscribed by him and made a matter of record. The county surveyor and his deputy are hereby authorized and empowered to administer oaths and affirmations to any person appearing as a witness before them. But the testimony as provided for herein shall never be used as evidence in any action involving corners or boundary lines, except for the purpose of impeachment. Each witness shall be entitled to the same fees allowed before justices of the peace.

Source: Laws 1913, c. 43, § 1, p. 142; R.S.1913, § 5687; Laws 1921, c. 138, § 1, p. 604; C.S.1922, § 5017; C.S.1929, § 26-1603.

23-1904. **Surveyor's certificate; use as evidence; effect.** The certificate of the county surveyor of any survey made by him of any lands in the county shall be presumptive evidence of the facts stated therein, unless such surveyor shall be interested in the same.

Source: Laws 1913, c. 43, § 2, p. 142; R.S.1913, § 5688; C.S.1922, § 5018; C.S.1929, § 26-1604.

23-1905. **Surveyor; interest; disqualification; who may act.** Whenever a survey of any lands or lots is required, in which the county surveyor is interested, such survey may be made by the surveyor of another county in like manner and to the same effect as though such survey had been made by the surveyor of the county where the land is situated. The surveyor doing the work shall record the field notes of said survey in the official record of surveys of the county wherein the land is situated.

Source: Laws 1913, c. 43, § 3, p. 142; R.S.1913, § 5689; C.S.1922, § 5019; C.S.1929, § 26-1605.

23-1906. **Trespass; exemption from liability.** The county surveyor in the performance of his official duties, shall not be liable to prosecution for trespass.

Source: Laws 1913, c. 43, § 4, p. 143; R.S.1913, § 5690; C.S.1922, § 5020; C.S.1929, § 26-1606.

County surveyor, when in performance of his official duties, is not liable to prosecution for trespass. *Singer v. State*, 123 Neb. 850, 241 N.W. 791.

23-1907. **Original corners; perpetuation.** It shall be the duty of the county surveyor in surveys made by him to perpetuate all original corners not at the time well marked, and all corners or angles that he may establish or reestablish, in a permanent manner by setting monuments of concrete, burned vitrified clay, iron or stone, and depositing at the base thereof, at a suitable depth to protect it from loss or destruction, a memorial of durable material upon which shall be marked the date and the initial letters of the surveyor's name, and where the corner is unmistakably a government corner, the letters G.C. (initial letters of the words Government Corner), in addition thereto; and where suitably growing trees are convenient to such corner or angle, he shall, in addition to said monument and memorial, carefully note the direction and distance to the middle of each tree, the size and kind of tree, all of which shall be carefully noted in the field notebook provided for that purpose. Where witness pits were dug at any original government corners, and they can be identified as such, the surveyor shall record their directions and distances from the corner, according to the instructions of the State Surveyor.

Source: Laws 1913, c. 43, § 5, p. 143; R.S.1913, § 5691; C.S.1922, § 5021; C.S.1929, § 26-1607.

23-1908. **Corners; establishment and restoration; rules governing.** The boundaries of the public lands established by the duly appointed government surveyors, when approved by the Surveyor General and accepted by the government, are unchangeable, and the corners established thereon by them shall be held and considered as the true corners which they were intended to represent, and the restoration of lines and corners of said surveys and the division of sections into their legal subdivisions shall be in accordance with the laws of the United States, the circular of instructions of the commissioner of the general land office on the restoration of lost

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Chapter 26.—EMINENT DOMAIN

26-5. PROCEDURE ACT. 26-501 to 26-517.



26-512. Same; making surveys and location. The prospective condemner or its agents may enter upon the land and make examinations, surveys and maps thereof, and such entry shall constitute no cause of action in favor of the owners of the land, except for actual damages thereto. [L. 1963, ch. 234, § 12; Jan. 1, 1964.]

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 170
Title: An act relating to land surveys

FISCAL DETAIL

Agency Affected: Natural Resources
Program Category Affected: NRMEC

Sponsor: Koponen, Sund, Navarre
Revisors: Denling, Jenkins, Kingstad,
Date of Request: & Pearce

BRU, Program or Subprogram(s) Affected: Information/Records Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	4.0	4.0	4.0	4.0	4.0	4.0
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

It is assumed that approximately 500 documents at \$8.00 each would be recorded each year under this proposed Bill.

Prepared By: Joseph C. Burch
Division: Technical Services

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Date: 2/11/85

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Date: 2/12/85

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