

1 IN THE HOUSE

BY BOUCHER

2

HOUSE BILL NO. 280

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the administrative adjudication  
7 of certain claims against the state."

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

9 \* Section 1. AS 44.77.010 is repealed and reenacted to read:

10 Sec. 44.77.010. FILING AND INITIAL ACTION ON CLAIMS. (a) A  
11 person shall file a claim against the state within 90 days after the  
12 services or supplies are furnished or after the final settlement of  
13 the procurement contract, whichever is later, if the claim

14 (1) is in contract, implied contract, quasi-contract, or  
15 quantum meruit;

16 (2) derives from a procurement by the state; and

17 (3) is for

18 (A) reimbursement for services and supplies, including  
19 unmanufactured tangible items, obtained for the state by the  
20 claimant from another person; or

21 (B) payment for services, other than as an employee,  
22 performed for the state by the claimant.

23 (b) A claim under (a) of this section does not include a claim  
24 that is

25 (1) governed by AS 36.30.560 - 36.30.699;

26 (2) on an implied warranty; or

27 (3) for negligence, defamation, assault, battery, trespass,  
28 false imprisonment, malicious prosecution, intentional or negligent  
29 interference with business relations, intentional or negligent

1 interference with prospective economic advantage, or other similar  
2 tort claim that might otherwise be covered under (a) of this section.

3 (c) A claim under (a) of this section must be filed with the  
4 appropriate officer of the agency administering the procurement.

5 (d) A claim filed under (a) of this section must include a  
6 concise, plain, and factual statement of the reasons for the claim.  
7 Within 20 days after filing the claim, the claimant shall provide the  
8 agency with all documents in the possession of the claimant that  
9 support the claim. A claimant shall use the claimant's best efforts  
10 to comply with all reasonable requests from the agency for additional  
11 documentation.

12 (e) The agency officer handling the claim shall decide the claim  
13 within 150 days after the claim is filed. If the officer denies the  
14 claim in whole or in part, the officer shall state the specific rea-  
15 sons for the decision in findings of fact and conclusions of law.

16 (f) Unless the agency and the claimant have agreed to an exten-  
17 sion of time or the agency can demonstrate that the agency's delay was  
18 excusable, the claim is considered to be allowed in its entirety if  
19 the agency officer does not issue a written decision on the claim  
20 within 150 days after the claim is filed. If a claim is allowed under  
21 this subsection, the Department of Administration shall issue a war-  
22 rant to pay the claim. A time extension under this subsection, in-  
23 cluding an extension agreed to by the agency and the claimant, may not  
24 exceed 60 days, and the agency officer handling the claim bears the  
25 burden of proof regarding the existence and nature of the extension.

26 \* Sec. 2. AS 44.77 is amended by adding a new section to read:

27 Sec. 44.77.025. PROCEDURE AFTER DENIAL OF A CLAIM. (a) If the  
28 agency officer handling a claim under AS 44.77.010 denies all or part  
29 of the claim under AS 44.77.010(e), the claimant may appeal the

1 decision by filing a notice of appeal with the Department of Adminis-  
2 tration within 30 days after receiving notice of the decision. A  
3 notice of appeal consists of a plain, concise, and detailed statement  
4 in writing of the reasons why the claimant believes that the decision  
5 was incorrect.

6 (b) If the claimant requests arbitration in the notice of ap-  
7 peal, the appeal shall be conducted under AS 09.43.010 - 09.43.180  
8 (Uniform Arbitration Act) as modified by (e), (f), and (g) of this  
9 section. Under AS 09.43.030 - 09.43.180 this subsection shall be  
10 considered the arbitration agreement between the agency and the claim-  
11 ant.

12 (c) If the claimant does not request arbitration under (b) of  
13 this section, the Department of Administration shall review the claim  
14 on the record established under AS 44.77.010. The department may  
15 supplement the record with testimony and other evidence that it deter-  
16 mines is appropriate to the determination of the claim. The depart-  
17 ment shall issue a written decision on the appeal within 120 days  
18 after the notice of appeal is filed, or within another period estab-  
19 lished by the department and the claimant by agreement. The decision  
20 must consist of a short, concise, and plain statement of facts and  
21 conclusions of law indicating the basis for the decision and consti-  
22 tutes the final administrative order for the claim.

23 (d) If a claimant does not accept the decision of the Department  
24 of Administration under (b) of this section, the claimant may appeal  
25 the decision to the superior court.

26 (e) Binding arbitration requested under (b) of this section  
27 shall be made by three arbitrators. The Department of Administration  
28 shall choose one arbitrator. The claimant shall choose one arbitra-  
29 tor. The third arbitrator shall be selected by agreement of the

1 department and the claimant, or if the parties cannot agree, by the  
2 American Arbitration Association. The third arbitrator shall be a  
3 disinterested third party qualified by education, experience, or  
4 training to be an arbitrator and shall have expertise on the subject  
5 matter in dispute.

6 (f) An arbitration award under (b) of this section shall be made  
7 within 150 days after the notice of appeal is filed. The decision  
8 must consist of a short, concise, and plain statement of facts and  
9 conclusions of law on which the decision was based. The decision may  
10 be appealed under AS 09.43.010 - 09.43.180.

11 (g) If the Department of Administration does not issue a written  
12 decision as provided under (c) of this section, or if the arbitration  
13 under (b) of this section is not completed within 150 days after the  
14 notice of appeal is filed, the claim is considered to be allowed in  
15 its entirety, and the department shall issue a warrant to pay the  
16 claim.

17 \* Sec. 3. AS 44.77.050 is repealed and reenacted to read:

18 Sec. 44.77.050. AUTHORITY OF THE DEPARTMENT OF ADMINISTRATION.  
19 The Department of Administration may authorize by subpoena or other  
20 method the taking of the deposition of an absent witness. The depart-  
21 ment shall adopt regulations under the Administrative Procedure Act  
22 (AS 44.62) governing the procedures for appeals under AS 44.77.025(a).  
23 The procedures must conform to the requirements of due process. A  
24 witness giving testimony shall be under oath and give the testimony  
25 under the penalty of perjury.

26 \* Sec. 4. AS 09.50.250 is amended to read:

27 Sec. 09.50.250. ACTIONABLE CLAIMS AGAINST THE STATE. A person  
28 or corporation having a contract, quasi-contract, or tort claim  
29 against the state may bring an action against the state in the

1 superior court. A person who may present the claim under AS 44.77 may  
2 not bring an action under this section [EXCEPT AS SET OUT IN AS 44.-  
3 77.040(c)]. A person who may bring an action under AS 36.30.560 -  
4 36.30.695 may not bring an action under this section except as set out  
5 in AS 36.30.685. However, an [NO] action may not be brought under  
6 this section if the claim

7 (1) is an action for tort, and is based upon an act or  
8 omission of an employee of the state, exercising due care, in the  
9 execution of a statute or regulation, whether or not the statute or  
10 regulation is valid; or is an action for tort, and based upon the  
11 exercise or performance or the failure to exercise or perform a dis-  
12 cretionary function or duty on the part of a state agency or an em-  
13 ployee of the state, whether or not the discretion involved is abused;

14 (2) is for damages caused by the imposition or establish-  
15 ment of a quarantine by the state;

16 (3) arises out of assault, battery, false imprisonment,  
17 false arrest, malicious prosecution, abuse of process, libel, slander,  
18 misrepresentation, deceit, or interference with contract rights.

19 \* Sec. 5. AS 44.77.015, 44.77.020, 44.77.030, and 44.77.040 are re-  
20 pealed.

21 \* Sec. 6. APPLICATION OF ACT. This Act applies to claims that derive  
22 from procurements made by the state on or after the effective date of this  
23 Act.

24 \* Sec. 7. TRANSITIONAL PROVISIONS. (a) A claimant whose claim derives  
25 from a procurement made before the effective date of this Act may request  
26 that the claim be submitted to arbitration under AS 44.77.025(b), as en-  
27 acted by sec. 2 of this Act, if the claim is pending before the Department  
28 of Administration on the effective date of this Act and if the Department  
29 of Administration has not issued for the claim before the effective date of

1 this Act a decision under AS 44.77.040(b), as that subsection existed  
2 before the effective date of this Act.

3 (b) Except as provided by (a) of this section, a claim shall proceed  
4 under AS 44.77, as that chapter existed before the effective date of this  
5 Act, if the claim is governed on the day before the effective date of this  
6 Act by that chapter.