

HB

280

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "A: App relating to
Administrative Adjudication . . ."
Sponsor: Representative Boucher
Requestor: House State Affairs

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

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						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

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
Division: Administrative Services

Phone: 465-3672
Date: 4/18/89

Approved by Commissioner: *Richard I. Pegues / FOR /*
Douglas B. Bailey, Attorney General
Agency: Department of Law

Date: 4/18/89

- 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 280

This bill repeals and reenacts various sections of AS 44.77 to provide for administrative adjudication of certain claims against the state. The bill covers claims arising from the furnishing of services or supplies under state procurement contracts. The bill excludes claims covered by the State Procurement Code, an implied warranty, and tort claims.

The bill provides for an initial appeals process by a purchasing agency or department. Denials of a claim at this level may be appealed to the Department of Administration. At this point, a party bringing an appeal may request that that appeal be conducted by arbitration under AS 09.43.010-09.43.180. Under the bill, the Department of Administration would be required to use this binding arbitration method, if such a request is made. If a request for arbitration is not made, the bill provides for an administrative appeals process for claimants, at the Department of Administration level. A claimant may appeal a decision of the Department of Administration to the superior court.

Administrative appeals are generally less expensive for all of the parties concerned. Discovery usually takes place during hearings, and the parties are given adequate time, through continuances to respond to newly discovered evidence. Arbitration proceedings, although less formal than court proceedings, are far more expensive than administrative appeals. Arbitrations include lawyer conducted discovery, depositions, and expert witnesses. The fee charged by arbitrators averages about \$150 per hour, excluding their costs, and excluding the administrative fee charged by the American Arbitration Association. The bill provides for a three member arbitration panel to hear each appeal.

Most claims arising from the state's procurement of services and supplies involve construction projects. Currently, and as provided by this version of the bill, those claims are and will be handled under the State Procurement Code. Consequently, this bill should not have a fiscal impact on the Department of Law. There would probably be a significant impact; however, if the bill's binding arbitration appeal process were to be used for claims that are now handled administratively under the procurement code. The greatest impact would be on the Department of Transportation and Public Facilities.

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: 280
PUBLISH DATE: 4/11/89

RECEIVED
APR 19 1989

REQUEST: FISCAL NOTE

Revision Date: 1/10/89
Title: An Act relating to the administrative adjudication of certain claims against the state.
Sponsor: Boucher

Agency Affected: DOT
BRU: Design & Construction Maintenance & Operations & AMHS

Requestor:

Components: Administration

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTURAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (THOUSANDS OF DOLLARS)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

There will be some adverse impact from the bill on the department in the form of higher administrative costs and possibly higher than administratively justified payments to the claimants. At this time, it would be difficult to estimate the increase costs.

Prepared by: Loren Rasmussen
Division: Engineering & Operations Standards

Phone: 465-2960
Date: 4/17/89

Approved by Commissioner: Mark S. Hickey
Agency: Department of Transportation and Public Facilities

Date: 4/17/89

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Department of Transportation & Public Facilities



POSITION PAPER

BILL NO: HB 280

APPROVED:

A handwritten signature in black ink, appearing to read "Mark D. [unclear]".

An Act relating to the administrative

TITLE: adjudication of certain claims against the State **DATE:** April 18, 1989

The department is opposed to the bill in the present form.

Section 1 of the bill defines the claims which will be covered by the legislation. It specifically excludes claims made under the existing procurement code.

Section 2 provides for review by the Department of Administration unless the claimant requests arbitration.

The department opposes the general use of arbitration in the settlement of contract claims. Arbitration has not proven to be cost effective or more timely in the resolution of claims. In the past three years the legislature and the administrations have spent considerable time and effort in developing and implementing a new procurement code which includes a complete Article, "Legal and contractual remedies", for the process of resolving claims. We would respectfully suggest that Article 8 of AS 36.30 be expanded to include the claims covered by this bill. We are willing to work with the committee to develop the appropriate committee substitute.

The remaining sections of this bill address technical changes and repealers.

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Administrative adjudication of certain claims against the State
 Sponsor: Boucher
 Requestor: _____

Agency Affected: Administration
 BRU: Office of the Commissioner
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL	0					
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REVENUE	0					
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Additional fiscal impact is impossible to predict because costs of arbitration are determined by arbitration panel (see AS 09.43.100), and apportioned by that body. These costs, as well as the award, could be levied against the department against which the claim is filed or if the appeal is not supported, the costs could be levied against the appellant.

Prepared by: Robert I. Stewart *Robert I. Stewart* Phone: 465-4418
 Division: Administrative Services Date: 4-13-89

Approved by Commissioner: John M. Andrews *John M. Andrews* Date: 4/14/89
 Agency: Administration

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)



Alaska State Legislature

House of Representatives
COMMITTEE ON STATE AFFAIRS

SECTIONAL ANALYSIS OF CSHB 280

SECTION 1. (Concerns eligibility and administrative steps in claims process)

Subsection (a). Establishes a 90 day time limit to file a claim against the state. Lists the kinds of claims that may be filed, i.e., contract claims, procurement claims, reimbursable services claims.

Subsection (b). Excludes claims that are governed by the Procurement Code except for construction contracts with DOT/PF. However, it does not exclude protests relating to the award of contracts. It excludes claims based on implied warranties and tort claims.

Subsection (c). Tells claimant with whom the claim should be filed.

Subsection (d). Claimant has 20 days to furnish related, existing documents.

Subsection (e). Agency has 90 days to decide the claim.

Subsection (f). If agency fails to decide claim within 90 days the claimant wins by default. The 90 day period may be extended by mutual consent.

SECTION 2. (Concerns the appeal process)

Subsection (a). Allows claimant to appeal within 30 days if claim is denied.

Subsection (b). Claimant may request arbitration under the Alaska Uniform Arbitration Act.

Subsection (c). If arbitration is not requested, the Dept. of Administration has 90 days to process and decide the appeal, unless both parties agree to a different period.

Subsection (d). If claimant disagrees with appeal decision, claimant may litigate in Superior Court.

Subsection (e). Provides for parties to select arbitrator by mutual consent or through American Arbitration Association.

Subsection (f). The arbitrator's award is due within 90 days.

Subsection (g). If the Dept. of Administration does not meet its 90 day deadline, or, if the arbitration is not completed within 90 days, the claimant wins by default.

SECTION 3. (Technical change)

This section incorporates the reference to the new 44.77.025(a) from section two of the bill into the authority of the Dept. of Administration.

SECTION 4. (Technical change)

This section makes the claims process in this bill (under Title 44) exclusive and ineligible for civil suit under Title 9.

SECTION 5 and SECTION 6. (Technical change)

These sections remove the reference to construction contract claims from the contract controversy sections of Title 36.

SECTION 7. (Exclusive remedy for procurement code claims)

This section states that the procurement code procedures are the exclusive remedy for all claims arising from a procurement except as provided in Section 8 of the bill.

SECTION 8. (Exclusive remedy for construction contract claims)

Provides that 44.77 is the exclusive procedure for a claim against DOT/PF arising from a construction contract.

SECTION 9. (Repealer)

This section repeals the sections in 44.70 made obsolete by this bill.

Section 10. (Application)

This Act applies to all subject claims made on or after the effective date.

Section 11. (Transitional provisions)

This section allows existing claimants to request arbitration under this bill if their claim is unsettled on the effective date of this Act. Old claims shall be governed by the old statute.



*Department of Transportation
and Public Facilities*

POSITION PAPER

BILL NO: HB 280

APPROVED: Mark D. Hill

TITLE: An Act relating to the administrative
adjudication of certain claims against
the state.

DATE: April 25, 1989

The department would strongly oppose any amendment to HB 280 which would require arbitration as a means of settling construction contract claims.

The legislature and the executive branch have spent three years in developing the new procurement code which includes the article for the legal and contractual remedies. This article was modeled after guidelines set up by the American Bar Association in the model procurement code. For the first time the process for protests, claims, appeals, debarments and suspensions were set up in the statutes.

We have just begun administrating contracts with these new requirements. To date we have had very few bid protests (say 6 or 7 total) and no construction claims. To date all have been settled by the administrative process outlined in AS 36.30. While there are a number of construction claims currently underway, they are not subject to the procurement code due to the date of contract award preceeding the effective date of the code. We have attempted in a few of the on-going claims to adopt the new process. Of interest, the department is trying to have a neutral party perform the second level review for bid protests. This has generally involved persons not from the department serving as a hearing officer.

We believe that we need to give the process established by the new procurement code an opportunity to function before we make drastic changes.

We have received a couple of draft amendments. Besides our general opposition to arbitration, we have not had time to consider the effects of these suggested amendments, and therefore offer no comments at this time.

Although we have only minor involvement with arbitration, within our limited experience the process has not proven to be more timely and it appears to be just as costly as a court proceeding. The administrative process

has proven to be considerably more expeditious and cost effective. We would therefore, ask that additional time be allowed to see if contract disputes can be resolved efficiently under the procurement code before embarking on a significant change in procedures.

CMST
X HB 280

JAMES N. WANAMAKER
1031 WEST 4TH AVENUE, SUITE 401
ANCHORAGE, ALASKA 99501
(907)279-6591

April 19, 1989

RECEIVED
APR 24 1989

Honorable H.A. Red Boucher
Chairman State Affairs
P.C. Box V
Juneau, Alaska 99811

Dear Representative Boucher:

I strongly endorse the arbitration provision set forth in Section 44.77.025(b) on page 3 of House Bill 280.

This arbitration provision would give the contractor a fair and speedy resolution of his claim.

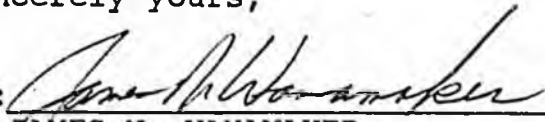
Under current procedures, the appeal is heard before a hearing officer appointed by the State, usually from its own department. The proceedings are subjected to great delay and the end result is a rubber stamping of the original decision by the "in-house" hearing officer.

If the contractor under the current procedure attempts to appeal to the Superior Court, he is met with the "substantial evidence rule" and the hearing officer's decision is affirmed "if there is any substantial evidence to support it", even if it is totally inadequate.

I am a practicing attorney and have seen these vices of the current law first-hand.

It is much better to provide the contractor with a mechanism for a fair hearing early in the proceedings as is done by HB 280. This is an excellent provision.

Sincerely yours,

BY: 
JAMES N. WANAMAKER

JNW/skm JNW/HB280

cc: Blomas

CSHB 280 (SA)

"...relating to administrative adjudication of claims against the state."

The rationale for HB280 is to balance the power between the state and contractors who have disputes with the state arising out of contracts with DOT/PF.

Currently, the dispute settlement mechanism is controlled entirely by the state. The state unilaterally selects hearing officers, sometimes from within the department against whom the claim is made. The state sets the hearing schedule and dictates the rules for conduct of the hearing.

Throughout the process, the state has unlimited administrative and personnel resources, including the Department of Law to advocate their position.

Summarily, the state controls the process and has the unchecked ability to mount costs against the claimant. Consequently, claims are settled because of the comparative financial strength of the state rather than merit of the claim.

CSHB 280 addresses this problem by first allowing DOT/PF the opportunity to resolve the claim administratively. If the claim can't be resolved this way, then the claimant may request arbitration.

If the claimant does not request arbitration, CSHB 280 establishes specific deadlines within which the state must act to resolve the claim. The deadlines may be extended by mutual consent of the parties. The purpose of the deadlines is to prevent the state from stringing out the process beyond the time that a claimant can reasonably afford to pursue the claim. If the state does not meet the deadline, the claimant wins by default.

Another key provision of CSHB 280 is that it requires an annual report to the legislature of the number, dollar value and status of contract claims filed each year.

b. Example / Checklist contact sheet

LEGISLATIVE

SPONSOR: House State Affairs

TC DATE/DAY: Wed, Apr 26

Pub. Hear Work Ses. Inv. Hear ^{Testimony}

TIME: 830-10 Am

LEGISLATIVE REFERENCE: HB280

JUNEAU ROOM: C-102

SUBJECT: Admin Adjudication /
Claims Against State

BRIDGE: _____

OF PORTS: _____

CONTACT: Ann PH: 4963

DATE TAKEN/BY: Wendi 4/26/89

TELECONFERENCE SITES:

LIO'S

LTC'S

VTS'S

- Anchorage
- Barrow *
- Bethel
- Delta Junction *
- Dillingham *
- Fairbanks
- Glennallen *
- Juneau
- ~~Verchikan~~
- Kodiak
- Kotzebue
- Mat-Su
- Nome
- Petersburg *
- Sitka
- Soldotna
- Valdez *

- Homer
- Wrangell

See List on Reverse Side

ALL LIO'S

OTHER SITES WELCOME WITH PRIOR NOTIFICATION

OFFNETS: Greg Edmiston
274-1151

Trajella Binas

CHAIRING SITE: Juneau

CHAIRPERSON: Rob Boucher

[] CONFORMS TO LEGISLATIVE COUNCIL POLICY 4/85

SIGNATURE OF SPONSOR/CONTACT PERSON

DATE

SPECIAL INSTRUCTIONS

b. Example / Checklist Contact Sheet

LEGISLATIVE SPONSOR: House State Affairs

TC DATE/DAY: Tues, Apr 25

Pub. Hear Work Ses. Inv. Hear

TIME: 8:30-10:00

LEGISLATIVE REFERENCE: HB 280

JUNEAU ROOM: C-102

SUBJECT: Admin Adjudication / Claims Against State

BRIDGE: _____

OF PORTS: _____

CONTACT: Ann PH: 4963

DATE TAKEN/BY: Roger 4/20/89

TELECONFERENCE SITES:

LIO'S

LTC'S

VTS'S

Anchorage
Barrow *

Homer
Wrangell

See List on
Reverse Side

232



DIRECT
ADVERTISING

LUIS
MARRIQUEN

907-345-4490
FAX: 345-2363

BOX 93057
ANCHORAGE
9 9 5 0 9

in *

Juneau
Boucher

ALL LIO'S

OTHER SITES WELCOME WITH PRIOR NOTIFICATION

[] CONFORMS TO LEGISLATIVE COUNCIL POLICY 4/85

SIGNATURE OF SPONSOR/CONTACT PERSON

DATE

HB 280 Arig Edmiston
OFFNETS: 276-5115 Arch
4/23/89 1029 W. 3rd Ave, Suite 500
Anchorage, AK 99501
HB 282 Luis Marriquen
per Glenn 345-4490
4/21/89 Robert Mintz
0276-3550 (DOL)
Consumer Prof. Section
1031 W. 4th Ave, Suite 110
A/A 99501
HB 280 Harry Blaras
4/21/89 659-4604
5:30pm or Mrs. Blaras 561-8580

562-2882

SPECIAL INSTRUCTIONS

Amended

→ use name of Boucher ←

6-1139E
Bannister
4/25/89

[Original sponsor: Boucher]

PROCUREMENT CODE

STATE OF ALASKA

One person violation has to significant - may be difficult.

* Appeal process - DOT needs to look outside individuals
IN THE HOUSE NOT SPECIFIED IN STATUTE BY THE STATE AFFAIRS COMMITTEE

PROCUREMENT CODE: CS FOR HOUSE BILL NO. 280 (State Affairs)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the administrative adjudication of, other action on, and disclosure of claims against the state."

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

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

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

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

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

(3) is for

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

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

(b) A claim under (a) of this section does not include a claim

that is

(1) governed by AS 36.30.560 - 36.30.699, unless the claim, excluding a protest relating to the award of a contract, derives from a construction contract with the Department of Transportation and Public Facilities or its delegate under AS 36.30.015;

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1 (2) on an implied warranty; or

2 (3) for negligence, defamation, assault, battery, trespass,
3 false imprisonment, malicious prosecution, intentional or negligent
4 interference with business relations, intentional or negligent inter-
5 ference with prospective economic advantage, or other similar tort
6 claim that might otherwise be covered under (a) of this section.

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

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

16 (e) The agency officer handling the claim shall decide the claim
17 within 90 days after the claim is filed. If the officer denies the
18 claim in whole or in part, the officer shall state the specific rea-
19 sons for the decision in findings of fact and conclusions of law.

20 (f) Unless the agency and the claimant have agreed to an exten-
21 sion of time or the agency can demonstrate that the agency's delay was
22 excusable, the claim is considered to be allowed in its entirety if
23 the agency officer does not issue a written decision on the claim
24 within 90 days after the claim is filed. If a claim is allowed under
25 this subsection, the Department of Administration shall issue a war-
26 rant to pay the claim. A time extension under this subsection, in-
27 cluding an extension agreed to by the agency and the claimant, may not
28 exceed 60 days, and the agency officer handling the claim bears the
29 burden of proof regarding the existence and nature of the extension.

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

2 Sec. 44.77.025. PROCEDURE AFTER DENIAL OF A CLAIM. (a) If the
3 agency officer handling a claim under AS 44.77.010 denies all or part
4 of the claim under AS 44.77.010(e), the claimant may appeal the deci-
5 sion by filing a notice of appeal with the Department of Administra-
6 tion within 30 days after receiving notice of the decision. A notice
7 of appeal consists of a plain, concise, and detailed statement in
8 writing of the reasons why the claimant believes that the decision was
9 incorrect.

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

16 (c) If the claimant does not request arbitration under (b) of
17 this section, the Department of Administration shall review the claim
18 on the record established under AS 44.77.010. The department may
19 supplement the record with testimony and other evidence that it deter-
20 mines is appropriate to the determination of the claim. The depart-
21 ment shall issue a written decision on the appeal within 90 days after
22 the notice of appeal is filed, or within another period established by
23 the department and the claimant by agreement. The decision must
24 consist of a short, concise, and plain statement of facts and con-
25 clusions of law indicating the basis for the decision and constitutes
26 the final administrative order for the claim.

27 (d) If a claimant does not accept the decision of the Department
28 of Administration under (c) of this section, the claimant may appeal
29 the decision to the superior court.

1 (e) Binding arbitration requested under (b) of this section
2 shall be conducted by one arbitrator and under the rules of the Ameri-
3 can Arbitration Association. The arbitrator shall be selected by
4 written agreement of the department and the claimant, or if the par-
5 ties cannot agree, under the rules of the American Arbitration Associ-
6 ation.

7 (f) An arbitration award under (b) of this section shall be made
8 within 90 days after the notice of appeal is filed. The decision must
9 consist of a short, concise, and plain statement of facts and conclu-
10 sions of law, if any, on which the decision was based. The decision
11 may be appealed under AS 09.43.010 - 09.43.180.

12 (g) If the Department of Administration does not issue a written
13 decision as provided under (c) of this section, or if the arbitration
14 under (b) of this section is not completed within 90 days after the
15 notice of appeal is filed, the claim is considered to be allowed in
16 its entirety, and the department shall issue a warrant to pay the
17 claim.

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

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

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

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

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

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

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

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

19 * Sec. 5. AS 36.30.620(c) is amended to read:

20 (c) The time for issuing a decision under (b) of this section
21 may be extended for good cause by the commissioner of administration,
22 or for a controversy involving a [CONSTRUCTION CONTRACT OR] procure-
23 ment for the state equipment fleet, the commissioner of transportation
24 and public facilities, if the controversy concerns an amount in excess
25 of \$50,000. The procurement officer shall notify the contractor in
26 writing that the time for the issuance of a decision has been extended
27 and of the date by which a decision shall be issued.

28 * Sec. 6. AS 36.30.625(a) is amended to read:

29 (a) An appeal from a decision of the procurement officer on a

1 contract controversy may be filed by the contractor with the commis-
2 sioner of administration, or for a controversy involving a [CONSTRUC-
3 TION CONTRACT OR] procurement for the state equipment fleet, the
4 commissioner of transportation and public facilities. The appeal
5 shall be filed within 14 days after the decision is received by the
6 contractor. The contractor shall file a copy of the appeal with the
7 procurement officer.

8 * Sec. 7. AS 36.30.690 is amended to read:

9 Sec. 36.30.690. EXCLUSIVE REMEDY. Notwithstanding AS 44.77 or
10 other law to the contrary, AS 36.30.560 - 36.30.699 and regulations
11 adopted under those sections provide, except as provided in (b) of
12 this section, the exclusive procedure for asserting a claim against an
13 agency arising in relation to a procurement under this chapter.

14 * Sec. 8. AS 36.30.690 is amended by adding a new subsection to read:

15 (b) AS 44.77 provides the exclusive procedure for asserting a
16 contract controversy claim against the Department of Transportation
17 and Public Facilities, or its delegate under AS 36.30.015, that
18 derives from a construction contract.

19 * Sec. 9. AS 36.90 is amended by adding a new section to read:

20 Sec. 36.90.120. ANNUAL DISCLOSURE OF CLAIMS. By the 15th day of
21 each regular session of the legislature a state agency shall provide a
22 written report to the legislature that lists the claims that were
23 filed against the agency during the preceding fiscal year and the
24 claims that are pending against the agency at the end of the preceding
25 fiscal year. The list must include for each claim the amount of the
26 claim, the party who is making the claim, the date the claim was
27 filed, a description of the basis for the claim, and the current
28 status of the claim. This section applies to claims that are filed
29 under AS 36.30.620 - 36.30.630 and AS 44.77.

1 * Sec. 10. AS 44.77.015, 44.77.020, 44.77.030, and 44.77.040 are re-
2 pealed.

3 * Sec. 11. APPLICATION OF ACT. Sections 1 - 8, 10, and 12 of this Act
4 apply to claims that derive from procurements made by the state on or after
5 the effective date of this Act.

6 * Sec. 12. TRANSITIONAL PROVISIONS. (a) A claimant whose claim
7 derives from a procurement made before the effective date of this Act may
8 request that the claim be submitted to arbitration under AS 44.77.025(b),
9 as enacted by sec. 2 of this Act, if the claim is pending before the
10 Department of Administration on the effective date of this Act and if the
11 Department of Administration has not issued for the claim before the effec-
12 tive date of this Act a decision under AS 44.77.040(b), as that subsection
13 existed before the effective date of this Act.

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

HB 280

BALANCE POWER BETWEEN CONTRACTORS &
DOT PUFF

Previously, contract is by state - state
has unlimited power - Amount costs.

HB 280

- resolve claim Ad Law structure.
- deadline for claim.
- Present structure out claim

requires reporting

Zwacki -

to claim out there? Time limit?

→ out first non claim

→ 150 day - for each step - state
can extend deadline

Fiskestein

subject area - DOT Puff - Ad Law involves
law process -

claims process from DOT Puff -