

HB

250

STATE OF ALASKA
HOUSE OF REPRESENTATIVES

Representative Jim Holm



119 N. Cushman
Fairbanks, AK 99701
TEL 456-7423, FAX 451-9293

House District 9

State Capitol
Juneau, AK 99801
TEL 465-3466, FAX 465-2937

Sectional Analysis

HB 250, State Contracts

5/7/3

NOTE: The word "CLAIM" is substituted for "CONTROVERSY" throughout the bill because "claim" is more technically correct and inclusive.

Section 1 and Section 4: Currently, if a contractor asserts a claim that cannot be resolved by agreement, the State can keep requesting more information from the contractor and thus "keep the clock running" until the State determines it has "enough" information. Section 4 allows the contractor to seek arbitration if the State does not issue a written decision by the due date. Section 1, on the other hand, allows the State to deny the claim, or a portion thereof, if the contractor does not furnish the requested information; it also prohibits the contractor from introducing new information later.

Section 2: Currently, state agencies have no penalty for missing deadlines, but if a contractor misses a deadline his claim is denied. This section places parameters on the State's deadlines, requiring the State to show good cause for an extension and allowing the contractor an opportunity to oppose the State's request for a second extension.

Section 3: "*Findings of fact about the claim*" and "*determination of any amount payable*" are added to the list of what the State's written decision must contain.

Section 5: The following new sections are added:

36.30.627 (a) provides that an appeal from the State's decision shall be resolved by binding and final arbitration

- on a claim less than \$250,000 if the contractor requests it,
- on a claim of more than \$250,000 if both the contractor and the State agree to it, or by a hearing if the contractor and the State do not agree to arbitration.

36.30.627 (b) defines what a claim includes.

36.30.629 allows the state to subpoena people and documents, and to take depositions, in hearings and arbitrations defined in this chapter.

Section 6: This section changes "controversy" to "claim" as it applies to binding and final arbitration.

Section 7: Currently, a contractor is not allowed to recover his costs or attorney fees. This new section allows the party who prevails in the case (the State or the contractor) to collect fees, and also to make a settlement offer, under the Alaska Rules of Civil Procedure.

Section 8: This substitutes "-" for "and", thus making the Commissioner's delegation powers in the appeal of a decision inclusive of all the sections 36.30.590 through 36.30.630.

Section 9: This section more clearly defines who receives the State's decisions and shortens the time frame.

Section 10: "*Controversy or claim*" becomes "*contract claim*" as regards penalties for misrepresentation.

Section 11: "*Expeditious administrative review*" becomes "*expeditious arbitration, hearing, and other administration review*."

Section 12: A new section is added to establish a venue for arbitration or hearing and a time frame for the State to issue a final decision. It also encourages the arbitrators or hearing officers to deliver timely decisions by disqualifying for a year them if they do not. Finally, it provides that any money awarded in the decision shall be paid within 45 days.

Section 13: A new paragraph is added giving the commissioner of administration power to adopt regulations establishing the procedures for arbitration and the qualifications for arbitrators.

Section 14: This removes "hearing" from the definition of arbitration.

Sections 15, 16, and 17 are temporary "uncodified" acts establishing 1) that the bill applies to a contract entered into on or after the bill's effective date, 2) that the commissioner of administration may immediately adopt regulations to implement the bill, and 3) that "controversy" be replaced with "claim" in all applicable statutes.

Section 18 provides for the bill to become effective immediately upon passage.

Letters of Support

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

**ASSOCIATED GENERAL CONTRACTORS of ALASKA**

8015 SCHOON STREET, SUITE 100 • ANCHORAGE, ALASKA 99518
TELEPHONE (907) 561-5354 • FAX (907) 562-6118

April 22, 2003

Representative Jim Holm
Co-Chair Transportation Committee
Alaska House of Representatives
Juneau, Alaska 998801-1182

Re: House Bill 250

Dear Representative Holm:

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 House Bill 250. 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. HB 250 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 HB 250 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 HB 250.

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



Richard Cattanach
Executive Director

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

CL # 1630

April 23, 2003

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

Attention: Representative Jim Holm

Fax (907) 465-2937

Regarding: Revision to the Construction Claims Bill HB250

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



April 22, 2003

Representative Jim Holm
Alaska State Legislature
State Capitol (MS3100)
Juneau, AK 99801

6441 South Airpark Place
Anchorage, Alaska 99502-1809
(907) 245-1865
Fax: (907) 245-1744

Subject: HB 250

Dear Representative Holm:

Knik Construction Co., Inc. fully supports revisions to the State of Alaska contracting methods contained within HB 250.

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 HB 250, 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 HB 250.

Very Truly Yours,

KNIK CONSTRUCTION CO., INC.


Steve Jansen
President

SJ:lmg

Cc: Richard "Dick" Cattanach

**SWALLING
CONSTRUCTION
COMPANY, INC.**

AN EQUAL OPPORTUNITY EMPLOYER
GENERAL CONTRACTOR #AA179



SETTING 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 - 907-465-2937

Representative Jim Holm,
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

Subject: HB 250

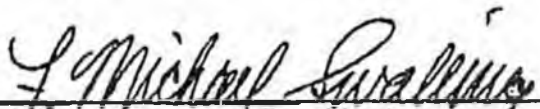

Dear Representative Holm,

I am writing this letter in support of HB 250 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 

STATE OF ALASKA



Interim:
119 North Cushman, Rm. 205
Fairbanks, Alaska 99701
(907) 456-7423
Fax: (907) 451-9293

Session:
State Capitol Building
Juneau, Alaska 99801
(907) 465-3466
Fax: (907) 465-2937

REPRESENTATIVE JIM HOLM
DISTRICT 9

SPONSOR STATEMENT

House Bill 250, State Contracts

4/14/3

Construction claims occur when the parties to the contract disagree as to whether a specific element of a project is within the scope of work defined by a construction contract. For projects undertaken by the State of Alaska, the Alaska procurement code defines a process for resolving these differences.

Ideally such a process should resolve differences in a fair and expeditious manner.

At this time, however, the perception in the construction community is that the process has slowly deteriorated so that it is no longer fair or expeditious. As now prescribed, when a contractor files a claim, the procurement officer involved with the claim initially evaluates the claim and issues a ruling on the perceived merits. If the contractor is not satisfied, an appeal is made to the procurement officer's supervisor.

There is no review by an independent party unless a contractor elects to appeal the supervisor's decision. Even then, the hearing officer is selected by the State, which raises a concern about the true independence of the hearing officers, since the State has sole discretion to maintain the hearing officer list. Delays are rampant. Justice is delayed. Contractors are forced to expend money defending their claim, but that money cannot be recovered in the process. Small contractors cannot afford to participate in the claims process because of these costs. Claims of less than \$250,000 are frequently not pursued because of the great expense involved. The entire process is ripe for review and revision.

The purpose of HB 250 is to modify the construction claims process to once again create a fair and expeditious claims process. Specifically HB 250 will modify the procurement code pertaining to construction claims in the following manner:

1. If a procurement officer does not issue a written decision by the due date, the contractor may seek arbitration.
2. On appeals of all construction claims, the parties can agree to binding arbitration.
3. The timelines for decisions have been tightened, and redundant requirements have been eliminated.
4. An arbitrator or hearing officer who does not issue a decision by the deadline is disqualified for a year.
5. Qualifications for arbitrators and hearing officers will be established by the commissioner of administration in regulation.
6. The contractor is entitled to recover some of the claims costs incurred.

Prompt passage of HB 250 will expedite contractor's claims and return fairness to the process.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB 250
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: DOT&PF
Title State Contracts BRU _____
Component _____
Sponsor Holm _____
Requester H L & C Component No. _____

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						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING						

CAPITAL EXPENDITURES	***	***	***	***	***	***
-----------------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

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)						
TOTAL	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 4/16/03 12:04 PM
Approved by: Mikə Barton Date 4/16/2003
Agency: DOT&PF