

HJR

18

**HOUSE COMMITTEE REPORT**

(11)

Date referred: 1/20/88

FURTHER REFERRALS:

DATE: 3-16-88

The Finance Committee has considered HJR 18

Proposing an amendment to the Constitution of the State of Alaska relating to resident preference under the equal protection clause.

**RECOMMENDS:**

- replace with CS HJR 18 (Finance)  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

**ADOPTS:**  \_\_\_\_\_ letter of intent

**ATTACHES NEW FISCAL NOTE(S):**

- fiscal impact  same as previous fiscal note published 1-20-88
- zero fiscal note  same as previous zero fiscal note published \_\_\_\_\_
- zero with analysis

**SIGNING DO PASS:**

[Signature]

Ronald J. Turner

Mark Somper

Alex Regis

Fay Brown

Althea Davis

[Signature]

Pat Pouchot

**SIGNING OTHER RECOMMENDATIONS:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[Signature]  
Chairman's signature

STATE OF ALASKA  
1988 LEGISLATIVE SESSION

BILL VERSION: CSHJR 18(FIN)  
PUBLISH DATE: HOMER 1/20/88

FISCAL NOTE

REQUEST:

Revision Date: 1/15/88  
Title: Constitutional Amendment  
Resident Preference/Equal Protection  
Sponsor: Donley  
Requestor: House Judiciary

Agency Affected: Office of the Governor  
BRU: Elections  
Components: II

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	0	2.2	0	0	0	0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	2.2 *	0	0	0	0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	2.2	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL	0	2.2	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

\* Costs included cover 2 to 3 additional pages in each Official Election Pamphlet, for printing and typesetting, and costs estimated to cover computer programming requirements for vote (continued pg. 2)

*Maw*

Prepared by: Linda Edgeworth  
Division: Elections

Phone: 465-4611  
Date: 1/15/88

Approved by Commissioner: [Signature]  
Agency: Office of the Governor

Date: 1/15/88

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HJR #18

counting purposes. However, these costs are based on the assumption that all candidates and issues will fit on three ballot cards, which is the norm. It should be noted, however that should the inclusion of this issue require a 4th ballot to be printed, the cost increase would have to be calculated at 16 cents per ballot x approximately 320,000 voters. The total cost of printing the additional ballot card would be \$51.2.

Under these circumstances the fiscal note would be:

53.4

Original sponsors: Donley, Gruenberg,  
Boyer, et al.

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE JOINT RESOLUTION NO. 18 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 Proposing an amendment to the Constitu-  
6 tion of the State of Alaska relating to  
7 resident preference.

8 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. Article I, Constitution of the State of Alaska, is amended  
10 by adding a new section to read:

11 SECTION 23. RESIDENT PREFERENCE. This constitution does not  
12 prohibit the State from granting preferences, on the basis of Alaska  
13 residence, to residents of the State over nonresidents to the extent  
14 permitted by the Constitution of the United States.

15 \* Sec. 2. The amendment proposed by this resolution shall be placed  
16 before the voters of the state at the next general election in conformity  
17 with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-  
18 tion laws of the state.

Original sponsors: Donley, Gruenberg,  
Boyer, et al.

[ ] Deleted  
Language

\_\_\_\_\_  
New  
Language

1 IN THE HOUSE

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14 permitted by the Constitution of the United States.

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18 tion laws of the state.

HJR 18

BURKE, Justice, concurring.

I concur in the determination that Alaska's "local hire" law<sup>1</sup> violates the Privileges and Immunities Clause of the Constitution of the United States,<sup>2</sup> for the reasons stated in the opinion of the court, authored by Justice Matthews. In my judgment, however, we should decide this case on an independent ground. Thus, as Francis urges us to do in one of his alternative arguments, I would hold the local hire law invalid upon the ground that it violates the clear and unambiguous language of article I, section 1 of the Alaska Constitution.<sup>3</sup>

When called upon to determine the constitutionality of an Alaska statute under both the state and federal constitutions, it is my belief that this court should consider first the requirements of the Alaska Constitution. Shafer v. Vest, 680 P.2d 1169, 1172 (Alaska 1984) (Burke, C.J., concurring). Although this approach has been criticized by some, it is the one favored by a number of respected judges and legal commentators, whose reasons appear far more persuasive to me than do those of the persons in the opposite camp. See R.F. Utter, Freedom and

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1. AS 36.10.

2. U.S. Const. art. IV, § 2.

3. Article I, section 1 of the Alaska Constitution provides, in part, "that all persons are equal and entitled to equal rights, opportunities, and protection under the law."

Diversity in the Federal System: Perspectives on State Constitutions and the Washington Declaration of Rights, 7 U. Puget Sound L. Rev. 491 (1984). In any event, it is the approach that I would employ in the case at bar, for the following reasons.

A decision by this court that the local hire law violates the Alaska Constitution would bring this case to an immediate end, since it has long been held that it is beyond the power of the United States Supreme Court to review a state court's interpretation of its state constitution, "as long as the state ground is independent of any federal ground and is adequate to support the judgment." Id. at 505, citing Michigan v. Long, 463 U.S. 1032, 77 L.Ed.2d 1201, 103 S.Ct. 3469 (1983) and Fox Film Corp. v. Miller, 296 U.S. 207, 80 L.Ed. 158, 56 S.Ct. 183 (1935). The majority opinion, however, leaves the final result still uncertain.

Given the understandable popularity of local hire measures in Alaska, it is a foregone conclusion that state officials will be under considerable pressure to seek review of our determination of the federal question by the final arbiter of such disputes, the United States Supreme Court. Should the advocates of local hire prevail in that forum, it will still be necessary for this court to decide whether the present statute

violates the Alaska Constitution. Thus, the ultimate outcome could remain unsettled until there is a second decision by this court. Rather than expose the parties and the people of this state to such uncertainty, and the added cost of future litigation, I think we should decide this critical issue of state law here and now.

Another reason for us to examine the requirements of the Alaska Constitution is the almost certain fact that the state legislature will be asked to enact new local hire legislation, after the announcement of our decision. The main difficulty that the legislature faces, as I see it, is the clear and unambiguous statement contained in our state constitution, "that all persons are equal and entitled to equal rights [and] opportunities." Alaska Const. art. I, § 1 (emphasis added). The fact that it may be possible to draft a statute that would satisfy the requirement of the United States Constitution does not mean that the same statute will pass muster under this or some other provision of the Alaska Constitution. It is important, I think, to make this clear to the people of this state and their elected representatives.

# REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE

DISTRICT ELEVEN • SPENARD

NORTHWOOD • SPENARD • THOMPSON • TURNAGAIN • UPPER MIDTOWN • WINDEMERE

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CHAIRMAN  
LABOR AND COMMERCE  
COMMITTEE

MEMBER  
STATE AFFAIRS COMMITTEE  
HEALTH, EDUCATIONAL  
AND SOCIAL SERVICES COMMITTEE

January 22, 1988

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

To: Representative Al Adams, Chair  
House Finance Committee

From: Representative Dave Donley **DB**

Re: Request for hearing on HJR 18

I am writing to request a hearing before the House Finance Committee on HJR 18, relating to local hire laws under Alaska's Constitution.

HJR 18 would put a proposed constitutional amendment before the voters that would clarify the State's right to grant employment preferences to its own citizens.

The measure was sparked by remarks made by Justice Burke in reviewing the Francis case that Alaska's constitution has a stronger prohibition against local hire preferences than the U.S. Constitution mandates. Justice Burke commented that local hire laws adopted by the Legislature may have a harder time meeting constitutional muster under our own Constitution than they would experience under federal review.

HJR 18 has a small fiscal note to cover the cost of putting the measure on the ballot. Please call me or Ginger Baim at 4954 if you have any questions or need additional information.

Original sponsors: Donley, Gruenberg,  
Boyer, et al.

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE  
2 CS FOR HOUSE JOINT RESOLUTION NO. 18 (Judiciary)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FIFTEENTH LEGISLATURE - SECOND SESSION  
5 Proposing an amendment to the Constitu-  
6 tion of the State of Alaska relating to  
7 resident employment preference.  
8 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:  
9 \* Section 1. Article I, Constitution of the State of Alaska, is amended  
10 by adding a new section to read:  
11 SECTION 23. RESIDENT EMPLOYMENT PREFERENCE. This constitution  
12 does not prohibit the State from granting employment preferences to  
13 residents of the State.  
14 \* Sec. 2. The amendment proposed by this resolution shall be placed  
15 before the voters of the state at the next general election in conformity  
16 with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-  
17 tion laws of the state.

BY DONLEY, GRUENBERG, BOYER,  
HOFFMAN, KOPONEN, SPRINGER  
AND GRUSSENDORF

1 IN THE HOUSE

2

HOUSE JOINT RESOLUTION NO. 18

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

Proposing an amendment to the Constitu-

6

tion of the State of Alaska relating to

7

resident preference under the equal

8

protection clause.

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

10 \* Section 1. Article I, sec. 1, Constitution of the State of Alaska, is  
11 amended to read:

12 SECTION 1. INHERENT RIGHTS. This constitution is dedicated to  
13 the principles that all persons have a natural right to life, liberty,  
14 the pursuit of happiness, and the enjoyment of the rewards of their  
15 own industry; that all persons are equal and entitled to equal rights,  
16 opportunities, and protection under the law; and that all persons have  
17 corresponding obligations to the people and to the State. This sec-  
18 tion does not prohibit the State from granting preferences consistent  
19 with the Constitution of the United States to residents of the State.

20 \* Sec. 2. The amendment proposed by this resolution shall be placed  
21 before the voters of the state at the next general election in conformity  
22 with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-  
23 tion laws of the state.