

Introduced: 3/31/81
Referred: Judiciary

1 IN THE HOUSE

BY METCALFE

2 HOUSE BILL NO. 428

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to litigation involving state actions;
7 and amending Rules 6 and 65 of the Rules of Civil
8 Procedure."

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

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

11 ARTICLE 7. LITIGATION INVOLVING STATE ACTION.

12 Sec. 09.50.450. CONDITIONS PRECEDENT TO MAINTENANCE OF LITIGATION.

13 A person may not file an action seeking to enjoin state action or
14 appealing state action on a license or permit unless the person

15 (1) has raised the issues presented to the agency charged
16 with the responsibility for the state action, and requested the state
17 agency to undertake alternative action sought;

18 (2) alleges that the state action will cause specified non-
19 speculative personal injury in fact to that person and that substantial
20 likelihood of the injury exists; and

21 (3) specifically alleges his efforts to secure the action
22 requested and that he has informed the state in writing of the ultimate
23 facts of each claim which he proposes to file.

24 Sec. 09.50.460. MOTION FOR SECURITY. (a) Upon motion, notice,
25 and hearing a court may require a person seeking to enjoin a state
26 action or appealing state action on a license or permit to furnish
27 security if the issues raised by the person

28 (1) were raised in an administrative proceeding and found to
29 be without merit after full consideration; or

1 (2) have not been previously considered in an administrative
2 proceeding, or in negotiations with the state.

3 (b) A motion under this section shall be made within 30 days of
4 the service on the state of the summons and complaint requesting injunc-
5 tive relief or appealing state action.

6 (c) Within 30 days after an order of a court granting interven-
7 tion by a party as a defendant in an action seeking to enjoin or appeal
8 a state action, the intervener may bring a motion under this section.

9 (d) For good cause the court may extend the 30-day period under
10 (b) or (c) of this section for not more than 30 additional days.

11 (e) If security required under this section is not furnished
12 within a reasonable time as determined by the court, the injunctive
13 action or appeal may be dismissed as to the moving party.

14 Sec. 09.50.470. AMOUNT OF SECURITY. (a) If the court determines
15 that the state or an intervener is entitled to security under AS 09.50.-
16 460, it shall set the amount of security, taking into account

17 (1) damages which the moving party will sustain if the
18 litigation causes a breach of a contract or agreement entered into in
19 good faith before the injunctive action or the appeal was filed, or, if
20 administrative proceedings or negotiations preceded the litigation,
21 before those proceedings or negotiations;

22 (2) extra costs which may be incurred by the moving party
23 through inflation due to delay caused by the litigation; and

24 (3) other costs and damages which the moving party can show
25 may occur as the result of the litigation, including the costs of the
26 litigation.

27 (b) The amount of security set by the court may be changed from
28 time to time in the discretion of the court, upon a motion showing that
29 the security is excessive or inadequate. If a person fails to furnish

1 additional security required by the court within a reasonable time as
2 determined by the court, the injunctive action or appeal may be dis-
3 missed as to the party moving for additional security.

4 Sec. 09.50.480. DISPOSITION OF SECURITY. When the injunctive
5 action or appeal is terminated, the court shall dispose of the security
6 furnished under AS 09.50.460 in accordance with the outcome of the
7 litigation.

8 Sec. 09.50.500. STAY OF PROCEEDINGS. A motion for security made
9 under AS 09.50.460 has the effect of staying proceedings in the injunc-
10 tive action or appeal until the motion is disposed of.

11 Sec. 09.50.510. NOTICE OF STATE ACTION. The provisions of AS 09.-
12 50.450 - 09.50.520 do not apply to a state action on a contract requir-
13 ing the expenditure of more than \$100,000 in state money or to state
14 action on a permit or license application under which the permittee or
15 licensee will expend more than \$100,000, unless the state gives public
16 notice of the proposed state action more than 30 days before the action
17 is taken.

18 Sec. 09.50.520. DEFINITIONS. In AS 09.50.450 - 09.50.520

19 (1) "state" includes a state department or agency in the
20 executive, legislative, or judicial branch, and a state board or com-
21 mission;

22 (2) "state action" means an act done by or a decision made
23 by the state, including the issuance of a state contract, or the grant-
24 ing, denial, suspension, qualification, or conditioning of a state
25 license or permit.

26 * Sec. 2. Section 1 of this Act has the effect of amending Rule 65 of
27 the Rules of Civil Procedure by changing the proceeding on certain motions
28 for injunctions and security. Section 1 of this Act has the effect of
29 amending Rule 6(b) of the Rules of Civil Procedure by providing for certain

1 continuances.

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