

Introduced: 1/29/80
Referred: Judiciary

1 IN THE HOUSE

BY METCALFE AND MOSS

2

HOUSE BILL NO. 632

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

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ELEVENTH LEGISLATURE - SECOND SESSION

5

A BILL

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For an Act entitled: "An Act relating to litigation involving action by the
7 state; and amending Rule 45 of the Rules of Appellate
8 Procedure and Rules 6(b) and 65(c) of the Rules of
9 Civil Procedure."

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

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

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ARTICLE 7. LITIGATION INVOLVING STATE ACTION.

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Sec. 09.50.450. CONDITIONS PRECEDENT TO MAINTENANCE OF LITIGATION.

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A person may not seek to enjoin state action or appeal the denial,
15 qualification, or conditioning of a license or permit on the part of the
16 state or a state agency unless the following conditions exist:

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(1) the plaintiff or appellant seeking to enjoin state action
18 or to appeal the denial, qualification, or conditioning of state action
19 has raised the issues presented in the complaint or appeal to the state
20 or state agency charged with the responsibility for the state action,
21 and requested the state agency to undertake the alternative action
22 sought in the complaint or appeal;

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(2) the plaintiff or appellant alleges that the issuance of
24 the license or permit or the state action will cause a specific non-
25 speculative personal injury in fact and the complaint or appeal indi-
26 cates the substantial likelihood of such an injury; and

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(3) the plaintiff or appellant alleges with particularity his
28 efforts to secure from the state the action requested in the complaint
29 or appeal and alleges further that he has informed the state in writing

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1 of the ultimate facts of each claim which he proposes to file.

2 Sec. 09.50.460. MOTIONS FOR SECURITY. (a) The state or a state
3 agency may move the court for an order, upon notice and hearing, re-
4 quiring the plaintiff or appellant, as appropriate, to furnish security
5 required by the court under AS 09.50.450 - 09.50.510 at any time within
6 30 days after

7 (1) the service of the summons and complaint upon the state
8 or a state agency in a civil action; or

9 (2) the receipt by the agency of the notice of appeal filed
10 in the superior court under Appellate Rule 45.

11 (b) In a complaint or appeal seeking the denial, qualification, or
12 conditioning of a license or permit from the state, the applicant for
13 the license or permit may intervene in the litigation under the Rules of
14 Civil Procedure and, within 30 days after the order of the court grant-
15 ing intervention, move the court for an order, upon notice and hearing,
16 requiring the plaintiff to furnish security required by the court under
17 AS 09.50.450 - 09.50.510.

18 (c) A motion filed under (a) or (b) of this section shall be based
19 on one of the following grounds:

20 (1) that the grounds alleged have been raised in proceedings
21 or negotiations involving the state, its agencies, and, if applicable,
22 the applicant for the license or permit and, after full consideration,
23 the grounds have been found without merit; or

24 (2) that the grounds alleged have not been raised in pro-
25 ceedings or negotiations involving the state or its agencies or, if
26 applicable, the applicant for a license or permit.

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

29 Sec. 09.50.470. HEARING ON THE MOTION. At a hearing on a motion

1 filed under AS 09.50.460, the court shall consider evidence, either
2 written or oral, by witnesses or by affidavit as may be material to
3 grounds on which the motion is based. If the court determines, after
4 hearing the evidence adduced by the parties at the hearing, that the
5 movant has established by a preponderance of the evidence a ground on
6 which the motion was based, the court shall fix the nature and amount of
7 the security to be furnished by the plaintiff or appellant under AS 09.-
8 50.480.

9 Sec. 09.50.480. SECURITY. (a) If the court determines that the
10 state, or a state agency, or an intervener is entitled to security under
11 AS 09.50.450 - 09.50.510, it shall consider and, if applicable, include,
12 the following elements in its determination of the amount of the secur-
13 ity set:

14 (1) damages, actual and prospective, which the movant is
15 likely to sustain because the litigation causes him to breach a contract
16 or agreement entered into in good faith before pre-litigation proceed-
17 ings or negotiations or, in the absence of proceedings or negotiations,
18 before the instant civil action was filed;

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

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

24 (b) The amount of the security set by the court may be decreased
25 or increased from time to time in the discretion of the court on a
26 showing that the security provided has or may become excessive or inade-
27 quate. If the court, on any such motion, makes a determination that
28 security shall be furnished by the plaintiff as to a defendant or de-
29 fendants, the action shall be dismissed as to that defendant, unless the

1 security required by the court has been furnished within a reasonable
2 time as may be set by the court.

3 Sec. 09.50.490. ACCESS TO SECURITY. A defendant shall have such
4 recourse to the security set under AS 09.50.480 in an amount as the
5 court may determine on the termination of the civil action.

6 Sec. 09.50.500. EFFECT OF MOTION FOR SECURITY. If a motion for
7 security is filed, a defendant need not file other pleadings and the
8 prosecution of the action is stayed until 10 days after the motion has
9 been disposed of.

10 Sec. 09.50.510. NOTICE OF STATE ACTION. (a) The state or a state
11 agency shall make available to the public proposals for the issuance of
12 a state contract involving the expenditure of \$100,000 in state money or
13 involving the granting of a state license or permit when the licensee or
14 permittee will expend \$100,000 under the license or permit.

15 (b) If the state agency presently gives notice to the public under
16 general law which complies with the requirements of (a) of this section,
17 no additional requirements are created by this section.

18 * Sec. 2. Section 1 of this Act has the effect of conditioning the right
19 of a person to file an appeal from the decision of an administrative agency
20 and may be viewed as an amendment to Appellate Rule 45. The provisions of
21 sec. 1 change the proceeding on certain motions for security under Civil Rule
22 65(c) and is an amendment to Civil Rule 65(c). The provisions of sec. 1 also
23 provide for certain continuances and constitute an amendment to Civil Rule
24 6(b).

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