

Original Sponsors: Messrs.
Strandberg and Josephson

Offered: 3/12/64
Referred: Judiciary and
Finance

1 IN THE HOUSE

BY THE COMMERCE COMMITTEE

2

CS FOR 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 con-
tract claims and review board."

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

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* Section 1. AS 36 is amended by adding a new chapter to read:

10

CHAPTER 30. CONTRACT CLAIMS AND REVIEW BOARD.

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Sec. 36.30.010. CREATION. There is created in the

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Department of Highways a contract claims and review board.

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Sec. 36.30.020. COMPOSITION AND APPOINTMENT. (a) The

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board consists of five members. The members are

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(1) the commissioner of highways or his designated

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representative;

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(2) a person who is a general contractor;

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(3) three members of the general public.

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(b) If the commissioner of highways designates a person

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to represent him under (a)(1) of this section, he shall

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designate a registered engineer employed by the Department of
Highways.

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(c) The members mentioned in (a)(2) and (3) of this sec-
tion are appointed by the governor and confirmed by the
legislature and serve at the pleasure of the governor.

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Sec. 36.30.030. ORGANIZATION OF BOARD. Within 30 days

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after the effective date of this chapter, the governor shall

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appoint the four appointed members of the board. Within 14

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days after the last of the original appointments is made, the

1 board shall meet and organize by electing from its members a
2 chairman. At that meeting the board shall also set hearing
3 dates for pending appeals to the board.

4 Sec. 36.30.040. TERM OF OFFICE. The term of office for
5 an appointed member of the board is four years. The term of
6 office expires on February 1 of each year. Upon initial
7 appointment the governor shall designate one appointed member
8 to serve a one-year term, one to serve a two-year term, one
9 to serve a three-year term, and one to serve a four-year
10 term. A member appointed by the governor to fill a vacancy
11 serves for the unexpired term of the member he succeeds.

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

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

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

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

25 Sec. 36.30.090. PER DIEM AND TRAVEL EXPENSES. The mem-
26 bers of the board, except the commissioner of highways or his
27 designated representative, are authorized per diem and travel
28 allowable to members of other boards and commissions.

29 Sec. 36.30.100. BOARD TO DECIDE DISPUTED QUESTIONS OF

1 FACT. Any dispute concerning a question of fact arising
2 under a contract exceeding \$2,000 for the construction,
3 alteration, or repair of any public work of the state shall
4 be decided by the contracting officer, who shall furnish to
5 the contractor a written copy of his decision and a notice of
6 the consequences of failing to appeal the decision. The con-
7 tracting officer's decision is final and conclusive unless
8 within 30 days from the date he receives the decision and
9 notice the contractor appeals from the decision by mailing
10 or delivering through the contracting officer a written
11 appeal to the contract claims and review board. The findings
12 and determination of the board are final and conclusive un-
13 less the findings and determination are fraudulent or
14 capricious or arbitrary or so grossly erroneous as neces-
15 sarily to imply bad faith, or are not supported by substantial
16 evidence.

17 Sec. 36.30.110. OPPORTUNITY TO BE HEARD. In connection
18 with any appeal to the board the contracting officer and the
19 contractor shall be afforded an opportunity to be heard and
20 to offer evidence in support of and in opposition to the
21 appeal.

22 Sec. 36.30.120. TIME AND PLACE OF HEARING. The hear-
23 ings before the board shall be held in Juneau or Douglas at a
24 time and place designated by the board. The board, at the
25 request of a party, shall change the place of hearing to
26 another place in the state, if the board finds that the
27 convenience of witnesses and the ends of justice would be
28 promoted by the change or that to hold the hearing in Juneau
29 or Douglas would put the party appealing a decision to un-

1 necessary expense and inconvenience.

2 Sec. 36.30.130. NOTICE OF HEARING. The board shall
3 deliver or mail a notice of hearing to all parties at least
4 30 days before the hearing. Continuances may be granted for
5 cause shown or by agreement of the parties.

6 Sec. 36.30.140. SUBPOENA. (a) Before the hearing be-
7 gins the board shall issue subpoenas and subpoenas duces
8 tecum at the request of a party in accordance with the rules
9 of civil procedure. After the hearing begins the board may
10 issue subpoenas and subpoenas duces tecum.

11 (b) A subpoena issued under (a) of this section extends
12 to all parts of the state and shall be served in accordance
13 with the rules of civil procedure. No witness is obliged to
14 attend at a place out of the election district in which he
15 resides unless the distance is less than 100 miles from his
16 place of residence, except that the board, upon affidavit of
17 a party showing that the testimony of the witness is material
18 and necessary, may endorse on the subpoena an order requiring
19 the attendance of the witness.

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

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

24 (2) mileage in the same amount and under the same
25 circumstances as prescribed by law for a witness in a civil
26 action in a superior court;

27 (3) an additional fee and mileage to a per diem
28 compensation of \$15 for expenses of subsistence for each day
29 of actual attendance and for each day necessarily occupied in

1 traveling to and from the hearing, if the witness attends a
2 hearing at a point so far removed from his residence as to
3 prohibit return to his residence from day to day.

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

6 Sec. 36.30.150. DEPOSITIONS. (a) On verified petition
7 of a party, the board may order that the testimony of a
8 material witness residing inside or outside the state be
9 taken by deposition in the manner prescribed by law for
10 depositions in civil actions. The petition shall set out (1)
11 the nature of the pending proceedings; (2) the name and
12 address of the witness whose testimony is desired; (3) a
13 showing of the materiality of his testimony; (4) a showing
14 that the witness will be unable or cannot be compelled to
15 attend; and (5) a request for an order requiring the witness
16 to appear and testify before an officer named in the petition
17 for that purpose.

18 (b) If the witness resides outside the state and if
19 the board orders the taking of his testimony by deposition,
20 the board shall obtain an order of court to that effect by
21 filing a petition for the taking of the deposition in the
22 superior court at Juneau. The proceedings on this order shall
23 be in accordance with provisions governing the taking of
24 depositions in the superior court in a civil action.

25 Sec. 36.30.160. DISQUALIFICATION OF BOARD MEMBER. (a)
26 A board member shall voluntarily disqualify himself and with-
27 draw from a case in which he cannot accord a fair and im-
28 partial hearing or consideration.

29 (b) A board member is disqualified and may not act as

1 a board member in a case

2 (1) to which he is a party or in which he is
3 directly interested;

4 (2) if he was not present and sitting as a member
5 of the board at the hearing of a matter submitted for its
6 decision;

7 (3) if he is related to any party by consanguinity
8 of affinity within the third degree;

9 (4) if a party or an attorney for a party files an
10 affidavit that the board member before whom the case is to be
11 heard has a personal bias or prejudice either against him or
12 his attorney or in favor of an opposite party or the attorney
13 for an opposite party to the case, and that the affidavit is
14 made in good faith and not for the purpose of delay.

15 (c) The affidavit in (b)(4) of this section shall state
16 the facts and the reasons for the belief that bias or preju-
17 dice exists, and shall be filed within one day after the day
18 the hearing is at issue upon a question of fact, unless good
19 cause is shown for the failure to file it within that time.
20 No party or attorney may file more than three affidavits
21 under (a)(4) of this section in one case.

22 (d) The disqualification of a board member under (a)(3)
23 of this section is waived by the parties unless a party
24 raises an objection to the board member's hearing the case.

25 (e) If one or more board members are disqualified, the
26 issue shall be determined by the other board members. If
27 more than two board members are disqualified, the governor
28 shall make as many temporary appointments to the board as are
29 necessary to provide a quorum to hear the case.

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

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

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

15 (c) The hearing need not be conducted according to
16 technical rules relating to evidence and witnesses. Relevant
17 evidence shall be admitted if it is the sort of evidence on
18 which responsible persons are accustomed to rely in the con-
19 duct of serious affairs, regardless of the existence of a
20 common law or statutory rule which makes improper the admis-
21 sion of the evidence over objection in a civil action. Hear-
22 say evidence may be used to supplant or explain direct evi-
23 dence but is not sufficient by itself to support a finding
24 unless it would be admissible over objection in a civil
25 action. The rules of privilege are effective to the same
26 extent that they are recognized in a civil action. Irrelevant
27 and unduly repetitious evidence shall be excluded.

28 Sec. 36.30.190. EVIDENCE BY AFFIDAVIT. (a) At any
29 time 10 or more days before a hearing or a continued hearing,

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

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

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

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

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

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

14 Sec. 36.30.220. CONTRACTOR TO PERFORM PENDING DECISION.
15 Pending final decision of a dispute under sec. 100 of this
16 chapter, the contractor shall proceed diligently with the
17 performance of the contract as directed by the contracting
18 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. The
23 notice of appeal shall be filed within 30 days after the order
24 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, (4)
7 the exhibits admitted or rejected, (5) the written evidence,
8 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.
12 Analogous 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 before 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 before 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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