

1 IN THE HOUSE

BY STRANDBERG AND GRAVEL

2

HOUSE BILL NO. 356

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTH LEGISLATURE - SECOND SESSION

5

A BILL

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For an Act entitled: "An Act relating to the creation of a
7 contract 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:

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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. The board

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consists of five members. The members are the commissioner

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of highways or his designated representative who shall be a

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registered engineer, the chairman of the House Finance Com-

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mittee, the chairman of the Senate Finance Committee, an

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attorney actively engaged in the private practice of law in

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Alaska, and a private citizen who is either a general con-

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tractor or an engineer who is registered under the laws of

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Alaska. The attorney member and the general contractor or

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engineer member shall be appointed by the governor and shall

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serve at his pleasure.

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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 two appointed members of the board. Within 14

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days after the last of the original appointments, the board

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shall meet and organize by electing from its members a chair-

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man. At that meeting the board shall also set hearing dates

1 for pending appeals to the board.

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

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

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

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

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

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

27 Sec. 36.30.100. BOARD TO DECIDE DISPUTED QUESTIONS OF
28 FACT. Any dispute concerning a question of fact arising
29 under a contract exceeding \$2,000 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 hearings
18 before the board shall be held in Juneau or Douglas at a
19 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 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 a superior court;

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

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

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

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

29 Sec. 36.30.170. RECORD OF PROCEEDINGS. The proceedings

1 at the hearing shall be reported by a phonographic reporter
2 or recorder, or other adequate means of assuring an accurate
3 record.

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

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

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

27 Sec. 36.30.190. EVIDENCE BY AFFIDAVIT. (a) At any
28 time 10 or more days before a hearing or a continued hearing,
29 a party may mail or deliver to the opposing party a copy of

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

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

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

24 Sec. 36.30.200. OFFICIAL NOTICE. In reaching a decision
25 the board may take official notice, either before or after
26 submission of the case for decision, of a generally accepted
27 technical or scientific matter within the field of engineering
28 or contracting, and of a fact which is judicially noticed by
29 the courts of the state. Parties present at the hearing shall

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

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

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

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

23 (b) The complete record of the proceedings, or the
24 parts of it which the appellant designates, shall be prepared
25 by the board. A copy shall be delivered to all parties
26 participating in the appeal. The original shall be filed in
27 the superior court within 30 days after the appellant pays
28 the estimated cost of preparing the complete or designated
29 record or files a corporate surety bond equal to the estimated

1 cost.

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

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

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

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