

**SENATE CS FOR CS FOR HOUSE BILL NO. 151(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 1/28/08

Referred: Rules

Sponsor(s): REPRESENTATIVES JOHNSON BY REQUEST, Lynn, Foster

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act requiring an indemnification, defense, and hold harmless provision in  
2 construction-related professional services contracts of state agencies, quasi-public  
3 agencies, municipalities, and political subdivisions."

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

5 \* **Section 1.** AS 36.90 is amended by adding a new section to read:

6 **Article 4. Required Contract Provision.**

7 **Sec. 36.90.300. Indemnification, defense, and hold harmless provision in**  
8 **certain construction-related contracts.** (a) A public agency shall include in a  
9 construction-related professional services contract entered into by the public agency a  
10 provision under which the consultant agrees to indemnify, defend, and hold harmless  
11 the public agency from claims or liability for the negligent acts, errors, or omissions of  
12 the consultant. The provision must include an apportionment of the indemnification,  
13 defense, and hold harmless obligation on a comparative fault basis.

14 (b) A provision that reads substantially as follows satisfies the requirement of

1 (a) of this section:

2 The consultant shall indemnify, defend, and hold harmless the  
 3 contracting agency from and against any claim of, or liability for,  
 4 negligent acts, errors, and omissions of the consultant under this  
 5 agreement. The consultant is not required to indemnify, defend, or hold  
 6 harmless the contracting agency for a claim of, or liability for, the  
 7 independent negligent acts, errors, and omissions of the contracting  
 8 agency. If there is a claim of, or liability for, a joint negligent act, error,  
 9 or omission of the consultant and the contracting agency, the  
 10 indemnification, defense, and hold harmless obligation of this provision  
 11 shall be apportioned on a comparative fault basis. In this provision,  
 12 "consultant" and "contracting agency" include the employees, agents,  
 13 and contractors who are directly responsible, respectively, to each. In  
 14 this provision, "independent negligent acts, errors, and omissions"  
 15 means negligence other than in the contracting agency's selection,  
 16 administration, monitoring, or controlling of the consultant, or in  
 17 approving or accepting the consultant's work.

18 (c) In this section,

19 (1) "construction" means the process of building, altering, repairing,  
 20 maintaining, improving, demolishing, planning, and designing a public highway, a  
 21 structure, a building, a utility, infrastructure, or another public improvement to real  
 22 property, but does not mean the routine operation of a public improvement;

23 (2) "consultant" means a person who contracts with a public agency to  
 24 provide professional services;

25 (3) "professional services" has the meaning given in AS 36.30.990;

26 (4) "public agency" means a department, institution, board,  
 27 commission, division, authority, public corporation, committee, school district,  
 28 political subdivision, or other administrative unit of a municipality, of a political  
 29 subdivision, or of the executive or legislative branch of state government, including  
 30 the University of Alaska, the Alaska Aerospace Development Corporation, the Alaska  
 31 Housing Finance Corporation, the Alaska Industrial Development and Export

1 Authority, the Alaska Energy Authority, the Alaska Railroad Corporation, and a  
2 regional educational attendance area.