

Introduced: 1/14/80  
Referred: State Affairs and  
Finance

1 IN THE HOUSE

BY GARDINER, ANDERSON AND  
BUCHHOLDT

2 HOUSE BILL NO. 508

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to construction oversight in public  
7 works projects; and providing for an effective date."

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

9 \* Section 1. AS 44.21 is amended by adding new sections to read:

10 ARTICLE 4. CONSTRUCTION OVERSIGHT.

11 Sec. 44.21.200. DIVISION OF CONSTRUCTION OVERSIGHT. There is  
12 established within the Department of Administration a division of con-  
13 struction oversight. The director of the division of construction  
14 oversight shall be an architect or engineer licensed under AS 08.48.

15 Sec. 44.21.210. DUTIES. The division of construction oversight  
16 shall, to the maximum extent possible,

17 (1) assure that public works projects are adequately designed  
18 and engineered to accomplish their purposes in the environments in which  
19 they are to be constructed, including but not limited to arctic environ-  
20 ments;

21 (2) assure that public works projects are constructed sub-  
22 stantially in accordance with plans and specifications;

23 (3) when applicable, assess the abilities of local communi-  
24 ties to maintain and operate public works projects.

25 Sec. 44.21.220. PLANNING APPROVAL. The division shall review all  
26 plans and specifications for a public works project before construction  
27 begins on the project. Construction may not begin on a public works  
28 project until the director or his designee approves the plans and speci-  
29 fications for the project in writing. The director or his designee may

1 approve plans and specifications for a public works project only if he  
2 determines that

3 (1) the project, as planned, is suitable to accomplish its  
4 purpose in the environment in which it is sited; and

5 (2) if applicable, the local community in which the project is  
6 to be constructed has the capacity to maintain and operate the completed  
7 project.

8 Sec. 44.21.230. CONSTRUCTION OVERSIGHT. (a) The division shall  
9 inspect each public works project for which it has given written  
10 approval under AS 44.21.220 at least once during the construction phase  
11 of the project to assure that construction conforms substantially to the  
12 approved plans and specifications.

13 (b) If the division determines that construction is not in sub-  
14 stantial conformance with the approved plans and specifications, the  
15 division shall immediately notify the contractor responsible for the  
16 construction and the contracting representative of the state in writing  
17 by registered mail. The notification shall specify the elements of the  
18 construction which are not in substantial conformance with the plans and  
19 specifications.

20 (c) If, within three days after receipt of the notice under (b) of  
21 this section, the contractor, the contracting representative, and the  
22 director are unable to agree on a method to bring the construction into  
23 conformance, and if the director does not waive conformance, the direc-  
24 tor shall issue an order to stop construction on the project. The order  
25 remains in effect until a written agreement is reached among the parties  
26 for a method to bring the construction into conformance or until the  
27 issue is otherwise resolved by court order.

28 Sec. 44.21.240. FINAL INSPECTION. (a) The contractor responsible  
29 for construction of a public works project shall notify the division of

1 the completion of construction.

2 (b) Upon receipt of notice of completion of construction under (a)  
3 of this section, the division shall conduct an inspection to determine  
4 whether the project has been constructed in substantial conformance with

5 (1) the approved plans and specifications; and

6 (2) any subsequent written agreements approved by the direc-  
7 tor.

8 (c) If the division determines that the project has been completed  
9 in substantial conformance with the approved plans and specifications  
10 and with any subsequent written agreements approved by the director, the  
11 contracting representative of the state may accept the public works  
12 project.

13 (d) If the division determines that the project has not been  
14 completed in substantial conformance with the approved plans and specifi-  
15 cations or with any subsequent written agreements approved by the direc-  
16 tor, the contractor responsible for the construction and the contracting  
17 representative of the state shall be notified. The contracting represen-  
18 tative of the state may not accept the project until the division deter-  
19 mines that it conforms with the approved plans and specifications and  
20 any subsequent agreements approved by the director.

21 Sec. 44.21.250. HEARINGS AND APPEALS. The division shall file an  
22 accusation, in accordance with AS 44.62.360, against the contractor  
23 responsible for the construction and shall conduct a hearing subject to  
24 the provisions of AS 44.62.330 - 44.62.630 before making a final deci-  
25 sion to issue an order to cease all construction activities under AS 44.  
26 21.230(c).

27 Sec. 44.21.260. REGULATIONS. The division shall adopt regulations  
28 to implement this chapter in accordance with the Administrative Proce-  
29 dure Act (AS 44.62).

1           Sec. 44.21.270. DEFINITIONS. For the purposes of AS 44.21.200 -  
2 44.21.270,

3           (1) "construction" includes construction, reconstruction,  
4 alteration, improvement or major repair;

5           (2) "contracting representative of the state" includes the  
6 Department of Transportation and Public Facilities, the University of  
7 Alaska, and any other state agency with regard to the contracts entered  
8 into by the department, university or agency for the construction of  
9 public works projects; "contracting representative of the state" also  
10 includes a municipality or a regional educational attendance area which  
11 assumes the responsibilities of the Department of Transportation and  
12 Public Facilities under AS 35.15.080 with regard to the planning and  
13 construction of a public works project of the state;

14           (3) "contractor responsible for the construction" means a  
15 person who enters into a contract directly with a contract representa-  
16 tive of the state to furnish labor, materials, services, or equipment  
17 for all or part of the construction of a public works project; however,  
18 the contracting representative of the state is the contractor responsi-  
19 ble for the construction to the extent that the contracting representa-  
20 tive of the state elects to furnish all or part of the labor, materials,  
21 services, or equipment for the construction, alteration or repair of a  
22 public works project;

23           (4) "director" means the director of the division of con-  
24 struction oversight;

25           (5) "division" means the division of construction oversight;

26           (6) "public works project" means all fixed works constructed  
27 or maintained by the state or any of its departments or agencies, in-  
28 cluding the University of Alaska; "public works" includes, but is not  
29 limited to, work on a public building, boat harbor, jetty, dike, break-

1 water, or airport.

2 \* Sec. 2. AS 35.10.010 is amended by adding a new subsection to read:

3 (b) The adoption and amendment of plans and specifications for the  
4 construction of public works under (a) of this section is subject to the  
5 approval of the division of construction oversight in the Department of  
6 Administration as provided in AS 44.21.200 - 44.21.270.

7 \* Sec. 3. AS 35.10.040 is amended to read:

8 Sec. 35.10.040. FAILURE OF CONTRACTOR TO PERFORM WORK. If a  
9 contractor or person in charge of the construction of a public building  
10 in the state fails to perform the work in a good and workmanlike manner  
11 and does not perform the work in accordance with the plans and speci-  
12 fications of the contract, the department shall direct what legal action,  
13 if any, shall be taken and shall notify the division of construction  
14 oversight in the Department of Administration of its decision.

15 \* Sec. 4. AS 35.10.060 is amended by adding a new subsection to read:

16 (b) The department shall provide a copy of the results of its  
17 inspections and tests to the division of construction oversight in the  
18 Department of Administration.

19 \* Sec. 5. AS 35.15.080(d) is amended to read:

20 (d) Provisions of this title and of AS 44.21.200 - 44.21.270  
21 governing planning, design, and construction of public works by the  
22 department, and regulations adopted under the provisions, govern the  
23 administration of projects assumed by a municipality or regional educa-  
24 tional attendance area under this section. For that purpose the provi-  
25 sions supersede any conflicting provisions of ordinance or charter of a  
26 municipality.

27 \* Sec. 6. AS 35.15.110(b) is amended to read:

28 (b) Responsibility for maintenance of the project shall be  
29 established in the original contract agreement. The department shall

1 participate in the final inspection of the project and, subject to  
2 final approval by the division of construction oversight in the Depart-  
3 ment of Administration under AS 44.21.240, approve of the final docu-  
4 ments on the project.

5 \* Sec. 7. AS 44.42 is amended by adding a new section to read:

6 Sec. 44.42.090. OVERSIGHT. The planning, designing, construction  
7 or maintenance of a public works project, as that term is defined in  
8 AS 44.21.270(6), by the department under AS 44.42 is subject to the pro-  
9 visions of AS 44.21.200 - 44.21.270.

10 \* Sec. 8. AS 19.10.170 is amended by adding a new subsection to read:

11 (d) The planning, designing, construction or maintenance of high-  
12 ways by the department under AS 19.10 is subject to the provisions of  
13 AS 44.21.200 - 44.21.270.

14 \* Sec. 9. This Act does not apply to contracts entered into before the  
15 effective date of this Act.

16 \* Sec. 10. This Act takes effect July 1, 1980.