

Introduced: 2/28/64
Referred: Commerce, Finance
and Judiciary

1 IN THE HOUSE

BY MESSRS. STRANDBERG
AND JOSEPHSON

2 HOUSE BILL NO. 364

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRD LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the creation of a
7 contract claims and review board."

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

9 * Section 1. AS 36 is amended by adding a new chapter to read:
10 CHAPTER 30. CONTRACT CLAIMS AND REVIEW BOARD.

11 Sec. 36.30.010. CREATION. There is created in the
12 Department of Highways a contract claims and review board.

13 Sec. 36.30.020. COMPOSITION AND APPOINTMENT. The board
14 consists of five members. The members are the commissioner
15 of highways or his designated representative who shall be a
16 registered engineer, the chairman of the House Finance Com-
17 mittee, the chairman of the Senate Finance Committee, an
18 attorney actively engaged in the private practice of law in
19 Alaska, and a private citizen who is either a general con-
20 tractor or an engineer who is registered under the laws of
21 Alaska. The attorney member and the general contractor or
22 engineer member shall be appointed by the governor and shall
23 serve at his pleasure.

24 Sec. 36.30.030. ORGANIZATION OF BOARD. Within 30 days
25 after the effective date of this chapter, the governor shall
26 appoint the two appointed members of the board. Within 14
27 days after the last of the original appointments, the board
28 shall meet and organize by electing from its members a chair-
29 man. At that meeting the board shall also set hearing dates

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for pending appeals to the board.

Sec. 36.30.040. TERM OF OFFICE. The term of office for an appointed member of the board is four years. The term of office expires on February 1 of each year. Upon initial appointment one appointed member who shall be designated by the governor serves for not more than two years and the other appointed member serves for not more than four years. A member appointed by the governor to fill a vacancy serves for the unexpired term of the member he succeeds.

Sec. 36.30.050. CHAIRMAN OF THE BOARD. The chairman of the board shall be elected by the members of the board from the membership of the board.

Sec. 36.30.060. EXECUTIVE OFFICER. The commissioner of highways or his designated representative is the executive officer of the board, and may perform all acts necessary to carry into effect the provisions of this chapter.

Sec. 36.30.070. QUORUM. Three members constitute a quorum and the action taken by three members is considered the action of the full board.

Sec. 36.30.080. REGULATIONS. The board shall adopt procedural and substantive regulations necessary to implement this chapter.

Sec. 36.30.090. PER DIEM AND TRAVEL EXPENSES. The members of the board, except the commissioner of highways or his designated representatives, are authorized per diem and travel allowable to members of other boards and commissions.

Sec. 36.30.100. BOARD TO DECIDE DISPUTED QUESTIONS OF FACT. Any dispute concerning a question of fact arising under a contract exceeding \$2000 for the construction,

1 alteration, or repair of any public work of the state shall
2 be decided by the contracting officer, who shall furnish to
3 the contractor a written copy of his decision. The contract-
4 ing officer's decision shall be final and conclusive unless
5 within 30 days from the date of receipt thereof, the contract-
6 or appeals therefrom by mailing or otherwise furnishing
7 through the contracting officer a written appeal to the
8 contract claims and review board. The findings and deter-
9 mination of the board shall be final and conclusive unless
10 the decision is fraudulent or capricious or arbitrary or so
11 grossly erroneous as necessarily to imply bad faith, or is
12 not supported by substantial evidence.

13 Sec. 36.30.110. OPPORTUNITY TO BE HEARD. In connection
14 with any appeal to the board the contracting officer and the
15 contractor shall be afforded an opportunity to be heard and
16 to offer evidence in support of his appeal.

17 Sec. 36.30.120. TIME AND PLACE OF HEARING. The hear-
18 ings before the board shall be held in Juneau or Douglas at
19 a time and place designated by the board; provided, however,
20 the board may designate another place for a hearing if the
21 parties to the dispute both consent.

22 Sec. 36.30.130. NOTICE OF HEARING. The board shall
23 deliver or mail a notice of hearing to all parties at least
24 30 days before the hearing. Continuances may be granted for
25 cause shown or by agreement of the parties.

26 Sec. 36.30.140. SUBPOENA. (a) Before the hearing
27 begins the board shall issue subpoenas and subpoenas duces
28 tecum at the request of a party in accordance with the rules
29 of civil procedure. After the hearing begins the board

1 hearing a case may issue subpoenas and subpoenas duces tecum.

2 (b) A subpoena issued under (a) of this section extends
3 to all parts of the state and shall be served in accordance
4 with the rules of civil procedure. No witness is obliged to
5 attend at a place out of the election district in which he
6 resides unless the distance is less than 100 miles from his
7 place of residence, except that the board, upon affidavit of
8 a party showing that the testimony of the witness is material
9 and necessary, may endorse on the subpoena an order requiring
10 the attendance of the witness.

11 (c) A witness who is not a party and who appears under
12 a subpoena is entitled to receive

13 (1) fees, except a witness who is an officer or
14 employee of the state or a political subdivision of the
15 state;

16 (2) mileage in the same amount and under the same
17 circumstances as prescribed by law for a witness in a
18 civil action in a superior court;

19 (3) an additional fee and mileage to a per diem
20 compensation of \$15 for expenses of subsistence for
21 each day of actual attendance and for each day neces-
22 sarily occupied in traveling to and from the hearing,
23 if the witness attends a hearing at a point so far re-
24 moved from his residence as to prohibit return to his
25 residence from day to day.

26 (d) Fees, mileage, and expenses of subsistence shall be
27 paid by the party at whose request the witness is subpoenaed.

28 Sec. 36.30.150. DEPOSITIONS. (a) On verified peti-
29 tion of a party, the board may order that the testimony of

1 a material witness residing inside or outside the state be
2 taken by deposition in the manner prescribed by law for
3 depositions in civil actions. The petition shall set out
4 (1) the nature of the pending proceeding; (2) the name and
5 address of the witness whose testimony is desired; (3) a
6 showing of the materiality of his testimony; (4) a showing
7 that the witness will be unable or cannot be compelled to
8 attend; and (5) a request for an order requiring the witness
9 to appear and testify before an officer named in the petition
10 for that purpose.

11 (b) If the witness resides outside the state and if
12 the board orders the taking of his testimony by deposition,
13 the board shall obtain an order of court to that effect by
14 filing a petition for the taking of the deposition in the
15 superior court at Juneau. The proceedings on this order
16 shall be in accordance with provisions governing the taking
17 of depositions in the superior court in a civil action.

18 Sec. 36.30.160. DISQUALIFICATION OF BOARD MEMBER. A
19 board member shall voluntarily disqualify himself and with-
20 draw from a case in which he cannot accord a fair and impar-
21 tial hearing or consideration. A party may request the
22 disqualification of a board member by filing an affidavit,
23 before the taking of evidence at a hearing, stating with
24 particularity the grounds upon which it is claimed that a
25 fair and impartial hearing cannot be accorded. If one or
26 more board members are disqualified the issue shall be deter-
27 mined by the other board members. If more than two members
28 of the board are disqualified, the governor shall make such
29 temporary appointments as are necessary to provide a quorum

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to hear the case.

Sec. 36.30.170. RECORD OF PROCEEDINGS. The proceedings at the hearing shall be reported by a phonographic reporter or recorder, or other adequate means of assuring an accurate record.

Sec. 36.30.180. RULES OF EVIDENCE. (a) The board or a member of it may for the purposes of this chapter administer or cause to be administered oaths. Oral evidence may be taken only on oath or affirmation.

(b) Each party may (1) call and examine witnesses; (2) introduce exhibits; (3) cross-examine opposing witnesses on matter relevant to the issues, even though that matter was not covered in the direct examination; (4) impeach a witness regardless of which party first called the witness to testify; and (5) rebut the evidence against himself.

(c) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of a common law or statutory rule which makes improper the admission of the evidence over objection in a civil action. Hearsay evidence may be used to supplant or explain direct evidence but is not sufficient by itself to support a finding unless it would be admissible over objection in a civil action. The rules of privilege are effective to the same extent that they are recognized in a civil action. Irrelevant and unduly repetitious evidence shall be excluded.

Sec. 36.30.190. EVIDENCE BY AFFIDAVIT. (a) At any

1 time 10 or more days before a hearing or a continued hear-
2 ing, a party may mail or deliver to the opposing party a
3 copy of an affidavit which he proposes to introduce in
4 evidence, together with a notice as provided in (b) of this
5 section. Unless the opposing party, within seven days after
6 that mailing or delivery, mails or delivers to the proponent
7 a request to cross-examine an affiant, his right to cross-
8 examine the affiant is waived and the affidavit, if intro-
9 duced in evidence, shall be given the same effect as if the
10 affiant had testified orally. If an opportunity to cross-
11 examine an affiant is not given after request for it is made,
12 the affidavit may be introduced in evidence, but shall be
13 given only the same effect as other hearsay evidence.

14 (b) The notice referred to in (a) of this section shall
15 be substantially in the following form:

16 The accompanying affidavit of (here insert name of
17 affiant) will be introduced as evidence at the hearing in
18 (here insert title of proceeding). (Here insert name of
19 affiant) will not be called to testify orally and you may
20 not question him unless you notify (here insert name of
21 proponent or his attorney) at (here insert address) that you
22 wish to cross-examine him. To be effective your request must
23 be mailed or delivered to (here insert a date eight days
24 after the date of mailing or delivering the affidavit to the
25 opposing party).

26 Sec. 36.30.200. OFFICIAL NOTICE. In reaching a deci-
27 sion the board may take official notice, either before or
28 after submission of the case for decision, of a generally
29 accepted technical or scientific matter within the field of

1 engineering or contracting, and of a fact which is judicially
2 noticed by the courts of the state. Parties present at the
3 hearing shall be informed of the matters to be noticed, and
4 those matters shall be noted in the record, referred to in
5 the record, or appended to it. A party present at the hear-
6 ing shall, upon request, be given a reasonable opportunity to
7 refute the officially noticed matters by evidence or by
8 written or oral presentation of authority. The board shall
9 determine the matter of this refutation.

10 Sec. 36.30.210. AUDIT OF CLAIM. The board may examine
11 or cause to have examined the parts of the books and records
12 of the parties to a proceeding which relate to the questions
13 in dispute. The board may also audit or cause to have an
14 audit made of any claim presented under this chapter.

15 Sec. 36.30.220. CONTRACTOR TO PERFORM PENDING DECISION.
16 Pending final decision of a dispute under sec. 100, the con-
17 tractor shall proceed diligently with the performance of the
18 contract as directed by the contracting officer.

19 Sec. 36.30.230. JUDICIAL REVIEW. (a) Judicial review
20 by the superior court of a final order of the board may be
21 had by filing notice of appeal in accordance with the appli-
22 cable rules of court governing appeals in civil matters.
23 The notice of appeal shall be filed within 30 days after the
24 order is served on each party to the proceeding.

25 (b) The complete record of the proceedings, or the
26 parts of it which the appellant designates, shall be prepared
27 by the board. A copy shall be delivered to all parties
28 participating in the appeal. The original shall be filed in
29 the superior court within 30 days after the appellant pays

1 the estimated cost of preparing the complete or designated
2 record or files a corporate surety bond equal to the esti-
3 mated cost.

4 (c) The complete record includes (1) all notices and
5 orders issued by the board, (2) the final decision of the
6 board, (3) a transcript of all testimony and proceedings,
7 (4) the exhibits admitted or rejected, (5) the written evi-
8 dence, and (6) all other documents in the case.

9 (d) Upon order of the superior court, appeals may be
10 taken on the original record or parts of it. The record may
11 be typewritten or duplicated by any standard process. Ana-
12 logous rules of court governing appeals in civil matters
13 shall be followed where this chapter is silent, and when not
14 in conflict with this chapter.

15 Sec. 36.30.240. EFFECT ON EXISTING CONTRACTS. Disputes
16 arising under contracts in existence prior to the effective
17 date of this chapter shall be decided pursuant to this chap-
18 ter only if the contractor so requests in a written demand
19 served on the board and on the contracting officer. In cases
20 in which the contract was in existence prior to the effective
21 date of this chapter, if the contractor does not request a
22 hearing before the contract claims and review board, its
23 administrative remedy shall be that provided in its contract
24 with the state.

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