

C S S B

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(11)

Date referred: 3/2/88

FURTHER REFERRALS:

DATE: 4/12/88

The Finance Committee has considered CSSB 356(L&C)

"An Act relating to the procurement preference for state agricultural and fisheries products; and providing for an effective date."

RECOMMENDS:

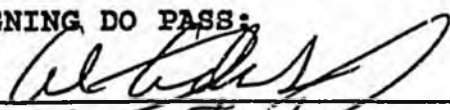
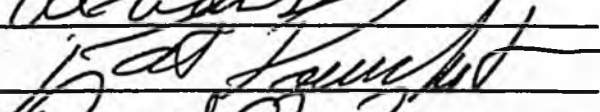
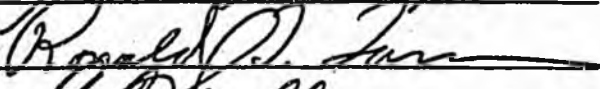
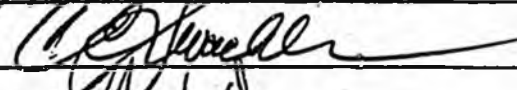
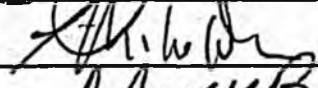
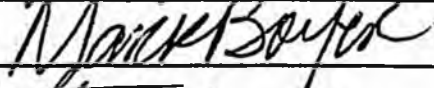
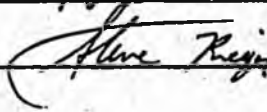
- replace with HCS CSSB 356(Fin)  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

ADOPTS: [ ] \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(S):

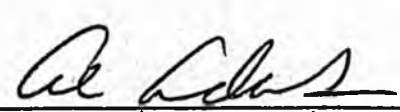
- fiscal impact
- zero fiscal note
- zero with analysis
- same as previous fiscal note published \_\_\_\_\_
- same as previous zero fiscal note published 2/25/88

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
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 \_\_\_\_\_

  
 \_\_\_\_\_  
 Chairman's signature

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Department of Administration  
 Title: An Act Relating to the Procurement BRU: General Services & Supply  
Preference for State Agricultural \*  
 Sponsor: Josephson et al. Components: Purchasing  
 Requestor: \_\_\_\_\_

\* and Fisheries Products.

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

We have no way of calculating any impact of existing statute and hence no way to calculate impact of the bill on municipalities or school districts.

Prepared By: Robert J. Link *Robert J. Link* Phone: 465-2250  
 Division: General Services & Supply Date: January 25, 1988

Approved by Commissioner: John M. Andrews *John M. Andrews* Date: 1/27/88  
 Agency: Department of Administration

Distribution (by preparer):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

Original sponsors: Josephson, Szymanski,  
Rodey, et al.

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 356 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the procurement preference for  
7 state agricultural and fisheries products; and pro-  
8 viding for an effective date."

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

10 \* Section 1. AS 29.10.200 is amended by adding a new paragraph to read:

11 (49) AS 29.71.040 (procurement preference).

12 \* Sec. 2. AS 29.71 is amended by adding a new section to read:

13 Sec. 29.71.040. PROCUREMENT PREFERENCE. (a) When agricultural  
14 products are purchased by a municipality that receives state money,  
15 only agricultural products harvested in the state shall be purchased  
16 whenever priced no more than seven percent above products harvested  
17 outside the state, available, and of like quality compared with agri-  
18 cultural products harvested outside the state.

19 (b) When fisheries products are purchased by a municipality that  
20 receives state money, only fisheries products harvested or processed  
21 within the jurisdiction of the state shall be purchased whenever  
22 priced no more than seven percent above products harvested or pro-  
23 cessed outside the jurisdiction of the state, available, and of like  
24 quality compared with fisheries products harvested or processed out-  
25 side the jurisdiction of the state.

26 (c) A solicitation by a municipality for the purchase of agri-  
27 cultural or fisheries products shall specify the requirement that  
28 products harvested in the state shall be used where possible. If a  
29 municipality that receives state money purchases agricultural or

1 fisheries products harvested outside the state, the municipal officer  
2 responsible for the purchase shall certify in writing the reasons that  
3 products harvested in the state were not purchased.

4 (d) If a contractor fails to comply with this section, the  
5 municipality shall withhold payment until the contractor complies. If  
6 a municipality fails to comply with this section, the state department  
7 responsible for disbursing state money to the municipality shall  
8 withhold the money until the municipality complies.

9 (e) An interested party, as defined in AS 36.30.699, may seek  
10 administrative or judicial review of the award of a contract in vio-  
11 lation of this section.

12 (f) Compliance with this section is not required if an exception  
13 to this section is mandated for participation in a federal program.

14 (g) This section applies to general law and home rule municipal-  
15 ities.

16 (h) In this section,

17 (1) "agricultural products" includes dairy products, timber  
18 and lumber, and products manufactured from timber and lumber;

19 (2) "state money" includes state reimbursement to munici-  
20 palities for school or related construction, foundation funding for  
21 education, municipal assistance, revenue sharing, and state funds for  
22 capital projects.

23 \* Sec. 3. AS 36.15.050(a) is amended to read:

24 (a) When agricultural products are purchased by the state or by  
25 a school district that receives [USING] state money, only agricultural  
26 products harvested in the [THIS] state shall be purchased whenever  
27 priced no more than seven percent above products harvested outside the  
28 state, available, and of like quality compared with agricultural  
29 products harvested outside the state.

1 \* Sec. 4. AS 36.15.050(b) is amended to read:

2 (b) When fisheries products are purchased by the state or by a  
3 school district that receives [USING] state money, only fisheries  
4 products harvested or processed within the jurisdiction of the state  
5 shall be purchased whenever priced no more than seven percent above  
6 products harvested or processed outside the jurisdiction of the state,  
7 available, and of like quality compared with fisheries products har-  
8 vested or processed outside the jurisdiction of the state.

9 \* Sec. 5. AS 36.15.050(c) is amended to read:

10 (c) A solicitation for the purchase of agricultural or fisheries  
11 products shall specify the requirement that products harvested in the  
12 state shall be used where possible. If the state or a school district  
13 that receives state money purchases [IS USED TO PURCHASE] agricultural  
14 or fisheries products harvested outside the state, the officer respon-  
15 sible for the purchase shall certify in writing the reasons that  
16 products harvested in the state were not purchased.

17 \* Sec. 6. AS 36.15.050(d) is amended to read:

18 (d) If a contractor fails to comply with this section, the  
19 purchasing agency shall withhold payment [THE STATE MONEY] until the  
20 contractor complies. If [A MUNICIPALITY OR] a school district fails to  
21 comply with this section, the department responsible for disbursing  
22 [THE] state money to the [MUNICIPALITY OR] school district shall  
23 withhold the money until the [MUNICIPALITY OR] school district com-  
24 plies.

25 \* Sec. 7. AS 36.15.050(g) is repealed and reenacted to read:

26 (g) In this section,

27 (1) "agricultural products" includes dairy products, timber  
28 and lumber, and products manufactured in the state from timber and  
29 lumber;

1           (2) "school district" includes a regional educational  
2 attendance area established under AS 14.08;

3           (3) "state money" includes state reimbursement to school  
4 districts for school or related construction, foundation funding for  
5 education, municipal assistance, revenue sharing, and state funds for  
6 capital projects.

7 \* Sec. 8. This Act takes effect immediately under AS 01.10.070(c).  
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FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Department of Administration  
 Title: An Act Relating to the Procurement BRU: General Services & Supply  
Preference for State Agricultural \*  
 Sponsor: Josephson et al. Components: Purchasing  
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\* and Fisheries Products.

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CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

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Prepared By: Robert J. Link *Robert J. Link* Phone: 465-2250  
 Division: General Services & Supply Date: January 25, 1988

Approved by Commissioner: John M. Andrews *John M. Andrews* Date: 1/27/88  
 Agency: Department of Administration

Distribution (by preparer):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)



United States  
Department of  
Agriculture

Food and  
Nutrition  
Service

3101 Park Center Drive  
Alexandria, VA 22302

NOV 19 1987

Mr. L. T. Freeman  
Assistant Superintendent  
for Business Management  
Anchorage School District  
4600 DeParr Avenue  
Anchorage, Alaska 99519-6614

Dear Mr. Freeman:

Thank you for your recent letter concerning the allowability of "State preference" procurements in the National School Lunch and School Breakfast Programs.

At the present time, procurements made in accordance with State preference procedures are not prohibited by Office of Management and Budget Circular A-102. Therefore, until the circular is amended or the Federal courts make it clear that such preferences violate Federal law or the Constitution, you may implement the local product preference.

Sincerely,

SAMUEL P. BAUER  
Director  
Child Nutrition Division

2/4  
NOV 26 1987

MDA

# MEMORANDUM

# State of Alaska

TO: Honorable William Demmert  
 Commissioner  
 Department of Education

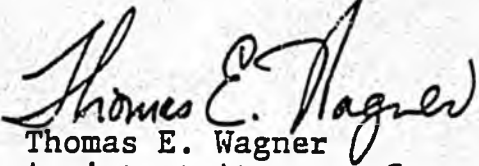
DATE: January 20, 1987

FILE NO: 663-88-0201

TELEPHONE NO: 465-3603

THRU:

SUBJECT: Interpretation of  
 ch. 62, SLA 1987

FROM:   
 Thomas E. Wagner  
 Assistant Attorney General  
 Human Services-Juneau  
 Department of Law

You have asked whether the above-referenced legislation requires a school district to purchase locally produced milk for its school lunch program. As we understand it, the money the school district uses to purchase the milk comes from a fund consisting solely of federal subsidies and student payments for lunches. If so, we conclude that the legislation does not require local purchase because the money involved is not "state money" as defined in the legislation.

AS 36.15.050, as amended by § 1, ch. 62, SLA 1987, provides, in pertinent part:

(a) When agricultural products are purchased using state money, only agricultural products harvested in this state shall be purchased whenever priced no more than seven percent above products harvested outside the state, available, and of like quality compared with agricultural products harvested outside the state.

.....

(c) In this section,

.....

(2) "state money" includes state reimbursement to municipalities and school districts for school or related construction, foundation funding for education, municipal assistance, revenue sharing, and state funds for capital projects.

Correspondence you have received from the Anchorage School District (letter from Tom Freeman dated November 12, 1987) indicates that it makes purchases for its school lunch program

Honorable William Demmert  
Department of Education  
663-88-0201

January 20, 1988  
Page 2

from a food service fund that consists solely of subsidies received from the federal government and student payments for lunches. No "state reimbursement for school or related construction" or "foundation funding for education," within the meaning of AS 36.15.050(c)(2), is involved. In our opinion, if the school district has accurately described the source of funding for its school lunch program, AS 36.15.050 does not apply to its purchase of agricultural products for that program because the money involved is not "state money" within the meaning of the statute. \*/

Please contact me if you have further questions regarding this matter.

TEW:jal

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\*/ It is not clear that amending the law to apply in this factual situation would be permissible under federal law as it may make a school district ineligible for federal subsidies. A federal regulation applicable to the school lunch program, 7 C.F.R. § 3015.182, which is incorporated by reference at 7 C.F.R. § 210.21, provides:

All procurement transactions, regardless of whether by sealed bids or by negotiation and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition.

AS 36.15.050(f) specifically provides that compliance with AS 36.15.050 "is not required if an exception to this section is mandated for participation in a federal program."



Official Business

# Alaska State Legislature

## Senate

P.O. BOX V  
State Capitol  
Juneau, Alaska 99811

TO: Anchorage Senators  
FROM: Senator Joe Josephson *J.P.J.*  
DATE: January 14, 1988  
RE: Amending procurement preference to specifically  
include school districts

I am planning to introduce the attached legislation which would amend the seven percent procurement preference law (SB 201) we adopted in 1987. As you know, the Anchorage School District did not apply a local products preference section when the milk bid was put out last year and feels that the current language of the new statute, at least as it applies to the school lunch program, does not clearly entitle the District, or require the District, to implement the seven percent preference. The theory is that state monies do not fund the school lunch program per se. The Anchorage School District does support amending the current statute to express more clearly the intent of the original legislation which would apply to school districts and all their programs.

I welcome your co-sponsorship on this legislation which I believe would encourage the use of Alaska products in our economy. Please contact my office at 465-4525 by January 18 if you would like to be a co-sponsor.

Attachment



ANCHORAGE  
SCHOOL DISTRICT

4600 DeBarr Avenue  
P.O. Box 196614  
Anchorage, Alaska 99519-6614  
AREA CODE [907] 333-3561

SCHOOL BOARD

Jean Buchanan  
President

William Frick  
Vice President

Carol Stolpe  
Clerk

Bettye Davis  
Clerk Pro Tem  
Immediate Past President

Martha Roderick  
Treasurer

Darryl Jordan  
Assistant Treasurer

Jim Robinson  
Parliamentarian  
Past President

SUPERINTENDENT

William Coats, Ph.D.

July 31, 1987

The Honorable Joe Josephson  
Alaska State Legislature  
3111 C Street, Suite 550  
Anchorage, Alaska 99503

Dear Senator Josephson:

The Business Management Division is responsible for the purchasing of equipment and supplies for the Anchorage School District. We understand your concern regarding the award of the milk contract for the District.

It is our endeavor to serve the people of the Municipality of Anchorage, abiding by established School Board Policy, as well as the Municipalities' ordinances and the laws of the State of Alaska.

The policies of the District do not permit the flexibility in the awarding of contracts based on only slightly higher pricing, but rather require that contracts be awarded to the "lowest responsible bidder," subject to the terms and conditions of the bidding documents.

It is our desire to comply with State law that is applicable to this District in the awarding of contracts. Our current interpretation of Senate Bill 201 is that it does not apply to milk or other purchases for the School Lunch Program since that program is not funded by State monies.

In our opinion, if it is the intent of the Legislature to impose bidder or product preferences on school districts' procurements without regard to funding source, Senate Bill 201 needs to be amended.

In summary, even though our individual preferences might well be to purchase locally produced products, we intend to award contracts, as a result of the bidding process, fairly and legally to the lowest

The Honorable Joe Josephson  
Page ?  
July 31, 1987

responsible bidder in accordance with the terms and conditions of the bid documents, School Board Policy, and State law. As an added note, we will be working with the Development Corporation to review the bid specifications for future bids on milk.

Sincerely,

*Tom Freeman*

L. T. Freeman  
Assistant Superintendent  
for Business Management

cl

*P.S. Joe, I also use Mat. Mail  
Products*

*Tom*

# ALASKA STATE SENATE

JOE P. JOSEPHSON  
DISTRICT H ANCHORAGE  
3111 C STREET, SUITE 550  
ANCHORAGE, ALASKA 99503  
(907) 561-7611



WHILE IN JUNEAU  
P.O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-4525

August 11, 1987

Mr. L. T. Freeman  
Assistant Superintendent for  
Business Management  
Anchorage School District  
P. O. Box 196614  
Anchorage, Alaska 99519-6614

Dear Tom:

I acknowledge your letter of July 31, in which you replied to my correspondence to Dr. Coats regarding the milk contract.

As the author of SB 201, I disagree with your suggestion that SB 201 "needs to be amended" to be applicable to the school lunch program. SB 201 contains no exemptions for school lunch programs; on the contrary, SB 201 applies expressly to local government procurement and to agricultural commodities.

The argument that the milk program "is not funded by State monies" is neither true nor relevant. I am confident that State monies are used in the administration of the program. After all, the District relies upon the State for most of its budget, through the school foundation program, the school debt funding program, and municipal assistance. In any event, SB 201 does not say that the preference for Alaska agriculture is applicable only to programs that utilize State monies.

In deference to your views, and based upon my personal respect for you built upon years of working with you on behalf of public education, I have communicated your position that SB 201 is not applicable to the school lunch program to the Attorney General of the State of Alaska and to Tamara Cook the Legislature's counsel. I will follow their advice. If they advise me that SB 201 should be amended, I will sponsor the amendment in 1988 -- and I will work diligently for its passage, which I regard as highly likely. If the only way for the Legislature to vindicate its pronounced policy in favor of Alaska agriculture is to further amend the law, I believe the Legislature will do just that, although it will be acting in a mood of significant irritation by virtue of a perceived want of cooperation at the local level.

Mr. L. T. Freeman

-2-

August 11, 1987

It is all well and good to say that the District policy is to award contracts "to the lowest responsible bidder. . .". However, there are several problems which that policy suggests.

First, the District operates today in the context of an ailing State economy, and a precarious environment for dairymen and other farmers. Only through the strengthening of Alaska's economy generally, and Alaska agriculture in particular, can the State of Alaska continue to provide high levels of support for public education and other critical programs.

The District seems to say that it can be indifferent to these larger public policy problems and issues. Other governments, and governmental functions, are to bear the burden created by that indifference, under the District's view. As far as the District is concerned, the State ought to be willing to bear heavy losses in its dairy cooperative operations and its role as an agricultural lender without asking the District and other local government units for help in building a sound agricultural base in the State.

I believe that is an unreasonable position. All parts of the Alaska economy need to work together in a joint and mutual commitment to strengthen our State. Of course, in the long term, our success in building Alaska agriculture will help provide products for school lunches at lower cost than is possible now through any supplier or group of suppliers.

I have been a consistent, prominent, supporter of public education in the Legislature. I have been a consistent, if somewhat less prominent, supporter of Alaska agriculture for decades. I see, from this experience, a real need for the District to reconsider its "policies" and bring them into alignment with the policies pronounced by the Legislature.

That brings me to another difficulty. Your "policies" call for awards to the lowest responsible bidder "in accordance with the terms and conditions of the bid documents, School Board policy, and State law." The difficulty is that School Board "policy" and "State law" are not the same. State law already calls for preferences for Alaska agricultural commodities when "competitively priced". That law should have been incorporated into the bid documents, and applied.

The District appears determined to ignore SB 201 even when SB 201 becomes effective, on the theory that the milk program does not rely on "State monies", thus reading into SB 201 a stipulation or condition that is not found there.

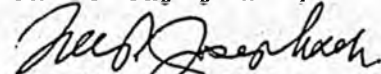
Mr. L. T. Freeman

-3-

August 11, 1987

My disappointment is profound. The District is not an economic island. There are larger issues and problems to which the District's response is apparently insensitive. I request hereby that an opportunity be afforded to me to appear before the School Board at an early meeting, on the Board's agenda, to present my concerns in public.

Sincerely yours,



Joe P. Josephson  
State Senator

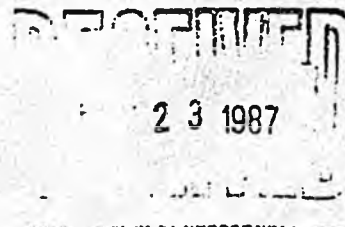
cc: Honorable Grace Schaible, Attorney General  
Ms. Tamara Cook, Legislative Counsel  
Honorable Jack Coghill, Chair, Senate Natural Resources  
Committee  
Co-Sponsors, SB 201  
Mr. Bill Miles



ANCHORAGE  
SCHOOL DISTRICT

4600 DeBarr Avenue  
P.O. Box 196614  
Anchorage, Alaska 99519-6614  
AREA CODE [907] 333-9561

November 20, 1987



SCHOOL BOARD

Martha Roderick  
President

William Frick  
Vice President

Jim Robinson  
Clerk

Past President  
1981-82, 1984-85

Bettye Davis  
Treasurer  
Past President  
1985-86

Darryl Jordan  
Clerk Pro Tem

Jean Buchanan  
Assistant Treasurer  
Past President  
1983-84, 1986-87

Carol Stolpe  
Parliamentarian

SUPERINTENDENT

William Coats, Ph.D.

The Honorable Joe Josephson  
Alaska State Legislature  
3111 C Street, Suite 550  
Anchorage, Alaska 99503

Dear Senator Josephson:

Since our last meeting we have had further discussion with our attorney on language changes that would eliminate the ambiguity that currently exists in AS 36.15.050(a). We believe the following changes would more clearly express the intent when 1987 SLA Chapter 62 was enacted, it places the emphasis on the receipt of funds rather than the use of funds:

Section 36.15.050. USE OF LOCAL AGRICULTURE AND FISHERIES PRODUCTS REQUIRED IN PURCHASES WITH STATE MONEY. (a) When agriculture products are purchased by the State or by a school district or municipality which receives [USING] State money, only agricultural products harvested in the state shall be purchased whenever priced no more than seven percent (7%) above products harvested outside the State, available, and of like quality compared with agricultural products harvested outside the State.

Please let me know if we can be of further help.

Sincerely,

L. T. Freeman  
Assistant Superintendent  
for Business Management

cl  
Enclosure

cc Anchorage Caucus  
Anchorage School Board  
William Coats, Superintendent  
Dennis Barrett, Director, Student Nutrition  
Curt Homme, Director, Purchasing/Warehouse



# ANCHORAGE SCHOOL DISTRICT

4600 DeBarr Avenue  
P.O. Box 196614  
Anchorage, Alaska 99519-6614  
AREA CODE (907) 333-9561

NOV 23 1987

November 16, 1987

Martha Roderick  
President

William Frick  
Vice President

Jim Robinson  
Clerk

Past President  
1981-82, 1984-85

Betty Davis  
Treasurer  
Past President  
1985-88

Darryl Jordan  
Clerk Pro Tem

Jean Buchanan  
Assistant Treasurer  
Past President  
1983-84, 1985-87

Carol Stolpe  
Parliamentarian

William Coats, Ph.D.

The Honorable Mike Szymanski  
Alaska State Legislature  
3111 C Street, Suite 510  
Anchorage, Alaska 99503

Dear Senator Szymanski:

The District is aware of the legislators' interpretation of the local procurement law. The Anchorage School District is also concerned about procurements, and we believe that Mr. Freeman's letter (enclosed) fairly expresses our position.

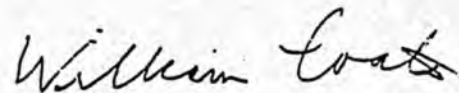
Mr. Freeman has been in contact with the Fairbanks, Mat-Su, Kenai, and Ketchikan School Districts. Kenai has not reviewed this particular law since it does not go out for bid until May. Ketchikan does not have Mat-Maid Milk. Mat-Su and Fairbanks tend to agree with the Anchorage School District's interpretation. Since all involved school districts will be going out for bid in May for milk products, we would suggest that there is time to change the specifications if there is clear direction.

Furthermore, Mr. Freeman has been in contact with Mr. Tom Wagner, Assistant Attorney General, and his verbal interpretation is in agreement with our own counsel, Mr. Peter Partnow. We have asked the Commissioner of Education to have Mr. Wagner put his opinion in writing. Currently, Mr. Partnow is working on language (for an amendment) which would correct the situation, and I will forward this language to you and Senator Josephson once it is completed.

Senator Mike Szmanski  
Page 2  
November 16, 1987

At the present time, the Anchorage School District feels it does not have sufficient clarification of the existing law. However, we welcome and would work with you in developing legislation that would give us clear direction in this important matter.

Sincerely,



William Coats  
Superintendent

cl  
Enclosure

cc School Board Members  
Anchorage Caucus  
L. T. Freeman, Assistant Superintendent, Business  
Management

Article 2. Agricultural and Fisheries Products Preference.

Section  
50. Use of local agricultural and fisheries products required in purchases with state money

Section  
60. Insertion of clause in calls for bids and in contracts

Sec. 36.15.050. Use of local agricultural and fisheries products required in purchases with state money. (a) When agricultural products are purchased using state money, only agricultural products harvested in this state shall be purchased whenever priced no more than seven percent above products harvested outside the state, available, and of like quality compared with agricultural products harvested outside the state.

(b) When fisheries products are purchased using state money, only fisheries products harvested or processed within the jurisdiction of the state shall be purchased whenever priced no more than seven percent above products harvested or processed outside the jurisdiction of the state, available, and of like quality compared with fisheries products harvested or processed outside the jurisdiction of the state.

(c) A solicitation for the purchase of agricultural or fisheries products shall specify the requirement that products harvested in the state shall be used where possible. If state money is used to purchase agricultural or fisheries products harvested outside the state, the officer responsible for the purchase shall certify in writing the reasons that products harvested in the state were not purchased.

(d) If a contractor fails to comply with this section, the purchasing agency shall withhold the state money until the contractor complies. If a municipality or a school district fails to comply with this section, the department responsible for disbursing the state money to the municipality or school district shall withhold the money until the municipality or school district complies.

(e) An interested party, as defined in AS 36.30.699, may seek administrative or judicial review of the award of a contract in violation of this section.

§ 36.15.060

ALASKA STATUTES

§ 36.15.060

(f) Compliance with this section is not required if an exception to this section is mandated for participation in a federal program.

(g) In this section,

(1) "agricultural products" includes, but is not limited to, dairy products, timber and lumber harvested in the state and products manufactured in the state from timber and lumber that has been harvested in the state;

(2) "state money" includes state reimbursement to municipalities and school districts for school or related construction, foundation funding for education, municipal assistance, revenue sharing, and state funds for capital projects. (§ 1 ch 16 SLA 1986; am §§ 1, 2 ch 62 SLA 1987)

Revisor's notes. — Enacted as AS 36.16.020. Renumbered in 1986.

Subsections (c)-(f) were enacted as (d)-(g) and renumbered in 1987. Subsection (g) were formerly (c); renumbered in 1987.

Effect of amendments. — The 1987 amendment in subsection (a) substituted "priced no more than seven percent above products harvested outside the state" for "competitively priced"; in subsection (b) substituted "priced no more than seven

percent above products harvested or processed outside the jurisdiction of the state" for "competitively priced"; in subsection (g) substituted "In" for "As used in" at the beginning of the subsection, designated part of the existing language as paragraph (1) and in paragraph (1) inserted "but is not limited to, dairy products," and added paragraph (2); and added subsections (c)-(f).



Official Business

# Alaska State Legislature

## Senate

P.O. BOX V  
State Capitol  
Juneau, Alaska 99811

April 8, 1988

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

TO: Martha Stewart, Aide to House Finance Committee

FROM: Nancy Lord, Aide to Sen. Joe Josephson

RE: SB 356, Product Preference

At a House Finance Committee hearing on this bill, a representative of the Department of Law raised some questions about the way the preference in SB 356 is applied to municipalities and school districts. After further review, the department determined that the Commerce Clause of the U. S. Constitution does not present a problem for the bill. However, the department still recommends that the procurement policy be enacted in the municipal code. The attached work draft incorporates the recommended changes. These are not substantive changes to the Labor and Commerce version, but serve only to make the applicability clear. A summary of the proposed changes follows:

Sec. 1. Adds the procurement preference to the list of limitations on home rule powers.

Sec. 2. Puts the procurement preference directly into the municipal code, so that it appears there as well as in the contracting title.

Sec. 6. Amends the section which currently provides for the purchasing agency to withhold state money for a contractor's failure to comply to withhold payment, regardless of its source. (This same provision is added to the municipal code in section 2.)

Sec. 7. Makes a stylistic clean-up of the definition of "agricultural products."

The effect of the bill remains that the state, a municipality, or a school district must purchase agricultural and fisheries products harvested in the state when they are priced no more than seven percent above products harvested outside the state.

If this explanation is not sufficiently clear, please contact me at 465-4525. We would be pleased if SB 356 could be rescheduled at the earliest possible date.

cc: Rep. Peter Goll

Original sponsors: Josephson, Szymanski,  
Rodey, et al.

1 IN THE SENATE

BY THE LABOR AND  
COMMERCE COMMITTEE

2

CS FOR SENATE BILL NO. 356 (L&C)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the procurement preference for  
7 state agricultural and fisheries products; and  
8 providing for an effective date."

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

10 \* Section 1. AS 36.15.050(a) is amended to read:

11 (a) When agricultural products are purchased by the state or by  
12 a municipality or school district that receives [USING] state money,  
13 only agricultural products harvested in this state shall be purchased  
14 whenever priced no more than seven percent above products harvested  
15 outside the state, available, and of like quality compared with agri-  
16 cultural products harvested outside the state.

17 \* Sec. 2. AS 36.15.050(b) is amended to read:

18 (b) When fisheries products are purchased by the state or by a  
19 municipality or school district that receives [USING] state money,  
20 only fisheries products harvested or processed within the jurisdiction  
21 of the state shall be purchased whenever priced no more than seven  
22 percent above products harvested or processed outside the jurisdiction  
23 of the state, available, and of like quality compared with fisheries  
24 products harvested or processed outside the jurisdiction of the state.

25 \* Sec. 3. AS 36.15.050(c) is amended to read:

26 (c) A solicitation for the purchase of agricultural or fisheries  
27 products shall specify the requirement that products harvested in the  
28 state shall be used where possible. If the state or a municipality or  
29 school district that receives state money purchases [IS USED TO

1 PURCHASE] agricultural or fisheries products harvested outside the  
2 state, the officer responsible for the purchase shall certify in  
3 writing the reasons that products harvested in the state were not  
4 purchased.

5 \* Sec. 4. AS 36.15.050(g) is repealed and reenacted to read:

6 (g) In this section,

7 (1) "agricultural products" includes, but is not limited to,  
8 dairy products, timber and lumber harvested in the state and products  
9 manufactured in the state from timber and lumber that have been har-  
10 vested in the state;

11 (2) "school district" includes a regional educational  
12 attendance area established under AS 14.08;

13 (3) "state money" includes state reimbursement to municipal-  
14 ities and school districts for school or related construction, founda-  
15 tion funding for education, municipal assistance, revenue sharing, and  
16 state funds for capital projects.

17 \* Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

18

1 IN THE SENATE

BY JOSEPHSON, SZYMANSKI, RODEY,  
FAIKS, HALFORD, KELLY, KERTTULA,  
STURGULEWSKI, FAHRENKAMP, DUNCAN,  
JONES, ELIASON AND UEHLING

2

SENATE BILL NO. 356

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

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