

**CS FOR HOUSE BILL NO. 526 (STATE AFFAIRS)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION**

BY THE HOUSE STATE AFFAIRS COMMITTEE

**Offered: 5/1/92
Referred: Finance**

Sponsor(s): REPRESENTATIVE LINCOLN

A BILL

FOR AN ACT ENTITLED

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

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 department 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.

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

10 (i) If a local commission reviewing the performance of a contractor on a public
11 construction contract under AS 35.15 recommends that the contractor's registration be suspended
12 or revoked, or that renewal of the registration be denied, the department shall consider the
13 evidence. The department shall, after a hearing under AS 44.62 (Administrative Procedure Act),
14 suspend, revoke, or refuse to renew a contractor's registration if the department finds that the

1 contractor

2 (1) has knowingly violated this chapter or a lawful order or regulation of the
3 department;

4 (2) is incompetent or has engaged in fraudulent practices; or

5 (3) has engaged in serious misconduct or failure of performance in performing
6 work on a public construction contract under AS 35.15.

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

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

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

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

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

30 (c) A municipality or village may request joint assumption of responsibilities with the
31 department relating to the planning, design, and construction of a public works project. Two or

1 more municipalities or villages may by agreement provide for cooperative assumption of
2 responsibilities relating to the planning, design, and construction of a public works project. If
3 two or more municipalities or villages request assumption of responsibilities for a project and
4 meet the standard of capability [PRACTICABILITY] set out in (a) of this section, the
5 commissioner shall determine which municipality or village is best able to direct planning,
6 design, and construction of the project and enter into an agreement with that municipality or
7 village or provide for joint or cooperative administration, as the parties may agree or the
8 commissioner may determine. Decisions of the commissioner under this subsection are subject
9 to review under (b) of this section [FINAL].

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

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

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

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

23 * Sec. 8. AS 35.15 is amended by adding a new section to read:

24 Sec. 35.15.095. APPLICATION TO AIRPORTS AND HIGHWAYS. Notwithstanding
25 the definition of "public facility" or "public work" contained in AS 35.95.100, the provisions of
26 this chapter that permit municipalities and villages to assume, separately or jointly, all or part of
27 the department's responsibilities relating to a public works project and that establish and grant
28 powers to local commissions apply to the construction, expansion, renovation, or major repair
29 of an airport or highway.

30 * Sec. 9. AS 35.15.100 is amended to read:

31 Sec. 35.15.100. RESPONSIBILITY OF DEPARTMENT. When a municipality, village,

1 or regional educational attendance area has assumed responsibility for a public works project
2 under AS 35.15.080 - 35.15.120, the department is relieved of responsibility to the extent it is
3 assumed by the municipality, village, or regional educational attendance area. The department
4 may provide technical assistance on the responsibility assumed if requested to do so by the
5 municipality, village, or area and shall be reasonably compensated for that assistance from the
6 account established under AS 35.15.090.

7 * Sec. 10. AS 35.15.110 is amended to read:

8 Sec. 35.15.110. TITLE TO SITE AND COMPLETION OF PROJECT. (a) Before
9 advertisement for bids or construction contract negotiations, the department shall approve both
10 the project site and the land interest in the site, except that, if the project involves construction
11 of an educational facility, title or sufficient interest determined acceptable by the department to
12 an approved site for a school building shall be vested in the municipality, village, the regional
13 educational attendance area, or the state before advertisement for bids or initiation of construction
14 contract negotiations.

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

19 * Sec. 11. AS 35.15.110 is amended by adding a new subsection to read:

20 (c) A municipality or village that assumes sole or shared responsibility for a public works
21 project of the state under this chapter may, by ordinance of the municipality or formal action of
22 the village council, establish a local commission to conduct inspections of the project for
23 compliance with the terms of the contract and with state and local law, approve the final
24 documents, and make recommendations to the state under AS 08.18 concerning license renewals
25 and license suspensions or revocations of contractors who worked on the project. The
26 recommendations of the local commission must be based on substantial evidence.

27 * Sec. 12. AS 35.15.120(2) is amended to read:

28 (2) "governing body" means, in the case of a
29 (A) municipality, its assembly or council;
30 (B) [, AND, IN THE CASE OF A] regional educational attendance area,
31 its regional school board; and

1 (C) village, its village council or other appropriate entity.

2 * Sec. 13. AS 35.15.120 is amended by adding a new paragraph to read:

3 (3) "village" means an incorporated or unincorporated contiguous rural community

4 of at least 25 residents.