

Introduced: 1/23/76  
Referred: State Affairs

1 IN THE HOUSE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

2 *SCS CS* HOUSE BILL NO. 646 *Fin am*

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to selection of architects, engineers  
7 and surveyors for state projects; and providing for  
8 an effective date."

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

10 \* Section 1. AS 35 is amended by adding a new chapter to read:

11 CHAPTER 30. STATE SELECTION OF ARCHITECTS,  
12 ENGINEERS, AND SURVEYORS.

13 Sec. 35.30.010. SELECTION REVIEW BOARD. (a) There is in the  
14 Department of Public Works an Architects, Engineers, and Land Surveyors  
15 Selection Review Board.

16 (b) The board is composed of seven members, appointed by the  
17 governor and subject to confirmation by the legislature in joint  
18 session. Members shall be appointed as follows:

19 (1) two members must be registered architects appointed by  
20 the governor from names submitted by the Alaska chapter of the American  
21 Institute of Architects;

22 (2) two members must be registered engineers appointed by  
23 the governor from names submitted by the Alaska chapter of the National  
24 Society of Professional Engineers;

25 (3) two members shall be appointed by the governor from  
26 the general public, neither of whom may be an architect or an engineer  
27 or a land surveyor; the public members must possess, due to their  
28 education, experience, or vocation, an understanding of and sensitivity  
29 to project design or construction;

-1-*SCS CS* HB 646 *Fin am*

1 (4) one member must be a land surveyor appointed by the  
2 governor from names submitted by the Alaska chapter of the American  
3 Society of Professional Land Surveyors.

4 (c) The term of office of board members is two years. Initial  
5 appointments within each classification in (b)(1)--(3) of this section  
6 shall specify one-year and two-year terms so as to assure the stagger-  
7 ing of terms within each classification. If a vacancy occurs on the  
8 board, the governor shall appoint a person qualified under the appli-  
9 cable provision in (b) of this section to serve the unexpired term.

10 (d) No member of the board or of a firm or joint venture with  
11 which he is associated, or in which he has a financial interest, may  
12 be barred, because of his board membership, from contracting to serve  
13 as an architect, engineer, or land surveyor for a project or from  
14 otherwise participating as a consultant or employee on a project.

15 (e) No member of the board may vote on a grievance matter brought  
16 by or against him or by or against a firm or joint venture with which  
17 he is associated or in which he has a financial interest.

18 Sec. 35.30.020. ORGANIZATION AND MEETINGS OF BOARD. At the  
19 first meeting of the members of the board, the board shall elect a  
20 chairman. The board shall also elect other officers it considers  
21 necessary for the conduct of its affairs. It shall adopt rules  
22 governing its operations and the conduct of its meetings. The rules  
23 shall provide for the term of the chairman and other officers if any.  
24 The board shall meet at least once every six months. In addition, the  
25 board may take official action by mail votes or votes during confer-  
26 ence telephone calls on reasonable notice to all members. Four members  
27 constitute a quorum.

28 Sec. 35.30.030. DUTIES AND POWERS OF THE BOARD. The board shall

29 (1) adopt regulations under the Administrative Procedure

1 Act (AS 44.62) that it finds appropriate to supplement the procedure  
2 established by this chapter for architect, engineer, and land surveyor  
3 selection;

4 (2) review all selection procedures on a periodic basis;

5 (3) review any grievance related to the selection process  
6 and recommend appropriate action to the governor; the board's recom-  
7 mendations on grievances are public information;

8 (4) prepare an annual report on architect, engineer, and  
9 land surveyor selection and selection grievances.

10 Sec. 35.30.040. REQUIREMENTS FOR PROFESSIONAL SERVICES. (a)  
11 Each agency shall make public on at least an annual basis its known  
12 present and future construction and planning programs, and its antici-  
13 pated requirements for professional services for at least the follow-  
14 ing 12-month period.

15 (b) When professional services are required for a specific  
16 project, the chief executive officer of the contracting agency shall  
17 submit a written notice to the board. The notice shall include a  
18 description of the proposed project, its location, the scope of  
19 services required, the proposed completion date, and a description of  
20 any special requirements or unique features of the proposed project.

21 Sec. 35.30.050. QUALIFICATION OF ARCHITECTURAL, ENGINEERING, AND  
22 SURVEYING FIRMS; SELECTION COMMITTEES. (a) The Department of Public  
23 Works shall encourage firms engaged in the lawful practice of archi-  
24 tecture, engineering, or land surveying to submit at least annually a  
25 statement of qualifications. The department shall maintain an up-to-  
26 date listing of qualified firms and shall make it available to selec-  
27 tion committees formed under this section. The department shall  
28 maintain a complete file of all qualified firms who have submitted a  
29 statement within the previous two years.

1 (b) When an agency of the state expects to enter into a contract  
2 for architectural, engineering, or land surveying services, the chief  
3 executive officer of that contracting agency shall appoint two persons  
4 from that agency to a three-member selection committee. The chief  
5 executive officer of the user agency for the proposed project shall  
6 appoint a person from the user agency as the third member of the  
7 committee. If it is anticipated that there will be more than one user  
8 agency, then the third committee member shall be appointed by the  
9 commissioner of administration. Committee members appointed from the  
10 Department of Public Works must be employees in the classified service  
11 under AS 39.25. The members shall elect a chairman.

12 (c) The committee, upon its appointment, shall make a public  
13 announcement of the proposed project which includes a description of  
14 the proposed project, its location, the scope of service required, the  
15 proposed completion date, and a description of any special require-  
16 ments or unique features. The announcement shall invite firms to  
17 submit to the committee an application to perform services for the  
18 project which may include supplemental descriptions of their firms and  
19 statements of qualifications with supporting data as it relates to the  
20 proposed project.

21 (d) The committee shall examine all applications from interested  
22 firms and certify those firms qualified to perform the services for  
23 the project under consideration. Among the factors to be considered  
24 in making this finding are the capability, adequacy of personnel, past  
25 record, and experience of the firm.

26 (e) In evaluating the firms certified under (d) of this section,  
27 the committee shall apply the following criteria, along with other  
28 criteria established by administrative regulations of the department  
29 if any:

1 (1) specialized experience and design and technical compe-  
2 tence of the firm, including a joint venture or association, regarding  
3 the type of service required;

4 (2) capability of the firm to perform the work, including  
5 any specialized services, within the time limitations;

6 (3) past record of performance on contracts with government  
7 agencies and private industry with respect to such factors as control  
8 of costs, quality of work, and ability to meet schedules;

9 (4) proximity to and familiarity with the area in which the  
10 project is located; and

11 (5) the desirability of selecting the most highly qualified  
12 firm; however, the volume of work previously awarded to the firm by  
13 the state shall also be considered, with the object of effecting an  
14 equitable distribution of contracts among qualified firms and of  
15 assuring that the interest of the public in having available a sub-  
16 stantial number of qualified firms is protected.

17 (f) After making this review and technical evaluation, the  
18 committee shall hold discussions with not less than three of the most  
19 highly qualified firms regarding their capability and methods of  
20 approach for furnishing the required services. Professional compensa-  
21 tion may not be considered in these discussions.

22 (g) The committee shall prepare a public report for submission  
23 to the board, recommending, in order of highest qualification, no less  
24 than three firms that are considered most highly qualified to perform  
25 the required services. This report shall include a statement of the  
26 extent of the evaluation and review and the considerations upon which  
27 the recommendations were based. If the committee has found under (d)  
28 of this section that less than three firms are qualified to perform  
29 the services, it shall include in its report the reasons for qualifying

1 less than three. The report shall be made within 45 days after the  
2 committee is appointed.

3 Sec. 35.30.060. NEGOTIATIONS. (a) The contracting agency shall  
4 conduct negotiations on scope of work and professional compensation  
5 initially with the highest ranked firm. If a mutually satisfactory  
6 contract cannot be negotiated with that firm, the agency head shall  
7 formally terminate the negotiations and notify the firm. Negotiations  
8 then shall be initiated with the second-ranked firm and this procedure  
9 shall be continued until a mutually satisfactory contract has been  
10 negotiated. If negotiations fail with the listed firms, the names of  
11 additional firms shall be selected and ranked by the committee and  
12 negotiations shall continue in the manner described in this subsection.

13 (b) Upon successfully negotiating a contract with a firm, the  
14 agency shall promptly report to the board the results of its negotia-  
15 tions, with documentation of the factors affecting any unsuccessful  
16 negotiations with higher ranked firms.

17 Sec. 35.30.070. PUBLIC REPORTS. The board shall make a public  
18 announcement of the firm selected for each proposed project and shall  
19 provide prompt notification to each recommended firm. The board shall  
20 issue an annual report summarizing the projects processed during the  
21 year and the firms selected to design them. The annual report also  
22 shall list each grievance received, give the board's recommendation on  
23 the grievance, and state what action was taken in response to the  
24 board's recommendation.

25 Sec. 35.30.080. PROHIBITION AGAINST CONTINGENT FEES; MISDEMEANOR.  
26 (a) Each contract entered into by an agency for professional services  
27 shall contain a prohibition against contingent fees as follows: "The  
28 contractor providing professional services warrants that he has not  
29 employed or retained any person other than a bona fide employee work-

1 ing solely for the contractor to solicit or secure this agreement, and  
2 that he has not paid or agreed to pay any person, other than a bona  
3 fide employee working solely for the contractor, any fee, commission,  
4 percentage, gift, or any other consideration contingent upon or result-  
5 ing from the award or making of this agreement." For a violation of  
6 this provision, the agency may terminate the agreement without lia-  
7 bility and, in its discretion, may deduct from the contract price, or  
8 otherwise recover, the full amount of the fee, commission, percentage,  
9 gift or consideration.

10 (b) A public official or other person who offers, agrees, or  
11 contracts to solicit or secure a state agency contract for professional  
12 services for any other person for a fee, commission, percentage, gift  
13 or other consideration contingent upon or resulting from, the award or  
14 the making of a contract for professional services, is guilty of a  
15 misdemeanor.

16 (c) An architect, engineer, land surveyor, or other person who  
17 offers or pays or otherwise furnishes any consideration prohibited in  
18 (b) of this section is guilty of a misdemeanor.

19 Sec. 35.30.090. OFFICE, STAFF, AND RECORDS. The Department of  
20 Public Works shall provide the board a suitable place to hold meetings  
21 and keep records. The commissioner of public works shall designate  
22 an employee of the department to serve as executive secretary to the  
23 board. He shall devote the time necessary to promote the expeditious  
24 conduct of the board's duties and responsibilities.

25 Sec. 35.30.100. EXEMPTIONS. (a) The board may adopt regulations  
26 exempting contracts from requirements of this chapter where compensa-  
27 tion to be paid under the contract is less than a specified amount to  
28 be determined by the board.

29 (b) The board may, on a case-by-case basis, exempt emergency

1 projects from the selection process. A brief statement of the emer-  
2 gency that caused the exemption of any project shall be included in  
3 the board's annual report made under sec. 70 of this chapter.

4 Sec. 35.30.110. DEFINITIONS. In this chapter, unless the context  
5 requires otherwise

6 (1) "agency" means all officials, departments, and agencies  
7 of the state government, including the University of Alaska and the  
8 Alaska State Housing Authority;

9 (2) "architect, engineer, or land surveyor" means an archi-  
10 tect, engineer, or land surveyor registered to practice under AS  
11 08.48;

12 (3) "board" means the Architects, Engineers, and Land  
13 Surveyors Selection Review Board;

14 (4) "contracting agency" means the agency administering a  
15 contract for architectural, engineering, or land surveying services;

16 (5) "committee" means a selection committee established  
17 under sec. 50 of this chapter;

18 (6) "firm" means an architect, engineer, or land surveyor,  
19 or a partnership, association, or corporation comprised primarily of  
20 architects or engineers or land surveyors registered to practice under  
21 AS 08.48;

22 (7) "professional service" means architectural, engineer-  
23 ing, or land surveying service;

24 (8) "project" means a construction project using professional  
25 services associated with design and construction, alteration, or  
26 repair of real property, as well as services incidental to it, in-  
27 cluding but not limited to studies, investigations, surveys, evalua-  
28 tions, land appraisals, consultations, planning, programming, con-  
29 ceptual designs, plans and specifications, cost estimates, inspections,

1 shop drawing reviews, sample recommendations, preparation of operating  
2 and maintenance manuals, and other related service;

3 (9) "user agency" means the agency which will occupy or use  
4 the product of the professional service.

5 \* Sec. 2. Nothing in this Act affects the validity or effect of any  
6 contract in existence on January 1, 1977.

7 \* Sec. 3. AS 35.30.030(2), (3), and (4), 35.30.040, and 35.30.050--  
8 35.30.070, enacted in sec. 1 of this Act, take effect January 1, 1977. All  
9 other provisions of this Act take effect immediately in accordance with AS  
10 01.10.070(c).