

Original Sponsors: Messrs.  
Strandberg and Josephson

Offered: 4/6/64  
Referred: Finance

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 2d 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-  
7 tract 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 Administration a contract claims and review  
13 board.

14 Sec. 36.30.020. COMPOSITION AND APPOINTMENT. (a) The  
15 board consists of five members of the general public appoint-  
16 ed by the governor and confirmed by the legislature. The  
17 governor shall appoint two members each from the central and  
18 southcentral senatorial districts and one member from the  
19 southeastern senatorial district. They serve at the pleasure  
20 of the governor.

21 Sec. 36.30.030. ORGANIZATION OF BOARD. Within 30 days  
22 after the effective date of this chapter, the governor shall  
23 appoint the members of the board. Within 14 days after the  
24 last of the original appointments is made, the board shall  
25 meet and organize by electing from its members a chairman.  
26 At that meeting the board shall also set hearing dates for  
27 pending appeals to the board.

28 Sec. 36.30.040. TERM OF OFFICE. The term of office for  
29 an appointed member of the board is four years. The term of

1 office expires on February 1 of each year. Upon initial  
2 appointment the governor shall designate one appointed member  
3 to serve a one-year term, one to serve a two-year term, one  
4 to serve a three-year term, and two to serve a four-year term.  
5 A member appointed by the governor to fill a vacancy serves  
6 for the unexpired term of the member he succeeds.

7 Sec. 30.30.050. CHAIRMAN OF THE BOARD. The chairman of  
8 the board shall be elected by the members of the board from  
9 the membership of the board.

10 Sec. 36.30.060. EXECUTIVE OFFICER. The commissioner of  
11 administration or his designated representative is the ex-  
12 ecutive officer of the board, and may perform all acts neces-  
13 sary to carry into effect the provisions of this chapter.

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

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

20 Sec. 36.30.090. PER DIEM AND TRAVEL EXPENSES. The mem-  
21 bers of the board, except the commissioner of administration  
22 or his designated representative, are authorized per diem and  
23 travel allowable to members of other boards and commissions.

24 Sec. 36.30.100. BOARD TO DECIDE DISPUTED QUESTIONS OF  
25 FACT. Any dispute concerning a question of fact arising  
26 under a contract exceeding \$2,000 for the construction,  
27 alteration, or repair of any public work of the state shall  
28 be decided by the contracting officer, who shall furnish to  
29 the contractor a written copy of his decision and a notice of

1 the consequences of failing to appeal the decision. The con-  
2 tracting officer's decision is final and conclusive unless  
3 within 30 days from the date he receives the decision and  
4 notice the contractor appeals from the decision by mailing or  
5 delivering through the contracting officer a written appeal to  
6 the contract claims and review board. The findings and deter-  
7 mination of the board are final and conclusive unless the find-  
8 ings and determination are fraudulent or capricious or arbi-  
9 trary or so grossly erroneous as necessarily to imply bad  
10 faith, or are not supported by substantial evidence.

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

15 Sec. 36.30.120. TIME AND PLACE OF HEARING. The hear-  
16 ings before the board shall be held at a time and place which  
17 the board finds would promote the convenience of witnesses and  
18 the ends of justice and avoid unnecessary expense and incon-  
19 venience.

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

24 Sec. 36.30.140. SUBPOENA. (a) Before the hearing be-  
25 gins the board shall issue subpoenas and subpoenas duces tecum  
26 at the request of a party in accordance with the rules appli-  
27 cable in a civil action in the superior court. After the  
28 hearing begins the board may issue subpoenas and subpoenas  
29 duces tecum.

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

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

18 (3) A per diem compensation of \$15 for expenses of  
19 subsistence for each day of actual attendance and for each  
20 day necessarily occupied in traveling to and from the hearing,  
21 if the witness attends a hearing at a point so far removed  
22 from his residence as to prohibit return to his residence  
23 from day to day.

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

26 Sec. 36.30.150. DEPOSITIONS. (a) On verified petition  
27 of a party, the board may order that the testimony of a  
28 material witness residing inside or outside the state be  
29 taken by deposition in the manner prescribed by law for

1 depositions in civil actions. The petition shall set out

2 (1) the nature of the pending proceedings;

3 (2) the name and address of the witness whose testi-  
4 mony is desired;

5 (3) a showing of the materiality of his testimony;

6 (4) a showing that the witness will be unable or  
7 cannot be compelled to attend; and

8 (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 closest to the place of hearing.

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

20 (b) A board member is disqualified and may not act as  
21 a board member in a case

22 (1) to which he is a party or in which he is  
23 directly interested;

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

27 (3) if he is related to any party by consanguinity  
28 or affinity within the third degree; or

29 (4) if a party or an attorney for a party files an

1 affidavit that the board member has a personal bias or pre-  
2 judice either against him or his attorney or in favor of an  
3 opposite party or the attorney for an opposite party to the  
4 case, and that the affidavit is made in good faith and not  
5 for the purpose of delay.

6 (c) The affidavit in (b)(4) of this section shall state  
7 the facts and the reasons for the belief that bias or preju-  
8 dice exists, and shall be filed within one day after the day  
9 the hearing is at issue upon a question of fact, unless good  
10 cause is shown for the failure to file it within that time.  
11 No party or attorney may file more than one affidavit under  
12 (a)(4) of this section in one case.

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

16 (e) If one or more board members are disqualified, the  
17 issue shall be determined by the other board members.

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

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

26 (b) Each party may

27 (1) call and examine witnesses;

28 (2) introduce exhibits;

29 (3) cross-examine opposing witnesses on matter

1 relevant to the issues, even though that matter was not  
2 covered in the direct examinations;

3 (4) impeach a witness regardless of which party  
4 first called the witness to testify; and

5 (5) rebut the evidence against himself.

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

19 Sec. 36.30.190. EVIDENCE BY AFFIDAVIT. (a) At any  
20 time 10 or more days before a hearing or a continued hearing,  
21 a party may mail or deliver to the opposing party a copy of  
22 an affidavit which he proposes to introduce in evidence,  
23 together with a notice as provided in (b) of this section.  
24 Unless the opposing party, within seven days after that mail-  
25 ing or delivery, mails or delivers to the proponent a request  
26 to cross-examine an affiant, his right to cross-examine the  
27 affiant is waived and the affidavit, if introduced in evi-  
28 dence, shall be given the same effect as if the affiant had  
29 testified orally. If an opportunity to cross-examine an

1 affiant is not given after request for it is made, the  
2 affidavit may be introduced in evidence, but shall be given  
3 only the same effect as other hearsay evidence.

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

6 The accompanying affidavit of (here insert name of  
7 affiant) will be introduced as evidence at the hearing in  
8 (here insert title of proceeding). (Here insert name of  
9 affiant) will not be called to testify orally and you may not  
10 question him unless you notify (here insert name of proponent  
11 or his attorney) at (here insert address) that you wish to  
12 cross-examine him. To be effective your request must be  
13 mailed or delivered to (here insert a date eight days after  
14 the date of mailing or delivering the affidavit to the  
15 opposing party).

16 Sec. 36.30.200. OFFICIAL NOTICE. In reaching a deci-  
17 sion the board may take official notice, either before or  
18 after submission of the case for decision, of generally  
19 accepted technical or scientific matter within the field of  
20 engineering or contracting, and of a fact which is judicially  
21 noticed by the courts of the state. Parties present at the  
22 hearing shall be informed of the matters to be noticed, and  
23 those matters shall be noted in the record, referred to in  
24 the record, or appended to it. A party present at the hear-  
25 ing shall, upon request, be given a reasonable opportunity to  
26 refute the officially noticed matters by evidence or by  
27 written or oral presentation of authority. The board shall  
28 determine the matter of this refutation.

29 Sec. 36.30.210. AUDIT OF CLAIM. The board may examine

1 or cause to have examined the parts of the books and records  
2 of the parties to a proceeding which relate to the questions  
3 in dispute. The board may also audit or cause to have an  
4 audit made of any claim presented under this chapter.

5 Sec. 36.30.220. CONTRACTOR TO PERFORM PENDING DECISION.  
6 Pending final decision of a dispute under sec. 100 of this  
7 chapter, the contractor shall proceed diligently with the  
8 performance of the contract as directed by the contracting  
9 officer.

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

16 (b) The complete record of the proceedings, or the  
17 parts of it which the appellant designates, shall be prepared  
18 by the board. A copy shall be delivered to all parties  
19 participating in the appeal. The original shall be filed in  
20 the superior court within 30 days after the appellant pays  
21 the estimated cost of preparing the complete or designated  
22 record or files a corporate surety bond equal to the esti-  
23 mated cost.

24 (c) The complete record includes (1) all notices and  
25 orders issued by the board, (2) the final decision of the  
26 board, (3) a transcript of all testimony and proceedings, (4)  
27 the exhibits admitted or rejected, (5) the written evidence,  
28 and (6) all other documents in the case.

29 (d) Upon order of the superior court, appeals may be

1 taken on the original record or parts of it. The record may  
2 be typewritten or duplicated by any standard process.  
3 Analogous rules of court governing appeals in civil matters  
4 shall be followed where this chapter is silent, and when not  
5 in conflict with this chapter.

6 Sec. 36.30.240. EFFECT ON EXISTING CONTRACTS. Disputes  
7 arising under contracts in existence before the effective  
8 date of this chapter shall be decided pursuant to this chap-  
9 ter only if the contractor so requests in a written demand  
10 served on the board and on the contracting officer. In cases  
11 in which the contract was in existence before the effective  
12 date of this chapter, if the contractor does not request a  
13 hearing before the contract claims and review board, its  
14 administrative remedy shall be that provided in its contract  
15 with the state.

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