

1 IN THE SENATE

BY ZIEGLER

2 SENATE BILL NO. 505

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to litigation involving action by the  
7 state."

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

9 \* Section 1. AS 09.50 is amended by adding new sections to read:

10 ARTICLE 7. LITIGATION INVOLVING STATE ACTION.

11 Sec. 09.50.450. CONDITIONS PRECEDENT TO MAINTENANCE OF ACTION. No  
12 civil action may be instituted or maintained by any person, association,  
13 group, or corporation seeking to enjoin state action or seeking the  
14 denial, qualification, or conditioning of a license or permit from the  
15 state or an agency of the state unless both of the following conditions  
16 exist:

17 (1) the plaintiff alleges in the complaint that the issuance  
18 of the license or permit or the state action will cause the plaintiff a  
19 specific nonspeculative personal injury in fact and the complaint indi-  
20 cates the substantial likelihood of such an injury; and

21 (2) the plaintiff alleges in the complaint with particularity  
22 his efforts to secure from the state the action that he requests in the  
23 complaint and alleges further that he has informed the state in writing  
24 of the ultimate facts of each claim against the state which he proposes  
25 to file.

26 Sec. 09.50.460. MOTIONS FOR SECURITY. (a) In a civil action  
27 seeking to enjoin state action, including the issuance of a permit or  
28 license, at any time within 30 days after service of the summons and  
29 complaint upon the state or an agency of the state, the state or an

1 agency of the state may move the court for an order, upon notice and  
2 hearing, requiring the plaintiff to furnish security required by the  
3 court under secs. 450 - 500 of this chapter.

4 (b) In a civil action seeking the denial, qualification, or con-  
5 ditioning of a license or permit from the state, the applicant for the  
6 license or permit may intervene in the litigation pursuant to the Rules  
7 of Civil Procedure and within 30 days after the order of the court  
8 granting intervention move the court for an order, upon notice and  
9 hearing, requiring the plaintiff to furnish security required by the  
10 court under secs. 450 - 500 of this chapter.

11 (c) A motion filed under (a) or (b) of this section shall be based  
12 upon one of the following grounds:

13 (1) that the grounds alleged in the complaint have been  
14 raised in proceedings or negotiations involving the state, its agencies,  
15 and, if applicable, the applicant for the license or permit and, after  
16 full consideration, the grounds have been found without merit; or

17 (2) that the grounds alleged in the complaint have not been  
18 raised in proceedings or negotiations involving the state or its agen-  
19 cies or, if applicable, the applicant for a license or permit.

20 (d) The court on application of a party may extend the 30-day  
21 period for an additional period or periods not exceeding 60 days.

22 Sec. 09.50.470. HEARING ON THE MOTION. At a hearing on a motion  
23 filed under sec. 460 of this chapter, the court shall consider evidence,  
24 either written or oral, by witnesses or by affidavit as may be material  
25 to grounds upon which the motion is based. If the court determines,  
26 after hearing the evidence adduced by the parties at the hearing, that  
27 the movant has established a probability in support of a ground upon  
28 which the motion was based, the court shall fix the nature and amount of  
29 the security to be furnished by the plaintiff under sec. 480 of this

1 chapter.

2 Sec. 09.50.480. SECURITY. (a) If the court determines that the  
3 state, or agency of the state, or an intervener is entitled to security  
4 under secs. 450 - 500 of this chapter, it shall consider and, if appli-  
5 cable, include, the following elements in its determination of the  
6 amount of the security set:

7 (1) the actual or prospective damages to the movant from con-  
8 tracts or agreements entered into in good faith before pre-litigation  
9 proceedings or negotiations or, in the absence of proceedings or nego-  
10 tiations, before the instant civil action was filed;

11 (2) the reasonably expected extra costs from inflation to the  
12 state, its agencies, or intervener that can be expected from a delay in  
13 the construction or execution of the proposed action; and

14 (3) other costs and damages that the movant may reasonably be  
15 expected to incur or suffer, including the costs of the litigation.

16 (b) The amount of the security set by the court may be decreased  
17 or increased from time to time in the discretion of the court on a  
18 showing that the security provided has or may become excessive or inade-  
19 quate. If the court, upon any such motion, makes a determination that  
20 security shall be furnished by the plaintiff as to a defendant or de-  
21 fendants, the action shall be dismissed as to that defendant, unless the  
22 security required by the court shall have been furnished within a reason-  
23 able time as may be set by the court.

24 Sec. 09.50.490. ACCESS TO SECURITY. A defendant shall have such  
25 recourse to the security set under sec. 480 of this chapter in an amount  
26 as the court may determine upon the termination of the civil action.

27 Sec. 09.50.500. EFFECT OF MOTION FOR SECURITY. If a motion for  
28 security is filed, no defendant need file other pleadings and the pro-  
29 secution of the action is stayed until 10 days after the motion has been

disposed of.

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