

Introduced: 1/27/77
Referred: Judiciary

1 IN THE SENATE

BY CROFT

2 HCS SENATE BILL NO. 89

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the exemption of municipalities
7 from the requirement of posting bonds for court costs
8 and the amount of judgment; amending Rule 65(c), Rules
9 of Civil Procedure, and Rule 7(d) Rules of Appellate
10 Procedure; and changing the effect of Rules 7(c),
11 24(d), 45(c) and 45(d), Rules of Appellate Procedure,
12 and Rules 23(e), 24(b), 25(b), 31(c)(2) and 31(d)(3),
13 District Court Civil Rules."

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

15 * Section 1. AS 09.65.040 is amended to read:

16 Sec. 09.65.040. PARTIES EXEMPT FROM GIVING BOND. In an action or
17 proceeding in a court in which the state or a municipality is a party or
18 in which the state or a municipality is interested, no bond or under-
19 taking is required of the state, a municipality, or an officer of the
20 state or municipality.

21 * Sec. 2. Rule 65(c) of the Alaska Rules of Civil Procedure is amended to
22 read:

23 (c) SECURITY. No restraining order or preliminary injunction shall
24 issue except upon the giving of security by the applicant, in such sum
25 as the court deems proper, for the payment of such costs and damages as
26 may be incurred or suffered by any party who is found to have been
27 wrongfully enjoined or restrained. No such security shall be required
28 of the state or a municipality or of an officer or agency thereof, or
29 unless otherwise ordered by the court, in domestic relations actions or

1 proceedings.

2 A surety upon a bond or undertaking under this rule submits himself
3 to the jurisdiction of the court and irrevocably appoints the clerk of
4 the court as his agent upon whom any papers affecting his liability on
5 the bond or undertaking may be served. His liability may be enforced on
6 motion without the necessity of an independent action. The motion and
7 such notice of the motion as the court prescribes may be served on the
8 clerk of the court who shall forthwith mail copies to the persons giving
9 the security if their addresses are known.

10 * Sec. 3. Rule 7(d) of the Alaska Rules of Appellate Procedure is amended
11 to read:

12 (d) Supersedeas Bond. Whenever an appellant entitled thereto
13 desires a stay on appeal, he may present to the superior court for its
14 approval a supersedeas bond which shall have such surety or sureties as
15 the court requires. The bond shall be conditioned for the satisfaction
16 of the judgment in full, together with costs and interest, if for any
17 reason the appeal is dismissed or if the judgment is affirmed, and to
18 satisfy in full such modification of the judgment and such costs and
19 interest as the supreme court may adjudge and award. When the judgment
20 is for the recovery of money not otherwise secured, the amount of the
21 bond shall be fixed at such sum as will cover the whole amount of the
22 judgment remaining unsatisfied, costs on the appeal, and interest, unless
23 the court after notice and hearing and for good cause shown, fixes a
24 different amount or orders security other than the bond. When the judg-
25 ment determines the disposition of the property in controversy as in
26 real actions, replevin, and actions to foreclose mortgages or when such
27 property is in the custody of the marshal or state police or when the
28 proceeds of such property or a bond for its value is in the custody or
29 control of the court, the amount of the supersedeas bond shall be fixed

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at such sum only as will secure the amount recovered for the use and detention of the property, the cost of the action, costs on appeal, and interest, unless the court, after notice and hearing and for good cause shown, fixes a different amount or orders security other than the bond. A municipality or an officer or agency thereof desiring a stay on appeal is exempted from the requirements of posting supersedeas bond imposed by this subsection.

* Sec. 4. This Act has the effect of excluding municipalities and their officers and agencies from application of rules regarding posting of bonds to cover costs on appeal imposed by Rules 7(c), 24(d), and 45(c), Alaska Rules of Appellate Procedure, and Rules 23(e), 25(b), 31(c)(2), and 31(d)(3) of the Alaska District Court Civil Rules. This Act also has the effect of excluding municipalities and their officers and agencies from application of rules regarding posting of bonds concomitant to obtaining a stay of the operation of a judgment, imposed by Rule 45(d) Rules of Appellate Procedure, and Rules 24(b) and 25(b), Alaska District Court Civil Rules.