

HB

50

COMMITTEE REPORT

SENATE

FURTHER:

3/21/85

Date APR 23, 1985

Mr. President

The Committee on STATE AFFAIRS considered CSNB 50(Fin)
relating to Alaska bidder preference.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for CSHB 50 (SA)
- new title
- same title and recommends _____
- and attached a "LETTER OF INTENT" [] NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS

Edna De Vries
V. J. ...
Bill Kay
Tim Kelly

[Signature]
Chairman

[Signature]
Chairman recommendation

AMENDMENT NO. 2

Add a new section 4 and renumber other sections accordingly:

* Section 4. AS 37.05.230(7) is amended to read:

(7) the provisions of this section relative to an "Alaska bidder" do not apply to contracts estimated to exceed \$500,000, [of the Department of Transportation and Public Facilities which are authorized under AS 35.15 or AS 19.10.]

Notwithstanding this subsection, an "Alaska bidder" preference may be waived by the Commissioner of ^{AND COM ADM} Transportation and Public Facilities in cases of competitive bids where mandatory federal guidelines would apply which restrict such a preference.

SEC 6.

A M E N D M E N T

Offered in the HOUSE

By _____

TO: COMMITTEE SUBSTITUTE TO HOUSE BILL 50 (Finance)

Page __, line __:

Add the following new material to read:

* Sec. __. AS 37.05.230(5) is repealed and reenacted to read:

(5) In this section, "Alaska bidder" means a person who

(A) holds a current Alaska Business license;

Business activity
(B) has more than \$1,000,000 worth of annual sales in the state or performs more than 20 percent of the person's annual business in the state, whichever is less;

(C) certifies under penalty of perjury that the bidder will employ Alaska residents in the performance of the contract unless resident laborers are unqualified or unavailable; and

(D) maintains a permanent place of business in the state for a period of six months immediately preceding the date of the bid.

E,



ANCHORAGE
SCHOOL DISTRICT

4600 DeBarr Avenue
P.O. Box 6-614
Anchorage, Alaska 99502-0614
[907] 333-9561

March 29, 1985

HB 50
M

- SCHOOL BOARD
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- SUPERINTENDENT
E.E. (Gene) Davis, Ed.D.

The Honorable Mitch Abood
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Abood:

Subject: House Bill #50 - "An Act Relating to Alaska
Bidder's Preference"

We recommend that this bill not pass.

The primary reason for opposing this bill is that no preference dollar limit is contained in the bill. On a \$10 million dollar project the 10 percent preference could amount to \$1 million dollars.

Current Anchorage School District Policy contains a 5 percent local bidder's preference for firms maintaining offices within the boundaries of the Municipality of Anchorage. The maximum dollar preference allowed is \$5,000.

Bidder's preferences tend to limit competition in the market-place and therefore, the usual result is higher costs to the taxpayers.

Sincerely,

E. E. (Gene) Davis, Ed.D.
SUPERINTENDENT

jlm

cc L. T. Freeman, Assistant Superintendent for Business
Management
Bill Miles, School District Lobbyist

RECEIVED
APR 2 1985

CONFERENCE COMMITTEE SUBSTITUTE
House Bill No. 106

For an Act entitled: "An Act relating to Alaska bidder preference."

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

* Section 1. AS 37.05 is amended by adding a new section to read:

Sec. 37.05.225. PURPOSE. The legislature finds that there exists in the state continuing high unemployment, underutilization of resident construction and supply firms, and high costs unfavorable to the welfare of Alaskans and to the economic health of the state. The purpose of bidder preference for resident firms when the state acts as a market participant using state funds is to encourage local industry, strengthen and stabilize the economy, decrease unemployment, and enhance the tax and revenue base of the state.

* Section 2. AS 37.05.230(1)(B) is amended to read:

(B) a bid shall be awarded to an Alaska bidder if the [HIS] bid is not more than five percent higher than the lowest nonresident bidder's, except that a contract bid of \$100,000 or less shall be awarded to an Alaska bidder if the bid is not more than 15 percent higher than the lowest nonresident bidder's; and

* Section 3. AS 37.05.230 (5)(A) is amended to read: (HOLDS) has held a current Alaska Business License for a period of six months immediately preceding the date of the bid.

* Section 4. AS 37.05.230(5) is amended by adding a new subparagraph to read: (D) if a joint venture, is composed entirely of venturers that qualify under this paragraph;

* Section 5. AS 37.05.230(7) is amended to read: (7) the provisions of this section relative to an "Alaska bidder" do not apply to a contract (CONTRACTS) estimated to exceed \$100,000 (\$5,000), of (EITHER) the Department of Transportation and Public Facilities, which is (ARE) authorized under AS 35.15 and the provisions of this section do not apply to a contract of less than \$100,000 of that department if their application would result in loss of federal funds (AS 35.15.010 - 35.15.120, OR THE DEPARTMENT OF HIGHWAYS, WHICH ARE AUTHORIZED UNDER AS 19.10.010 - 19.10.280);

(LAST YEARS BILL)

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: CSHB 50 (FIN)
 Title: An act relating to Alaska
bidders preference
 Sponsor: Grussendorf and Sund
 Requestor: House Finance Committee
 Date of Request: March 14, 1985

FISCAL DETAIL

Agency Affected: none
 Program Category Affected: none
 BRU, Program or Subprogram(s) Affected:
none

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		0				
200 TRAVEL		0				
300 CONTRACTUAL		0				
400 SUPPLIES		0				
500 EQUIPMENT		0				
600 LAND & STRUCTURES		0				
700 GRANTS, CLAIMS		0				
800 MISCELLANEOUS		0				
TOTAL OPERATING		0				
CAPITAL		0				
REVENUE		0				

FUNDING: (Thousands of Dollars)

GENERAL FUND		0				
FEDERAL FUNDS		0				
OTHER		0				
TOTAL		0				

POSITIONS:

FULL-TIME		0				
PART-TIME		0				
TEMPORARY		0				

ANALYSIS: Attach a separate page if necessary

Prepared By: Al Adams, Chair *APA* Phone: 465-3706
 Division: House Finance Committee Date: 3/14/85

Approved by Commissioner: _____ Date: _____
 Agency: _____

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

REPRESENTATIVE
BEN GRUSSENDORF

P. O. Box 828
SITKA, ALASKA 99835
(907) 747-8458

RULES COMMITTEE
LEGISLATIVE COUNCIL

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PORT ALEXANDER
SITKA
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Alaska State Legislature



House of Representatives
SPEAKER OF THE HOUSE

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3824
(907) 465-3720

SECTIONAL ANALYSIS OF CS HB 50 (Finance):

This bill adds two sections and amends one section of existing law (AS 37.05) as follows:

Section 1. Adds a new section (AS 37.05.225. PURPOSE) to establish in statute a legislative purpose for bidders preference. The purpose is based on economic conditions in Alaska, including continuous high unemployment, underutilization of resident construction and supply firms, and unfavorably high costs which impact the economic health of the State.

Section 2. Amends AS 37.05.230(1)(a), increasing the existing bidders preference from "not more than five percent" to "not more than 10 percent higher than the lowest nonresident bidder's."

Section 3. Adds a new subsection (e) to AS 37.05.315, providing that municipalities using state grant funds, in part or whole, for competitively bid contracts or projects may utilize the bidders preference set out in Section 2.

Except for the three sections above, the other provisions of AS 37.05 would remain as is in existing statutes.

AIECA

ALASKA
INDEPENDENT
ELECTRICAL
CONTRACTORS
ASSOCIATION

RECEIVED
3/4/85

The Honorable BEL GRUSSENDORF
Speaker of the House
Pouch V
Juneau, Alaska 99811

Dear Speaker Grussendorf,

21 February 1985

We write in support of HB 50, relating to Alaska Bidder's Preference.

Our organization represents the largest segment of the State's electrical contractors; the Independents. Most of us are long term Alaskans, who have been here winter after winter, surviving the crash after the pipeline completion and the like. We hire Alaskans, pay our Alaskan taxes, are licensed, bonded and insured in concert with State law.

In the past several years we have seen great quantities of "contractors" come up here from areas of dismal fiscal outlook, attempting to make a grab for some big construction money. Many do not bother to apply for registration, licensing or bonding, and numerous are the horror stories associated with their work.

Not only are they injuring Alaskans, both in the residential markets and in the commercial markets, but they are giving a bad name to a trade in which we take pride and try to support. We know of several parallels to the contractor difficulties noted above, involving suppliers doing business here from the states.

We support the increase in the Alaska Bidder Preference as a logical way to attempt to protect the people, companies and industries who are ALWAYS HERE, in bad winters, miserable breakups and poor economic climates.

We would be pleased to work with you during passage of this amendment; thank you in advance,



DON TANNER
President

Charter Members: ALL PHASE ELECTRIC, B & E ELECTRIC, DINO BATE ELECTRIC, FUCHS ELECTRIC, HUSKY ELECTRIC, INDEPENDENT ELECTRIC, RAINBOW ELECTRIC, RAVEN ELECTRIC, RICHCREEK ELECTRIC, TANNER & SONS ELECTRIC, YELLOW ELECTRIC, LTD.



ALASKA CHAPTER
ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.

POSITION STATEMENT

ON LEGISLATION INCREASING

THE

ALASKA BIDDER PREFERENCE (HB 50)



HB 50

POSITION PAPER ON HB 50

The Alaska Chapter, Associated General Contractors of America, Inc. (A.G.C.) represents more than 900 member companies, including most of the general contracting companies engaged in Alaska's commercial construction.

A.G.C. is opposed to HB 50 which proposes to raise the Alaska bidder preference percentage, contained in AS 37.05.230, from 5% to 10%. Primarily, A.G.C. opposes any local preference for the construction industry including the existing 5% preference. A.G.C.'s opposition is founded on both practical and philosophical considerations.

From a practical perspective, a preference for local contractors:

- inflates the cost to the owner
- increases the uncertainty in the bidding process
- increases construction bidding requirements
- increases the potential for litigation
- delays the awarding of projects

Further, there is a strong likelihood that such a scheme is unconstitutional. In Attorney Robert Goldberg's recent study submitted to the Department of Labor, pages 50 and 51 state in part:

". . . While that court has not decided the constitutionality of the five percent bidder preference in AS 37.05.230, two of the five justices (Rabinowitz and Burke) have already announced that they regard the preference as manifestly unconstitutional because: 'A discrimination between residents and non residents solely on the object of assisting the one class over the other economically cannot be upheld under either the privileges and immunities or equal protection clauses.' Irby-Northface v. Commonwealth Electric Co., 664 P.2d 557, 562 (Alaska 1983) (Rabinowitz, J., concurring), quoting Lynden Transport, Inc. v. State, 532 P.2d 700, 710 (Alaska 1975)"

From a philosophical perspective, A.G.C. opposes government regulations of the construction industry. A.G.C. supports the free market, competitive bidding system for awarding construction contracts. This system has stood the test of time as the most economical system for the owner and a fair system for the contractors. Consistency dictates that A.G.C. not seek special regulatory favor for Alaska contractors. Further, a local preference is not consistent with the competition free market system.

Although this legislation has no effect on projects awarded by the Department of Transportation and Public Facilities, it would affect such State agencies as: The Alaska Power Authority, University of Alaska, Department of Corrections, Department of Administration, Pioneer Homes and the Court System. The Alaska Power Authority has experienced bidder preference law suits, including a case that had to be settled by the Supreme Court before the bid could be let. Litigation prior to project award increases the cost and is not in the best interest of the construction industry or the general public.

A 10% bidder preference will unnecessarily and substantially increase the cost of building Alaska's infrastructure. At a time of dwindling oil revenues we suggest that the 10% bidder preference not be approved.

D. Statutory Provisions Governing Public Contracts

Title 36 of the Alaska Statutes, which governs public contracts, includes three chapters granting preferences to Alaskan individuals and businesses. AS 36.10, discussed above, requires preferential hiring of Alaska residents for the performance of public works contracts. AS 36.15 requires the use, wherever practicable, of Alaska forest products in state-funded construction. AS 36.20.010 provides that: "In making purchases or awarding contracts for supplies, commodities or material for an office or institution of this state preference shall be given, whenever practicable, to producers and dealers in the state, price and quality being equal." This provision is implemented in AS 37.05.230(1) which establishes competitive building requirements but provides that "a bid shall be awarded to an Alaska bidder if the bid is not more than five percent higher than the lowest nonresident bidder's..."

The future of these preferences, however, appears uncertain at best. The Superior Court has recently ruled AS 36.10.010 to be violative of the privileges and immunities clause in Francis v. Robison, et al., 3AN 83-9969 Civil, a decision the state is currently appealing to the Alaska Supreme Court. While that court has not decided the constitutionality of the five percent bidder preference in AS 37.05.230, two of the five

justices (Rabinowitz and Burke) have already announced that they regard the preference as manifestly unconstitutional because: "A discrimination between residents and non residents solely on the object of assisting the one class over the other economically cannot be upheld under either the privileges and immunities or equal protection clauses." Irby-Northface v. Commonwealth Electric Co., 664 P.2d 557, 562 (Alaska 1983) (Rabinowitz, J., concurring), quoting Lynden Transport, Inc. v. State, 532 P.2d 700, 710 (Alaska 1975).

Conspicuous by their absence from Alaska's public contract statutes are provisions in effect in some jurisdictions permitting or requiring bidding preferences or set-asides for small business and/or minority business enterprises. Nor does Alaska have a statutory requirement that contractors have affirmative action programs, although such requirements are in practice included in some state contracts. As discussed below, measures such as these could serve as constitutionally permissible means of fighting unemployment in Alaska.

E. DOT & PF Affirmative Action Program

One major state agency has made commitments to increase contracting opportunities for minority business enterprises. In 1980, the Department of Transportation and Public Facilities (DOT & PF) entered into a settlement agreement