

HB

632

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 29, 1960

SUBJECT: Litigation involving state action *H.B. 632*
(Work Order No. 7697)

TO: Representative Ray H. Metcalfe

FROM: Billy G. Berrier *BGB*
Director
Division of Legal Services

This is, as you have noticed, a highly technical procedural bill. Any non-technical synopsis will of necessity be broad brush.

Essentially, the bill is directed toward preliminary proceeding when an action is brought in court to prevent action on a decision made by the state or an agency.

It requires that notice be given of a proposal by the state to award a contract in the amount of \$100,000 or more or to grant a permit where expenditures under the permit will be \$100,000 or more. If these notices are already given, no new requirements are imposed. (Sec. 09.50.510)

If a person wishes to go to court to enjoin action, he must have

- (1) raised the issue with the state agency which has responsibility for the action complained of and requested the agency to take the requested action
- (2) show that he has a real interest in the action complained of by showing there is substantial likelihood of a specific, personal injury if the action is carried out

and he must show specifically what his efforts to get the state agency to meet his demands have been. (Sec. 09.50.450)

January 29, 1980

If the grounds alleged in support of the action sought have been raised with the agency and found to be without merit or were not raised before the agency, the state may ask the court for an order requiring security to be posted (sec. 09.-50.460); the motion shall be heard by the court (sec. 09.50.-460) and the amount of security may include damages for actual or prospective breach of contract, extra costs from inflation caused by delay and other costs or damages, including costs of litigation (sec. 09.50.480). The state or an intervenor (another person who has an interest in the contract who has become a party to the suit such as a company to whom a contract was awarded) may request that the security be furnished.

When the action is terminated, the defendant may have access to the security as the court determines.

In the broadest summary:

- (1) The state must give notice of its actions where \$100,000 or more is involved.
- (2) A person must have an interest in the action that could create a personal and specific injury to him in order to bring suit.
- (3) The person bringing suit must have presented his objections and proposed alternative to the agency making the decision and must show that he has done so.
- (4) On motion of a party, security for damages, including inflation increases and costs of suit may be required from a party who did not present his claim to the state agency or who was ruled against by the state agency.
- (5) The security may be used to pay damages caused the suit.

I realize this broad brush summary omits significant conditions. It does not, for instance, deal with the time periods or the burdens of proof. Please let us know if a more detailed technical analysis is required.

BGB:jdn