

HB

156



A M E N D M E N T #1

Offered in the HOUSE

By Phillips

TO: CSHB 156(State Affairs)

Page 1, line 18:

Delete "or"

Page 1, line 20:

After "AS 37.05.230" insert "; or

(5) the service is to be provided by an agency or department of the state government or by a municipality."

*OK/needed?*

A M E N D M E N T #2

Offered in the HOUSE

By Phillips

TO: CSHB 156(State Affairs)

Page 2:

Delete all material on lines 18 and 19

*I just may agree*

Page 2, line 20:

Change "(4)" to "(3)"

A M E N D M E N T <sup>3</sup>

Offered in the HOUSE

BY PHILLIPS

TO: CSHB 156 (SA)

Page 3, following line 20; Insert:

Sec. 24.23.050. DEFINITION. In this chapter, "services" means professional personal services characterized by skilled, technical, or specialized personal services rendered to the agency or a committee.

#4

AMENDMENT

By Meekins

CS Hb 156 (State Affairs)

Page 1, line 13: delete "the contract amount does not exceed \$5,000;"  
insert "the total amount of a contract or contracts  
awarded to a person in a twelve-month period  
does not exceed \$5,000;"

Page 1, line 21-23: delete (b)

Page 2, line 8: delete (1), renumber existing subparagraphs accordingly

~~Page 2, line 18; after "required," insert "are professional services  
which"~~



# Alaska State Legislature

## House of Representatives

### Committee on Rules

Pouch V  
State Capitol  
Juneau, Alaska 99811

Official Business

#### M E M O R A N D U M

TO: Members of the Rules Committee

FROM: Rep. Sally Smith  
Chair, Rules Committee

RE: HB156

DATE: April 3, 1981

Legal Services was unable to prepare an analysis for the attached three proposed amendments. However, Legal Services attorney Jack Chenoweth will be attending the meeting to address questions you may have on the effect of these amendments to the bill.

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 17, 1951

SUBJECT: Legislative contracts  
(CSHB 156 (Rules))

TO: Representative Sally Smith  
Chairman, House Rules Committee

FROM: Richard A. Bradley *B*  
Legislative Counsel

You have requested an analysis of the amendments proposed for a Rules Committee Substitute to HB 156, a bill dealing with legislative contracts.

The first amendment that I have is an amendment by Representative Meekins. His amendment deletes the phrase "the contract amount does not exceed \$5,000;" on page 1, line 13 of the bill. He proposes to add in its place:

the total amount of a contract or contracts awarded to a person in a twelve-month period does not exceed \$5,000;

His amendment further deletes (b) at lines 21 - 23 on page 1; on page 2, line 8 he proposes to delete (1) and to renumber the remaining paragraphs. Finally, his amendment would add "are professional services which" after "required" on page 2, line 18.

The basis for the amendment was the conclusion that the bill was not effective in its goal to limit contracts for services to \$5,000 a year. The State Affairs Committee had requested amendments toward that end; for reasons involving essentially nothing more than statutory construction, it had been concluded that the goal was not achieved.

The first three aspects of the Meekins amendment achieve this goal, we believe.

The last aspect of the amendment deals with a different problem: while it seems clear that the language of sec. 24.23.020(b)(3) was intended to reach only professionals such as lawyers or accountants, the language was thought to be uncertain in its scope. The addition of the language solves that uncertainty; it now reads that a request for proposals need not be extended if

(3) the services required are professional services which may, by law or regulation, be provided only by a person licensed to perform the service;

Representative Phillips offered several amendments.

One amendment adds another exception to the list of contracts for services to which the chapter does not apply: to "service" "provided by an agency or department of the state government or by a municipality". The exclusion is, it seems, wholly within the apparent policy goal of the bill to limit the possibility of the award of legislative contracts to arguably favored individuals.

A separate amendment offered by Representative Phillips deletes the exception under sec. 24.23.020(b)(3) for contracts performed by professionals, almost uniformly by lawyers or accountants. As I understand Representative Phillip's goal, his view was that if the services offered by these professionals were unique such that they constitute a single source, then sec. 24.23.020(b)(2) authorized the negotiation of a contract. And if the services were not unique, then he saw no reason why these professional groups should be excluded from the goals of the act. The decision may or may not be reasonable; in my judgment, the matter is uniquely appropriate for legislative judgment. I note in the past that professional ethics of the legal profession and very likely the accounting profession would have viewed a response to a request for proposals as akin to advertising and thus unethical. In my judgment, those days are past and I do not believe that the elimination of the protections to attorneys or accountants presents any ethical problems. The committee should recognize that this amendment and the last aspect of Representative Meekins' amendment are not consistent.

An amendment by Representative Phillips defines "services" under the proposed AS 24.23 to mean "personal services

Representative Sally Smith  
Page 3  
April 17, 1981

characterized by skilled, technical, or specialized personal services rendered to the agency or a committee".

As I understand the purpose of the amendment, Representative Phillips had a discussion with Dick Berg, director of Legislative Affairs Agency administrative services. As a result of the discussion, Representative Phillips properly concluded that the purpose of the bill was to regulate contracts for personal services. But, as he noted, the term "services" was not defined. This amendment provides such a definition, presumably within the intent of the sponsors.

RAB:ljb

# STATE OF ALASKA THE LEGISLATURE

PO BOX Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

## LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 3, 1981

SUBJECT: Legislative Contracts  
(CSHB 156 (State Affairs))

TO: Representative Sally Smith, Chairman  
House Rules Committee

FROM: Billy G. Berrier *BGB*  
Director  
Division of Legal Services

As requested I have looked at two areas of this bill and I would suggest clarifying amendments.

*Good*  
In sec. 24.23.010 it is my understanding that the intent is that the \$5,000 limit may not be exceeded by use of a series of contracts under \$5,000 to the same person.

I think that (b) in the committee substitute creates an ambiguity since the \$5,000 limitation in (a)(1) (page 1, line 13) is a limitation separate from the remainder. For example the competitive bid procedure excepted in (a)(4) clearly should be available as an option in large contracts.

I would suggest that sec. 24.23.010(b) (page 1, lines 21-23) be deleted and (a)(1) be changed to read:

(1) the total amount of a contract or contracts awarded to a person in a twelve-month period does not exceed \$5,000;

In connection with this sec. 24.23.020(b)(1) (page 2, line 8) should be deleted as redundant since if the chapter does not apply to contracts under \$5,000 the requirement for a request for proposals does not apply.

The second area is the exemption in sec. 24.23.020(b)(3) (page 2, lines 18 and 19). It is my understanding that the

Representative Sally Smith  
Page 2  
April 3, 1981

intent here is to exempt services requiring exercise of professional judgment. Although today the term "professional" is often used very broadly, the context would narrow the meaning. I would suggest the exemption read:

*Good*  
The services are professional services which may, by law or regulation, be performed only by a person licensed to perform the services.

BGB:ljb



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*with*

*affect*

FREE Committee

HB156

Recommended Amendments

*discuss*  
1. Sec 24.23.020(a) (Page 2, line 3 - last sentence in subparagraph)

The FREE Committee believes that this sentence provides loopholes to allow informal solicitation of contracts. Emphasis should be on formal public advertising.

*too much*  
2. Sec 24.23.030(b) provides that the contract award amount is to be stated on the first page of the contract. The FREE Committee is recommending that the language should be more specific and require that the contract amount be included on all research reports which are a product of such a contract.

*70*  
3. The FREE Committee also recommends that a payment procedure be outlined in this bill. Said payment would be based on work performance and would not be received until portions of the contract had been completed. There would be no prepayment for services at time of contract award.

Bill Berrier's response to above recommendations:

1. Mr. Berrier pointed out that an amendment to this language may alter the bill's intent. Should there be equal attention to informal solicitation of contracts and formal public advertising. How much leeway is wanted?

2. This recommendation may be more appropriately considered a policy issue than a statutory requirement.

3. Again, payment procedure may be more appropriately considered as a policy issue. Failure to provide partial payment at the time of contract award, may prevent small contractors from participating. The larger businesses may, theoretically, be the only ones able to meet these requirements. Depends upon the legislative intent.

Original sponsor: Rules Committee

Offered: 3/23/81  
Referred: Rules

1 IN THE HOUSE

BY THE STATE AFFAIRS COMMITTEE

2 CS FOR HOUSE BILL NO. 156 (State Affairs)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to legislative contracts."

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

8 \* Section 1. AS 24 is amended by adding a new chapter to read:

9 CHAPTER 23. LEGISLATIVE CONTRACT PROCEDURE.

10 Sec. 24.23.010. APPLICATION. (a) This chapter applies to  
11 contracts for services to be provided to a legislative agency or  
12 committee unless

13 (1) the contract amount does not exceed \$5,000;

14 (2) the contract is an employment contract for services to  
15 be performed under direct supervision regardless of the existence of an  
16 employer-employee relationship;

17 (3) the contract is for construction, repair, or maintenance  
18 of a structure; or

19 (4) the contract is awarded based on competitive bids ob-  
20 tained under the competitive bid procedure provided in AS 37.05.230.

21 ~~(b)~~ A legislative agency or committee may not negotiate a con-  
22 tract or contracts with a person that exceed \$5,000 in a 12-month  
23 period.

24 Sec. 24.23.020. REQUESTS FOR PROPOSALS. (a) A formal written  
25 request for proposals soliciting an offer to perform the services  
26 required under a contract must be extended to a sufficient number of  
27 providers of the required services to assure that public interest in  
28 competition is adequately served. Proposals from at least six firms  
29 shall be solicited for contracts in excess of \$100,000 if the expertise

1 required is widely available. Proposals from at least three firms  
2 shall be solicited for contracts of less than \$100,000 if the expertise  
3 required is widely available. Formal advertising in a medium which  
4 will reasonably bring the proposal to the attention of persons able to  
5 provide the required service may be substituted for direct solicitation  
6 or used jointly with direct solicitation of proposals.

7 (b) A request for proposals need not be extended if

8 (1) the contract amount does not exceed \$5,000;

9 (2) there is a single source of the expertise or knowledge  
10 required or if one person or firm can clearly perform the required  
11 tasks more satisfactorily because of the person's or firm's prior work;  
12 however, this exemption from a request for proposals applies only when  
13 a legislative committee by vote of the majority of the members of the  
14 committee has approved the exemption and a written justification signed  
15 by the person responsible for awarding the contract which details the  
16 reasons for the exemption is filed with the Legislative Affairs Agency  
17 as a public record;

18 (3) the services required may, by law or regulation, be  
19 performed only by a person licensed to perform the service;

20 (4) the contract is for services provided to the office of  
21 the ombudsman for an investigation under AS 24.55.100.

22 (c) A proposal should be designed to demonstrate to legislative  
23 committees and staff who will review the proposal that the proposed  
24 research project represents a sound approach to the investigation of an  
25 important public policy question. A proposal should be self-contained  
26 and written with care and thoroughness.

27 (d) Unless the contract is for services exempt under AS 24.23 010  
28 or (b) of this section, a contract for

29 (1) the Legislative Affairs Agency shall be approved by the

1 Legislative Council;

2 (2) the legislative finance division or the legislative  
3 audit division shall be approved by the Legislative Budget and Audit  
4 Committee.

5 Sec. 24.23.030. AWARD OF CONTRACT. (a) If a contract is made by  
6 a legislative committee, execution of the contract on behalf of the  
7 committee must be authorized by a majority vote of the full membership  
8 of the committee. The contract must be executed by the provider of the  
9 service and the project director, be approved by the executive director  
10 of the Legislative Affairs Agency, the director of the legislative  
11 finance division or the legislative audit division, and be approved as  
12 to form by the legislative legal counsel.

13 (b) A contract awarded under this section shall contain the  
14 amount of the contract stated on its first page.

15 Sec. 24.23.040. FILING. A copy of each contract must be filed  
16 with the Legislative Affairs Agency, the ombudsman, the legislative  
17 finance division, or the legislative audit division, and is open for  
18 public inspection. The request for proposals and each proposal sub-  
19 mitted must be attached to the filed copy unless the contract is one in  
20 which requests for proposals are not required.

21 \* Sec. 2. AS 24.5. is amended by adding a new section to read:

22 Sec. 24.55.315. CONTRACT PROCEDURES. The ombudsman shall adopt  
23 by regulations procedures consistent with AS 24.23 to be followed by  
24 the office of the ombudsman in contracting for services.

Original sponsor: Rules Committee

Offered: 3/23/81  
Referred: Rules

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25 *Add comm eff*

26  
27 *Bill*

28  
29