

Introduced: 1/27/65  
Referred: Labor &  
Management, Commerce

ALASKA  
STATE  
LEGISLATURE

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1 IN THE HOUSE

2 HOUSE BILL NO. 39

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTH LEGISLATURE - FIRST 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. The  
15 board consists of five members of the general public appoint-  
16 ed by the governor and confirmed by the legislature. They  
17 serve at the pleasure of the governor.

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

25 Sec. 36.30.040. TERM OF OFFICE. The term of office for  
26 an appointed member of the board is four years. The term of  
27 office expires on February 1 of each year. Upon initial  
28 appointment the governor shall designate one appointed member  
29 to serve a one-year term, one to serve a two-year term, one

1 to serve a three-year term, and two to serve a four-year  
2 term. A member appointed by the governor to fill a vacancy  
3 serves for the unexpired term of the member he succeeds.

4 Sec. 30.30.050. CHAIRMAN OF THE BOARD. The chairman of  
5 the board shall be elected by the members of the board from  
6 the membership of the board.

7 Sec. 36.30.060. EXECUTIVE OFFICER. The commissioner of  
8 administration or his designated representative is the execu-  
9 tive officer of the board, and may perform all acts neces-  
10 sary to carry into effect the provisions of this chapter.

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

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

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

21 Sec. 36.30.100. BOARD TO DECIDE DISPUTED QUESTIONS OF  
22 FACT. Any dispute concerning a question of fact arising  
23 under a contract exceeding \$2,000 for the construction,  
24 alteration, or repair of any public work of the state shall  
25 be decided by the contracting officer, who shall furnish to  
26 the contractor a written copy of his decision and a notice of  
27 the consequences of failing to appeal the decision. The con-  
28 tracting officer's decision is final and conclusive unless  
29 within 30 days from the date he receives the decision and

1 notice the contractor appeals from the decision by mailing  
2 or delivering through the contracting officer a written  
3 appeal to the contract claims and review board. The findings  
4 and determination of the board are final and conclusive un-  
5 less the findings and determination are fraudulent or  
6 capricious or arbitrary or so grossly erroneous as neces-  
7 sarily to imply bad faith, or are not supported by substantial  
8 evidence.

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

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

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

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

29 (b) A subpoena issued under (a) of this section extends

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

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

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

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

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

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

25 Sec. 36.30.150. DEPOSITIONS. (a) On verified petition  
26 of a party, the board may order that the testimony of a  
27 material witness residing inside or outside the state be  
28 taken by deposition in the manner prescribed by law for  
29 depositions in civil actions. The petition shall set out (1)

1 the nature of the pending proceedings; (2) the name and  
2 address of the witness whose testimony is desired; (3) a  
3 showing of the materiality of his testimony; (4) a showing  
4 that the witness will be unable or cannot be compelled to  
5 attend; and (5) a request for an order requiring the witness  
6 to appear and testify before an officer named in the petition  
7 for that purpose.

8 (b) If the witness resides outside the state and if  
9 the board orders the taking of his testimony by deposition,  
10 the board shall obtain an order of court to that effect by  
11 filing a petition for the taking of the deposition in the  
12 superior court closest to the place of hearing.

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

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

19 (1) to which he is a party or in which he is  
20 directly interested;

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

24 (3) if he is related to any party by consanguinity  
25 of affinity within the third degree; or

26 (4) if a party or an attorney for a party files an  
27 affidavit that the board member has a personal bias or pre-  
28 judice either against him or his attorney or in favor of an  
29 opposite party or the attorney for an opposite party to the

1 case, and that the affidavit is made in good faith and not  
2 for the purpose of delay.

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

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

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

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

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

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

29 (c) The hearing need not be conducted according to

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

13 Sec. 36.30.190. EVIDENCE BY AFFIDAVIT. (a) At any  
14 time 10 or more days before a hearing or a continued hearing,  
15 a party may mail or deliver to the opposing party a copy of  
16 an affidavit which he proposes to introduce in evidence,  
17 together with a notice as provided in (b) of this section.  
18 Unless the opposing party, within seven days after that mail-  
19 ing or delivery, mails or delivers to the proponent a request  
20 to cross-examine an affiant, his right to cross-examine the  
21 affiant is waived and the affidavit, if introduced in evi-  
22 dence, shall be given the same effect as if the affiant had  
23 testified orally. If an opportunity to cross-examine an  
24 affiant is not given after request for it is made, the  
25 affidavit may be introduced in evidence, but shall be given  
26 only the same effect as other hearsay evidence.

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

29 The accompanying affidavit of (here insert name of

1           affiant) will be introduced as evidence at the hearing in  
2           (here insert title of proceeding). (Here insert name of  
3           affiant) will not be called to testify orally and you may not  
4           question him unless you notify (here insert name of proponent  
5           or his attorney) at (here insert address) that you wish to  
6           cross-examine him. To be effective your request must be  
7           mailed or delivered to (here insert a date eight days after  
8           the date of mailing or delivering the affidavit to the op-  
9           posing party).

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

23           Sec. 36.30.210. AUDIT OF CLAIM. The board may examine  
24           or cause to have examined the parts of the books and records  
25           of the parties to a proceeding which relate to the questions  
26           in dispute. The board may also audit or cause to have an  
27           audit made of any claim presented under this chapter.

28           Sec. 36.30.220. CONTRACTOR TO PERFORM PENDING DECISION.  
29           Pending final decision of a dispute under sec. 100 of this

1 chapter, the contractor shall proceed diligently with the  
2 performance of the contract as directed by the contracting  
3 officer.

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

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

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

23 (d) Upon order of the superior court, appeals may be  
24 taken on the original record or parts of it. The record may  
25 be typewritten or duplicated by any standard process.  
26 Analogous rules of court governing appeals in civil matters  
27 shall be followed where this chapter is silent, and when not  
28 in conflict with this chapter.

29 Sec. 36.30.240. EFFECT ON EXISTING CONTRACTS. Disputes

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arising under contracts in existence before the effective date of this chapter shall be decided pursuant to this chapter only if the contractor so requests in a written demand served on the board and on the contracting officer. In cases in which the contract was in existence before the effective date of this chapter, if the contractor does not request a hearing before the contract claims and review board, its administrative remedy shall be that provided in its contract with the state.