

**SB**

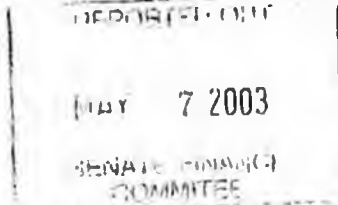
**125**

**SFIN**

**FILE**

# SENATE FINANCE COMMITTEE REPORT

DATE: 5/2/03



FURTHER:

DATE TURNED IN TO OFFICE: 5/8/03

Finance Committee considered

SENATE BILL NO. 125

SB 125 STATE CONTRACTS

"An Act relating to protests of state contract awards, to claims on state contracts and to hearings under the State Procurement Code; making conforming amendments in the State Procurement Code; and providing for an effective date."

and recommends:

- be replaced with \_\_\_\_\_ CS SB 125 (FIN)
- adopt previous \_\_\_\_\_ CS CS FORTHCOMING (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

**Senate Bill:**

- same title
- new title

**House Bill:**

- same title
- technical title
- new: SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#
DOT	4/23	XXX		1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>			✓	
<i>[Signature]</i>			✓	
COCHAIR: <i>[Signature]</i>	✓			
COCHAIR: <i>[Signature]</i>	✓			

# FISCAL NOTE

REPORTED ON

MAY 7 2003

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
Bill Version: SB 125  
(S) Publish Date: 5/1/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DOT&PF  
Title: State Contracts BRU: \_\_\_\_\_  
Component: \_\_\_\_\_  
Sponsor: Cowdery Component No.: \_\_\_\_\_  
Requester: STRA

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractua.						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>						

<b>CAPITAL EXPENDITURES</b>	***	***	***	***	***	***
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	***	***	***	***	***	***
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type- Do not abbreviate)						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0  
Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

\*\*\* The additional costs associated with this bill are based on historical claims costs. The baseline costs for the Rule 79 and 82 provisions, requiring the payment of Attorney fees and claims costs, are estimated at \$145,000 per year. (The historical high would have been \$341,000 per year and the low would have been \$7,300.) This baseline may be increased based on such factors as complexity of litigation, length of trial, etc. The \$145,000 has not been adjusted for Rule 68 offers of judgement as they are not easily applied. In addition to the anticipated Rule 79 and 82 costs, there will be additional attorney fees associated with litigating these awards. This is estimated at 20 hours per claim or \$6,000 per year. Most construction claims are associated with federal funded projects, however, Rule 79 and 82 costs and fees are not eligible for federal participation and would have to be paid with General Fund dollars.

Prepared by: Mark O'Brien Phone 465-3900  
Division: Commissioner's Office Date/Time 4/23/03 11:01 AM  
Approved by: Mike Barton Date 4/23/2003  
Agency: DOT&PF

COMMITTEE COPY

SENATE FINANCE  
COMMITTEE  
Amendment Number: #1  
Bill Number: SB 125  
Sponsor: Wilken Date: 5/7/03  
Logged In By: Mindy

ADOPTED

23-LS0758\H.1  
Bannister  
5/7/03

AMENDMENT

OFFERED IN THE SENATE

TO: CSSB 125(TRA)

- 1 Page 1, following line 5:  
2       Insert a new bill section to read:  
3       **"\* Section 1.** AS 36.30.005 is amended by adding a new subsection to read:  
4               (d) Notwithstanding the provisions of AS 36.30.627, the University of Alaska  
5       is not required to arbitrate construction contract claims unless the university  
6       specifically agrees to the arbitration."  
7  
8 Page 1, line 6:  
9       Delete **"\* Section 1."**  
10       Insert **"Sec. 2."**  
11  
12 Renumber the following bill sections accordingly.  
13  
14 Page 7, line 24:  
15       Delete "16"  
16       Insert "17"

**THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES**

*Conceptual*

COMMITTEE

Amendment Number: #2

**LEGAL SERVICES**

Bill Number: SB125

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

Sponsor: Willy Date: 5/7/03

Logged In By: Robin

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

ADOPTED

MEMORANDUM

May 7, 2003

**SUBJECT:** Amendment to CSSB 125(TRA), (Work Order No. 23-LS0758\H)

**TO:** Senator Gary Wilken  
Attn: Sheila

**FROM:** *TB*  
Theresa L. Bannister  
Legislative Counsel

This memo accompanies the amendment described above.

Correction needed. You have asked me to include a memo with the amendment describing the needed correction. This correction is not caused by the amendment. The present language of sec. 15, the applicability section of CSSB 125(TRA), is not clear and could cause confusion. Although the section talks in terms of "the effective date of this Act," one section of the bill (the one to authorize adopting the needed regulations) has an immediate effective date. Therefore, there are two different effective dates in the Act. If the amendment is adopted, I recommend rewriting this renumbered section as "Sections 1 - 16 and 18 apply to a contract if the contract is entered into on or after the effective date of secs. 1 - 16 and 18 of this Act." If the amendment is not adopted, I recommend rewriting sec. 15 of CSSB 125(TRA) to read "Sections 1 - 15 and 17 apply to a contract if the contract is entered into on or after the effective date of secs. 1 - 15 and 17 of this Act."

*conceptual into*

If I may be of further assistance, please advise.

TLB:med  
03-496.med

Enclosure

CS FOR SENATE BILL NO. 125(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATOR COWDERY

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to protests of state contract awards, to claims on state contracts, to the  
2 arbitration of certain state construction contract claims, and to hearings and appeals  
3 under the State Procurement Code; making conforming amendments in the State  
4 Procurement Code; and providing for an effective date."

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

6 \* Section 1. AS 36.30.005 is amended by adding a new subsection to read:

7 (d) Notwithstanding the provisions of AS 36.30.627, the University of Alaska  
8 is not required to arbitrate construction contract claims unless the university  
9 specifically agrees to the arbitration.

Amend #1

10 \* Sec. 2. AS 36.30.620(b) is amended to read:

11 (b) If a claim [CONTROVERSY] asserted [BY A CONTRACTOR]  
12 concerning a contract awarded under this chapter cannot be resolved by agreement, the  
13 procurement officer shall, after receiving a written request by the contractor for a  
14 decision, issue a written decision. The procurement officer shall make the decision

#1

1 not [SHALL BE MADE NO] more than 90 days after receipt [BY THE  
 2 PROCUREMENT OFFICER] of all necessary information from the contractor. If  
 3 [FAILURE OF] the contractor fails to furnish necessary information requested by  
 4 [TO] the procurement officer, the procurement officer shall proceed to decide  
 5 [CONSTITUTES A WAIVER OF] the claim and may, in the procurement officer's  
 6 discretion, deny all or part of the claim because of the failure to furnish necessary  
 7 information. During an appeal under this chapter, the contractor may not rely  
 8 on or introduce information that the contractor has failed to furnish to the  
 9 procurement officer in support of the claim. Before issuing the decision, the  
 10 procurement officer shall review the facts relating to the claim [CONTROVERSY]  
 11 and obtain necessary assistance from legal, fiscal, and other advisors.

12 \* Sec. 3. AS 36.30.620(c) is amended to read:

13 (c) Upon the written request of the procurement officer, the [THE] time  
 14 for issuing a decision under (b) of this section may be extended for up to 60  
 15 additional days [GOOD CAUSE] by the commissioner [OF ADMINISTRATION,  
 16 OR FOR A CONTROVERSY INVOLVING A CONSTRUCTION CONTRACT OR  
 17 PROCUREMENT FOR THE STATE EQUIPMENT FLEET, THE  
 18 COMMISSIONER OF TRANSPORTATION AND PUBLIC FACILITIES,] if the  
 19 claim [CONTROVERSY] concerns an amount in excess of \$50,000. Upon the  
 20 written request of the procurement officer showing that good cause exists for a  
 21 second extension, the commissioner may extend the time for issuing a decision  
 22 under (b) of this section up to 90 additional days after the first extension. The  
 23 contractor shall be provided with an opportunity to oppose or otherwise respond  
 24 to the request for a second extension. If a second extension is granted, the  
 25 commissioner [THE PROCUREMENT OFFICER] shall notify the contractor and  
 26 the procurement officer in writing that the time for the issuance of a decision has  
 27 been extended and of the date by which a decision shall be issued. In this subsection,  
 28 "commissioner" means the commissioner of administration or, for a claim  
 29 involving a construction contract or procurement for the state equipment fleet,  
 30 the commissioner of transportation and public facilities.

31 \* Sec. 4. AS 36.30.620(d) is amended to read:

1 (d) The procurement officer shall furnish a copy of the decision to the  
 2 contractor by certified mail or other method that provides evidence of receipt. The  
 3 decision must include [A]

4 (1) a description of the claim [CONTROVERSY];

5 (2) a reference to the pertinent contract provisions;

6 (3) a statement of the agreed upon and disputed facts;

7 (4) findings of fact about the claim:

8 (5) a determination of any amount payable;

9 (6) a statement of reasons supporting the decision; and

10 (7) a [(5)] statement substantially as follows:

11 "This is the final decision of the procurement officer. This decision  
 12 may be appealed to the commissioner of (administration/transportation  
 13 and public facilities). If you appeal, you must file a written notice of  
 14 appeal with the commissioner within 14 days after you receive this  
 15 decision."

16 \* **Sec. 5.** AS 36.30.620(e) is amended to read:

17 (e) If the procurement officer does not issue a written decision [IS NOT  
 18 MADE] by the date it is due, the contractor may proceed as if the procurement officer  
 19 had issued a decision adverse to the contractor.

20 \* **Sec. 6.** AS 36.30 is amended by adding new sections to read:

21 **Sec. 36.30.627. Construction contract claim appeals.** (a) An appeal from a  
 22 decision of the procurement officer of a claim involving a construction contract shall  
 23 be resolved by

24 (1) binding and final arbitration under AS 09.43.010 - 09.43.180  
 25 (Uniform Arbitration Act) if the claim is

26 (A) less than \$250,000 and the contractor requests arbitration  
 27 of the claim; or

28 (B) \$250,000 or more and both the agency and the contractor  
 29 agree to arbitration of the claim; or

30 (2) a hearing under AS 36.30.630 if the claim is not handled by  
 31 arbitration under (1) of this subsection.

1 (b) In this section, a claim includes all issues, causes of action, and  
 2 controversies arising from a construction contract for which a contractor or the  
 3 contracting agency asserts compensation is due.

4 **Sec. 36.30.629. Subpoenas and discovery.** In appeals under AS 36.30.627,  
 5 the arbitrator or hearing officer may

6 (1) issue subpoenas, including subpoenas duces tecum, to compel the  
 7 attendance of witnesses and the production of documents;

8 (2) allow the taking of depositions for discovery or to perpetuate  
 9 testimony; and

10 (3) refer a subpoena or subpoena duces tecum to the superior court for  
 11 enforcement and the imposition of appropriate sanctions.

12 \* **Sec. 7.** AS 36.30.630 is amended to read:

13 **Sec. 36.30.630. Hearing on a contract claim [CONTROVERSY].** (a)  
 14 Except as provided in (b) of this section, a hearing shall be conducted according to  
 15 AS 36.30.670 and regulations adopted by the commissioner of administration on a  
 16 contract claim [CONTROVERSY] appealed to the commissioner of administration or  
 17 the commissioner of transportation and public facilities or referred to either  
 18 commissioner under AS 36.30.620(f).

19 (b) Except as provided in AS 36.30.627(a)(1), within [WHIN] 15 days  
 20 after receipt of an appeal on a contract claim [CONTROVERSY] the commissioner of  
 21 administration or the commissioner of transportation and public facilities, as  
 22 appropriate, may adopt the decision of the procurement officer as the final decision  
 23 without a hearing.

24 \* **Sec. 8.** AS 36.30 is amended by adding a new section to read:

25 **Sec. 36.30.631. Attorney fees, costs, and offers of judgment.** (a) An  
 26 arbitrator in the arbitration of a construction contract claim under AS 36.30.627(a)(1)  
 27 and a hearing officer for the hearing of a construction contract claim conducted under  
 28 AS 36.30.627(a)(2) shall award the prevailing party attorney fees and costs incurred in  
 29 the arbitration or hearing. The award shall be made as provided by Rules 68, 79, and  
 30 82 of the Alaska Rules of Civil Procedure.

31 (b) Either party to an arbitration of a construction contract claim conducted

1 under AS 36.30.627 or a hearing of a construction contract claim conducted under  
 2 AS 36.30.630(a) may serve on the adverse party an offer to allow a final decision to be  
 3 entered in complete satisfaction of the claim. The offer shall be made, accepted, or  
 4 rejected as provided for an offer of judgment under Rule 68 of the Alaska Rules of  
 5 Civil Procedure. Acceptance or rejection of the offer has the same consequences as  
 6 acceptance or rejection of an offer of judgment made in a civil action under Rule 68 of  
 7 the Alaska Rules of Civil Procedure.

8 \* **Sec. 9.** AS 36.30.632 is amended to read:

9 **Sec. 36.30.632. Delegation.** The commissioner of administration and the  
 10 commissioner of transportation and public facilities may delegate responsibilities  
 11 under AS 36.30.590 - 36.30.630 [AS 36.30.590 AND 36.30.630] to the head of the  
 12 contracting agency.

13 \* **Sec. 10.** AS 36.30.680 is amended to read:

14 **Sec. 36.30.680. Final decision by the commissioner.** A decision by the  
 15 commissioner of administration or the commissioner of transportation and public  
 16 facilities after a hearing under this chapter is final. A decision shall be sent within 20  
 17 days after the hearing to all parties by personal service or certified mail, except that a  
 18 decision by the commissioner of transportation and public facilities involving  
 19 procurement of construction shall be sent to all parties by personal service or  
 20 certified mail within 45 [90] days after receipt by the commissioner of  
 21 transportation and public facilities of the hearing officer's decision [TO ALL  
 22 PARTIES BY PERSONAL SERVICE OR CERTIFIED MAIL].

23 \* **Sec. 11.** AS 36.30.687(d) is amended to read:

24 (d) A person who in a matter relating to a procurement or a contract  
 25 [CONTROVERSY OR] claim under this chapter makes a misrepresentation to the  
 26 state through a trick, scheme, or device is guilty of a class C felony.

27 \* **Sec. 12.** AS 36.30.695 is amended to read:

28 **Sec. 36.30.695. Other rules of procedure.** The commissioner may adopt by  
 29 regulation additional rules of procedure providing for the expeditious arbitration,  
 30 hearing, and other administrative review of all contract claims [OR  
 31 CONTROVERSIES], both before the contracting agency and through an appeal heard

1 de novo.

2 \* Sec. 13. AS 36.30.695 is amended by adding new subsections to read:

3 (b) Except as provided by (c) of this section, an arbitrator shall issue a final  
4 decision, and a hearing officer shall issue a recommended decision, within the  
5 following time limits after the date the record on the claim is closed:

6 (1) 30 calendar days for a claim of less than \$100,000;

7 (2) 45 calendar days for a claim of \$100,000 or more but less than  
8 \$1,000,000; or

9 (3) 60 calendar days for a claim of \$1,000,000 or more.

10 (c) The commissioner of administration or the commissioner of transportation  
11 and public facilities may, for good cause shown, grant an arbitrator or a hearing officer  
12 additional time to issue a decision.

13 (d) If an arbitrator or hearing officer fails to issue a decision within the time  
14 allowed for a decision under (b) or (c) of this section, the arbitrator or hearing officer  
15 is disqualified from acting as an arbitrator or hearing officer in another proceeding  
16 under this chapter for one year after the decision is issued.

17 (e) The venue for an arbitration or hearing under this chapter is the judicial  
18 district where the office of the contracting agency is located, unless the agency and the  
19 contractor agree on another location.

20 (f) If a party fails to appear at a proceeding under this chapter, the arbitrator or  
21 hearing officer may proceed in the party's absence.

22 (g) Subject to appropriation, any money awarded by an arbitrator's decision  
23 shall be paid within 45 days after the date that the arbitrator's decision is final. Subject  
24 to appropriation, any money awarded by a hearing officer's recommended decision  
25 that is approved by the commissioner of transportation and public facilities shall be  
26 paid within 45 days after the date that the commissioner's decision is delivered to the  
27 contractor and the agency, unless the commissioner's decision is appealed under  
28 AS 36.30.685.

29 \* Sec. 14. AS 36.30.870 is amended by adding a new subsection to read:

30 (c) The commissioner of administration shall adopt regulations establishing  
31 the procedures for arbitration under AS 36.30.627(a), including establishing the

1 qualifications for arbitrators and the method for appointing neutral arbitrators to  
2 conduct arbitrations

3 \* Sec. 15. AS 36.30.990 is amended by adding a new paragraph to read:

4 (24) "hearing" does not include a hearing in an arbitration.

5 \* Sec. 16. The uncodified law of the State of Alaska is amended by adding a new section to  
6 read:

7 APPLICABILITY. Sections 1 - 16 and 18 of this Act apply to a contract if the  
8 contract is entered into on or after the effective date of secs. 1 - 16 and 18 of this Act.

# 2

9 \* Sec. 17. The uncodified law of the State of Alaska is amended by adding a new section to  
10 read:

11 TRANSITION: REGULATIONS. The commissioner of administration may  
12 immediately proceed to adopt regulations necessary to implement this Act. The regulations  
13 take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date  
14 of the other sections of this Act.

15 \* Sec. 18. The uncodified law of the State of Alaska is amended by adding a new section to  
16 read:

17 REVISOR'S INSTRUCTIONS. (a) The revisor of statutes shall substitute "claim" for  
18 "controversy" in

- 19 (1) AS 36.30.620(f);
- 20 (2) AS 36.30.623;
- 21 (3) AS 36.30.625(a);
- 22 (4) AS 36.30.625(c);
- 23 (5) AS 36.30.687(a); and
- 24 (6) AS 36.30.750(b).

25 (b) The revisor of statutes shall substitute "claims" for "controversies" in

- 26 (1) AS 36.30.750(a); and
- 27 (2) AS 36.30.750(b).

28 \* Sec. 19. Section 17 of this Act takes effect immediately under AS 01.10.070(c).


# 1

**LEGAL SERVICES****DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**(907) 465-3887 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 128 6th St., Rm. 329**MEMORANDUM**

May 7, 2003

**SUBJECT:** Amendment to CSSB 125(TRA), (Work Order No. 23-LS0758\H)

**TO:** Senator Gary Wilken  
Attn: Sheila

**FROM:**   
Theresa L. Bannister  
Legislative Counsel

This memo accompanies the amendment described above.

Correction needed. You have asked me to include a memo with the amendment describing the needed correction. This correction is not caused by the amendment. The present language of sec. 15, the applicability section of CSSB 125(TRA), is not clear and could cause confusion. Although the section talks in terms of "the effective date of this Act," one section of the bill (the one to authorize adopting the needed regulations) has an immediate effective date. Therefore, there are two different effective dates in the Act. If the amendment is adopted, I recommend rewriting this renumbered section as "Sections 1 - 16 and 18 apply to a contract if the contract is entered into on or after the effective date of secs. 1 - 16 and 18 of this Act." If the amendment is not adopted, I recommend rewriting sec. 15 of CSSB 125(TRA) to read "Sections 1 - 15 and 17 apply to a contract if the contract is entered into on or after the effective date of secs. 1 - 15 and 17 of this Act."

If I may be of further assistance, please advise.

TLB:med  
03-496.med

Enclosure

# FISCAL NOTE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: CSSB125(TRA)  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DOT&PF  
 Title State Contracts BRU \_\_\_\_\_  
 Component \_\_\_\_\_  
 Sponsor Cowdery Component No. \_\_\_\_\_  
 Requester SRUL

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
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Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>						

<b>CAPITAL EXPENDITURES</b>	***	***	***	***	***	***
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

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1003 GF Match						
1004 GF	***	***	***	***	***	***
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2003) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

\*\*\* The additional costs associated with this bill are based on historical claims costs. The baseline costs for the Rule 79 and 82 provisions, requiring the payment of Attorney fees and claims costs, are estimated at \$145,000 per year. (The historical high would have been \$341,000 per year and the low would have been \$7,300.) This baseline may be increased based on such factors as complexity of litigation, length of trial, etc. The \$145,000 has not been adjusted for Rule 68 offers of judgement as they are not easily applied. In addition to the anticipated Rule 79 and 82 costs, there will be additional attorney fees associated with litigating these awards. This is estimated at 20 hours per claim or \$6,000 per year. Most construction claims are associated with federal funded projects, however, Rule 79 and 82 costs and fees are not eligible for federal participation and would have to be paid with General Fund dollars.

Prepared by: Mark O'Brien  
 Division: Commissioner's Office  
 Approved by: Mike Barton  
 Agency: DOT&PF

Phone 465-3900  
 Date/Time 5/2/03 8:05 AM  
 Date 5/2/2003

SENATOR  
JOHN J. COWDERY  
Anchorage



Committees  
Chair: Rules  
Chair: Transportation  
Chair: World Trade &  
State/Federal Relations  
Legislative Council

Senate

January - May:  
State Capitol, Suite 101  
Juneau, Alaska 99801-1182  
Tel: 907-465-3879  
Toll Free: 888-269-3879  
Fax: 907-465-2069

May - December:  
716 W. 4th Avenue  
Anchorage, Alaska 99501  
Tel: 907-269-0222  
Fax: 907-269-0223

Senator\_John\_Cowdery@legis.state.ak.us

## **SPONSOR STATEMENT FOR SB 125**

*"An Act relating to protests of state contract awards, to claims on state contracts, to the arbitration of certain state construction contract claims, and to hearings and appeals under the State Procurement Code; making conforming amendments in the State Procurement Code; and providing for an effective date."*

**C**onstruction claims occur when parties to a contract disagree as to whether a specific element of a project is within the scope of work defined by the contract. A dispute resolution process is defined in the Alaska Procurement Code.

There is, however, a perception among construction contractors that this dispute resolution process is no longer expeditious or fair. The purpose of SB125 is to reform the claims process in order to restore confidence in it on the part of the private sector.

Presently, a procurement officer initially evaluates a claim and issues a ruling on its perceived merits. If the contractor who brought the claim isn't satisfied, he or she may appeal to the procurement officer's supervisor.

A contractor may then appeal the supervisor's decision to a hearing officer. Trouble is, there is no opportunity for independent review at any level of appeal. In addition, the roster of hearing officers is maintained solely by the state.

Delays are common: justice delayed is justice denied. The appeal process becomes expensive – which particularly affects small contractors, considering claims of less than \$250,000 are often not pursued.

Specific provisions of SB 125 are as follows:

- Permits a contractor to seek arbitration if a procurement officer's written decision isn't issued by its due date.
- Provides that parties may agree to binding arbitration on all appeals.
- Tightens timelines, and eliminates redundant requirements.
- Holds hearing officers and arbitrators to their required deadlines; those who fail to be timely are disqualified for one year.
- Entitles contractors to recover some claim costs.
- Spells out in regulation specific qualifications for hearing officers and arbitrators.



April 22, 2003

Senator John Cowdery  
Alaska State Legislature  
State Capitol (MS3100)  
Juneau, AK 99701

6441 South Airpark Place  
Anchorage, Alaska 99502-1809  
(907) 245-1885  
Fax: (907) 245-1744

Subject: SB 125

Dear Senator Cowdery:

Knik Construction Co., Inc. fully supports revisions to the State of Alaska contracting methods contained within SB 125.

Knik Construction Co., Inc. has been in business since 1973 and has performed many projects for the State of Alaska during its existence. As we understand the revisions contained within SB 125, the claims process would be timelier and allow the collection of some of the claims by the contractor; such as attorney fees and claim consultants.

For these reasons Knik would encourage your support of SB 125.

Very Truly Yours,

KNIK CONSTRUCTION CO., INC.

A handwritten signature in black ink, appearing to read "Steve Jansen", written over a white background.

Steve Jansen  
President

SJ:lmg

Cc: Richard "Dick" Cattanach

**SWALLING  
CONSTRUCTION  
COMPANY, INC.**

AN EQUAL OPPORTUNITY EMPLOYER  
GENERAL CONTRACTOR #AA179



SERVING ALASKA SINCE 1947

www.swalling.com

P.O. Box 101039

ANCHORAGE, ALASKA 99510-1039

TELEPHONE (907) 272-3461

FACSIMILE (907) 274-6002

LOCATED AT 235 F ST

April 24, 2003

Sent Via Fax - 907-465-2069

Senator John Cowdry,  
Alaska State Legislature  
State Capitol (MS 3100)  
Juneau, AK 99801-1182

Subject: SB125

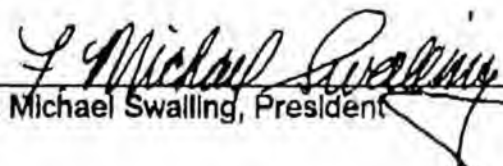
Dear Senator Cowdry,

I am writing this letter in support of SB 125 which addresses current inequities in the construction claims resolution process.

I recently settled two significant construction claims with DOT last year for a total of \$591,000. Swalling spent a total of \$250,000 in outside counsel and expert fees to bring those claims to settlement. Unlike other legal forums where the prevailing party receives some reimbursement for cost incurred Swalling received nothing. This legislation attempts to correct that inequity and gives DOT an incentive to address legitimate claims in a timely fashion before the contractor incurs significant costs.

I urge you to pass the bill as soon as possible.

Sincerely,

  
F. Michael Swalling, President



April 23, 2003

Senator John Cowdery  
Alaska State Legislature  
State Capitol (MS 3100)  
Juneau, Alaska 99801-1182

Facsimile Correspondence  
FAX No.: (907) 465-2069

Reference: SB 125

Dear Senator Cowdery:

I strongly support the passage of SB 125. This legislation's provision allowing for alternative dispute resolutions could speed the settlement of construction claims resulting in the saving of valuable time and money by both the State of Alaska and the contractor.

The language that allows for the award to the prevailing party of attorney fees and costs is fair and will help to avoid the pursuit of baseless claims or the denial of well founded claims. Besides encouraging settlement and thus avoiding unnecessary expenses, this provision, too, will expedite dispute settlement.

The change calling for the sharing of the cost of the hearing officer will help to alleviate concerns of the contractor that the hearing officer is an employee of the State working to satisfy his/her employer.

In summary, SB 125 will serve to bring more equity to the claims process and to expedite the settlement of claims, thereby reducing the cost of construction in Alaska. Thank you for your sponsorship and support of this important legislation.

Sincerely,  
Great Northwest, Inc.



Anton K. Johansen



**GOODFELLOW BROS., INC. — GENERAL CONTRACTOR —**

CL # 1630

April 23, 2003

Alaska State Legislature  
State Capitol (MS 3100)  
Juneau, Alaska 99801-1182

Attention: Senator John Cowdery

Fax (907) 465-2069

Regarding: Revision to the Construction Claims Bill SB125

The construction claims bill that Associated General Contractors and the Department of Transportation and Public Facilities worked on for more than two years was introduced last week and moved from its first committee of referral. This bill attempts to speed up the claims process and allows the collection of some of the claims costs (i.e. attorney fees, accounts and claims consultants, etc.). We feel that this bill is more fair to all the parties involved in a claim. Please regard this as a letter of support for House Bill 250.

Respectfully,

Ben A. Northey  
Alaska Manager



## ASSOCIATED GENERAL CONTRACTORS of ALASKA

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8005 SCHOON STREET, SUITE 100 • ANCHORAGE, ALASKA 99518  
TELEPHONE (907) 561-5354 • FAX (907) 562-6118

April 22, 2003

Senator John Cowdery  
Chair, Transportation Committee  
Alaska Senate  
Juneau, Alaska 998801-1182

Re: Senate Bill 125

Dear Senator Cowdery:

On behalf of the more than 600 member firms of the Alaska Chapter of the Associated General Contractors of America, I would like to express our support of Senate Bill 125. For more than two years, AGC has been meeting with the Alaska Department of Transportation and Public Facilities to resolve problems with the current construction claims process. SB 125 reflects the modifications that the parties agree are merited at this time.

The goals of the parties when discussions were initiated were to:

1. Streamline the system
2. Strive to improve the fairness of the process, and
3. Allow the prevailing party to recapture some of its costs associated with the claim.

AGC believes that SB 125 represents a significant improvement over the current claims process and achieves the goals set forth at the start of our deliberations.

AGC has not only worked closely with the Department of Transportation and Public Facilities, it has also sought the advice and consent of the Departments of Law and Administration. In so doing, AGC strived to minimize, if not eliminate, opposition to the bill. At this point we are unaware of any group or organization that may object to the SB 125.

FAIRBANKS  
P.O. BOX 6005 • FAIRBANKS, AK 99706  
TELEPHONE (907) 452-1809

SOLDOTNA  
43335 KALIFONSKI BEACH ROAD, STE. 32 • SOLDOTNA, AK 99669  
TELEPHONE (907) 262-8535

Accordingly, we request your support of this bill.

Sincerely,

ASSOCIATED GENERAL CONTRACTORS  
OF ALASKA

A handwritten signature in black ink, appearing to read 'Richard Cattanach', with a long horizontal flourish extending to the right.

Richard Cattanach  
Executive Director



## SENATE COMMITTEE REPORT First Committee of Referral

DATE: 3/7/03

FURTHER: State Affairs

Date of 5-Day Notice: 3/6/03  
(in accordance with Uniform Rule 23)

DATE TURNED  
IN TO OFFICE: 4/30/03

Transportation Committee considered SENATE BILL NO. 125

### SB 125 STATE CONTRACTS

"An Act relating to protests of state contract awards, to claims on state contracts and to hearings under the State Procurement Code; making conforming amendments in the State Procurement Code; and providing for an effective date."

and recommends:

- be replaced with \_\_\_\_\_ CS SB 125 (TRA)
- adopt previous \_\_\_\_\_ CS (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

**Senate Bill:**

- same title
- new title

**House Bill:**

- same title
- technical title
- new: SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#
* DOT	4/23	xxx		1

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#

\*Forthcoming FN - Pub 5/1  
[ ] APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
Olson <i>Brad Olson</i>			✓	
Therriault <i>Eugene Therriault</i>			x	
Wagoner <i>Thomas Wagoner</i>	✓			
Cowdery CHAIR: <i>John Cowdery</i>	✓			

SENATE FINANCE COMMITTEE

SIGN-IN

SB 125-STATE CONTRACTS

NAME: MARK O'BRIEN Subject/Bill No: SB 125

Co./Dept./Title: DEPT TRANSPORTATION Phone: 465-6990

Address: 3132 CHANNEL DR Zip: 99801

Do you wish to testify?  Yes  No  Respond To Questions

NAME: DICK CATANZARH Subject/Bill No: SB 125

Co./Dept./Title: ASSOC. GENERAL CONTRACTORS Phone: 561-5354

Address: ANCHORAGE Zip: 99524

Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_

Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_ Zip: \_\_\_\_\_

Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_

Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_ Zip: \_\_\_\_\_

Do you wish to testify?  Yes  No  Respond To Questions

AM  
B  
PM