

HB

10

(7)
Date Referred to Committee: March 14, 1997

FURTHER REFERRALS:

Finance

Date of Committee Action: 3/21/97

The JUDICIARY Committee considered:

HB 10

HOUSE BILL NO. 10

MANDATORY MEDIATION/DESIGN PROF LAWSUITS

"An Act requiring mediation in a civil action against an architect, engineer, or land surveyor; amending Rule 100, Alaska Rules of Civil Procedure; and providing for an effective date."

recommends it be replaced the same title
with the following committee substitute _____ a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal note(s) _____

fiscal note(s) _____

zero fiscal note(s) COURTS

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>[Signature]</i> ROKEBERG	<input checked="" type="checkbox"/>			
<i>[Signature]</i> CROFT	<input checked="" type="checkbox"/>			
<i>[Signature]</i> BERKOWITZ	<input checked="" type="checkbox"/>			
<i>[Signature]</i> BUNDE	<input checked="" type="checkbox"/>			
<i>[Signature]</i> JAMES	<input checked="" type="checkbox"/>			
<i>[Signature]</i> GREEN	<input checked="" type="checkbox"/>			

CHAIR'S SIGNATURE

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March 12, 1997

apdclcl\HB10_397

Representative Joe Green
Room 118, State Capitol
Juneau, AK 99801-1182

Re: HB10

Dear Rep. Green:

I am writing to you as a professional engineer and as a representative of the Alaska Professional Design Council, commonly known as APDC. APDC is a consortium of professional societies representing architects, engineers, land surveyors, building code officials, and landscape architects. The ten member-organizations have a combined membership of over 1400 and represent approximately 5000 licensed professionals. APDC is very supportive of HB10.

Our legal system needs modification! Over 90% of civil suits never go to trial. Most cases are settled, with little to no consideration to actual fault, to avoid the expenses of discovery, trials, the threat of punitive damages (which aren't covered by insurance) and the seemingly capricious decisions of juries. When suits are filed against all possible defendants, regardless of fault, to ensure there are plenty of pockets to chip into the settlement, some defendants end up spending a considerable amount of time and money to extricate themselves from cases in which they shouldn't be involved. In most cases, they get to contribute to the settlement, even though they have no fault, due to pressure from the other parties to the suit. Knowing this, some people use the court system as a means of legal extortion by filing frivolous suits with the hope of a settlement. Millions of dollars are spent in the so called "discovery process" which almost always results in the defendants throwing in their insurance to stop the bleeding and make the case go away.

Existing sanctions against frivolous suits are rarely used because they require that the plaintiff first lose at trial, a trial that rarely happens. Summary judgment is also very rare because appellate courts have almost always overturned such decisions, making trial judges wary of issuing such orders. Many settlements are due to fear of the perceived large down side of going to trial, including the expense involved and the tendency of some juries to ignore common sense and aid the "little guy" plaintiff by dipping into the "deep pocket". All too often we read about large awards being reduced by the trial judge or on appeal or on the second appeal, all of which takes time and money. Some argue that these are rare, but they are not rare enough to take the gamble of a trial.

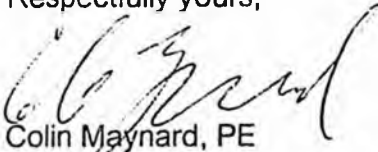
It is time to develop a system which identifies patently frivolous and meritorious suits early, so we can get them out of the system. HB10 will help the situation for design professionals. Mandatory mediation would occur immediately after the immediate mandatory discovery process, a relatively new exchange of documents which occurs very shortly after a case is filed. A mandatory mediation system would reduce the number and costs of frivolous suits by letting the plaintiff and their attorney know early on if a case has no merit. They will be less willing to press the case as the likelihood of recovery will be decreased and the likelihood of court sanction for bringing a frivolous suit will be increased. On the other hand, it will encourage

defendants to settle valid claims early by giving them an independent opinion of the validity of the claim against them. It will reduce the costs of litigation by resolving cases before the lengthy, expensive, regular discovery process which includes depositions and responding to interrogatories. This may have the added benefit of more money going to the injured, rather than lawyers and expert witnesses. It should slow down the shotgun approach to suits by removing defendants who are obviously not liable.

It is our understanding that approximately 80% of cases sent to mediation in Washington are resolved during or soon after the mediation process. Fewer, smaller, and shorter cases should provide relief to an overtaxed court system. A bill which would have established mandatory mediation in suits against design professionals passed the House last year, 37-3. The trial attorneys, who have generally not been proponents of legal reform, testified on that bill that they support mandatory mediation, although they would prefer it to apply to all suits.

APDC thanks you for introducing HB10 and urges its passage. If you have any questions, I can be reached by phone at (907) 274-2236, by fax at (907) 274-2520, or by e-mail at bbfm@alaska.net.

Respectfully yours,



Colin Maynard, PE

Alaska State Legislature

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DEVELOPMENT
ALASKA COURT SYSTEM

Representative Joe Green
District 10

Sponsor Statement

CSHB 10 (L&C)

Mandatory Mediation for Claims Against Design Professionals

HB 10 attempts to keep frivolous lawsuits out of the courtroom by amending the Code of Civil Procedure to require mediation of a civil action alleging professional negligence against an architect, engineer, or land surveyor.

A voluntary mediation process is set out under Court Rule 100, HB 10 simply makes this process mandatory for actions against design professionals. After a suit is filed both parties will go through a limited discovery process, then a mediator will work with each side to help reach a settlement.

Members of both the professional design community and the trial attorneys have offered public testimony in favor of this approach. They have testified, and I agree, that mandatory mediation will help resolve claims of negligence against design professionals *before* they reach the courtroom.

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 10

Revision Date: _____ Dept. Affected: Alaska Court System
 Title: Civil action against an architect, engineer BRU: Trial Courts
or land surveyor Component: _____
 Sponsor: Rep. Green
 Requestor: _____ COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

Fund Source (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 97) cost: None

Positions

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel
 Agency: Alaska Court System
 Approved by: Stephanie J. Cole, Acting Administrative Director
 Agency: Alaska Court System

Phone: 264-8228
 Date: 03/10/97
 Date: 03/10/97

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Alaska Court System
Fiscal Analysis
HB 10

HB 10 amends the Code of Civil Procedure to require mediation of a civil action alleging professional negligence against an architect, engineer or land surveyor. Mediation must be conducted as provided under the Rules of Civil Procedure.

The court system does not keep statistics on the number of professional negligence claims filed against design professionals each year; based on testimony, it is assumed that only a few dozen such cases are filed each year in superior or district court.

Court rules will specify that the costs of the mediation shall be paid by the parties. However, as long as mediation is mandatory, the state will be required to pay the costs of the mediator for any party who is legally indigent. Because of the small number of claims each year and the relatively low costs of mediation, this note assumes that there will be no costs to the state for indigent mediation. This could change dramatically from year to year, however. Several years ago, a school roof collapsed because of snow load. Because the building was empty, no one was injured and only one plaintiff (the school district) had standing to file a claim. If school had been in session, however, scores of children or their estates might have had grounds for filing a civil action. In such an event, there could be a large number of legally indigent plaintiffs ordered to mediation, and the engineers who designed the roof might not be financially able to pay their share of the costs of hundreds of mediation sessions. While the catastrophic failure of buildings or other structures is fortunately rare, the potential exists that the court system would need to return to the legislature for funding of indigent mediation at some time in the future.

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mediator, the mediator shall notify the court that mediation efforts have been terminated.

(g) Mediation proceedings shall be held in private and are confidential. The mediator shall not testify as to any aspect of the mediation proceedings. This rule does not relieve any person of a duty imposed by statute.

(h) If the mediation is successful, the party requesting mediation shall prepare a stipulation for dismissal which dismisses all or such portions of the action as have been concluded by mediation as agreed upon at the mediation.

(Added by SCO 1116 effective July 15, 1993; amended by SCO 1130 effective July 15, 1993)

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