

HOUSE BILL NO. 526

**IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION**

BY REPRESENTATIVE LINCOLN

Introduced: 2/18/92

Referred: Community & Regional Affairs, State Affairs, Finance

A BILL

FOR AN ACT ENTITLED

**1 "An Act relating to certain public construction contracts and contractors and to certain
2 procurements."**

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

4 * Section 1. AS 08.18.031 is amended by adding a new subsection to read:

5 (c) In determining whether to issue or renew a certificate of registration of a contractor
6 who has held a contract for work on a public construction contract under AS 35.15, the
7 commissioner shall consider the recommendations of local commissions established under
8 AS 35.15.110(c) by the municipalities and villages in which the contractor performed contracting
9 work. The commissioner may not renew the certificate of a contractor who has received a
10 recommendation against renewal under AS 35.15.110(c) unless, after a hearing, the commissioner
11 determines that the recommendation is not supported by a preponderance of the evidence.

12 * Sec. 2. AS 08.18.121 is amended by adding a new subsection to read:

13 (i) If a local commission reviewing the performance of a contractor on a public
14 construction contract under AS 35.15 recommends that the contractor's registration be revoked,

1 the commissioner shall suspend the contractor's registration. If, after a hearing, the commissioner
2 determines that the recommendation for revocation is based on serious misconduct or failure of
3 performance by the contractor under AS 35.15.110(c), the commissioner shall revoke the
4 registration of the contractor.

5 * Sec. 3. AS 35.15.080(a) is amended to read:

6 (a) A municipality or village may, by resolution of its governing body, request the
7 assumption of all or part of the department's responsibilities relating to the planning, design, and
8 construction of a public works project of the state that is to be located within the boundaries of
9 the municipality or in or adjacent to a village and that would otherwise be constructed in the
10 manner provided in AS 35.15.010. After receipt of the request, the department shall [MAY]
11 provide by agreement for transfer to and assumption by the municipality or village of the
12 department's responsibilities relating to the project [, UNLESS THE COMMISSIONER
13 DETERMINES THAT ASSUMPTION OF RESPONSIBILITIES BY THE MUNICIPALITY IS
14 NOT PRACTICABLE OR NOT IN THE BEST INTERESTS OF THE STATE].

15 * Sec. 4. AS 35.15.080(c) is amended to read:

16 (c) A municipality or village may request joint assumption of responsibilities with the
17 department relating to the planning, design, and construction of a public works project. Two or
18 more municipalities or villages may by agreement provide for cooperative assumption of
19 responsibilities relating to the planning, design, and construction of a public works project. If
20 two or more municipalities or villages request assumption of responsibilities for a project [AND
21 MEET THE STANDARD OF PRACTICABILITY SET OUT IN (a) OF THIS SECTION], the
22 commissioner shall determine which municipality or village is best able to direct planning,
23 design, and construction of the project and enter into an agreement with that municipality or
24 village or provide for joint or cooperative administration, as the parties may agree or the
25 commissioner may determine. Decisions of the commissioner under this subsection are subject
26 to judicial review by the superior court [FINAL].

27 * Sec. 5. AS 35.15.080(d) is amended to read:

28 (d) Provisions of this title governing planning, design, and construction of public works
29 by the department, and regulations adopted under the provisions, govern the administration of
30 projects assumed by a municipality, village, or regional educational attendance area under this
31 section. For that purpose, the provisions supersede any conflicting provisions of ordinance or

1 charter of a municipality.

2 * Sec. 6. AS 35.15.090 is amended to read:

3 Sec. 35.15.090. USE OF APPROPRIATED FUNDS. Upon execution of an agreement
4 under AS 35.15.080(a), state funds appropriated for a public works project that is the subject of
5 the agreement shall be transferred to a special account in the state treasury. A municipality or
6 village administering the project under the agreement may draw on the account for costs of the
7 project, under fiscal control of the department. If an agreement provides for joint or cooperative
8 administration of the project, payment of costs shall be made to the party incurring the costs.

9 * Sec. 7. AS 35.15.100 is amended to read:

10 Sec. 35.15.100. RESPONSIBILITY OF DEPARTMENT. When a municipality, village,
11 or regional educational attendance area has assumed responsibility for a public works project
12 under AS 35.15.080 - 35.15.120, the department is relieved of responsibility to the extent it is
13 assumed by the municipality, village, or regional educational attendance area. The department
14 may provide technical assistance on the responsibility assumed if requested to do so by the
15 municipality, village, or area and shall be reasonably compensated for that assistance from the
16 account established under AS 35.15.090.

17 * Sec. 8. AS 35.15.110 is amended to read:

18 Sec. 35.15.110. TITLE TO SITE AND COMPLETION OF PROJECT. (a) Before
19 advertisement for bids or construction contract negotiations, the department shall approve both
20 the project site and the land interest in the site, except that, if the project involves construction
21 of an educational facility, title or sufficient interest determined acceptable by the department to
22 an approved site for a school building shall be vested in the municipality, village, the regional
23 educational attendance area, or the state before advertisement for bids or initiation of construction
24 contract negotiations.

25 (b) Responsibility for maintenance of the project shall be established in the original
26 contract agreement. The department and the local commission, if one has been established
27 under (c) of this section, shall participate in the final inspection of the project and approve of
28 the final documents on the project.

29 * Sec. 9. AS 35.15.110 is amended by adding a new subsection to read:

30 (c) A municipality or village that assumes sole or shared responsibility for a public works
31 project of the state under this chapter may, by ordinance of the municipality or formal action of

1 the village council, establish a local commission to conduct inspections of the project for
2 compliance with the terms of the contract and with state and local law, approve the final
3 documents, and make recommendations to the state under AS 08.18 concerning license renewals
4 and license revocations of contractors who worked on the project. In making recommendations
5 concerning license renewal or revocation, the local commission shall consider the quality and
6 timeliness of the contractor's performance under the contract, the responsiveness of the contractor
7 to matters of public concern in the municipality or village that affect or are affected by the
8 performance of the contract, and the contractor's ability to assist in the informal, peaceful, fair
9 resolution of disputes that relate to the public construction project or to the presence in the
10 municipality or village of persons engaged in the project.

11 * Sec. 10. AS 35.15.120(2) is amended to read:

12 (2) "governing body" means, in the case of a

13 (A) municipality, its assembly or council;

14 (B) [, AND, IN THE CASE OF A] regional educational attendance area,
15 its regional school board; and

16 (C) village, its village council or other appropriate entity.

17 * Sec. 11. AS 35.15.120 is amended by adding a new paragraph to read:

18 (3) "village" means an incorporated or unincorporated contiguous rural community
19 of at least 25 residents.

20 * Sec. 12. AS 36.30.305(a) is amended to read:

21 (a) A contract for supplies, services, professional services, or a construction contract
22 under \$100,000 [,] may be awarded without competitive sealed bidding or competitive sealed
23 proposals, in accordance with regulations adopted by the commissioner. A contract, other than
24 a contract for construction under \$100,000 in a remote area, may be awarded under this
25 section only when the commissioner, or, for construction contracts under \$100,000 or
26 procurements for the state equipment fleet, the commissioner of transportation and public
27 facilities, determines in writing that a situation exists that makes competitive sealed bidding or
28 competitive sealed proposals impractical or contrary to the public interest. The commissioner
29 of transportation and public facilities shall permit a contract for construction under
30 \$100,000 that is located in a remote area to be awarded without competitive sealed bidding
31 or competitive sealed proposals. Procurements under this section shall be made with

1 competition that is practicable under the circumstance. Except for procurements of supplies,
2 services, or construction that do not exceed the amount for small procurements under
3 AS 36.30.320(a), the authority to make a determination required by this section may not be
4 delegated.

5 * Sec. 13. AS 36.30.305(d) is amended to read:

6 (d) Except for procurements in a community with a population of less than 2,000
7 residents [SOLE] source procurements may not be made under this section.

8 * Sec. 14. AS 36.30.320(c) is amended to read:

9 (c) Small procurements need not be made through competitive sealed bidding or
10 competitive sealed proposals but shall be made with competition that is practicable under the
11 circumstances. The commissioner shall exempt small procurements for supplies, services,
12 or construction in a rural area from the requirement for competition.

13 * Sec. 15. AS 35.15.080(b) is repealed.