

Original sponsor: Metcalfe

Offered: 3/31/82
Referred: Rules

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 428 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to litigation involving state actions;
7 and amending Rules 602 and 603 of the Rules of Appellate
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) A person may not file an action seeking to review state action on a
14 license or permit for the construction or operation of a facility or a
15 disposal of an interest in state land unless the person

16 (1) has raised and supported the issues presented to the
17 agency charged with the responsibility for the state action at each
18 available opportunity, and has requested the state agency to undertake
19 the alternative action sought;

20 (2) demonstrates that the state action will cause nonspecula-
21 tive injury in fact to that person and that substantial likelihood of
22 the injury exists; and

23 (3) files a timely notice of appeal of the state action under
24 Rule 602, Rules of Appellate Procedure.

25 (b) An action for declaratory or injunctive relief is not available
26 to review state action on a license or permit for the construction or
27 operation of a facility, or a disposal of an interest in state land,
28 whether or not the person who seeks review was a party to a previous
29 administrative proceeding on the license, permit or disposal.

1 (c) The requirements of (a) and (b) of this section are juris-
2 dictional.

3 Sec. 09.50.460. MOTION FOR SECURITY. (a) Upon motion the court
4 shall require a person seeking to review state action on a license or
5 permit for the construction or operation of a facility, or a disposal of
6 an interest in state land to furnish security in the amount determined
7 under AS 09.50.470, unless the person demonstrates a substantial likeli-
8 hood of prevailing on the appeal. Security under this subsection is in
9 place of the bond required by Rules 602(c) and 603(a), Rules of Appellate
10 Procedure.

11 (b) A motion under this section shall be made within 30 days of
12 the service on the state of the notice of appeal served under Rule 602,
13 Rules of Appellate Procedure.

14 (c) Within 30 days after an order of a court granting intervention
15 by the proposed permittee, licensee, or recipient as an appellee in an
16 appeal of state action, the intervenor may bring a motion under this
17 section.

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

20 (e) If security required under this section is not furnished
21 within a reasonable time as determined by the court, the appeal shall be
22 dismissed.

23 Sec. 09.50.470. AMOUNT OF SECURITY. (a) The court shall set the
24 amount of security requested by AS 09.50.460 taking into account

25 (1) damages that the moving party will sustain if delays
26 occasioned by the appeal cause a breach of a contract or agreement
27 entered into in good faith before the appeal was filed;

28 (2) extra costs that may be incurred by the moving party
29 through inflation due to delay caused by pendency of the appeal; and

1 (3) other costs and damages that the moving party can show
2 may occur as the result of the appeal, which shall include the costs of
3 the appeal and attorney fees.

4 (b) The amount of security set by the court may be changed from
5 time to time in the discretion of the court, upon a motion showing that
6 the security is excessive or inadequate. If a person fails to furnish
7 additional security required by the court within a reasonable time as
8 determined by the court, the appeal shall be dismissed.

9 Sec. 09.50.480. DISPOSTION OF SECURITY. When the appeal is termi-
10 nated, the court shall dispose of the security furnished under AS 09.50.-
11 460 in accordance with the outcome of the appeal.

12 Sec. 09.50.500. STAY OF PROCEEDINGS. A motion for security made
13 under AS 09.50.460 has the effect of staying proceedings in the appeal
14 until the motion is disposed of.

15 Sec. 09.50.510. DEFINITIONS. In AS 09.50.450 - 09.50.510

16 (1) "facility" means any onshore or offshore structure,
17 improvement, or land use, including the exploration for or extraction of
18 minerals, and the harvesting of timber or other natural resources;

19 (2) "state" includes a state department or agency in the
20 executive branch, and a state board or commission;

21 (3) "state action" means an act done by or a decision made by
22 the state, including the granting, denial, suspension, qualification, or
23 conditioning of a state license or permit for the construction or opera-
24 tion of a facility, and the disposal of an interest in state land.

25 * Sec. 2. Section 1 of this Act has the effect of amending Rules 602 and
26 603, Rules of Appellate Procedure, by changing the procedures on certain
27 appeals and bonds on appeal.