

HB

263

FISCAL NOTE

REQUEST: _____

Revision Date: _____
 Title: "An Act establishing arbitration
 commission...Valdez oil discharge..."
 Sponsor: Repr. Pettyjohn
 Requestor: Repr. Pettyjohn

Agency Affected: Department of Law
 BRU: Legal Services
 Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	-0-	500.0	500.0	500.0	500.0	500.0
MISCELLANEOUS						
TOTAL OPERATING	-0-	500.0	500.0	500.0	500.0	500.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	500.0	500.0	500.0	500.0	500.0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director
 Division: Administrative Services Division

Phone: 465-3672
 Date: April 12, 1989

Approved by Commissioner: Douglas B. Bailey, Attorney General
 Agency: Department of Law

Date: April 12, 1989

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 263

This bill would establish a special arbitration commission for claims related to the Valdez oil discharge disaster, which occurred after the grounding of the Exxon Valdez on Blye Reef, March 24, 1989.

Currently, claims of this nature can proceed under the state's existing Uniform Arbitration Act, AS 09.43.010 - 09.43.180, provided that all of the parties to a dispute agree to resolve the dispute through arbitration.

The bill, however, differs from the Uniform Act in two important respects. First, Section 1 provides that the five arbitrator members of the commission are to be appointed by the governor. Under existing statute, arbitrators are selected by the parties to a dispute or, if they are unable to do so, selection is made by the court.

Second, Section 4 requires that an arbitration award by the commission must provide that the arbitrators' expenses and fees, together with other expenses, including counsel fees, incurred in the conduct of the arbitration, shall be paid by the person against whom the claim is brought. Here, the bill is unclear as to the paying party when there is no arbitration award. As appointees of the governor, it might be assumed that the arbitrators' expenses and fees, in this circumstance, are to be paid by the governor. Furthermore, when a claim before the commission is, after lengthy proceedings, substantially reduced, it appears that all of the arbitrators' expenses and fees will be paid by the person against whom the claim is brought. Under the existing Act, arbitrators' expenses and fees are usually prorated between the parties, depending upon the arbitrators' findings.

As mentioned previously, Section 4 also requires that arbitration awards include the cost of attorney's fees. Here again, under the existing Act, attorney's fees are not ordinarily awarded where matters are submitted to arbitration. The existing method is consistent with the strong public policy favoring arbitration, which would be seriously undercut if a party could obtain attorney's fees merely by filing a complaint as an initial step in the arbitration process. To the extent the bill mandates the payment of attorney's fees, it is probably inconsistent with that public policy. Certainly, it will invite unnecessary, and in some cases, even unmeritorious claims.

Because Section 3 preserves the voluntary nature of arbitration contained in the Uniform Arbitration Act, which provides that both sides must agree to submit the dispute to the arbitration process, it is unlikely that a person from whom damages are sought will willingly agree to go to arbitration due to the "no fault" claims process that is provided to claimants in Section 4.

It is likely, however, that the state will also be subject to claims under the provisions of the proposed Act. The Department of Law would be responsible for representing and defending agencies and

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 263

department's against whom claims may be brought. In such events, the state would be responsible for paying the claims awarded against it, and the state would be responsible for paying arbitrators' expenses and fees, and for paying claimants' attorney's fees when damage awards are made against the state.

It is not possible to accurately predict these costs in advance. However, they will probably be substantial and could cost hundreds of thousands of dollars per year. The current fee for an individual arbitrator is \$ 150.00 per hour plus expenses. Most arbitration proceedings require three arbitrators, although proceedings can be conducted with fewer than three arbitrators, if the parties agree to a smaller number. Attorneys representing claimants customarily charge similar fees. What cannot be predicted at this time is the extent to which the state might be responsible for these costs. The department therefore request \$ 500,000 to pay for arbitrators' expenses and special fees, and claimants' attorney fees, for which it might be responsible, if the arbitration commission is established. This request does not include obligations that might become the responsibility of the Office of the Governor, on those occasions when a claim is heard, but no award is made. This request also does not include the cost of damage awards made against the state, which would be subject to future consideration and appropriation by the legislature.

April 5, 1989

Representative Gruenberg
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

RE: HB 263

Dear Representative Gruenberg:

I fully support the passage of HB 263. Businesses and individuals in Prince William Sound and along our Southcentral coast will be heavily impacted by the oil spill. Many of them will not be able to economically survive long enough to pursue litigation. The proposed arbitration commission is an excellent idea.

I would like to make a couple of suggestions to improve the bill and settle some ambiguities. The following are some ideas which I would like to have you consider:

- 1) Line 14 should be amended to read: "member of the American Arbitration Association or a Certified Public Accountant." The vast majority of the work of this commission will be analyzing and interpreting financial and tax information. Most of this information will be in poor form. The claimants will present oral information that conflicts with written information. This is common and as CPAs we are accustomed to asking questions and determining the proper amounts. A mix of arbitrators and CPAs would be preferable.
- 2) Nothing in the bill indicates how damages are computed. Some general guidelines should be included. The commission should develop its own rules based on general guidelines, case precedent, accounting and tax standards.

The commission has a big problem that is going to be difficult to work with. Many people in the rural communities live in a cash economy. They may claim income from wages or 1099s on their tax returns, but they rarely claim cash received for small jobs and fishing. My sense of the size of the cash economy is that it is very large and very important. Compensation for reported income will probably not help the region significantly. The IRS probably has a better understanding of the magnitude of the problem.

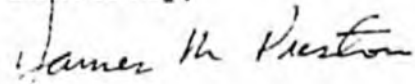
Representative Gruenberg
April 5, 1989
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Even if the legislature was to reward tax evasion by allowing compensation to individuals who operated in the cash economy, computing damages will be almost impossible. People with unreported income tend to hide it well, and only extensive and time consuming auditing could verify their estimates. Should the commission require an IRS audit in some circumstances?

- 3) Another factor is the validity of reported information. The commission should probably require a power of attorney from the claimants in order to obtain copies of tax returns from the IRS. I am sure that some people will be less than honest in their claims. The oil companies will need some protections built into the procedures. Should an oil company representative be on the commission?

I will assist you in addressing these issues if you would like. This is an important bill. If it doesn't work well then the political and economic repercussions will be severe.

Sincerely,



James M. Preston

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCHY STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

MEMORANDUM

April 12, 1989

SUBJECT: Arbitration under the TAPS
liability fund, HB 263

TO: Representative Fritz Pettyjohn

FROM: Terri Lauterbach *TL*
Legislative Counsel

I have discovered some new information that might be relevant as you consider your options in relation to HB 263, a bill that would establish a special arbitration commission for Valdez disaster claims.

That new information relates to the federal Trans-Alaska Pipeline Liability Fund, the \$100,000,000 fund that may be sued for claims arising from discharges of oil that was carried through the pipeline and later carried by tankers. The Fund regulations provide for binding arbitration of claims if the parties to a claim agree.

The time line for claims filed against the Fund might also interest you. According to regulations in the Code of Federal Regulations, the Fund is supposed to be currently advertising its claims procedures (15 - 20 days after the incident). After a person presents a claim, the claim is sent to the responsible company where it is supposed to be paid within 90 days. If it is not paid, the claimant can file against the Fund or go to court. If a claim is presented to the Fund, the Fund must decide the claim within 120 days. 43 C.F.R. 29.1 - 29.13.

It is during the time the claim is being considered by the responsible company that arbitration is an option. So, it appears to me that arbitration is available to claimants under federal law without a special commission. Of course, arbitration is also available under state law without a special commission, by submission of a dispute to an

Representative Fritz Pettyjohn
Page 2
April 12, 1989

arbitrator under AS 09.43 (Uniform Arbitration Act),
referred to in HB 263.

If, in your judgment, you believe a special arbitration
commission would better serve the interests of the people of
the state than either the federally authorized arbitration
or the procedures already available under AS 09.43, then
HB 263 is an appropriate vehicle. But I thought you would
want to know that binding arbitration is authorized under
the federal law.

If I can be of further assistance, please let me know.

TL:gc
WKG9/053

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

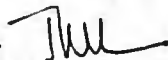
LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 30, 1989..

SUBJECT: Arbitration of Valdez disaster claims
(Work Order No. 6-1124)

TO: Representative Fritz Pettyjohn

FROM: Terri Lauterbach 
Legislative Counsel

Enclosed is a draft of your bill establishing a special arbitration commission for Valdez oil spill claims.

As you have probably heard, there is a federal law that has set up a special fund for claims based on oil discharges from vessels carrying crude oil that flowed through the Trans-Alaska Pipeline System. Strict liability, up to a maximum of \$100 million per incident, is imposed under the federal law unless the owner or operator of the vessel or the fund administrator can prove the damages were caused by negligence of a government entity or the damaged party. If claims exceed that amount, each claim is reduced proportionately. The unpaid portion of a claim may be pursued under other applicable law, which may or may not require proof of negligence.

I do not know if a claim must be pursued under federal law before other remedies are pursued. So, I do not know precisely when arbitration by your special commission would be appropriate. However, since it seems likely that total claims arising from the Valdez disaster will exceed \$100 million, arbitration by the special commission will eventually be appropriate even if a claim must be pursued under the federal law first. As a practical matter, Exxon will probably not agree to arbitration until the \$100 million federal fund is depleted.

Representative Fritz Pettyjohn
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March 30, 1989

I have enclosed a copy of the entire chapter of federal law related to the pipeline. The most pertinent section begins on page 509. If I can be of further assistance, please let me know.

TL:gc
WKG8/094

Enclosure

CHAPTER 34—TRANS-ALASKA PIPELINE

- Sec.
1651. Congressional findings and declaration.
1552. Authorizations for construction.
- (a) Congressional declaration of purpose.
 - (b) Issuance, administration, and enforcement of rights-of-way, permits, leases, and other authorizations.
 - (c) Applicability of statutes governing rights-of-way for pipelines through Federal lands; other statutory terms and conditions; waiver of procedural requirements; supersedure of administrative authorizations for construction.
 - (d) National Environmental Policy Act of 1969 by-passed; issuance of authorizations for construction and operation not to be subject to judicial review; time limits on charges of invalidity or unconstitutionality; jurisdiction; hearings; review.
 - (e) Amendment or modification of rights-of-way, permits, leases, or other authorizations.
1653. Liability for damages.
- (a) Activities along or in vicinity of pipeline right-of-way; strict liability; limitation on liability; subrogation; emergency subsistence and other aid; exemption for State of Alaska.
 - (b) Control and removal of pollutants at expense of right-of-way holder.
 - (c) Discharges of oil from vessels loaded at terminal facilities of pipeline; strict liability; limitation on liability; apportionment of liability; establishment and operation of Trans-Alaska Pipeline Liability Fund.
1654. Antitrust laws.
1655. Roads and airports.

§ 1651. Congressional findings and declaration

The Congress finds and declares that:

(a) The early development and delivery of oil and gas from Alaska's North Slope to domestic markets is in the national interest because of growing domestic shortages and increasing dependence upon insecure foreign sources.

(b) The Department of the Interior and other Federal agencies, have, over a long period of time, conducted extensive studies of the technical aspects and of the environmental, social, and economic impacts of the proposed trans-Alaska oil pipeline, including consideration of a trans-Canada pipeline.

(c) The earliest possible construction of a trans-Alaska oil pipeline from the North Slope of Alaska to Port Valdez in that State will make the extensive proven and potential reserves of low-sulfur oil available for domestic use and will best serve the national interest.

(d) A supplemental pipeline to connect the North Slope with a trans-Canada pipeline may be needed later and it should be studied now, but it should not be regarded as an alternative for a trans-Alaska pipeline that does not traverse a foreign country.

(Pub.L. 93-153, Title II, § 202, Nov. 16, 1973, 87 Stat. 584.)

Historical Note

Short Title. Section 201 of Pub.L. 93-153 provided that: "This title [which enacted this chapter] may be cited as the 'Trans-Alaska Pipeline Authorization Act'."

Separability of Provisions. Section 411 of Pub.L. 93-153 provided that: "If any provision of this Act [enacting this chapter, section 1450a of this title, and section 3512 of Title 44, Public Printing and Documents, amending section 1608 of this title, sections 45, 46, 53, and 56 of Title 15, Commerce and Trade, section 185 of Title 30, Mineral Lands and Mining, section 3502 of Title 44, and section 391a of Title 46, Shipping, and enacting provisions set out as notes under sections 1608 and 1651 of this title, section 1904 of Title 12, Banks and Banking, section 45 of Title 15, section 791a of Title 16, Conservation, and section 1221 of Title 33, Navigation and Navigable Waters] or the applicability thereof is held invalid the remainder of this Act shall not be affected thereby."

North Slope Crude Oil; Report on Equitable Allocation. Pub.L. 94-586, § 18, Oct. 22, 1976, 90 Stat. 2916, directed that the President, within 6 months of Oct. 22, 1976, determine special expediting procedures necessary to insure the equitable allocation of North Slope crude oil to the Northern Tier States of Washington, Oregon, Idaho, Montana, Illinois, Indiana, and Idaho to carry out the provisions of section 410 of Pub.L. 93-153 [set out below], and to report his findings to Congress, such report to include a statement demonstrating the impact that the delivery system would have on reducing the dependency of New England and the Middle Atlantic States on foreign oil imports.

Trans-Canada Pipeline; Negotiations With Canada; Feasibility Study. Title III (sections 301 to 303) of Pub.L. 93-153 authorized the President to enter into negotiations with the Government of Canada to determine Canadian willingness to permit construction of pipelines or other transportation systems across its territory to bring gas and oil from Alaska's North Slope to the United States; the need for intergovernmental agreements to protect interests of any parties involved with construction, operation, and maintenance of such natural gas or oil transportation systems; terms and conditions for construction across Canadian territory; desirability of joint studies to insure environmental protection, reduce regulatory uncertainty, and insure meeting energy requirements; quantity of oil and gas for which Canada would guarantee

transit; and acquisition of other energy sources so as to make unnecessary the shipment of oil from the Alaska pipeline by tanker into the Puget Sound area. The President was to report to Congress on actions taken and recommendations for further action. In addition, the Secretary of the Interior was to investigate, and to report to Congress within 2 years of Nov. 16, 1973, as to the feasibility of oil or gas pipelines from the North Slope of Alaska to connect with a pipeline through Canada that would deliver oil or gas to United States markets. Nothing in Title III was to limit the authority of the Secretary or any other Federal official to grant a gas or oil pipeline right-of-way or permit, which that official was otherwise authorized by law to grant.

Exclusion of Persons From Trans-Alaska Pipeline Activities on Basis of Race, Creed, Color, National Origin, or Sex Prohibited. Section 403 of Pub.L. 93-153 provided that: "The Secretary of the Interior shall take such affirmative action as he deems necessary to assure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from receiving, or participating in any activity conducted under, any permit, right-of-way, public land order, or other Federal authorization granted or issued under title II [this chapter]. The Secretary of the Interior shall promulgate such rules as he deems necessary to carry out the purposes of this subsection and may enforce this subsection, and any rules promulgated under this subsection, through agency and department provisions and rules which shall be similar to those established and in effect under title VI of the Civil Rights Act of 1964 [section 2000d et seq. of Title 42]."

Equitable Allocation of North Slope Crude Oil. Section 410 of Pub.L. 93-153 provided that: "The Congress declares that the crude oil on the North Slope of Alaska is an important part of the Nation's oil resources, and that the benefits of such crude oil should be equitably shared, directly or indirectly, by all regions of the country. The President shall use any authority he may have to insure an equitable allocation of available North Slope and other crude oil resources and petroleum products among all regions and all of the several States."

Legislative History. For legislative history and purpose of Pub.L. 93-153, see 1973 U.S. Code Cong. and Adm. News, p. 2417.

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§ 1652. Authorizations for construction

(a) Congressional declaration of purpose

The purpose of this chapter is to insure that, because of the extensive governmental studies already made of this project and the national interest in early delivery of North Slope oil to domestic markets, the trans-Alaska oil pipeline be constructed promptly without further administrative or judicial delay or impediment. To accomplish this purpose it is the intent of the Congress to exercise its constitutional powers to the fullest extent in the authorizations and directions herein made and in limiting judicial review of the actions taken pursuant thereto.

(b) Issuance, administration, and enforcement of rights-of-way, permits, leases, and other authorizations

The Congress hereby authorizes and directs the Secretary of the Interior and other appropriate Federal officers and agencies to issue and take all necessary action to administer and enforce rights-of-way, permits, leases, and other authorizations that are necessary for or related to the construction, operation, and maintenance of the trans-Alaska oil pipeline system, including roads and airstrips, as that system is generally described in the Final Environmental Impact Statement issued by the Department of the Interior on March 20, 1972. The route of the pipeline may be modified by the Secretary to provide during construction greater environmental protection.

(c) Applicability of statutes governing rights-of-way for pipelines through Federal lands; other statutory terms and conditions; waiver of procedural requirements; supersedure of administrative authorizations for construction

Rights-of-way, permits, leases, and other authorizations issued pursuant to this chapter by the Secretary shall be subject to the provisions of section 185 of Title 30, as amended by Pub.L. 93-153, (except the provisions of subsections (h)(1), (k), (q), (w)(2), and (x)); all authorizations issued by the Secretary and other Federal officers and agencies pursuant to this chapter shall include the terms and conditions required, and may include the terms and conditions permitted, by the provisions of law that would otherwise be applicable if this chapter had not been enacted, and they may waive any procedural requirements of law or regulation which they deem desirable to waive in order to accomplish the purposes of this chapter. The direction contained in subsection (b) of this section shall supersede the provisions of any law or regulation relating to an administrative determination as to whether the authorizations for construction of the trans-Alaska oil pipeline shall be issued.

(d) National Environmental Policy Act of 1969 by-passed; Issuance of authorizations for construction and operation not to be subject to judicial review; time limits on charges of invalidity or unconstitutionality; jurisdiction; hearings; review

The actions taken pursuant to this chapter which relate to the construction and completion of the pipeline system, and to the applications filed in connection therewith necessary to the pipeline's operation at full capacity, as described in the Final Environmental Impact Statement of the Department of the Interior, shall be taken without further action under the National

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 200 Y State Capital
 30011

Environmental Policy Act of 1969 [42 U.S.C.A. § 4321 et seq.], and the actions of the Federal officers concerning the issuance of the necessary rights-of-way, permits, leases, and other authorizations for construction and initial operation at full capacity of said pipeline system shall not be subject to judicial review under any law except that claims alleging the invalidity of this section may be brought within sixty days following November 16, 1973, and claims alleging that an action will deny rights under the Constitution of the United States, or that the action is beyond the scope of authority conferred by this chapter, may be brought within sixty days following the date of such action. A claim shall be barred unless a complaint is filed within the time specified. Any such complaint shall be filed in a United States district court, and such court shall have exclusive jurisdiction to determine such proceeding in accordance with the procedures hereinafter provided, and no other court of the United States, of any State, territory, or possession of the United States, or of the District of Columbia, shall have jurisdiction of any such claim whether in a proceeding instituted prior to or on or after November 16, 1973. Such court shall not have jurisdiction to grant any injunctive relief against the issuance of any right-of-way, permit, lease, or other authorization pursuant to this section except in conjunction with a final judgment entered in a case involving a claim filed pursuant to this section. Any review of an interlocutory or final judgment, decree, or order of such district court may be had only upon direct appeal to the Supreme Court of the United States.

(e) Amendment or modification of rights-of-way, permits, leases, or other authorizations

The Secretary of the Interior and the other Federal officers and agencies are authorized at any time when necessary to protect the public interest, pursuant to the authority of this section and in accordance with its provisions, to amend or modify any right-of-way, permit, lease, or other authorization issued under this chapter.

(Pub.L. 93-153, Title II, § 203, Nov. 16, 1973, 87 Stat. 584, Pub.L. 98-620, Title IV, § 402(46), Nov. 8, 1984, 98 Stat. 3360)

Historical Note

References in Text. The National Environmental Policy Act of 1969, referred to in subsec. (d), is Pub.L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (section 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables volume.

1984 Amendment. Subsec. (d) Pub.L. 98-620 struck out provision that any such proceeding had to be assigned for hearing at the earliest possible date, had to take precedence over all other matters pending on the docket of the district court at that time, and

had to be expedited in every way by such court.

Effective Date of 1984 Amendment. Amendment by Pub.L. 98-620 not to apply to cases pending on Nov. 8, 1984, see section 403 of Pub.L. 98-620, set out as a note under section 1657 of Title 28, Judiciary and Judicial Procedure.

Legislative History. For legislative history and purpose of Pub.L. 93-153, see 1973 U.S. Code Cong. and Adm. News, p. 2417. See also, Pub.L. 98-620, 1984 U.S. Code Cong. and Adm. News, p. 570.

Cross References

Roads and airports, see section 1655 of this title

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Trans-Alaska Pipeline

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Short supply controls, domestically produced crude oil, see section 2406 of the Appendix to Title 50, War and National Defense

Federal Practice and Procedure

Relationship to lower federal court jurisdiction, see Wright, Miller & Cooper, Jurisdiction 2d § 3526.

West's Federal Forms

Preliminary injunctions and temporary restraining orders, matters pertaining to, see § 5271 et seq
 Supreme Court jurisdiction on appeal, see § 121 et seq

West's Federal Practice Manual

Rights-of-way, see § 5449

Notes of Decisions

1. Purpose

The intent of this section which vests exclusive jurisdiction over certain disputes in the United States district courts was to bar

litigation that would delay construction of the pipeline. *Alaska Pipeline Service Co. v. U.S.*, 1980, 624 F.2d 1005, 224 Ct.Cl. 240.

§ 1653. Liability for damages

(a) Activities along or in vicinity of pipeline right-of-way; strict liability; limitation on liability; subrogation; emergency subsistence and other aid; exemption for State of Alaska

(1) Except when the holder of the pipeline right-of-way granted pursuant to this chapter can prove that damages in connection with or resulting from activities along or in the vicinity of the proposed trans-Alaskan pipeline right-of-way were caused by an act of war or negligence of the United States, other government entity, or the damaged party, such holder shall be strictly liable to all damaged parties, public or private, without regard to fault for such damages, and without regard to ownership of any affected lands, structures, fish, wildlife, or biotic or other natural resources relied upon by Alaska Natives, Native organizations, or others for subsistence or economic purposes. Claims for such injury or damages may be determined by arbitration or judicial proceedings.

(2) Liability under paragraph (1) of this subsection shall be limited to \$50,000,000 for any one incident, and the holders of the right-of-way or permit shall be liable for any claim allowed in proportion to their ownership interest in the right-of-way or permit. Liability of such holders for damages in excess of \$50,000,000 shall be in accord with ordinary rules of negligence.

(3) In any case where liability without fault is imposed pursuant to this subsection and the damages involved were caused by the negligence of a third party, the rules of subrogation shall apply in accordance with the law of the jurisdiction where the damage occurred.

(4) Upon order of the Secretary, the holder of a right-of-way or permit shall provide emergency subsistence and other aid to an affected Alaska Native, Native organization, or other person pending expeditious filing of, and determination of, a claim under this subsection.

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 P.O. Box 7, State Capitol
 Juneau, Alaska 99811

(5) Where the State of Alaska is the holder of a right-of-way or permit under this chapter, the State shall not be subject to the provisions of this subsection, but the holder of the permit or right-of-way for the trans-Alaska pipeline shall be subject to this subsection with respect to facilities constructed or activities conducted under rights-of-way or permits issued to the State to the extent that such holder engages in the construction, operation, maintenance, and termination of facilities, or in other activities under rights-of-way or permits issued to the State.

(b) Control and removal of pollutants at expense of right-of-way holder

If any area within or without the right-of-way or permit area granted under this chapter is polluted by any activities conducted by or on behalf of the holder to whom such right-of-way or permit was granted, and such pollution damages or threatens to damage aquatic life, wildlife, or public or private property, the control and total removal of the pollutant shall be at the expense of such holder, including any administrative and other costs incurred by the Secretary or any other Federal officer or agency. Upon failure of such holder to adequately control and remove such pollutant, the Secretary, in cooperation with other Federal, State, or local agencies, or in cooperation with such holder, or both, shall have the right to accomplish the control and removal at the expense of such holder.

(c) Discharges of oil from vessels loaded at terminal facilities of pipeline; strict liability; limitation on liability; apportionment of liability; establishment and operation of Trans-Alaska Pipeline Liability Fund

(1) Notwithstanding the provisions of any other law, if oil that has been transported through the trans-Alaska pipeline is loaded on a vessel at the terminal facilities of the pipeline, the owner and operator of the vessel (jointly and severally) and the Trans-Alaska Pipeline Liability Fund established by this subsection, shall be strictly liable without regard to fault in accordance with the provisions of this subsection for all damages, including clean-up costs, sustained by any person or entity, public or private, including residents of Canada, as the result of discharges of oil from such vessel.

(2) Strict liability shall not be imposed under this subsection if the owner or operator of the vessel, or the Fund, can prove that the damages were caused by an act of war or by the negligence of the United States or other governmental agency. Strict liability shall not be imposed under this subsection with respect to the claim of a damaged party if the owner or operator of the vessel, or the Fund, can prove that the damage was caused by the negligence of such party.

(3) Strict liability for all claims arising out of any one incident shall not exceed \$100,000,000. The owner and operator of the vessel shall be jointly and severally liable for the first \$14,000,000 of such claims that are allowed. Financial responsibility for \$14,000,000 shall be demonstrated in accordance with the provisions of section 1321(p) of Title 33 before the oil is loaded. The Fund shall be liable for the balance of the claims that are allowed up to \$100,000,000. If the total claims allowed exceed \$100,000,000, they shall be reduced proportionately. The unpaid portion of any claim may be asserted and adjudicated under other applicable Federal or state law.

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(4) The Trans-Alaska Pipeline Liability Fund is hereby established as a non-profit corporate entity that may sue and be sued in its own name. The Fund shall be administered by the holders of the trans-Alaska pipeline right-of-way under regulations prescribed by the Secretary. The Fund shall be subject to an annual audit by the Comptroller General, and a copy of the audit shall be submitted to the Congress.

(5) The operator of the pipeline shall collect from the owner of the oil at the time it is loaded on the vessel a fee of five cents per barrel. The collection shall cease when \$100,000,000 has been accumulated in the Fund, and it shall be resumed when the accumulation in the Fund falls below \$100,000,000.

(6) The collections under paragraph (5) shall be delivered to the Fund. Costs of administration shall be paid from the money paid to the Fund, and all sums not needed for administration and the satisfaction of claims shall be invested prudently in income-producing securities approved by the Secretary. Income from such securities shall be added to the principal of the Fund.

(7) The provisions of this subsection shall apply only to vessels engaged in transportation between the terminal facilities of the pipeline and ports under the jurisdiction of the United States. Strict liability under this subsection shall cease when the oil has first been brought ashore at a port under the jurisdiction of the United States.

(8) In any case where liability without regard to fault is imposed pursuant to this subsection and the damages involved were caused by the unseaworthiness of the vessel or by negligence, the owner and operator of the vessel, and the Fund, as the case may be shall be subrogated under applicable State and Federal laws to the rights under said laws of any person entitled to recovery hereunder. If any subrogee brings an action based on unseaworthiness of the vessel or negligence of its owner or operator, it may recover from any affiliate of the owner or operator, if the respective owner or operator fails to satisfy any claim by the subrogee allowed under this paragraph.

(9) This subsection shall not be interpreted to preempt the field of strict liability or to preclude any State from imposing additional requirements.

(10) If the Fund is unable to satisfy a claim asserted and finally determined under this subsection, the Fund may borrow the money needed to satisfy the claim from any commercial credit source, at the lowest available rate of interest, subject to approval of the Secretary.

(11) For purposes of this subsection only, the term "affiliate" includes—

(A) Any person owned or effectively controlled by the vessel owner or operator; or

(B) Any person that effectively controls or has the power effectively to control the vessel owner or operator by—

(i) stock interest, or

(ii) representation on a board of directors or similar body, or

(iii) contract or other agreement with other stockholders, or

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(iv) otherwise; or

(C) Any person which is under common ownership or control with the vessel owner or operator.

(12) The term "person" means an individual, a corporation, a partnership, an association, a joint-stock company, a business trust, or an unincorporated organization.

(Pub. L. 93-153, Title II, § 204, Nov. 16, 1973, 87 Stat. 586.)

Historical Note

Delegation of Functions. Functions of the President under section 1321(p)(1) to (2) of Title 33, Navigation and Navigable Waters, as incorporated by reference in subsec. (c)(3) of this section, relating to the demonstration of financial responsibility for vessels carrying oil loaded from the Trans-Alaska pipeline, delegated to the Secretary of the Department

in which the Coast Guard is operating. See Ex. Ord. No. 12418, § 4, May 5, 1983, 48 FR 20891 set out as a note under section 1321 of Title 33.

Legislative History. For legislative history and purpose of Pub. L. 93-153, see 1973 U.S. Code Cong. and Adm. News, p. 2417.

West's Federal Practice Manual

Right-of-way, see § 5449

Code of Federal Regulations

Liability fund, see 43 CFR 29.1 et seq.

Oil pollution, financial responsibility, see 33 CFR 131.1 et seq.

Library References

Health and Environment ¶25.5(3)

CJS Health and Environment §§ 91 et seq., 106 et seq., 129 et seq.

Notes of Decisions

- Claims within section 1
- Strict liability
- Generally 2
- Construction accidents 3
- Pollution clean-up 4

1. Claims within section

This section was intended to deal with environmental risks of the pipeline but did not cover ordinary personal injury and wrongful death claims unconnected with any environmental injury, in view of fact that, although literal interpretation indicated contrary result, overwhelming evidence of legislative history indicated that chapter was intended to deal with environmental accidents rather than ordinary torts. *Heppner v. Alyeska Pipeline Service Co.*, C.A. Alaska 1981, 605 F.2d 606.

2. Strict liability—Generally

Provisions of this chapter were designed to establish the permit holders of the pipeline right-of-way as strictly liable for a broad

range of damages to the land, fish, wildlife, air, water, and the subsistence lifestyle of the Alaskan Native. *Jordan v. Amerada Hess Corp.*, D.C. Alaska 1979, 479 F.Supp. 573.

3. — Construction accidents

This section was intended to render permit holders strictly liable for environmental harm, but was not intended to hold permit holders strictly liable for all damages of any kind that occurred "in connection with" or "in the vicinity of the proposed trans-Alaska pipeline right-of-way," and, hence, was not a basis for holding defendant oil companies strictly liable in action arising from injuries allegedly sustained in an automobile accident that occurred in vicinity of Alaska pipeline or in wrongful death action arising as a result of a construction accident in Alaska pipeline right-of-way. *Jordan v. Amerada Hess Corp.*, D.C. Alaska 1979, 479 F.Supp. 573.

4. — Pollution clean-up

This chapter barred pipeline service company from recovering from the United States for

Note 4

the cost of cleaning up oil discharged from the pipeline into navigable waters due to the fault of a party; this chapter made the pipeline company absolutely liable for any pollution resulting from operation of the pipeline and prevailed over the earlier enacted Water Pollution Control Act, section 1321(i)(1) of Title 33, which provides that the owner or

operator of the facility that caused pollution may recover its cleanup costs from the United States if the oil discharged was caused by a third party and did not involve any fault of the owner or operator. *Alyeska Pipeline Service Co. v. U.S.*, 1981, 649 F.2d 831, 227 Ct Cl 297, certiorari denied 102 S.Ct. 505, 454 U.S. 964, 70 L.Ed 2d 380

§ 1654. Antitrust laws

The grant of a right-of-way, permit, lease, or other authorization pursuant to this chapter shall grant no immunity from the operation of the Federal anti-trust laws.

(Pub L. 93-153, Title II, § 205, Nov. 16, 1973, 87 Stat. 588.)

Historical Note

References in Text. The Federal antitrust laws, referred to in text, are classified generally to chapter 1 (section 1 et seq.) of Title 15, Commerce and Trade.

Legislative History. For legislative history and purpose of Pub L. 93-153, see 1973 U.S. Code Cong. and Adm. News, p. 2417.

§ 1655. Roads and airports

A right-of-way, permit, lease, or other authorization granted under section 1652(b) of this title for a road or airstrip as a related facility of the trans-Alaska pipeline may provide for the construction of a public road or airstrip.

(Pub L. 93-153, Title II, § 206, Nov. 16, 1973, 87 Stat. 588.)

Historical Note

Legislative History. For legislative history and purpose of Pub L. 93-153, see 1973 U.S. Code Cong. and Adm. News, p. 2417.

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Original sponsors: Pettyjohn, Collins,
Menard, et al.

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 263 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act establishing a special arbitration commission
7 for claims related to the Valdez oil discharge disas-
8 ter; and providing for an effective date."

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

10 * Section 1. VALDEZ DISASTER ARBITRATION COMMISSION. (a) There is
11 established the Valdez Disaster Arbitration Commission consisting of five
12 members appointed by the governor to serve at the governor's pleasure.

13 (b) A member of the commission must, at the time of appointment, be a
14 member of the American Arbitration Association.

15 (c) If the governor determines that the caseload of the commission
16 warrants, the governor may establish additional five-member panels under
17 this section. Each panel has the powers and duties of the commission, as
18 described in this Act.

19 * Sec. 2. DUTIES OF THE COMMISSION. Upon a properly presented request
20 under sec. 3 of this Act, the commission shall hold hearings and make
21 awards for claims arising from the Valdez oil discharge disaster.

22 * Sec. 3. PRESENTATION OF CLAIMS. (a) A person who has a claim for
23 damages or the costs of containment and cleanup arising from the Valdez oil
24 discharge disaster may apply to the commission in writing for arbitration
25 of the claim. A person may present a claim for a specific damage or cost,
26 limited in type or the time period to which the claim relates, and assert
27 other claims at other times or in other forums.

28 (b) If the commission determines that the person from whom damages
29 and costs are sought agrees to arbitration of the claim by the commission,

1 the commission shall proceed under sec. 4 of this Act.

2 (c) If the commission determines that the person from whom damages
3 and costs are sought does not agree to arbitration of the claim by the com-
4 mission, the commission shall promptly notify the claimant.

5 * Sec. 4. ARBITRATION PROCEDURES. (a) Arbitration by the commission
6 is governed by AS 09.43.010 - 09.43.180 (Uniform Arbitration Act), except
7 as provided in this Act.

8 (b) An arbitration award by the commission must provide that the
9 arbitrators' expenses and fees and the claimant's reasonable expenses,
10 including reasonable attorney fees, incurred in the conduct of the arbitra-
11 tion, shall be paid by the person against whom the claim is brought.

12 * Sec. 5. DEFINITIONS. In this Act

13 (1) "commission" means the Valdez Disaster Arbitration Commis-
14 sion;

15 (2) "Valdez oil discharge disaster" means the incident involving
16 the discharge of crude oil after the grounding of the Exxon Valdez south of
17 Valdez on March 24, 1989; the discharge of ballast water from another
18 tanker on the subsequent weekend in order to accommodate the transfer of
19 crude oil from the Exxon Valdez to the second tanker; and attendant con-
20 tainment and cleanup actions.

21 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).
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Sec. 09.40.310. Third party claims. If the property taken is claimed by any person other than the defendant, and that person makes an affidavit of title to the property or the right to the possession of it, stating the grounds of the title or right, and serves it upon the peace officer taking the property while the property is still in the peace officer's custody, the peace officer may release the property unless the plaintiff, on demand of the officer, indemnifies the peace officer against the third party claim by a written undertaking approved by the clerk of court and executed by sufficient sureties. (§ 24.06 ch 101 SLA 1962)

NOTES TO DECISIONS

Stated in *First Nat'l Bank v. Zawodny*,
Sup. Ct. Op. No. 1976 (File No. 4188), 602
P.2d 1254 (1979).

Chapter 43. Arbitration.

Article

- 1. Uniform Arbitration Act (§§ 09.43.010 — 09.43.180)
- 2. Arbitration of Small Claims (§§ 09.43.190 — 09.43.220)

Article 1. Uniform Arbitration Act.

Section

- 10. Arbitration agreements valid; appli-
cation of article
- 20. Proceedings to compel or stay arbi-
tration
- 30. Appointment of arbitrators by court
- 40. Majority action by arbitrators
- 50. Hearing
- 60. Representation by attorney
- 70. Witnesses, subpoenas, depositions
- 80. Award
- 90. Modification of award by arbitrators

Section

- 100. Fees and expenses of arbitration
- 110. Confirmation of an award
- 120. Vacating an award
- 130. Modification or correction of award
by court
- 140. Judgment or decree on award
- 150. Applications to court
- 160. Appeals
- 170. Court jurisdiction
- 180. Short title

Cross references. — For court rule pro-
vision on arbitration and award as an
affirmative defense, see Civ. R. 8(c).

NOTES TO DECISIONS

**Public policy in Alaska favors arbi-
tration as a means of resolving disputes
without court interference.** *Arctic
Contractors v. State*, Sup. Ct. Op. No. 1420
(File Nos. 2595, 2657), 564 P.2d 30 (1977),
aff'd on other grounds, Sup. Ct. Op. No.
1557, 573 P.2d 1385 (1978).

**And is demonstrated by adoption of
this article.** — Alaska's strong public pol-
icy in favor of arbitration is demonstrated
by the adoption of this article. *Modern
Constr., Inc. v. Barce, Inc.*, Sup. Ct. Op. No.
1336 (File No. 3060), 556 P.2d 528 (1976).

Freedom to contract for arbitration terms. — In the absence of statutory restrictions, parties are free to contract for

the terms of arbitration they desire. Board of Educ. v. Ewig, Sup. Ct. Op. No. 2048 (File No. 4253), 609 P.2d 10 (1960).

Collateral references. — 5 Am. Jur. 2d, Arbitration and Award, § 1 et seq.

6 C.J.S., Arbitration, § 1 et seq.

Resolving real estate disputes through arbitration, 27 Am. Jur. Trials, pp. 621-678.

Validity of state statutory provisions for arbitration of labor disputes, as against the objection of delegation of legislative power without setting up adequate standards to guide the administrative agency, 9 ALR2d 871.

Quotient arbitration award or appraisal, 20 ALR2d 958.

Matters arbitrable under arbitration provisions of collective labor contract, 24 ALR2d 752.

Equity jurisdiction to determine valuation, where arbitration or appraisal has failed, under long-term lease providing for appraisal of premises and fixing rental value at stated intervals, 26 ALR2d 744.

Arbitrator's viewing or visiting premises or property alone as misconduct justifying vacation of award, 27 ALR2d 1160.

Laches or statute of limitations as bar to arbitration under agreement, 37 ALR2d 1125.

Arbitration provisions of employment contract providing for severance or dismissal pay, 40 ALR2d 1052.

Contract providing that it is governed by or subject to rules or regulations of a particular trade, business, or association as incorporating agreement to arbitrate, 41 ALR2d 872.

Validity and effect of arbitration agreement provision that, upon one party's failure to appoint arbitrator, controversy may be determined by arbitrator appointed by other party, 47 ALR2d 1346.

Arbitrator's consultation with outsider or outsiders as misconduct justifying vacation of award, 47 ALR2d 1362.

Effect of vacancy through resignation, withdrawal, or death of one of multiple arbitrators on authority of remaining arbitrators to render award, 49 ALR2d 900.

Constitutionality of arbitration statutes, 55 ALR2d 432.

Death of party to arbitration agreement before award as revocation or termination of submission, 63 ALR2d 754.

Arbitration of disputes within close corporation, 64 ALR2d 643.

Construction and application of provisions of general arbitration statutes excluding from their operation contracts for labor or personal services, 64 ALR2d 1336.

Disqualification of arbitrator by court or stay of arbitration proceedings prior to award, on ground of interest, bias, prejudice, collusion, or fraud of arbitrators, 65 ALR2d 755.

Power of president of corporation to commence or to carry on arbitration proceedings, 65 ALR2d 1321.

Power of arbitrators to award injunction, 70 ALR2d 1055.

Dissolved corporation's power to participate in arbitration proceedings, 71 ALR2d 1121.

Agreement to arbitrate future controversies as binding on infants, 78 ALR2d 1292.

Covenant in lease to arbitrate, or to submit to appraisal, as running with the leasehold so as to bind assignee, 81 ALR2d 804.

Necessity that arbitrators, in making awards, make specific or detailed findings of fact or conclusions of law, 82 ALR2d 969.

Time for impeaching arbitration award, 85 ALR2d 779.

Claim of fraud in inducement of contract as subject to compulsory arbitration clause contained in contract, 91 ALR2d 936.

Appealability of order or decree compelling or refusing to compel arbitration, 94 ALR2d 1071.

Discovery in aid of arbitration proceedings, 98 ALR2d 1247.

Enforcement of contractual arbitration clause as affected by expiration of contract prior to demand for arbitration, 5 ALR3d 1008.

Confirming or setting aside award. appealability of judgment confirming or setting aside arbitration award, 7 ALR3d 608.

Availability and scope of declaratory judgment actions in determining rights of parties, or powers and exercise thereof by arbitrators, under arbitration agreements, 12 ALR3d 854.

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Validity and effect, and remedy in respect, of contractual stipulation to submit disputes to arbitration in another jurisdiction, 12 ALR3d 892.

Validity and construction of provision for arbitration of disputes as to alimony or support payments, or child visitation or custody matters, 18 ALR3d 1264.

Municipal corporation's power to submit to arbitration, 20 ALR3d 569.

Validity and enforceability of provision for binding arbitration, and waiver thereof, 24 ALR3d 1325.

Necessity and sufficiency of notice of and hearing in proceedings before appraisers and arbitrators appointed to determine amount of loss, 25 ALR3d 680.

Delay in asserting contractual right to arbitration as precluding enforcement thereof, 25 ALR3d 1171.

Waiver, or estoppel to assert, substantive right or right to arbitrate as question for court or arbitrator, 26 ALR3d 604.

Breach or repudiation of collective labor contract as subject to, or as affecting right to enforce, arbitration provision in contract, 29 ALR3d 688.

Breach or repudiation of contract as affecting right to enforce arbitration clause therein, 32 ALR3d 377.

Participation in arbitration proceedings as waiver of objections to arbitrability, 33 ALR3d 1242.

Power of arbitrator to correct, or power of court to correct or resubmit, nonlabor award because of incompleteness or failure to pass on all matters submitted, 36 ALR3d 939.

Setting aside arbitration award on ground of interest or bias of arbitrators, 56 ALR3d 697.

Construction and effect of contractual or statutory provisions fixing time within which arbitration award must be made, 56 ALR3d 815.

Liability of parties to arbitration for costs, fees, and expenses, 57 ALR3d 633.

Privileged nature of communications

made in course of grievance or arbitration procedure provided for by collective bargaining agreement, 60 ALR3d 1041.

State court's power to consolidate arbitration proceedings, 64 ALR3d 528.

Validity and construction of statutes or ordinances providing for arbitration of labor disputes involving public employees, 68 ALR3d 885.

Demand for or submission to arbitration as affecting enforcement of mechanics' lien, 73 ALR3d 1042.

Filing of mechanics' lien or proceeding for its enforcement as affecting right to arbitration, 73 ALR3d 1066.

Refusal of arbitrators to receive evidence, or to permit briefs or arguments, on particular issues as grounds for relief from award, 75 ALR3d 132.

Admissibility of affidavit or testimony of arbitrator to impeach or explain award, 80 ALR3d 155.

Modern status of rules respecting concurrence of all arbitrators as condition of binding award under private agreement not specifying unanimity, 83 ALR3d 996.

Arbitration of medical malpractice claims, 84 ALR3d 375.

Arbitrator's power to award punitive damages, 83 ALR3d 1037.

Statute of limitations as bar to arbitration under agreement, 94 ALR3d 533.

Conflict of laws as to validity and effect of arbitration provision in contract for purchase or sale of goods, products, or services, 95 ALR3d 1145.

Defendant's participation in action as waiver of right to arbitration of dispute involved therein, 98 ALR3d 767.

Appealability of state court's order or decree compelling or refusing to compel arbitration, 6 ALR4th 652.

Claim of fraud in inducement of contract as subject to compulsory arbitration clause contained in contract, 11 ALR4th 774.

Validity of statute or rule providing for arbitration of fee disputes between attorneys and their clients, 17 ALR4th 993.

Sec. 09.43.010. Arbitration agreements valid; application of article. A written agreement to submit an existing controversy to arbitration or a provision in a written contract to submit to arbitration a subsequent controversy between the parties is valid, enforceable and irrevocable, except upon grounds which exist at law or in equity for the revocation of a contract. However, AS 09.43.010 — 09.43.180 do not apply to a labor-management contract unless they are incorporated into the contract by reference or their application is provided for by statute. (§ 1 ch 232 SLA 1968; am § 3 ch 113 SLA 1972)

Cross references. — For arbitration agreements under Public Employment Relations Act, see AS 23.40.200(f).

Legislative history reports. — For report on ch. 232, SLA 1968 (HB 212 am FCC), see 1968 House Journal, p. 861.

NOTES TO DECISIONS

Section applicable to option to arbitrate. — An option to arbitrate in a written contract is a provision in a written contract to submit a controversy to arbitration and is thus literally within the meaning of this section which states that such a provision is valid. *Willis Flooring, Inc. v. Howard S. Lease Constr. Co. & Assocs.*, Sup. Ct. Op. No. 2598 (File No. 6736), 656 P.2d 1184 (1983).

Cited in *Harold's Trucking v. Kelsey*, Sup. Ct. Op. No. 1739 (File No. 3695), 584 P.2d 1128 (1978); *Alaska State Hous. Auth. v. Riley Pleas, Inc.*, Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978); *City of Fairbanks v. Rice*, Sup. Ct. Op. No. 2354 (File No. 4951), 628 P.2d 565 (1981); *Masden v. University of Alaska*, Sup. Ct. Op. No. 2421 (File No. 5291), 633 P.2d 1374 (1981).

Sec. 09.43.020. Proceedings to compel or stay arbitration. (a) On application of a party showing an agreement described in AS 09.43.010, and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue and if the agreement is found to exist shall order arbitration.

(b) On application, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. The issue, when in substantial and bona fide dispute, shall be immediately and summarily tried and the stay ordered if no agreement is found to exist. If found for the opposing party, the court shall order the parties to proceed to arbitration.

(c) If an issue subject to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under (a) of this section, the application shall be made in that court. Otherwise the application may be made in any court of competent jurisdiction.

(d) An action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application for the order has been made under this section or, if the issue is severable, the stay may be with respect to the issue only.

(e) An order for arbitration may not be refused on the ground that the claim in issue lacks merit or because a fault or ground for the claims sought to be arbitrated has not been shown. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

Arbitrability to be determined prior to rendition of award. — This section provides for court determination of the issue of arbitrability prior to rendition of

an award and before the parties have subjected themselves to the effort and expense of arguing the merits of the dispute to the panel. *University of Alaska v. Modern*

Constr., Inc., Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Possibility of waiver or estoppel where party fails to seek court review of the arbitrators' decision on arbitrability until after rendition of award. — See University of Alaska v.

Modern Constr., Inc., Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Applied in Anchorage Daily News, Inc. v. Anchorage Times Publishing Co., Sup. Ct. Op. No. 2393 (File No. 4966), 631 P.2d 500 (1981).

Sec. 09.43.030. Appointment of arbitrators by court. If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. If no method of appointment is provided, or if the agreed method fails or for any reason cannot be followed, or when before the hearing an arbitrator appointed fails or is unable to act and a successor has not been appointed, the court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement. (§ 1 ch 232 SLA 1968)

Sec. 09.43.040. Majority action by arbitrators. The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by AS 09.43.010 — 09.43.180. (§ 1 ch 232 SLA 1968)

Sec. 09.43.050. Hearing. Unless otherwise provided by the agreement,

(1) the arbitrators shall set a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than five days before the hearing; appearance at the hearing waives the notice; the arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause or upon their own motion, may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date; the arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a properly notified party to appear;

(2) the parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing;

(3) the hearing shall be conducted by all the arbitrators but a majority may determine any question and render a final award; if, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals shall continue with the hearing and determination of the controversy. (§ 1 ch 232 SLA 1968)

Sec. 09.43.060. Representation by attorney. A party has the right to be represented by an attorney at a proceeding or hearing under this chapter. A waiver of the right before the proceeding or hearing is ineffective. (§ 1 ch 232 SLA 1968)

Sec. 09.43.070. Witnesses, subpoenas, depositions. (a) The arbitrators may cause to be issued subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and have the power to administer oaths. Subpoenas shall be served, and upon application to the court by a party or the arbitrators, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.

(b) On application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.

(c) All provisions of law compelling a person under subpoena to testify are applicable.

(d) Fees for attendance as a witness shall be the same as for a witness in the superior court. (§ 1 ch 232 SLA 1968)

Sec. 09.43.080. Award. (a) The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally or by registered mail, or as provided in the agreement.

(b) An award shall be made within the time fixed by the agreement or, if not so fixed, within the time the court orders on application of a party. The parties may extend the time in writing either before or after the expiration of the time. A party waives the objection that an award was not made within the time required unless the party notifies the arbitrators of the objection before the delivery of the award to that party. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

The law favors arbitration with a minimum of court interference. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974); *Board of Educ. v. Ewig*, Sup. Ct. Op. No. 2048 (File No. 4253), 609 P.2d 10 (1980).

Whenever possible an arbitration award rendered in the form required by this section is presumptively valid and shall be upheld without inquiry into the merit of the dispute. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Subsection (a) sets out the minimum requirements as to the form of an

award. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Written findings and conclusions not required. — The language in subsection (a) does not require the arbitrators to submit written findings of fact or conclusions of law. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Authority to fashion remedies. — There is ample authority for the proposition that arbitrators generally have authority to fashion any remedy necessary to the resolution of the dispute. *Board of Educ. v. Ewig*, Sup. Ct. Op. No. 2048 (File No. 4253), 609 P.2d 10 (1980).

Sec. 09.43.090. Modification of award by arbitrators. On application to the arbitrators by a party or, if an application to the court by

a party is pending under AS 09.43.110 — 09.43.130 on submission to the arbitrators by the court under the conditions the court may order, the arbitrators may modify or correct the award upon the grounds stated in AS 09.43.130(a)(1) and (3), or for the purpose of clarifying the award. An application to the arbitrators by a party shall be made within 20 days after delivery of the award to the applicant. Written notice of the application shall be given promptly to the opposing party, stating that objections to the application must be served within 10 days from the notice. A modified or corrected award is subject to the provisions of AS 09.43.110 — 09.43.130. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

Superior court authorized to order clarification. — This section clearly authorizes the superior court to return an award to the arbitrators for clarification. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Sec. 09.43.100. Fees and expenses of arbitration. Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, shall be paid as provided in the award. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

Ordinarily attorney's fees are not awarded where matters are submitted to arbitration. This is consistent with the strong public policy favoring arbitration, which would be seriously undercut if a party could obtain attorney's fees merely by filing a complaint as an initial step in the arbitration process. *Harold's Trucking v. Kelsey*, Sup. Ct. Op. No. 1739 (File No. 3695), 584 P.2d 1128 (1978). Award of attorney's fees held proper. — See *Harold's Trucking v. Kelsey*, Sup. Ct. Op. No. 1739 (File No. 3695), 584 P.2d 1128 (1978).

Sec. 09.43.110. Confirmation of an award. Upon application of a party, the court shall confirm an award unless within the time limits imposed by AS 09.43.120 and 09.43.130 grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in AS 09.43.120 and 09.43.130. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

Applied in *Willis Flooring, Inc. v. Howard S. Lease Constr. Co. & Assocs.*, Sup. Ct. Op. No. 2598 (File No. 6736), 656 P.2d 1184 (1983).

Sec. 09.43.120. Vacating an award. (a) On application of a party, the court shall vacate an award if

(1) the award was procured by fraud or other undue means;

(2) there was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of a party;

(3) the arbitrators exceeded their powers;

(4) the arbitrators refused to postpone the hearing upon sufficient cause being shown for postponement or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of AS 09.43.050, as to prejudice substantially the rights of a party; or

(5) there was no arbitration agreement and the issue was not adversely determined in proceedings under AS 09.43.020 and the party did not participate in the arbitration hearing without raising the objection.

(b) The fact that the relief is such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

(c) An application under this section shall be made within 90 days after delivery of a copy of the award to the applicant. However, if the application is predicated upon corruption, fraud or other undue means by either the opposing party or an arbitrator, it shall be made within 90 days after the grounds are known or should have been known.

(d) In vacating the award on grounds other than those stated in (a)(5) of this section the court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence of a provision in the agreement, by the court in accordance with AS 09.43.030, or, if the award is vacated on grounds set out in (a)(3) or (4) of this section, the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with AS 09.43.030. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

(e) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

This section and AS 09.43.130 define the superior court's power to review and either vacate or modify an arbitration award. *Alaska State Hous. Auth. v. Riley Pleas, Inc.*, Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

An arbitrator's misconstruction of a contract is not open to judicial review,

except on questions of arbitrability. *Alaska State Hous. Auth. v. Riley Pleas, Inc.*, Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

No review for gross errors. — The "fraud or other undue means" standard of this section does not authorize review for gross errors. *Alaska State Hous. Auth. v.*

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Riley Pleas, Inc., Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

There is a substantial difference between procurement of an award by fraud or other undue means and an award in which the arbitrators have allegedly made large mistakes. The former instances connote affirmative wrongdoing by a party to the arbitration and often by an arbitrator; gross error carries no such connotation. Moreover, fraud or undue means in the procurement of an award does not require a review on the merits of the controversy; a review for gross errors is a review on the merits. Alaska State Hous. Auth. v. Riley Pleas, Inc., Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

Proceedings not reviewable for evidentiary sufficiency. — Since arbitration proceedings are not required by statute or by the rules of the American Arbitration Association to be conducted on the record, it is not possible to review them for evidentiary sufficiency. Alaska State Hous. Auth. v. Riley Pleas, Inc., Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

This article evinces a strong public policy in favor of arbitration. University of Alaska v. Modern Constr., Inc., Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

The power of arbitrators are confined to those conferred upon them by the arbitration agreement, subject, of course, to further limitations imposed by the law of the jurisdiction. University of Alaska v. Modern Constr., Inc., Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

A particular claim may be arbitrable although it is not so designated by "clear and unequivocal" contract language. University of Alaska v. Modern Constr., Inc., Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Ambiguous contract terms may be construed in favor of arbitrability where such construction is not obviously contrary to the parties' intent, especially where the party contesting arbitrability drafted the contract. University of Alaska v. Modern Constr., Inc., Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Claim not arbitrable. — Where the parties have clearly agreed to arbitrate only those "disputes arising in connection with this contract" a particular claim is not arbitrable if it is nowhere mentioned in the contract. University of Alaska v. Modern Constr., Inc., Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

The question of whether the arbitrator exceeded his power in ordering monetary damages can be appealed. Board of Educ. v. Ewig, Sup. Ct. Op. No. 2048 (File No. 4253), 609 P.2d 10 (1980).

Question on review. — When an award is attacked under this article on the grounds that the arbitrators exceeded their powers through erroneous interpretation of the contract, the reviewing court should determine whether the construction of the contract made by the arbitrators is a reasonably possible one that can seriously be made in the context in which the contract was made. University of Alaska v. Modern Constr., Inc., Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974); Anchorage Medical & Surgical Clinic v. James, Sup. Ct. Op. No. 1333 (File No. 2780), 555 P.2d 1320 (1976).

Stated affirmatively, if all fair and reasonable minds would agree that the construction of the contract made by the arbitrators was not possible under a fair interpretation of the contract, then the court would be bound to vacate or refuse to confirm the award. University of Alaska v. Modern Constr., Inc., Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974); Anchorage Medical & Surgical Clinic v. James, Sup. Ct. Op. No. 1333 (File No. 2780), 555 P.2d 1320 (1976).

Arbitrators' interpretation entitled to significant weight. — The arbitrators' interpretation of what is submitted to them is entitled to significant weight. Anchorage Medical & Surgical Clinic v. James, Sup. Ct. Op. No. 1333 (File No. 2780), 555 P.2d 1320 (1976).

Arbitrators generally need not follow applicable law when deciding issues. — The general rule in both statutory and common-law arbitration is that arbitrators need not follow otherwise applicable law when deciding issues properly before them, unless they are commanded to do so by the terms of the arbitration agreement. University of Alaska v. Modern Constr., Inc., Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974); Anchorage Medical & Surgical Clinic v. James, Sup. Ct. Op. No. 1333 (File No. 2780), 555 P.2d 1320 (1976).

Authority to fashion remedies. — There is ample authority for the proposition that arbitrators generally have authority to fashion any remedy necessary to the resolution of the dispute. Board of Educ. v. Ewig, Sup. Ct. Op. No. 2048 (File No. 4253), 609 P.2d 10 (1980).

Arbitrators held not to have exceeded their powers by awarding compensation based upon the claims of a party's subcontractors, who were not parties to the contract. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Right to object to the alleged bias of an arbitrator was waived where the objecting party did not raise the matter at

the arbitration hearing. *Alaska State Hous. Auth. v. Riley Pleas. Inc.*, Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

Cited in *Kodiak Oilfield Haulers, Inc. v. Local 879, Hotel Union*, Sup. Ct. Op. No. 2471 (File No. 5758), 641 P.2d 11 (1982).

Applied in *Masden v. University of Alaska*, Sup. Ct. Op. No. 2421 (File No. 5291), 633 P.2d 1374 (1981).

Sec. 09.43.130. Modification or correction of award by court.

(a) On application made within 90 days after delivery of a copy of the award to the applicant, the court shall modify or correct the award if

(1) there was an evident miscalculation of figures or an evident mistake in the description of a person, thing or property referred to in the award;

(2) the arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

(3) the award is imperfect in a matter of form not affecting the merits of the controversy.

(b) If the application is granted, the court shall modify and correct the award to effect its intent and shall confirm the award as modified and corrected. Otherwise, the court shall confirm the award as made.

(c) An application to modify or correct an award may be joined in the alternative with an application to vacate the award. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

This section and AS 09.43.120 define the superior court's power to review and either vacate or modify an arbitration award. *Alaska State Hous. Auth. v. Riley Pleas, Inc.*, Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

An arbitrator's misconstruction of a contract is not open to judicial review, except on questions of arbitrability. *Alaska State Hous. Auth. v. Riley Pleas, Inc.*, Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

Proceedings not reviewable for evidentiary sufficiency. — Since arbitration proceedings are not required by statute or by the rules of the American Arbitration Association to be conducted on the record, it is not possible to review them for evidentiary sufficiency. *Alaska State Hous. Auth. v. Riley Pleas, Inc.*, Sup. Ct.

Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

Error calling for modification or correction must be manifestly clear. — Given the presumption that arbitration awards rendered in proper form are valid and the "evident mistake" prerequisite language of subsection (a), it follows that the error which calls for modification or correction of an arbitration award must be manifestly clear. *Anchorage Medical & Surgical Clinic v. James*, Sup. Ct. Op. No. 1333 (File No. 2780), 555 P.2d 1320 (1976).

Arbitrators' interpretation entitled to significant weight. — The arbitrators' interpretation of what is submitted to them is entitled to significant weight. *Anchorage Medical & Surgical Clinic v. James*, Sup. Ct. Op. No. 1333 (File No. 2780), 555 P.2d 1320 (1976).

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Sec. 09.43.140. Judgment or decree on award. Upon the granting of an order confirming, modifying or correcting an award, a judgment or decree shall be entered in conformity with the award and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent to the application, and disbursements may be awarded by the court. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

Award of attorney's fees held proper. — See Anchorage Medical & Surgical Clinic v. James, Sup. Ct. Op. No. 1333 (File No. 2780), 555 P.2d 1320 (1976). Cited in Harold's Trucking v. Kelsey, Sup. Ct. Op. No. 1739 (File No. 3695), 584 P.2d 1125 (1978).

Sec. 09.43.150. Applications to court. An application to the court under AS 09.43.010 — 09.43.180 shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action. (§ 1 ch 232 SLA 1968)

Cross references. — For court rules on service of motions and service procedures, see Civ. R. 77(a) and Civ. R. 5.

Sec. 09.43.160. Appeals. (a) An appeal may be taken from
(1) an order denying an application to compel arbitration made under AS 09.43.020;
(2) an order granting an application to stay arbitration made under AS 09.43.020(b);
(3) an order conforming or denying confirmation of an award;
(4) an order modifying or correcting an award;
(5) an order vacating an award without directing a rehearing; or
(6) a judgment or decree entered under the provisions of AS 09.43.010 — 09.43.180.

(b) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action. (§ 1 ch 232 SLA 1968)

Sec. 09.43.170. Court, jurisdiction. In AS 09.43.010 — 09.43.180, the term "court" means the superior court of this state. The making of an agreement described in AS 09.43.010 providing for arbitration in this state confers jurisdiction on the superior court to enforce the agreement under AS 09.43.010 — 09.43.180 and to enter judgment on an award under the agreement. (§ 1 ch 232 SLA 1968)

Sec. 09.43.180. Short title. AS 09.43.010 — 09.43.180 may be cited as the Uniform Arbitration Act. (§ 1 ch 232 SLA 1968; am § 1 ch 94 SLA 1972)

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subsequent recording. Whenever the lien is discharged, it is the duty of the recorder, when requested, to record the transcript of an order, entry of satisfaction of judgment, or other proceeding of record whereby it appears that the lien has been discharged. (§ 7.05 ch 101 SLA 1962)

Revisor's notes. — Minor word because of the enactment of ch. 161, SLA changes related to the recording of documents were made in this section in 1988.

Chapter 43. Arbitration.

Article

1. Uniform Arbitration Act (§§ 09.43.160, 09.43.170)

NOTES TO DECISIONS

Cited in City of Valdez v. 18.99 acres, Sup. Ct. Op. No. 2834 (File No. 6940), 686 P.2d 682 (1984).

Article 1. Uniform Arbitration Act.

Section

- 160. Appeals
- 170. Court, jurisdiction

Sec. 09.43.160. Appeals. (a) An appeal may be taken from (1) an order denying an application to compel arbitration made under AS 09.43.020;

(2) an order granting an application to stay arbitration made under AS 09.43.020(b);

(3) an order confirming or denying confirmation of an award;

(4) an order modifying or correcting an award;

(5) an order vacating an award without directing a rehearing; or

(6) a judgment or decree entered under the provisions of AS 09.43.010 — 09.43.180.

(b) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action. (§ 1 ch 232 SLA 1968)

Editor's notes. — This section is set out above to correct a minor error in the main pamphlet.

Sec. 09.43.170. Court, jurisdiction. In AS 09.43.010 — 09.43.180, the term "court" means the court with jurisdiction in this state. The making of an agreement described in AS 09.43.010 providing for arbitration in this state confers jurisdiction on the court to enforce the agreement under AS 09.43.010 — 09.43.180 and to enter judgment on

an award under the agreement. (§ 1 ch 232 SLA 1968; am § 4 ch 38 SLA 1987; am § 4 ch 38 SLA 1987)

Effect of amendments. — The 1987 amendment substituted "court with jurisdiction in" for "superior court of" in the first sentence and deleted "superior" preceding "court" in the second sentence.

Chapter 45. Actions Relating to Real Property.

Article

1. Adverse Claims and Boundary Disputes (§§ 09.45.010, 09.45.015)
2. Forcible Entry and Detainer (§ 09.45.090)
4. Nuisances (§ 09.45.235)
5. Partition (§ 09.45.480)
6. Recovery of Possession (§ 09.45.720)
7. Trespass (§§ 09.45.730 — 09.45.735)
9. Miscellaneous Provisions (§§ 09.45.790 — 09.45.795)
10. Earthslide Relief Act (§§ 09.45.840, 09.45.845)

Article 1. Adverse Claims and Boundary Disputes.

Section

10. Action to quiet title
15. Presumption in certain cases

Sec. 09.45.010. Action to quiet title. A person in possession of real property, or a tenant of that person, may bring an action against another who claims an adverse estate or interest in the property for the purpose of determining the claim. (§ 6.01 ch 101 SLA 1962)

Editor's notes. — This section is set out above to correct a minor error in the main pamphlet.

Sec. 09.45.015. Presumption in certain cases. (a) A conveyance of land after April 7, 1958, that, at the time the conveyance was made, adjoined a highway reservation listed in section 1 of Public Land Order 1613 of the Secretary of the Interior (April 7, 1958), is presumed to have conveyed land up to the center-line of the highway subject to any highway reservation created by Public Land Order 601 and any highway easement created by Public Land Order 1613.

(b) The burden of proof in litigation involving land adjoining a highway reservation created by Public Land Order 601 or a highway easement created by Public Land Order 1613 is on the person who claims that the conveyance did not convey an interest in land up to the center-line of the highway. (§ 2 ch 141 SLA 1986)