

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

4210 SLAB HB 148 - HB 168 1090

state inspector, and the enforcement agency may hold administrative hearings on alleged violations. When it is determined, following such a hearing, that a dealer or manufacturer has violated a provision of the law, the violator may be ordered to take corrective action. Moreover, in appropriate cases the manufacturer's \$35,000 performance bond may be forfeited and the proceeds distributed to the injured parties.

The 1980 mobile home legislation did more than establish state warranty requirements; it also revealed existing portions of AS 45.30 which regulated mobile home construction standards. The reason for this repeal was not, it must be emphasized, a belief that such regulation was unnecessary. Rather, it was simply a matter of federal preemption. In 1976 the U.S. Department of Housing and Urban Development (HUD) had taken over the regulation of mobile home construction throughout the country. This meant the preemption of Alaska's construction standards program.

The HUD program, however, did not come close to eliminating many kinds of serious problems that frequently afflict purchasers of mobile homes. As pointed out in a 1980 Federal Trade Commission study of mobile home warranty problems, the scope of the HUD standards is limited and the agency's remedial powers when defects occur are "severely circumscribed." The construction standards, which cover only basic components and focus on safety concerns, do not protect consumers from defects in appliances, cabinetry, carpeting, ceiling tile or wall paneling, floor coverings, and so on; nor do they address damage occurring during transportation or set up. Equally important, inspection is required of a mobile home only once -- at any point -- during the manufacturing process, so that defects may readily occur which are not detected. Indeed, HUD has acknowledged that "no mobile home is completely without failures to conform to the Federal standards." Finally, once a mobile home has been purchased by a consumer, the only defects which HUD can require the manufacturer to correct are those which present an unreasonable risk of injury or death.

Thus, when the Alaska Legislature passed its mobile home warranty act, joining seventeen other states at that time with similar legislation, it did so in recognition of the need to fill a major gap in the legal protection provided to consumers. The House committee which recommended passage of the act had before it a report from the Attorney General's Consumer Protection Section analyzing complaints within the past two years from some 68 consumers having problems with mobile homes. In addition to multitudinous defects reported in interior construction, exterior construction, plumbing, appliances, electrical systems, and plumbing systems, a common thread running through the consumers'

experience was a lack of response from dealers and manufacturers to their complaints. Long delays in merely getting someone to look at the problem were common, and in many cases the defects remained uncorrected even after repeated attempts at repair. Experience since that time amply demonstrates the continuing importance of the warranty law.

Recent Consumer Protection Section  
Experience with Mobile Home Problems

Since the enforcement of the mobile home warranty act was administratively transferred to the Consumer Protection Section in May of 1983, the section has handled 65 complaints and has responded to over 96 inquiries and requests for assistance. Although most consumer mobile home complaints involve several individual problems that the consumer has experienced, the major focus of complaints received during the past year and a half may be summarized as follows:

1.	Defects in materials and workmanship	27%
2.	Misrepresentative sales techniques	46%
3.	Shoddy repair services	16%
4.	Mobile home park and other problems	11%

Specific mobile home related complaints include but are not limited to the following:

1. Doors and windows that will not open or close properly.
2. Cracked sinks and bathtubs.
3. Overly expensive to operate or inadequate heating systems.
4. Excessively high interior humidity
5. Buckling walls and separating components.
6. Misrepresentations about the ability to qualify for a loan, or about the outcome or penalty resulting from not qualifying for or not obtaining a loan to purchase a mobile home.
7. Settling of mobile homes resulting from inadequate or improper setup procedures.
8. Numerous failed attempts to repair mobile home defects by unqualified service persons.
9. Misrepresentations of the authority of a salesperson.
10. Failure to deliver title.

Although a report regarding consumer problems with their mobile homes must be brief, because as one consumer wrote to Consumer Protection just last week "there isn't enough paper in Alaska to state the dissatisfaction we've experienced," a few specific examples will help provide a clear understanding of the seriousness of consumer mobile home problems.

During the past year, three purchasers of a particular brand of mobile home complained to the Consumer Protection Section that the roofs on the mobile homes were leaking severely and that they had been unable to obtain a remedy from either the manufacturer or dealer. The consumer found that the dealer had "disappeared" and the manufacturer's response was that the consumers needed to shove their roofs more adequately in the winter time (despite the dealer's original claim that their roofs were specially designed for "Alaska conditions"). Yet only a minor amount of snow had accumulated on them, and moreover the manufacturer's own "homeowners manual" stated that the roofs should not be climbed or walked on. Although the manufacturer's warranty had expired on two of the mobile homes, through mediation and negotiation the Consumer Protection Section obtained for the consumers new roofs and a one year warranty from the manufacturer that the structure of the roof would remain free from defects.

After resolution of the complaints one of the consumers confided that had the problem not been resolved he would have had to leave his home. It should be pointed out that since February of 1984, 56 mobile homes purchased between 1980 and 1984 were repossessed. According to AHFC personnel many of these homes were abandoned by their owners. With a 17% increase in the cost of a new mobile home between 1983 and 1985 and a slight decrease in the average monthly income of a new mobile home purchaser during the same period, it has become increasingly difficult for mobile home consumers to bear the burden of major defects such as these.

Many consumer complaints have involved the formation of large amounts of condensation on interior surfaces of their mobile homes. In many instances this leads to wet and ruined walls and carpets; in one case a consumer reported mushrooms growing on the floor. Homes inspected by this section have been found to possess warped ceilings, floors and walls. In some cases permanent fixtures such as bathtubs and toilet bowls have begun to sink through the floors. Often manufacturers respond to these problems with allegations that the consumer is improperly ventilating or utilizing the mobile home.

In other recent complaints consumers stated that they ordered mobile homes with particular features and amenities to be included by the manufacturer. They found, however, that when the mobile homes arrived many of these features were not included with the homes. Although the purchase agreements clearly stated that these items would be included, the dealer claimed that the consumer had agreed to accept the home without them. One consumer stated that the dealer kept telling him that he would "take care of it"; the outcome is pending. Consumer Protection records show

that many consumers are promised features or amenities with their mobile homes and then find those features missing upon delivery. They also find that the homes are many times improperly installed and in fact the homes themselves have been damaged in transit or were not properly constructed in the first place.

During the past two and one half years the Consumer Protection Section has recovered over \$132,000 for consumers who experienced defects in their mobile homes or mobile home transactions.

## BUSINESS RESPONSE INFORMATION

### Consumer Protection Section

The Consumer Protection Section of the Attorney General's Office enforces Alaska's Unfair Trade Practices and Consumer Protection laws, which laws benefit both individual consumers and business people. One of the functions of this office is to handle consumer complaints.

### Consumer Complaints

Any consumer who believes that he/she has been subjected to an unfair or deceptive trade practice may file a complaint with this state office. A staff member initially reviews all complaints to determine whether there is evidence of a clear, serious violation of law. If so, the complaint will go to a staff attorney. Otherwise, we will handle the complaint in our informal complaint resolution procedure.

We do not attempt to prejudge the merits of complaints by either refusing to handle some complaints or by assuming that one or the other side is "right." It would be impossible, as well as unfair, to make any assumptions on so little information. We do screen complaints to verify that we have jurisdiction to handle the subject matter of the complaint.

### The Complaint Resolution Process

Our complaint handling process is informal and relies upon cooperation from all parties. Whenever a consumer files a complaint against you, we will send the complaint to you as a respondent. By doing so, we are requesting your cooperation in clarifying the situation and resolving the problem. We cannot force you as a respondent to offer a settlement, nor can we force a settlement on either party.

We recognize that there are two sides to every story, and we listen to both sides. We know that sometimes consumer complaints are inaccurate or unreasonable. The fact that both sides may be angry does not make either one of them "right."

By our mediation efforts, we hope to give both sides to a consumer complaint a chance to better understand each other and, once understood, resolve their problem. Much of the time, this process yields satisfactory results for both sides.

### How to Respond to a Complaint

We request that you respond, in writing, to the complaint. Written responses help you give us all the details we need, avoid misunderstandings, and help us work faster. (We can handle several matters in the time it takes to do an interview, and somebody still has to write all the details.)

To enable both this office and the consumer to better understand your position, we ask that you investigate the complaint; for instance, talk to the employees involved and check your business records. We request that you respond with a discussion of the facts of this complaint and any figures that might be necessary to better understand the situation. Often, it is important to include a statement of your standard business procedure so that there is a context in which to view this particular complaint. Finally, please include a statement of your position on this consumer complaint, as well as any suggestions or plans you may have for resolving this matter.

#### What Happens When Mediation Fails

If mediation fails (or if you fail to respond), we will review the information we obtained to determine whether or not there is a pattern or serious indication of deceptive practices which justifies formal action by the state. Formal actions include conducting a formal investigation or, in the face of serious violations of the law, filing a lawsuit seeking an injunction to stop the disputed practice and to seek restitution for consumers and civil penalties.

If we determine that formal state action is not appropriate, we will usually advise consumers that they have the right to proceed privately through small claims court or a private attorney if they so choose. The fact that the state does not take formal action does not necessarily reflect on the merit of either party's position in this matter.

All complaint files are kept for future reference in case other complaints against the business are received. This way we can keep track of deceptive or fraudulent patterns which may begin to evolve. However, unless we file formal legal action in court, all complaints are confidential. We do not perform the function of a Better Business Bureau by releasing complaint information about particular businesses.

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#### VALDEZ

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# CONSUMER INFO

## CONSUMER PROTECTION SECTION

The Consumer Protection Section of the Attorney General's office enforces Alaska's Unfair Trade Practices and Consumer Protection laws, which laws benefit both individual consumers and business people. One of the functions of this office is to handle consumer complaints.

## WHY WE NEED YOUR COMPLAINT IN WRITING

Consumer Protection is here to serve you. We can do a better job and process your complaint faster if you help us. We need to have your complaint in writing because written complaints help you give us all the details we need and help us work faster than with initial interviews. (We can handle several complaints in the time it takes to do an interview, and somebody still has to write out all the details.) If we need more details after reading your complaint, we will contact you.

If you aren't sure whether you have a complaint, go ahead and fill out one of our complaint forms anyway. If you don't have a complaint, we will contact you promptly. Usually you do have a complaint or you wouldn't be here.

## WHAT WE DO WITH YOUR COMPLAINT

A staff member initially reviews all complaints to determine whether there is evidence of a clear, serious violation of law. If so, the complaint will go to a staff attorney. Otherwise, we will handle the complaint in our informal complaint resolution procedure.

We send the business a letter and a copy of your complaint, asking them to tell their side of the story. When we get their reply, we will contact you for your comments or to tell you about any proposed settlement offer from the business. Much of the time, this process yields satisfactory results.

If there is no voluntary offer of settlement or the proposed settlement is not acceptable to you, you must then proceed privately through the Small Claims Court or a private attorney. The state can only take formal action when there is a serious indication of deceptive practices in violation of law. The fact that we do not take formal action does not necessarily reflect on the merit of either party's position in this matter.

All complaint files are kept for future reference in case other complaints against the business are received. This way we can keep track of deceptive or fraudulent patterns which may begin to evolve. However, unless we file formal legal action in court, all complaints are confidential; we do not perform the function of a Better Business Bureau by releasing complaint information about particular businesses.

## YOU SHOULD REALIZE THAT:

- 1** THE CONSUMER PROTECTION OFFICE CANNOT ACT AS YOUR ATTORNEY. WHEN THE ATTORNEY GENERAL SUES A BUSINESS, HE SUES FOR THE STATE--TO STOP THE PRACTICE AND COLLECT FINES.
- 2** THE COMPLAINT HANDLING PROCESS USUALLY TAKES AT LEAST SIXTY (60) DAYS.
- 3** IT IS NOT POSSIBLE FOR THE STATE TO SUE EVERY TIME A CONSUMER IS TREATED UNFAIRLY OR EVEN DEFRAUDED. THE STATE CAN ONLY ACT IN THE GENERAL PUBLIC INTEREST.
- 4** EVEN THOUGH YOU FILE A CONSUMER COMPLAINT WITH OUR OFFICE YOU ALSO WANT TO CONSULT A PRIVATE ATTORNEY, OR THE LEGAL SERVICES ATTORNEY, OR FILE A CLAIM IN SMALL CLAIMS COURT AT THE SAME TIME.

Anchorage

Fairbank

Juneau

Valdez



Official Business

# Alaska State Legislature

## Senate

### Committee on Labor & Commerce

Pouch V  
State Capitol  
Juneau, Alaska 99811

#### CSHB 148 (Jud) Sectional

- Section 1) Increases the performance bond required of a mobile home manufacturer from \$35,000 to \$100,000.
- Section 2) Adds a new section which would permit a buyer to pursue a "private cause of action" against a manufacturers bond;
- Section 3) Adds a new section which outlines the sureties responsibilities, liabilities, and duties with respect to the cancellation of a surety bond.
- Section 4) Transfers the enforcement authority from DCED to the Department of Law.
- Section 5) Adds a new paragraph to the unfair trade practices/consumer protection statutes relating to mobile home warranties.

NOTE: The bill which passed over from the House shows two section 2's; This will be corrected prior to the meeting.

# STATE OF ALASKA

**DEPARTMENT OF LAW**  
**OFFICE OF ATTORNEY GENERAL**  
**CONSUMER PROTECTION SECTION**

April 11, 1985

Honorable Fred Zharoff, Chairman  
Senate Labor and Commerce Committee  
Alaska State Legislature  
Pouch V (MS 3100)  
Juneau, AK 99811

Re: HB 148

Dear Senator Zharoff:

This letter is written to encourage the Senate Labor and Commerce Committee to quickly consider and pass HB 148. This bill passed the House Labor and Commerce Committee unanimously and also passed the House Judiciary Committee unanimously, although the present version is a committee substitute that was developed in the House Judiciary Committee. House Bill 148 passed the House on a vote of 39 to 0 with one excused. As you can see there was tremendous support for this legislation. I believe the reason for this support and the popularity of the bill is the important relief granted to a purchaser of a mobile home in Alaska. Essentially the bill accomplishes three changes in the present law:

1. It raises the performance bond required of a manufacturer of mobile homes from \$35,000 to \$100,000.
2. It creates a private cause of action for a mobile home buyer against the manufacturer's bond for warranty violations.
3. It transfers warranty enforcement authority from the Department of Commerce and Economic Development to the Department of Law.

Increase in bond amount from \$35,000 to \$100,000.

This bill would amend AS 45.30.015(a) to increase the bond amount that a manufacturer of mobile homes would have to post with the State from \$35,000 to \$100,000. The purpose of this bond is to assure compliance with the provisions of AS 45.30.011, which set forth the warranty obligation by a manufacturer of a mobile home. The increase in the cost of mobile homes since the statute was first enacted suggests the need for the increase in the bond. You are probably aware that there are many persons in the state who live in mobile homes or choose to purchase mobile homes for

**BILL SHEFFIELD, GOVERNOR**

XXREPLY TO

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their primary residence. There are no manufacturers of mobile homes in the State of Alaska, and the posting of this bond aids in making certain the mobile homes sold in the state are warranted for one year and that the manufacturer corrects any substantial defects that occur. Attached is a report that we prepared which sets forth some of the problems mobile home consumers have had with their mobile homes.

We, in this section, conducted a survey to determine the cost to a manufacturer if the bond amount were increased from \$35,000 to \$100,000. Our research showed that there would not be significant increase to the cost of a manufacturer whose mobile homes were sold in Alaska if the bond were increased. The cost of a bond pursuant to AS 45.30.015 would be between 1% and 2% of the face value annually, but in most cases only about 1% of the face amount. Thus, a \$100,000 bond would cost a manufacturer approximately \$1000, with an upper limit of \$2000 a year.

The financial stability and net worth of a manufacturer might well determine the cost of a bond or even if the manufacturer can obtain a bond. Any company's inability to obtain a bond would probably be a good indication of its level of reliability in fulfilling its bonded obligations, according to one local insurance broker. If the manufacturer is currently able to obtain a \$35,000 bond that same manufacturer would likely be able to obtain a \$100,000 bond. Thus the manufacturer would be looking at an increase from approximately \$350 to approximately \$1000 if this bill is enacted increasing the bond required from \$35,000 to \$100,000

#### Private cause of action against the bond

The current mobile home warranty statute, at AS 45.30.040, only allows a private buyer injured by the manufacturer of a defective home to request the state to take administrative action against the bond. In order to obtain the proceeds of the bond for any consumers, the state would have to show in an administrative action that the mobile home manufacturer's violations of the warranty act were "regular and recurring." Thus, an individual mobile home buyer may have a serious defect in the purchased mobile home but not be able to obtain the bond proceeds absent state action. The state is not likely to take action unless there are several mobile home buyers who experienced defects in a particular manufacturer's mobile homes.

Also, a buyer may believe she or he has a valid claim against the bond in a case in which the state enforcing authority

does not agree that administrative action is warranted. Providing a clear private cause of action against the bond may relieve a burden on government by reducing the number of administrative hearings and yet ensure that a individual can choose to enforce his own rights, whether or not a state agency agrees with the individual. Of course the mobile home buyer under the proposed revision to the statute would still have to file an action in court and prove that the mobile home manufacturer had violated the warranty provisions of the Mobile Home Warranty Act. The benefit to the mobile home buyer to be able to bring his or her private action against the mobile home manufacturer's bond becomes readily apparent in that case where the mobile home manufacturer has gone out of business, gone bankrupt or has no assets that can be used to satisfy a judgment that a mobile buyer might receive in court. Since all the mobile home manufacturers are located outside the state, collection efforts against an outside mobile home manufacturer may be very difficult for an individual mobile home buyer in the state. It is hoped that creating this private cause of action will make it possible for many claims to be settled without any formal action. The mobile home buyer would notify the manufacturer and the surety on the bond and hopefully some settlement or agreement could be arrived at to provide repairs or correct the defect without the necessity of litigation in many cases.

Transfer of enforcement from the Department of Commerce and Economic Development to the Department of Law

The bill proposes a change in the definition of "department" to mean the Department of Law in AS 45.30.100(2).

The Department of Commerce and Economic Development and the Department of Law agree that this is the most appropriate place to locate the enforcement of the Mobile Home Warranty Act. The Division of Legislative Audit prepared a special report on the Department of Commerce and Economic Development, Division of Measurement Standards, on April 6, 1983. In that report Legislative Audit recommended the transfer of the responsibility to resolve warranty defects of mobile homes found at AS 45.30 from the Department of Commerce and Economic Development to the Department of Law. The audit reflected three reasons for the need for the transfer:

1. Alleged possible conflicts of interest involving the Department of Commerce and Economic Development mobile home inspector;

2. Alleged possible failure of the Department of Commerce and Economic Development to carry out the duties of the mobile home warranty act / and alleged use of money appropriated for that purpose in other ways.

3. The public perception that the Consumer Protection Section of the Department of Law is the agency to contact concerning consumer complaints with problems relating to mobile homes.

A follow up report was issued by the Division of Legislative Audit on June 4, 1984. That audit report provided: "The 1983 audit of the Division recommended that the Mobile Home Warranty Program would be better served under the Consumer Protection Section of the Department of Law. The recommendation was made on the basis that the Consumer Protection Section is the agency to which the public looks for resolution of consumer problems and would therefore be best suited to administer the program. The Department of Commerce and Economic Development has entered into a Reimbursable Service Agreement with the Department of Law to transfer the program. Legislation to make the transfer permanent was introduced into the 1984 session of the legislature."

For your convenience I have attached a copy of the 1983 report and the 1984 follow up report by the Division of the Legislative Audit.

We respectfully request that the Senate Labor & Commerce Committee carefully consider enacting the suggestions of the Division of Legislative Audit and transferring the responsibility for enforcement of AS 45.30 to the Department of Law. From a consumer viewpoint it would seem beneficial to alert the public to the fact that the actual enforcement of the Mobile Home Warranty Act now lies with the Department of Law. For instance, if a private attorney were advising mobile home owners, the attorney would no doubt look to the current statute and attempt to make contact with the Department of Commerce for additional information. It is difficult to justify the referral from one agency to another that is necessitated simply because the definition contained in AS 45.30.100 of "department" has not been changed by the legislature to the Department of Law.

Thank you for consideration of this legislation. We stand ready to assist the committee in any way that we can. I would be happy to testify via teleconference or in person. I have

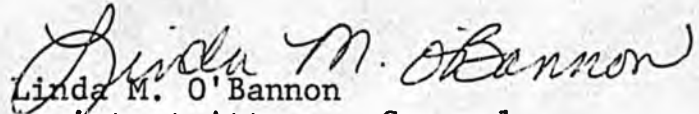
Honorable Fred Zharoff, Chairman  
Senate Labor and Commerce Committee

April 11, 1985  
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a very moving and interesting video tape of the defects in one particular mobile home. The House Labor and Commerce Committee viewed a portion of that video tape. I would be happy to play a portion of that for your committee. Again, we encourage you to consider this legislation as quickly as possible and pass the bill out of your committee. Thank you for considering our position.

Sincerely,

NORMAN C. GORSUCH  
ATTORNEY GENERAL

By:   
Linda M. O'Bannon  
Assistant Attorney General  
Consumer Protection Section

/pc

Enclosures

A FOLLOW-UP REPORT ON THE  
DEPARTMENT OF COMMERCE AND  
ECONOMIC DEVELOPMENT  
DIVISION OF MEASUREMENT STANDARDS  
(Originally Released April 6, 1983)

June 4, 1984

Commissioner, Department of  
Commerce and Economic Development

Richard A. Lyon

Deputy Commissioners, Department of  
Commerce and Economic Development:

Vincent O'Reilly  
Terry Elder

# STATE OF ALASKA

AUDIT DIVISION  
POUCH W  
JUNEAU, ALASKA 99811

## THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

June 4, 1984

Members of the  
Legislative Budget and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

A FOLLOW-UP REPORT ON THE  
DEPARTMENT OF COMMERCE AND  
ECONOMIC DEVELOPMENT  
DIVISION OF MEASUREMENT STANDARDS  
(Originally Released April 6, 1983)

June 4, 1984



Gerald L. Wilkerson, CPA  
Legislative Auditor  
Division of Legislative Audit

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PURPOSE OF THE REPORT

In accordance with the provisions of Title 24 of the Alaska Statutes and a special request of the Legislative Budget and Audit Committee, a follow-up review of the Department of Commerce and Economic Development's Division of Measurement Standards was conducted to determine the extent of implementation of recommendations presented in our report titled A Special Report on the Department of Commerce and Economic Development, Division of Measurement Standards, April 4, 1983.

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## ORGANIZATION AND FUNCTION

The Division of Measurement Standards (DMS) was established in July 1982 with the transfer of the permit and weigh station functions from the Department of Public Safety to the Department of Commerce and Economic Development, Weights and Measures Section. The Division has four distinct statutory requirements:

1. Public and consumer protection through maintenance of uniform standards which ensure the accuracy of commercial weighing and measuring devices within the State (AS 45.75).
2. Consumer protection for buyers of mobile homes through the enforcement of mobile home warranties (AS 45.30).
3. Operation of weigh stations to identify and remove overweight commercial vehicles from the State highway system (AS 44.33.020(25)).
4. Issuance of special permits authorizing the operation of overweight and oversize vehicles, and the collection of fees for these special permits (AS 44.33.020(25)).

The "Weights and Measures Act", AS 45.75, requires a system of weights and measures that conforms to the standards customarily in use in the United States. The weights and measures obtained by the State are to be verified by the National Bureau of Standards (NBS) and are to be properly maintained to ensure their reliability and traceability to NBS.

To accomplish this mandate, DMS is the custodian of the State's weights and measures and conducts the periodic verification with NBS. The State's standards of weights and measures are used to verify all office standards. The office standards then are used to verify all field standards used by DMS. In addition, these standards become the basis for verification of all instruments and devices used for determining weight or measure in commercial transactions within the State.

DMS fulfills its responsibilities through physical inspection of devices, examination of packaging and the investigation of complaints. DMS may issue "stop-use" or "removal orders" of measuring devices and commodities offered for sale, when it is necessary to enforce the Weights and Measures Act.

Alaska Statute 45.30 mandates the responsibility for resolving warranty defects of mobile homes to the Department of Commerce and Economic Development. The Department assigned the responsibility for carrying out the provisions of the

statute to the Division of Weights and Measures upon its creation in July of 1982.

The 1983 audit of the Division recommended that the Mobile Home Warranty Program would be better served under the Consumer Protection Section of the Department of Law. The recommendation was made on the basis that the Consumer Protection Section is the agency to which the public looks for resolution of consumer problems and would therefore be best suited to administer the program. The Department of Commerce and Economic Development has entered into a Reimbursable Service Agreement with the Department of Law to transfer the program. Legislation to make the transfer permanent was introduced into the 1984 session of the Legislature.

The Division, under the provisions of AS 44.33.020(25) has the responsibility for the operation of the weigh stations located on the State highway system. The primary function of the weigh station program is the enforcement of the size, weight and load limitations adopted by the Department of Transportation and Public Facilities under AS 19.10.060.

Additionally, DMS administers the oversize and overweight permit program as provided under AS 44.33.020(25). Permits are issued, for a fee, which allows commercial vehicles that exceed the maximum allowable size, weight or load limitations the right to legally travel over the State highway system. DMS also regulates pilot cars under this statute.

## PRIOR AUDIT RECOMMENDATIONS

In a previous audit report dated April 6, 1983, we presented the Commissioner of Commerce and Economic Development with seven recommendations relating to the operation of the Division of Measurement Standards. Three of those recommendations had a total of nine sub-recommendations. The following is the current status of each:

### Prior Audit Recommendation No. 1

The Department should take immediate action to improve the employee morale of the Division of Measurement Standards (DMS).

As a result of interviews with fifteen employees and a review of written communications during our prior audit, it was obvious that a serious morale problem existed within DMS. The cause of the low morale did not appear to be centered around any single issue but was due to a build up of problems within the Weights and Measures Section over the past several years.

### Legislative Audit's Current Position

Prior to the final release of our previous report, the Department initiated procedures to determine the causes of the low morale and to provide for possible solutions. These efforts have continued and included:

1. Employee interviews conducted by the Department's personnel officer.
2. The Director meeting collectively and individually with employees of the Division.
3. The development of a new employee evaluation manual and procedures that define management's expectations of employees and provides for ongoing communication between the staff and management.
4. The Director's standing offer to meet with any employee to discuss problems and, if possible, provide reasonable solutions.

During our present review, we found that there continues to be a certain amount of employee dissatisfaction, however, in our opinion, the Department and Division management are making a reasonable and good-faith effort at resolving remaining problems.

Prior Audit Recommendation No. 2

DMS should avoid situations that give the appearance of a conflict of interest.

During our prior audit, we noted three situations which, at a minimum, gave the appearance of a conflict of interest to employees and other persons outside the Division.

Two of the situations involved the DMS Mobile Home Inspector and the third related to the 1981 hiring of a person convicted of price fixing in a retail gasoline business as a weights and measures inspector. This employee was asked to resign and his termination was effective April 17, 1981.

Legislative Audit's Current Position

The Division no longer administers the Mobile Home Warranty Program. On June 15, 1983, the Division entered into a Reimbursable Service Agreement (RSA) with the Department of Law wherein the Department of Law would, through its Consumer Protection Division, administer the program.

The issue of hiring a person convicted of price fixing, in the retail gasoline business as Weights and Measures Inspector I was addressed and resolved prior to the initiation of the original audit. During the current audit nothing came to our attention which would lead us to believe that DMS is not exercising care in the selection of employees.

In our opinion, these situations were isolated instances and the Division is cognizant of the need to avoid conflict of interest situations.

Prior Audit Recommendation No. 3A

DMS should ensure performance indicators in their budget requests are accurate.

The State budget documents for Fiscal Years 1983 and 1984 included forms for each agency to report its performance activities of the prior year based on predetermined measurements.

In our review of the Fiscal Year 1983 and 1984 budget documents, we found that some of the information reported by DMS for actual performance activities in Fiscal Years 1981 and 1982 was not accurate.

Legislative Audit's Current Position

Beginning with Fiscal Year 1985, the budget request format has been revised. The section devoted to agency performance

in meeting its objectives no longer identifies prior years' actual performance. Information is limited to those measurements planned for the prior year and those estimated for the budget year at various levels of funding.

DMS has continued to maintain actual performance statistics as a measure against planned performance objectives. Prior to Fiscal Year 1984, the Division's methods of compiling and reporting performance data were cumbersome.

During Fiscal Year 1984, DMS began developing methods, including data processing, for improving the system of data collection, retention, analysis and reporting. A review of Fiscal Year 1984 performance activity summaries and supporting documentation showed no significant errors.

Prior Audit Recommendation No. 3B

DMS should prepare their fiscal year budgets in accordance with their anticipated spending plans.

The DMS Fiscal Year 1982 budget requested \$96,900 for rental of State vehicles through the Department of Transportation and Public Facilities (DOTPF). Actual costs during 1982 totalled approximately \$62,000, 36% less than budgeted. DMS staff explained that this budget line item was intentionally overbudgeted and the excess funds were used to cover expenditures in other underbudgeted line items within the contractual services category for which funding was harder to secure.

Legislative Audit's Current Position

For Fiscal Year 1984, DMS budgeted \$77,900 for State vehicle rental costs which represents a \$19,000 reduction from the inflated Fiscal Year 1982 budget amount.

For Fiscal Year 1985, the DMS budget reflects a change from the "wet lease" approach, in which both a fixed rental cost and a repair and maintenance rate are paid to DOTPF, to a "dry lease" approach whereby a fixed rental cost is paid to DOTPF and DMS assumes responsibility for repair and maintenance. According to DMS, this change will result in a significant reduction in vehicle costs.

Prior Audit Recommendation No. 3C

DMS should ensure State funds are expended only for authorized purchases in accordance with the State Administrative Manual.

DMS purchased seafood in August, 1981, and September, 1982, totalling \$100 and \$548 respectively. The seafood was presented to the members of the Western Weights and Measures

Conferences. The State Administrative Manual, section 6820, prohibits expenditure of State funds for nonessential food-stuffs.

Legislative Audit's Current Position

A review of the Division's Fiscal Year 1984 expenditures showed no unauthorized purchases of seafood. The seafood presented at the most recent Western Weights and Measures Conference was purchased at the Director's personal expense.

Prior Audit Recommendation No. 3D

DMS should ensure appropriations are expended in accordance with law.

DMS received an appropriation totalling \$33,200 through Chapter 50, SLA 1980 to "purchase scale testing equipment and to provide transportation to test scales for seafood processors in the Aleutian Islands and Western Alaska". Through a review of the related expenditures, we found \$8,148 was expended for travel to areas other than the Aleutian Islands or Western Alaska.

In addition, DMS received another appropriation totalling \$39,100 through Chapter 120, SLA 1980, to implement the Mobile Home Warranty Program enacted by Chapter 104, SLA 1980. We determined that \$2,875 of these funds were expended on travel unrelated to the Mobile Home Warranty Program.

Legislative Audit's Current Position

A review of Fiscal Year 1984 expenditures and correspondence showed the Division is cognizant of the legal limitations of expending appropriations. During the year, DMS has requested approval and/or advice on certain expenditures from the Department's Division of Administrative Services, the Office of Management and Budget, and the Division of Legislative Audit.

Prior Audit Recommendation No. 4A

DMS should update job descriptions and classifications as required by the State Personnel Rules.

We determined through a review of job descriptions and employee interviews that material changes had occurred in the duties and responsibilities of two classified positions since the formation of the Division.

A Weights and Measures Inspector IV position no longer had the supervisory authority over the inspectors. The employee's responsibilities included only administrative and budgeting duties. The Mobile Home Inspector's duties

included supervision of the weigh stations in addition to mediating mobile home warranty complaints.

We recommended that job descriptions and duties should be changed to reflect the actual duties and responsibilities of these positions to decrease the confusion and misunderstandings within the Division.

#### Legislative Audit's Current Position

The Weights and Measures Inspector IV position was reclassified to a Management Analyst III on November 23, 1983.

With the transfer of the Mobile Home Warranty Program to Consumer Protection in the Department of Law, DMS reclassified the Mobile Home Inspector position to a Weigh Station Operator II.

#### Prior Audit Recommendation No. 4B

DMS should utilize promotional eligibility lists to the extent possible.

In July, 1982, DMS assumed the responsibility of the weigh stations from the Department of Public Safety. Twenty-eight commercial vehicle inspectors were transferred from the Department of Public Safety to DMS, however, DMS did not receive a transfer of any supervisory personnel. In order to provide sufficient supervision of the weigh stations, DMS upgraded three of the commercial vehicle inspector positions from a range 12 to a range 15. The incumbents in two of the upgraded positions became supervisors while the other inspectors were not afforded the opportunity to interview for the positions.

#### Legislative Audit's Current Position

DMS has used the Division of Personnel's departmental eligibility lists in making promotions since our previous audit.

#### Prior Audit Recommendation No. 5

The Department should seek legislation to transfer the Mobile Home Warranty Program to the Consumer Protection Section of the Department of Law.

We reviewed the function of the Mobile Home Warranty Program and the activity from July, 1981 through March, 1983. Based on our review, we noted the following:

1. The Mobile Home Inspector acts as a mediator between the consumer and the dealer and/or manufacturer in order to resolve complaints.

2. During Fiscal Year 1982, DMS received 26 mobile home warranty complaints. As of March, 1983, DMS had received nine complaints in Fiscal Year 1983.
3. The Consumer Protection Section receives and investigates mobile home complaints from consumers. According to a memorandum dated March 17, 1983, from an assistant attorney general, the Consumer Protection Section had five complaints currently under investigation.

Since the Consumer Protection Section is the agency to which the public looks for resolution of consumer problems and the Mobile Home Warranty Program deals with consumer protection warranty laws, it appears that the program could be more efficiently and effectively administered by the Consumer Protection Section.

#### Legislative Audit's Current Position

The Mobile Home Warranty Program is presently being administered by Consumer Protection through a Reimbursable Service Agreement with DMS. For Fiscal Year 1985, the program is budgeted within Consumer Protection.

During the 1984 legislative session, Senate Bill No. 497 was introduced to amend AS 45.30 by placing the responsibility for the program in the Department of Law. The bill was not passed by the 1984 Legislature.

We recommend that the Department resubmit the proposed legislation change to the 1985 Legislature.

#### Prior Audit Recommendation No. 6

The Department should seek removal of DMS staff as delegates to the National Conference of States on Building Codes and Standards.

The Director and the Mobile Home Inspector are delegates to the National Conference of States on Building Codes and Standards, Incorporated (NCSBCS). During the period from May, 1981, through January, 1983, the Director attended five meetings related to NCSBCS which were held in Seattle, Denver, Boston, Atlanta, and New Orleans. The Mobile Home Inspector also attended the meetings at Seattle and New Orleans.

DMS duties and responsibilities relating to building codes and standards were greatly diminished with the repeal of the State mobile home standards in September, 1980, and the enactment of the Mobile Home Warranty Program. Furthermore, activity in the Mobile Home Warranty Program does not warrant involvement of DMS in NCSBCS.

### Legislative Audit's Current Position

The Director of the Division of Measurement Standards is still the delegate of record to NCSBCS however, he has initiated action to have his name removed as a delegate. A review of the Director's Fiscal Year 1983 and 1984 travel showed that no travel involving NCSBCS business has occurred since September of 1982.

### Prior Audit Recommendation No. 7A

DMS should provide sufficient documentation that office and field standards (official test devices) are verified in accordance with law.

We could not find sufficient documentation to determine if DMS was in compliance with AS 45.75.060 which requires verification of office and field standards on an annual basis.

In order to provide sufficient documentation, DMS should develop a complete inventory of all office and field standards with identifying numbers (where possible), the location of the standards, and the last date of verification.

### Legislative Audit's Current Position

The Division has developed a complete inventory of field standards and laboratory standards. The field standards status report lists the standards by type, serial number, location, inventory date, last certification date and certification due date. According to Division personnel, the lists will be maintained on a current basis.

### Prior Audit Recommendation No. 7B

DMS should develop procedures to ensure that weight and measure devices are inspected and tested semiannually in accordance with law.

DMS did not have sufficient documentation to determine that they were in compliance with AS 45.75.080 which requires all weights and measures in commercial use to be inspected and tested at least semiannually or more often as the Director considers necessary. We were able to review inspection dates for 110 businesses located in Southeastern Alaska. Of those 110 businesses, 43 received annual inspections, 23 received semiannual inspections, and the remaining 44 did not have sufficient information to determine the frequency of inspections.

DMS should compile an inventory of devices including location and the last date of testing. This will provide management with data to determine the extent of compliance possible

within budgetary constraints.

#### Legislative Audit's Current Position

Beginning with the Anchorage area, the Division is in the process of developing a route system for the inspection and testing of devices. Inventory schedules using the data processing equipment are being prepared which will list location of the commercial device, type, serial number, date of previous inspection and date of previous approval, date of current inspection and date of current approval. The inventory lists should provide a positive response to the problem of testing devices semiannually in heavily populated areas. In addition, legislation was introduced during the 1984 session of the Legislature which would eliminate semiannual inspections in favor of annual inspection (Senate Bill No. 491).

The Fiscal Year 1985 budget for DMS approved by the Legislature and the Governor reflects a significant reduction in the inspection activity of the Division. In light of this reduction, the proposed statutory change appears justified.

#### Prior Audit Recommendation No. 7C

DMS should develop a uniform method for compilation of weights and measures verification activity data.

An inspector, in order to verify a weight or measure device, performs an inspection which is an evaluation of the physical characteristics of the device, and a test which is the actual test for accuracy through the use of standards, e.g. test weights. We noted inconsistencies in the methods used by inspectors to count the number of devices, and inspections and tests of those devices.

In addition to the inconsistencies in accounting for activities, we noted that monthly activity information is not organized in a manner to facilitate managerial use of data for planning and budgeting purposes.

#### Legislative Audit's Current Position

Monthly statistics are compiled from test reports submitted by the inspectors. Since the system is manual, it is relatively cumbersome and error prone. DMS is working towards a uniform method of compiling verification data. DMS should continue to work for a more efficient system of data compilation.

BILL SHEFFIELD, GOVERNOR

**DEPARTMENT OF COMMERCE &  
ECONOMIC DEVELOPMENT**

POUCH D  
JUNEAU, ALASKA 99811  
PHONE: 465-2500

OFFICE OF THE COMMISSIONER

July 9, 1984

RECEIVED  
JUL 11 1984  
LEGISLATIVE AUDIT

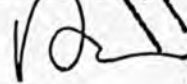
Mr. Gerald L. Wilkerson, CPA  
Legislative Auditor  
Division of Legislative Audit  
The Legislature  
Pouch W  
Juneau, Alaska 99801

Dear Mr. Wilkerson:

I have received your follow-up report on the Department of Commerce and Economic Development, Division of Measurement Standards dated June 4, 1984 and have no disagreement with the recommendations in the report. As stated, all recommendations have been addressed and corrective measures taken by the division.

Thank you and your staff for your efforts in performing this follow-up audit.

Sincerely,



Richard A. Lyon  
Commissioner

RAL/mm0442M  
7984a

CSHB 148(Jud): "AN ACT RELATING TO MOBILE HOME WARRANTIES"

THIS LEGISLATION MAKES 3 MAJOR CHANGES TO THE CURRENT MOBILE HOME WARRANTY LAW:

- 1) IT INCREASES THE PERFORMANCE BOND REQUIRED OF A MOBILE HOME MANUFACTURER FROM \$35,000 TO \$100,000
- 2) IT ALLOWS A CONSUMER TO PURSUE A PRIVATE CAUSE OF ACTION AGAINST A MOBILE HOME MANUFACTURER FOR WARRANTY VIOLATIONS.
- 3) IT ALSO TRANSFERS WARRANTY ENFORCEMENT AUTHORITY FROM THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT TO THE DEPARTMENT OF LAW.

Chairman's Information:

1) CSHB 148(Jud) "An act relating to mobile home warranties"

a) Introduced: Governor

b) Co-Sponsors:

2) INTENT: This legislation raises the performance bond required of a mobile home manufacturer from \$35,000 to \$100,000; it also allows a consumer to pursue a private cause of action against the manufacturer for warranty violations, and it transfers warranty enforcement authority from DCED to the Department of Law.

FISCAL NOTE: 0

NOTE: Bill which came over from the House has two section 2's;

3) ADDITIONAL REFERRALS: Judiciary

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public witnesses:

5) BILL ACTION:

a) Hold in committee?

b) Assign to sub committee for further review?

c) Move from Committee?

d) close public hearings?

6) COMMITTEE ACTION:

a) amendments?

b) CS adoption?

AN ACT RELATING TO MOBILE HOME WARRANTIES.

PRIME SPONSOR: RULES COMMITTEE  
CO-SPONSORS:

BY REQ OF THE GOVERNOR

CURRENT STATUS: (S) CALENDAR 3/4

DATE		PAGE	ACTION
01/30/85	(H)	200	READ THE FIRST TIME - REFERRAL(S)
01/30/85	(S)	200	GOVERNOR'S TRANSMITTAL LETTER
01/30/85	(H)	200	ZERO FISCAL NOTE/ANALYSIS HSE SUPPL 11
01/30/85	(H)	200	ZERO FISCAL NOTE
02/08/85	(H)	292	L&C RPT 7DF
03/27/85	(H)	718	JUD RPT CS, NEW TITLE 6DP
03/29/85	(H)		RLS TO CALENDAR
03/29/85	(H)	756	READ THE SECOND TIME
03/29/85	(H)	756	CS (JUD) ADOPTED UNAN CONSENT
03/29/85	(H)	756	ADVANCED TO THIRD READING UNAN CONSENT

HB 148

MEASURE HISTORY

PAGE 02 OF 02

DATE		PAGE	ACTION
03/29/85	(H)	756	READ THE THIRD TIME CSHB 148(JUD)
03/29/85	(H)	756	PASSED Y39 N- X1
03/29/85	(H)	757	COTTEN NOTICE OF RECONSIDERATION
04/01/85	(H)	789	RECONSIDERATION NOT TAKEN UP
04/01/85	(H)	789	TRANSMITTED TO (S)
04/02/85	(S)	693	READ THE FIRST TIME - REFERRAL(S)
05/07/85	(S)	1105	L&C RPT 3DP
05/10/85	(S)	1210	JUD COMM REFERRAL WAIVED
03/03/86	(S)		RULES RPT CALENDAR 3/4

CSHB 148:

Additional comments from Robert Mintz (279-0428) of the Consumer Protection Section of the Department of Law.

- 1) There are currently NO manufacturer's of mobile homes in the State of Alaska;
- 2) Warranties on Mobile Homes are typically about a year; This provision would not extend to a dealer who purchases a mobile home from a person while it is still under warranty, however if a private person sold a mobile home to another private person and the mobile home was under warranty, then the provisions of this statute would apply.
- 3) They don't have a clear handle on the number of mobile homes in the state however, AHFC has financed the following numbers of mobile homes:
  - a) FY83: 1,872
  - b) FY84: 1,619
  - c) First half of FY85: 383
- 4) Penalty provisions:

amount for a period of 24 months after the date the last mobile home was delivered to a buyer in the state. (§ 1 ch 104 SLA 1980)

Sec. 45.30.020. Duties of department.

Repealed by § 5 ch 123 SLA 1972.

Editor's note. — The repealed section derived from § 2, ch. 80, SLA 1971.

Sec. 45.30.030. Administration.

Repealed by § 5 ch 123 SLA 1972 and § 5 ch 104 SLA 1980.

Cross reference. — For current provisions concerning deposit of performance bonds, see AS 45.30.015. derived from § 2, ch. 80, SLA 1971; §§ 2, 5, ch. 123, SLA 1972; §§ 3, 4, ch. 114, SLA 1974.

Editor's note. — The repealed section

Sec. 45.30.040. Enforcement of compliance. (a) A department inspector shall give written notice to the owner, dealer or manufacturer of a mobile home of each violation of AS 45.30.011. The notice of violation shall accurately describe the violation and give specific reference to the section and paragraph of the statutes.

(b) Repealed by § 5 ch 104 SLA 1980.

(c) Whenever it determines that there may be a violation of the provisions of this chapter by a manufacturer or dealer of mobile homes, the department may give notice of hearing and, within 30 days after giving notice, hold a hearing to determine whether there has been a violation. After notice and hearing,

(1) if the department finds that there has been a violation of the provisions of this chapter, the department may issue an order directing that the person who is violating the provision cure the violation in a reasonable time and in a reasonable manner;

(2) if the department determines that violations of the provisions of this chapter are regular and recurring, it may require forfeiture of the bond to the benefit of the state and arrange for distribution of the proceeds of the bond to the mobile home owners injured by the activities of the dealer or manufacturer, or to mobile home dealers injured by the activities of the manufacturer.

(d) The provisions of AS 44.62.330 — 44.62.630 apply to a hearing held under (c) of this section. (§ 2 ch 80 SLA 1971; am § 3 ch 123 SLA 1972; am § 5 ch 114 SLA 1974; am §§ 2, 3, 5 ch 104 SLA 1980)

Effect of amendment. — The 1980 amendment, in subsection (a), inserted "dealer" preceding "or manufacturer" near the beginning of the first sentence, substituted "AS 45.30.011" for "the regulations adopted under AS 45.30.010"

at the end of the first sentence, and substituted "statutes" for "regulations" at the end of the second sentence; repealed subsection (b); and added subsections (c) and (d).

Sec. 45. Repealed

Cross reference provisions covered by AS 45.30.

Sec. 45. Repealed

Cross reference provisions covered by AS 45.30.100.

Sec. 45. prohibited of sale that home park ch 138 SLA

Sec. 45. (1) "buy personal u (2) "dep: Economic (3) "mob habitation authorized

Editor's note from AS 45.30

- Article 1. Interest 2. Collection 3. Merchand 4. Funerals 5. Regulatio 10. Miscellar

- Section 10. Legal rat 20. Higher r 30. Action fo of usur 40. Usurious entire

I think this is what they are getting at but I am not 100% sure. MICHAEL

§ 45.30.040

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§ 45.30.050

TRADE AND COMMERCE

§ 45.30.100

**Sec. 45.30.050. Penalty.**

Repealed by § 5 ch 104 SLA 1980.

**Cross reference.** — For current provisions concerning forfeiture of bond, see AS 45.30.040.

**Editor's note.** — The repealed section derived from § 2, ch. 80, SLA 1971; § 4, ch. 123, SLA 1972; § 6, ch. 114, SLA 1974.

**Sec. 45.30.060. Definitions.**

Repealed by § 5 ch 123 SLA 1972.

**Cross reference.** — For current provisions concerning definitions, see AS 45.30.100.

**Editor's note.** — The repealed section derived from § 2, ch. 80, SLA 1971.

**Sec. 45.30.070. Certain landlrd-vendor agreements prohibited.** A vendor of mobile homes may not require as a condition of sale that a purchaser locate the mobile home in a particular mobile home park or in one of a particular group of mobile home parks. (§ 6 ch 138 SLA 1976)

**Sec. 45.30.100. Definitions.** In this chapter,

(1) "buyer" means a person who purchases a mobile home for his personal use and not for purposes of resale;

(2) "department" means the Department of Commerce and Economic Development;

(3) "mobile home" means a vehicle designed and equipped for human habitation, and which may be drawn by a motor vehicle only when authorized by permit. (§ 4 ch 104 SLA 1980)

**Editor's note.** — This section derives the revisor of statutes pursuant to AS from AS 45.30.061 and was renumbered by 01.05.031.

**Chapter 45. Trade Practices.**

**Article**

1. Interest (§§ 45.45.010 — 45.45.070)
2. Collection of Advance Interest (§§ 45.45.080 — 45.45.090)
3. Merchandise (§§ 45.45.100 — 45.45.110)
4. Funerals (§ 45.45.120)
5. Regulation of Motor Vehicle Repairs (§§ 45.45.130 — 45.45.240)
10. Miscellaneous (§ 45.45.900)

**Article 1. Interest.**

**Section**

10. Legal rate of interest
20. Higher rate of interest prohibited
30. Action for recovery of double amount of usurious interest paid
40. Usurious rate as working forfeiture of entire interest

**Section**

50. Recovery by assignee of usurious contract of amount paid by him
60. Contract not usurious because of agreement to pay taxes
70. Enforcement of contracts entered into under AS 45.45.060

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

**REQUEST**

Bill/Resolution No.: HB 148, No. 1  
 Title: "An Act relating to...  
 mobile home warranties..."  
 Sponsor: House Rules/Governor  
 Requestor: Ofc. of Gov. - OMB  
 Date of Request: 12/10/84

**FISCAL DETAIL**

Agency Affected: Department of Law  
 Program Category Affected: Public Protection  
 BRU, Program or Subprogram(s) Affected: Consumer Protection

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

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

**FUNDING: (Thousands of Dollars)**

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS:**

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

**ANALYSIS:**

This bill creates a private cause of action relating to mobile home warranties, and transfers responsibility for enforcement of mobile home warranties from the Department of Commerce and Economic Development to the Department of Law. A 1983 legislative audit report recommended transfer of the enforcement process to the Department of Law. The transfer of the existing mobile home warranty enforcement position, including funding, from the Department of Commerce and Economic Development to the Department of Law, was accomplished July 1, 1984. Consequently, enactment of this bill will not require additional funding nor will it cause a fiscal impact.

Prepared By: Richard I. Pegues, Director Phone: 465-3672  
 Division: Administrative Services Division Date: 12/10/84  
 Approved by Commissioner: Norman C. Gorsuch  
 Agency: Department of Law Fiscal notes (0)

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: December 3, 1984

REQUEST

Bill/Resolution No.: 111-1048  
Title: Relating to Mobile Home Warranties

Sponsor: \_\_\_\_\_  
Requestor: \_\_\_\_\_  
Date of Request: \_\_\_\_\_

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.  
Program Category Affected: Protection

BRU, Program or Subprogram(s) Affected: \_\_\_\_\_  
Measurement Standards

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

<b>CAPITAL</b>						
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<b>REVENUE</b>						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	0	0				

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY	0	0				

ANALYSIS: Attach a separate page if necessary

Prepared By: Joe Swanson  
Division: Measurement Standards

Phone: 345-7750  
Date: 12/4/84

Approved by Commissioner: Richard A. Lyon  
Agency: Commerce and Economic Development

Date: 12.5.84

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

7/1/84



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

January 30, 1985

The Honorable Ben Grussendorf  
Speaker of the House  
Alaska State Legislature  
Pouch V  
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to mobile home warranties. This bill increases government efficiency in enforcement of mobile home warranties, and encourages private consumer self-help.

The bill has two main components: (1) the creation of a private cause of action in a mobile home buyer against the manufacturer's bond, which AS 45.30.015 requires be posted with the state; and (2) a transfer of warranty enforcement authority from the Department of Commerce and Economic Development (DCED) to the Department of Law.

With regard to the first of the components, it is the understanding of both DCED and the Department of Law that, when the mobile home warranty statute, AS 45.30.011, took effect in 1980, a private buyer injured by a manufacturer who sold a defective home to a buyer in this state would be allowed to make a claim against the bond under AS 45.30.040. However, that statute only provided a procedure for the consumer to petition the state to take administrative action against the bond. Experience in the last few years has shown that a buyer may believe that he or she has a valid claim against the bond in a case in which the state enforcing authority does not agree that administrative action is warranted. Providing a clear, private cause of action against the bond may relieve a burden on the government by reducing the number of administrative hearings, and insure that an individual can choose to enforce his or her own rights, whether or not a state agency agrees with the individual.

The second component of the bill is a transfer of the warranty enforcement powers from DCED to the Department of Law. The April 1983 legislative audit of the division of measure-

ment standards, DCED, studied this issue and recommended  
The Department [of Commerce and Economic  
Development] should seek legislation to  
transfer the mobile home warranty enforce-  
ment program to the Consumer Protection  
Section of the Department of Law.

Both departments have agreed that this is a more efficient  
enforcement pattern, as the Department of Law, consumer  
protection section, already processes mobile home complaints  
that fall outside the warranty Act, as well as those that  
may duplicate warranty Act enforcement by DCED. In FY 84,  
DCED transferred the one mobile home investigator position  
to the Department of Law through a reimbursable services  
agreement.

The bill promotes government efficiency by encouraging  
private self-help, rather than reliance on government. I  
feel that it will have the support of both industry and  
consumers. I urge your affirmative action on this measure.

Sincerely,

A handwritten signature in cursive script that reads "Bill Sheffield".

Bill Sheffield  
Governor

STATUTES RELATING TO CSHB 148(Jud)

CHAPTER = 45.30  
SECTION = 45.30.011  
TITLE = 45  
HEADINGS TITLE 45.  
Trade and Commerce.  
CHAPTER 30.  
Mobile Homes and Mobile Home Parks.  
CITATION Sec. 45.30.011.  
CATCH LINE

MOBILE HOME WARRANTIES.  
TEXT (a) After August 27, 1980, a new mobile home sold by a mobile home dealer to a buyer is subject to a mobile home warranty. A mobile home warranty shall be set out in a separate written document entitled "Mobile Home Warranty" which shall be delivered to the buyer by the mobile home dealer at the time a contract of sale is signed. The warranty shall contain the name, address and telephone number of the mobile home manufacturer and the mobile home dealer and shall include at least the following provisions:

- (1) the mobile home is free from any substantial defects in materials and workmanship;
- (2) the manufacturer or dealer, or both, shall take appropriate action at the site of the mobile home to correct substantial defects in materials or workmanship which become evident within one year of the date of delivery of the mobile home to the buyer if the buyer, or his transferee, gives written notice of the defect by registered or certified mail addressed to the business address of the manufacturer or dealer on a date which is not more than one year and ten days after date of delivery of the mobile home;
- (3) the manufacturer and the dealer are jointly and severally liable to the buyer, or his transferee, for the fulfillment of the terms of warranty, and the buyer may notify the manufacturer or the dealer, or both, in the event action is required to correct substantial defects in materials or workmanship;
- (4) the warranty is applicable to the mobile home structure, its plumbing, heating and electrical systems, and all appliances and equipment installed or included in the mobile home unit by the manufacturer or dealer; and
- (5) notwithstanding separate warranties applicable to appliances contained within a mobile home unit issued by the manufacturers of the appliances, primary responsibility for appropriate corrective action under the warranty rests with

the manufacturer and the dealer of the mobile home unit, and written notice of defects must be initially reported to them.

(b) The warranty provided under (a) of this section is in addition to and not in derogation of all other rights and remedies which a buyer may have under any other law or instrument.

(c) The manufacturer and the dealer may not require the buyer to waive his rights under (a) of this section. A waiver of rights required by a manufacturer or dealer is contrary to public policy and is unenforceable.

(d) A mobile home dealer shall display a notice of reasonable size stating the applicability of the warranty required by this section, and shall, upon request, provide a sample copy of the warranty. The notice shall be posted in each area in which purchase orders and sales contracts for mobile homes are written.

(e) The manufacturer shall compensate a mobile home dealer who incurs expenses as a result of warranty obligations for which the manufacturer is legally responsible or for obligations which the manufacturer imposes upon the dealer. A provision of contract which is contrary to this subsection is void as against public policy.

(f) In this section, a defect is "substantial" if it materially affects the fitness of the mobile home for occupancy or use by the buyer or his transferee.

HISTORY (Sec. 1 ch 104 SLA 1980)

CHAPTER = 45.30  
SECTION = 45.30.015  
TITLE = 45  
HEADINGS TITLE 45.  
Trade and Commerce.  
CHAPTER 30.  
Mobile Homes and Mobile Home Parks.  
CITATION Sec. 45.30.015.  
CATCH LINE

BONDS.  
TEXT (a) A manufacturer constructing mobile homes for sale in the state shall deposit a performance bond in the amount of \$35,000 with the department to assure compliance with the provisions of AS 45.30.011.  
(b) A manufacturer who discontinues construction of mobile homes for sale in the state shall maintain a performance bond in the required amount for a period of 24 months after the date the last mobile home was delivered to a buyer in the state.

HISTORY (Sec. 1 ch 104 SLA 1980)

CHAPTER = 45.50  
SECTION = 45.50.471  
TITLE = 45  
HEADINGS TITLE 45.  
Trade and Commerce.  
CHAPTER 50.  
Competitive Practices and Regulation of Competition.

ARTICLE 4.

Unfair Trade Practices and Consumer Protection.

CITATION Sec. 45.50.471.

CATCH LINE

UNLAWFUL ACTS AND PRACTICES.

TEXT

(a) Unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce are declared to be unlawful.

(b) The terms "unfair methods of competition" and "unfair or deceptive acts or practices" include, but are not limited to, the following acts:

(1) fraudulently conveying or transferring goods or services by representing them to be those of another;

(2) falsely representing or designating the geographic origin of goods or services;

(3) causing a likelihood of confusion or misunderstanding as to the source, sponsorship, or approval, or another person's affiliation, connection, or association with or certification of goods or services;

(4) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have;

(5) representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, secondhand, or seconds;

(6) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

(7) disparaging the goods, services, or business of another by false or misleading representation of fact;

(8) advertising goods or services with intent not to sell them as advertised;

(9) advertising goods or services with intent not to supply reasonable expectable public demand, unless the advertisement prominently discloses a limitation on quantity;

(10) making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

(11) engaging in any other conduct creating a likelihood of confusion or of misunderstanding and which misleads, deceives or damages a buyer or a competitor in connection with the sale or advertisement of goods or services;

(12) using or employing deception, fraud, false pretense, false promise, misrepresentation, or knowingly concealing, suppressing, or omitting a material fact with intent that others rely upon the concealment, suppression or omission in connection with the sale or advertisement of goods or services whether or not a person has in fact been misled, deceived or damaged;

(13) failing to deliver to the customer at the time of an installment sale of goods or services, a written order,

contract, or receipt setting out the name and address of the seller and the name and address of the organization which he represents, and all of the terms and conditions of the sale, including a description of the goods or services, which shall be stated in readable, clear, and unambiguous language;

(14) representing that an agreement confers or involves rights, remedies or obligations which it does not confer or involve, or which are prohibited by law;

(15) knowingly making false or misleading statements concerning the need for parts, replacement, or repair service;

(16) misrepresenting the authority of a salesman, representative or agent to negotiate the final terms of a consumer transaction;

(17) basing a charge for repair in whole or in part on a guaranty or warranty rather than on the actual value of the actual repairs made or work to be performed on the item without stating separately the charges for the work and the charge for the guaranty or warranty, if any;

(18) disconnecting, turning back or resetting the odometer of a vehicle to reduce the number of miles indicated;

(19) using a chain referral sales plan by inducing or attempting to induce a consumer to enter into a contract by offering a rebate, discount, commission, or other consideration, contingent upon the happening of a future event, on the condition that the consumer either sells, or gives information or assistance for the purpose of leading to a sale by the seller of the same or related goods;

(20) selling or offering to sell a right of participation in a chain distributor scheme;

(21) selling, falsely representing or advertising meat, fish or poultry which has been frozen as fresh food;

(22) failing to comply with AS 45.02.350;

(23) failing to comply with AS 45.45.130 45.45.240;

(24) counseling, consulting or arranging for future services relating to the disposition of a body upon death whereby certain personal property, not including cemetery lots and markers, will be furnished or the professional services of a funeral director or embalmer will be furnished, unless the person receiving money or property deposits the money or property, and money or property is received, within five days of its receipt, in a trust in a financial institution whose deposits are insured by an instrumentality of the federal government designating the institution as the trustee as a separate trust in the name only of the person on whose behalf the arrangements are made with a provision that the money or property may only be applied to the purchase of designated merchandise or services and should the money or property deposited and any accrued interest not be used for the purposes intended on the death of the person on whose behalf the arrangements are made, all money or property in the trust shall become part of his estate; upon demand by the person on whose behalf the arrangements are made, all money

or property in the trust including accrued interest, shall be paid to him; this paragraph does not prohibit the charging of a separate fee for consultation, counseling or arrangement services if the fee is disclosed to the person making the arrangement; any arrangement under this paragraph which would constitute a contract of insurance under AS 21 is subject to the provisions of AS 21;

(25) failing to comply with the terms of the Alaska Gasoline Products Leasing Act (AS 45.50.800 45.50.850).

(c) The unlawful acts and practices listed in (b) of this section are in addition to and do not limit the types of unlawful acts and practices actionable at common law or under other state statutes.

(d) Repealed by sec. 21 ch 166 SLA 1978.

HISTORY

(Sec. 2 ch 246 SLA 1970; am sec. 1 ch 53 SLA 1974; am sec. 1 ch 138 SLA 1974; am sec. 1 ch 183 SLA 1975; am sec. 2 ch 146 SLA 1976; am sec. 3 ch 197 SLA 1976; am sec. 3 ch 234 SLA 1976; am sec. 21 ch 166 SLA 1978)



# 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 A. Smith  
Signature of Camera Operator

11/24/89  
Date

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STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

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

REQUEST

Page 1 of 2

FISCAL DETAIL

Bill/Resolution No.: CSHB 168 (L&C)  
Title: Act relating to

Agency Affected: Commerce & Economic Dev.

Program Category Affected: \_\_\_\_\_

Construction Contractors;

Consumer Protection

Sponsor: Representative Sund

BRU, Program or Subprogram(s) Affected: \_\_\_\_\_

Requestor: House Finance Committee

Date of Request: March 19, 1985

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES		69.3	96.9	101.7	106.8	112.2
200 TRAVEL		13.8	15.7	16.5	17.3	18.2
300 CONTRACTUAL		22.8	23.9	25.1	26.4	27.7
400 SUPPLIES		2.7	3.8	4.0	4.2	4.4
500 EQUIPMENT		8.4	-0-	-0-	-0-	-0-
500 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>		117.0	140.3	147.3	154.7	162.5
<b>CAPITAL</b>						
<b>REVENUE</b>						

FUNDING: (Thousands of Dollars)

GENERAL FUND	117.0	140.3	147.3	154.7	162.5
FEDERAL FUNDS					
OTHER					
<b>TOTAL</b>	117.0	140.3	147.3	154.7	162.5

POSITIONS:

FULL-TIME	2.0	2.0	2.0	2.0	2.0
PART-TIME	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-

ANALYSIS: Attach a separate page if necessary

See page 2 Attached for analysis.

Prepared By: Al Adams - Chairman  
Division: House Finance Committee

Phone: 465-3706

Date: March 19, 1985

Approved by Commissioner: \_\_\_\_\_  
Agency: \_\_\_\_\_

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

Distribution (by Agency preparing fiscal note):

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

Current revenues generated by licensing fees charged construction contractors approximate \$436.7. HB 78 provides for additional revenues should costs exceed those presently incurred.

This note provides two positions, one in Anchorage and one in Fairbanks to implement the citation procedure. Existing Headquarters staff from Juneau will service Southeast.

COST ANALYSIS FY 86 - Variable costs.@ 9 months.

	<u>ANCHORAGE</u>	<u>FAIRBANKS</u>	<u>JUNEAU</u>
100	Investigator I - 28.0	Investigator III 41.3 <sup>(1)</sup>	-0-
200	3.8	5.0	5.0
300	7.0	9.8 (1)	6.0
400	0.9	0.9	0.9
500	4.2	4.2	-0-

(1) Fairbanks office stands alone, hence higher level investigator and cost of new office space.

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

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

REQUEST

Bill/Resolution No.: CS HB 168 (L&C)  
 Title: "An Act relating to construction contractors..."  
 Sponsor: Sund and Taylor  
 Requestor: House Finance  
 Date of Request: 3/14/85

FISCAL DETAIL

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

<b>CAPITAL</b>						
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<b>REVENUE</b>						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: <sup>18</sup> Robert J. Bacolas, Sr. Phone: 465-4870  
 Division: Labor Standards & Safety Date: 3/14/85

Approved by Commissioner: <sup>18</sup> Jim Robison Date: 3/14/85  
 Agency: Labor

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

Offered: 2/25/85  
Referred: Judiciary and Finance

Original sponsors: Sund, Taylor  
and Boucher

BY THE LABOR AND  
COMMERCE COMMITTEE

1 IN THE HOUSE

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

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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 without lawful justification or excuse fails  
18 to appear in court to answer a citation issued under this chapter, re-  
19 gardless of the disposition of the charge for which the citation was  
20 issued, is guilty of a class B misdemeanor.

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

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

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

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

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

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

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

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

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

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

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

26 \* Sec. 11. Sections 1, 2 and 4 - 10 of this Act take effect July 1,  
27 1985.

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

29 \* Sec. 13. Section 4 of this Act applies to general contractor and

*Amended*  
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1 specialty contractor licenses that are issued or renewed by the Department  
2 of Commerce and Economic Development after July 1, 1985.

Original sponsors: Sund, Taylor  
and Boucher

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IN THE HOUSE

BY THE LABOR AND  
COMMERCE COMMITTEE

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

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

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

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

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

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

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

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in the capacity of a contractor under any other name unless that name  
also is registered.

(b) All advertising, contracts, correspondence, cards, signs,  
posters, papers and documents prepared by a contractor for the con-  
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.

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16 [OF COMMERCE,] in the amount specified for bonds.

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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  
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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.

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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.

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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  
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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  
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17 prosecutor, a person who without lawful justification or excuse fails  
18 to appear in court to answer a citation issued under this chapter, re-  
19 gardless of the disposition of the charge for which the citation was  
20 issued, is guilty of a class B misdemeanor.

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

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

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

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

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

7 Sec. 08.18.131. INJUNCTION. In an action instituted in the  
8 superior court by the commissioner of labor or the commissioner of  
9 commerce and economic development, the court may enjoin [COMMIS-  
10 SIONER'S REPRESENTATIVE,] a person from acting in the capacity of a  
11 contractor in violation of this chapter. In addition to other relief,  
12 the court may impose a civil penalty of not more than \$250 for each  
13 violation. Each day that an unlawful act continues constitutes a  
14 separate violation [MAY BE ENJOINED FROM DOING SO].

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

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

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

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

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

27 \* Sec. 11. Sections 1, 2 and 4 - 10 of this Act take effect July 1,  
28 1985.

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

1 \* Sec. 13. Section 4 of this Act applies to general contractor and  
2 specialty contractor licenses that are issued or renewed by the Department  
3 of Commerce and Economic Development after July 1, 1985.  
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Chairman's Information:

1) CSHB 168 (L&C) "An act relating to construction contractors; and providing for an effective date."

a) Introduced: Sund

b) Co-Sponsors: Taylor and Boucher

2) INTENT: To better protect the public from unlicensed and unbonded construction contractors. The bill increases the bonding requirements for general and special contractors, provides for the issuance of citations, and the assessment of civil penalties. Further, this legislation enhances the Department of Labor's enforcement authority and provides such authority to DCED so they can work in concert.

FISCAL NOTE: 117.0 FY86 for DCED; House letter of intent establishes that the fiscal note is to be shared between Dept of Labor and DCED;

Note: NEED TO ADOPT HOUSE LETTER OF INTENT

3) ADDITIONAL REFERRALS: Judiciary and Finance.

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public witnesses:

5) BILL ACTION:

a) Hold in committee?

b) Assign to sub committee for further review?

c) Move from Committee?

d) close public hearings?

6) COMMITTEE ACTION:

a) amendments?

b) CS adoption?

→ L&C SCB CONTAINS CHANGES  
ON PAGE 5; LINES 8-10; DESIGNATES  
BOTH COMMISSIONERS OF LABOR & DCED TO  
INSTITUTE INJUNCTIONS IN SUPERIOR COURT  
AND MAKES GRAMMATICAL CHANGES WHICH  
PUTS SECTION IN THE "ACTIVE VOICE"

HOUSE JOURNAL

House Finance Committee  
Letter of Intent  
for  
CSHB 168 (Labor and Commerce)

This bill intends to expand the enforcement authority over contractors by both the Department of Labor and the Department of Commerce and Economic Development. It is the intent that funds provided by the fiscal note be shared by both departments taking into account existing enforcement personnel, capabilities, and office locations.



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Al Adams, Chairman  
House Finance Committee



ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY

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

February 20, 1985

MEMORANDUM

TO: Representative John Sund

FROM: Nancy Pease *Nancy Pease*  
Legislative Analyst

RE: Licensing and Bonding of Contractors: Update  
Research Request 85-180

Kitty Rodriguez of your staff requested an update of Research Request 83-251, "Licensing and Bonding of Contractors in Other States." I have contacted each of the eight states originally surveyed and amended the summary table accordingly (see attachment).

Licensing requirements do not appear to have changed in the eight states surveyed. Of the eight states surveyed, only Ohio has no state licensing or bonding requirements for contractors. However, Ohio counties and municipalities may license and bond contractors. Michigan and Oregon license general and specialty contractors for residential construction but not for commercial construction. Idaho and Montana contractors must be state-licensed in order to bid for public works contracts let by the state, federal or local governments but not for contracts with the private sector. Several states exempt contractors from obtaining licenses for jobs below a designated cost limit. California waives contractor licensing requirements for jobs costing less than \$200 while Montana waives licensing requirements for public works jobs costing less than \$5,000.

As noted in the earlier memorandum, licensing requirements vary considerably from trade to trade and state to state. Several states, including Alaska, Washington and Oregon, register as contractors persons who are not personally qualified in skilled trades for which they will be contracting. These contractors may be required to hire or subcontract a qualified, licensed specialty tradesman as a condition of the contracting license. Alaska, Washington and Oregon require contracting license applicants to provide proof of liability insurance in addition to a surety bond or assignment of savings. In Alaska and Washington, applicants must carry a minimum coverage of \$20,000 for property damage and \$100,000 for personal injury to more than one person.

Representative Sund  
February 20, 1985  
Page 2

The summary table shows several changes in bond requirements. Washington has increased the amount of the bonds required of general and specialty construction contractors. Oregon now requires a \$5,000 bond for all residential contractors; previously the bond amount varied for general and specialty contracting. Michigan no longer requires a \$2,000 bond for specialty contractors but does require a \$50 deposit to the Construction Lien Recovery Fund for each specialty trade contractor practices. Michigan also requires a \$1,000 bond before licensing nonresident electricians.

I hope this information is helpful. If you have further questions, please let us know.

NP

Attachments

LICENSING AND BONDING OF CONTRACTORS IN NINE STATES

	<u>Electrical work</u>	<u>Plumbing</u>	<u>General Building Contracting</u>	<u>Specialty Contracting</u>
Alaska <sup>1,2</sup>	license bond (\$2,000)	license bond (\$2,000)	license bond (\$5,000)	license bond (\$2,000)
California <sup>3,4</sup>	license bond (\$5,000)	license bond (\$5,000)	license bond (\$5,000)	license bond (\$5,000)
Colorado	license ---	license ---	---	---
Idaho	license ---	license bond (\$2,000)	license for public works ---	license for public works ---
Michigan <sup>5</sup>	license bond (\$50 or \$1,000)	license ---	license for residential constr. ---	license for residential constr. bond (\$50)
Montana <sup>6</sup>	license ---	license ---	license for public works ---	license for public works ---
Ohio	---	---	---	---
Oregon <sup>1,7</sup>	license bond for residential constr. (\$5,000)	license bond for residential constr. (\$5,000)	license for residential constr. bond (\$5,000)	license for residential constr. bond (\$5,000)
Washington <sup>1,8</sup>	license bond (\$3,000)	license bond as general contractor (\$6,000)	license bond (\$6,000)	license bond (\$4,000)

Footnotes: See Next Page

## FOOTNOTES

- <sup>1</sup>Applicants for contracting licenses must provide proof of liability insurance. In Washington and Alaska, applicants must carry a minimum of \$20,000 for property damage and \$100,000 for personal injury or death of more than one person.
- <sup>2</sup>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.
- <sup>3</sup>No contracting license is required for projects costing less than \$200. 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 their own or other contractors' licenses. Swimming pool contractors must post a bond of \$10,000.
- <sup>4</sup>If the responsible managing employee of a construction firm does not himself own at least 20 percent of the interest in the firm, the managing employee may be required to post a \$5,000 "qualifying individual" bond in addition to the \$5,000 licensing bond.
- <sup>5</sup>The bond takes the form of a Deposit to the Homeowners Construction Lien Recovery Fund. The amount of the bond is usually \$50. Michigan requires a \$1,000 bond before licensing nonresident electricians.
- <sup>6</sup>No contracting license is required for public works projects costing under \$5,000.
- <sup>7</sup>Bonds are required for residential construction (building projects of up to four residential units). All construction trades satisfy the bond requirement for residential construction through the Builders Board.
- <sup>8</sup>Washington plumbers must post bonds and apply for contracting licenses as general contractors if they let bids, supervise workers or perform more than two specialty trades.

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 as \$60,000 - \$100,000 on the same basis as explained in the FY 84 summary.

Background Info.

March 28, 1985

HB168- An act relating to construction contractors and providing for an effective date.

OVERVIEW prepared by Rep. John Sund's office

#### HISTORY OF THE BILL

As the law now stands, anyone 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.

Little 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 CSHB610, focused on changes which were substantially similar to HB168. It passed the House with a vote of 34 yeas and 6 nays and was left in the Senate upon adjournment.

#### PURPOSE OF THE BILL

Under CSHB168, 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 allow 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 and the Department of Labor will have citation authority. They will have the authority to enter work sites to inspect licenses. Working without a license will be a Class B misdemeanor.

A \$117,000 fiscal note provide 2 Investigator positions, in Anchorage and Fairbanks, and travel monies for two already existent Juneau positions, to enforce contractor requirements. These provisions will strengthen the enforcement of current regulations.

Bill No. Committee Substitute for House Bill No. 168 (L&C) Date

March 29, 1985

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

Contact: Eileen Plate  
465-2700  
Robert J. Bacolas  
465-4870

APR 1 5

Committee Substitute for House Bill No. 168 seeks to strengthen the contractor licensing enforcement powers of the Department of Labor and the Department of Commerce and Economic Development.

Currently, the Department of Commerce is responsible for the registration of construction contractors, with enforcement being provided by the Department of Labor. The Department of Labor's enforcement is primarily carried out in connection with other inspection/enforcement responsibilities (mechanical inspections, occupational safety and health inspections, and wage and hour investigations). This bill extends enforcement authority to the Department of Commerce in order that it may focus on residential construction and other areas where the Department of Labor is not highly visible. This would bridge the gap that presently exists in contractor licensing enforcement.


In addition, this bill increases the bonding requirements for both general and specialty contractors, and provides for the issuance of citations, the assessment of civil penalties, and the imposition of injunctive relief for violations of the contractor licensing laws.

The provisions of this bill are designed to combat the proliferation of unlicensed contractors in the state in order to better protect the public from unlicensed and unbonded construction contractors.

A section-by-section analysis of this bill is attached.

The Department of Labor supports passage of this bill. It will not have a fiscal impact on the Department.

APPROVED:

  
Jim Robison, Commissioner  
Department of Labor

CSHB 168 (L & C): An Act relating to Construction Contractors; and providing for an effective date.

The Department of Commerce and Economic Development supports CSHB 168 (L & C).

The committee substitute provides the Department of Commerce and Economic Development and the Department of Labor the authority to enforce unlicensed activity with a strong citation program.

Unlicensed activity in the area of construction contractors has been a rapidly growing problem. A joint effort by the departments will strengthen enforcement ability.

The bill also increases bonding requirements and adds additional requirements to mandate that a contractor identify the principal place of business, mailing address and license number.

*Harry D. Treager*

Harry D. Treager, Director  
Division of Occupational Licensing

DATE: February 22, 1985

*Loren H. Lounsbury*

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

DATE: 2/26/85



Official Business

# Alaska State Legislature

## Senate

### Committee on Labor & Commerce

Pouch V  
State Capitol  
Juneau, Alaska 99811

#### CSHB 168(L&C) Sectional Analysis:

- Section 1) Adds a new subsection which makes it unlawful for a general contractor to allow a specialty contractor to begin working for him, unless the specialty contractor is licensed.
- Section 2) Adds a new subsection which prohibits the commissioner of DCED 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) makes grammatical changes; subsection (b) and (c) add the principal place of business, the contractor's registration number, and the true name of the firm, to the list of items required in all advertising and contracts.
- Section 4) Increases the bond requirements for general contractors from \$5,000 to \$10,000, and increases the bond requirements for specialty contractors from \$2,000 to \$5,000.
- Section 5) Adds a new section which allows DCED and DOL the authority to investigate alleged violations of this chapter, to issue citations for violations, including the issuance of citations for each day a violation continues. This section also requires records of citations to be maintained by the commissioner, and that there be at least 5 days between the issuance of a citation and the notice to appear. A person failing to appear is guilty of a class "B" misdemeanor.
- Section 6&7) reflect the dual authority of DCED and DOL
- Section 8) Allows both the Commissioners of DCED and DOL to institute an injunctive proceeding in Superior court and impose a civil penalty not to exceed \$250 for each violation of this chapter.
- Section 9) Provides that an unlicensed contractor, or a general contractor who hires an unlicensed specialty contractor, is guilty of a class "B" misdemeanor (maximum 90 days jail/\$1,000 fine).

Further provides that criminal prosecution does not preclude the departments from seeking civil remedies as well.