

CS FOR HOUSE BILL NO. 526 (CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered: 4/2/92

Referred: State Affairs, Finance

Sponsor(s): REPRESENTATIVE LINCOLN

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to construction contractors and to certain public construction contracts."**

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

3 *** Section 1. AS 08.18.031 is amended by adding a new subsection to read:**

4 (c) In determining whether to issue or renew a certificate of registration of a contractor
5 who has held a contract for work on a public construction contract under AS 35.15, the
6 commissioner shall consider the recommendations of local commissions established under
7 AS 35.15.110(c) by the municipalities and villages in which the contractor performed contracting
8 work. The commissioner may not renew the certificate of a contractor who has received a
9 recommendation against renewal under AS 35.15.110(c) unless, after a hearing, the commissioner
10 determines that the recommendation is not supported by a preponderance of the evidence.

11 *** Sec. 2. AS 08.18.121 is amended by adding a new subsection to read:**

12 (i) If a local commission reviewing the performance of a contractor on a public
13 construction contract under AS 35.15 recommends that the contractor's registration be revoked,
14 the commissioner shall consider the evidence and may suspend the contractor's registration. If,

1 after a hearing, the commissioner determines that the recommendation for revocation is based on
2 serious misconduct or failure of performance by the contractor under AS 35.15.110(c), the
3 commissioner shall revoke the registration of the contractor.

4 * Sec. 3. AS 35.15.080(a) is amended to read:

5 (a) A municipality or village may, by resolution of its governing body, request the
6 assumption of all or part of the department's responsibilities relating to the planning, design, and
7 construction of a public works project of the state that is to be located within the boundaries of
8 the municipality or in or adjacent to a village and that would otherwise be constructed in the
9 manner provided in AS 35.15.010. After receipt of the request, the department shall [MAY]
10 provide by agreement for transfer to and assumption by the municipality or village of the
11 department's responsibilities relating to the project, unless the commissioner determines that
12 [ASSUMPTION OF RESPONSIBILITIES BY] the municipality or village is not capable of
13 assuming the responsibilities [PRACTICABLE OR NOT IN THE BEST INTERESTS OF THE
14 STATE].

15 * Sec. 4. AS 35.15.080(b) is amended to read:

16 (b) If the commissioner of transportation and public facilities determines that assumption
17 of responsibilities by a municipality or village under (a) of this section is not within the
18 capability of the municipality or village [PRACTICABLE OR NOT IN THE BEST
19 INTERESTS OF THE STATE], the commissioner shall notify the governing body of the
20 municipality or village of the finding and specify reasons for it. If the governing body requests
21 reconsideration of the decision, the commissioner shall hold a hearing in the municipality or
22 village within 30 days following mailing of the request. Following the hearing, the commissioner
23 may affirm, modify, or reverse the initial decision and shall specify in writing the reasons. The
24 decision of the commissioner may be reviewed by the superior court.

25 * Sec. 5. AS 35.15.080(c) is amended to read:

26 (c) A municipality or village may request joint assumption of responsibilities with the
27 department relating to the planning, design, and construction of a public works project. Two or
28 more municipalities or villages may by agreement provide for cooperative assumption of
29 responsibilities relating to the planning, design, and construction of a public works project. If
30 two or more municipalities or villages request assumption of responsibilities for a project and
31 meet the standard of capability [PRACTICABILITY] set out in (a) of this section, the

1 commissioner shall determine which municipality or village is best able to direct planning,
2 design, and construction of the project and enter into an agreement with that municipality or
3 village or provide for joint or cooperative administration, as the parties may agree or the
4 commissioner may determine. Decisions of the commissioner under this subsection are subject
5 to review under (b) of this section [FINAL].

6 * Sec. 6. AS 35.15.080(d) is amended to read:

7 (d) Provisions of this title governing planning, design, and construction of public works
8 by the department, and regulations adopted under the provisions, govern the administration of
9 projects assumed by a municipality, village, or regional educational attendance area under this
10 section. For that purpose, the provisions supersede any conflicting provisions of ordinance or
11 charter of a municipality.

12 * Sec. 7. AS 35.15.090 is amended to read:

13 Sec. 35.15.090. USE OF APPROPRIATED FUNDS. Upon execution of an agreement
14 under AS 35.15.080(a), state funds appropriated for a public works project that is the subject of
15 the agreement shall be transferred to a special account in the state treasury. A municipality or
16 village administering the project under the agreement may draw on the account for costs of the
17 project, under fiscal control of the department. If an agreement provides for joint or cooperative
18 administration of the project, payment of costs shall be made to the party incurring the costs.

19 * Sec. 8. AS 35.15.100 is amended to read:

20 Sec. 35.15.100. RESPONSIBILITY OF DEPARTMENT. When a municipality, village,
21 or regional educational attendance area has assumed responsibility for a public works project
22 under AS 35.15.080 - 35.15.120, the department is relieved of responsibility to the extent it is
23 assumed by the municipality, village, or regional educational attendance area. The department
24 may provide technical assistance on the responsibility assumed if requested to do so by the
25 municipality, village, or area and shall be reasonably compensated for that assistance from the
26 account established under AS 35.15.090.

27 * Sec. 9. AS 35.15.110 is amended to read:

28 Sec. 35.15.110. TITLE TO SITE AND COMPLETION OF PROJECT. (a) Before
29 advertisement for bids or construction contract negotiations, the department shall approve both
30 the project site and the land interest in the site, except that, if the project involves construction
31 of an educational facility, title or sufficient interest determined acceptable by the department to

1 an approved site for a school building shall be vested in the municipality, village, the regional
2 educational attendance area, or the state before advertisement for bids or initiation of construction
3 contract negotiations.

4 (b) Responsibility for maintenance of the project shall be established in the original
5 contract agreement. The department and the local commission, if one has been established
6 under (c) of this section, shall participate in the final inspection of the project and approve of
7 the final documents on the project.

8 * Sec. 10. AS 35.15.110 is amended by adding a new subsection to read:

9 (c) A municipality or village that assumes sole or shared responsibility for a public works
10 project of the state under this chapter may, by ordinance of the municipality or formal action of
11 the village council, establish a local commission to conduct inspections of the project for
12 compliance with the terms of the contract and with state and local law, approve the final
13 documents, and make recommendations to the state under AS 08.18 concerning license renewals
14 and license revocations of contractors who worked on the project. In making recommendations
15 concerning license renewal or revocation, the local commission shall consider the quality and
16 timeliness of the contractor's performance under the contract, the responsiveness of the contractor
17 to matters of public concern in the municipality or village that affect or are affected by the
18 performance of the contract, and the contractor's ability to assist in the informal, peaceful, fair
19 resolution of disputes that relate to the public construction project or to the presence in the
20 municipality or village of persons engaged in the project. The recommendations of the local
21 commission must be based on substantial evidence.

22 * Sec. 11. AS 35.15.120(2) is amended to read:

23 (2) "governing body" means, in the case of a
24 (A) municipality, its assembly or council;
25 (B) [, AND, IN THE CASE OF A] regional educational attendance area,
26 its regional school board; and
27 (C) village, its village council or other appropriate entity.

28 * Sec. 12. AS 35.15.120 is amended by adding a new paragraph to read:

29 (3) "village" means an incorporated or unincorporated contiguous rural community
30 of at least 25 residents.