

HJR

18

HOUSE COMMITTEE REPORT

(7)

Date referred: 2/20/87

FURTHER REFERRALS: Judiciary

DATE: 3/3/87

The Labor & Commerce 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 HJR 18 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 _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

[Signature]

[Signature]

Cliff Davidson

Dave H. Douley

[Signature]

SIGNING OTHER RECOMMENDATIONS:

[Signature]

W. Furnace

Dave H. Douley

 Chairman's signature

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____

Bill Version: _____

Publish Date: _____

Revision Date: HJR #18

Title: Amend. to Consti. relating to resident

Agency Affected: Office of the Governor

preference under the equal protection clause

BRU: Division of Elections

Sponsor: Donley

Components: II

Requestor: Donley

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL			2.2			
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING			2.2			

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND			2.2			
FEDERAL FUNDS						
OTHER						
TOTAL						

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

(cont.)

Prepared by: Linda Edgeworth

Phone: 465-4611

Division: Elections

Date: 2-24-87

Approved by Commissioner: Carol P. Karklin

Date: 2-27-87

Agency: Office of the Governor/ Division of Elections

Distribution (by preparer):

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

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

REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE
DISTRICT ELEVEN - SPENARD

PO. BOX V, JUNEAU 99811
(907) 465-3892



CHAIRMAN
LABOR AND COMMERCE
COMMITTEE

MEMBER
STATE AFFAIRS COMMITTEE
HEALTH, EDUCATIONAL
AND SOCIAL SERVICES COMMITTEE
INTERNATIONAL TRADE
SUB-COMMITTEE

March 3, 1987

MEMORANDUM

To: Members, House Labor and Commerce Committee

From: Representative Dave Donley

Re: HJR 18 - "Proposing an amendment to the Constitution of the State of Alaska relating to resident preference under the equal protection clause"

HJR 18 was introduced in response to concerns voiced by some Alaska State Supreme Court Justices in the Francis v Robinson case that overturned the 1985 Alaska hire law.

Specifically, the justices implied that Alaska's Constitution has potentially stronger prohibitions against local hire than federal law requires.

HJR 18 proposes an amendment to Alaska's Constitution to clarify the right of state government to give reasonable preferences to Alaskans and to make Alaska's constitution consistent with the U.S. Constitution (see attached).

This measure would help clear our way in adopting meaningful local hire legislation that can meet a constitutional challenge.

U.S CONSTITUTION

1. Privileges and Immunities Clause, Article IV, Sec. 2:

"The citizens of each state shall be entitled to all the privileges and immunities of citizens in the several States."

2. Equal Protection Clause, 14th Amendment:

"No state shall deny any person within its jurisdiction the equal protection of the laws."

3. Commerce Clause, Article I, Sec. 8, Clause 3:

"The Congress shall have power... to regulate commerce with foreign nations, and among the several states, and with Indian tribes."

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

House JUDICIARY:

1-18-88

3-23-88

3-30-88

HOUSE COMMITTEE REPORT

(7)

Date referred 1/4/87

FURTHER REFERRALS:

DATE: 1-18-88

The Judiciary 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 (JJD) 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 _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

Max Greenberg

Mike Hargis

SIGNING OTHER RECOMMENDATIONS:

John Palmer more

(John) I. Taylor (NO REC)

General Barnes to go

[Signature]

Chairman's signature

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.

5-0479B
Cramer
3/26/87

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

1 IN THE HOUSE

2 CS FOR 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 employment preference.

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

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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.

18
19 *granting*
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REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE

DISTRICT ELEVEN • SPENARD

NORTHWOOD • SPENARD • THOMPSON • TURNAGAIN • UPPER MIDDLETOWN • WINDEMERE

P.O. BOX V, JUNEAU 99811

(907) 465-3892



CHAIRMAN
LABOR AND COMMERCE
COMMITTEE

MEMBER
STATE AFFAIRS COMMITTEE
HEALTH, EDUCATIONAL
AND SOCIAL SERVICES COMMITTEE

January 18, 1988

M E M O R A N D U M

To: Members, House Judiciary Committee

From: Representative Dave Donley
Sponsor - HJR 18

Handwritten initials, possibly "DD", in blue ink.

Re: HJR 18 - "Proposing an amendment to the
Constitution of the State of Alaska relating to
resident preference under the equal protection
clause"

HJR 18 is before the House Judiciary Committee for your consideration today. The measure will give voters the opportunity to decide whether to amend Alaska's Constitution to give clear authority to the state to grant employment preferences to its own citizens.

HJR 18 was introduced in response to concerns voiced by some Alaska State Supreme Court Justices in the Francis v Robinson case that overturned the 1985 Alaska hire law.

Specifically, the justices implied that Alaska's Constitution has potentially stronger prohibitions against local hire than federal law requires.

HJR 18 proposes an amendment to Alaska's Constitution to clarify the right of state government to give reasonable preferences to Alaskans and to make Alaska's Constitution consistent with the U.S. Constitution.

This measure would help clear our way in adopting meaningful local hire legislation that can meet a constitutional challenge.

ANCHORAGE OFFICE

3111 "C" STREET, SUITE 450 • ANCHORAGE, ALASKA 99503 • (907) 561-7629

REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE

DISTRICT ELEVEN • SPENARD

P.O. BOX V, JUNEAU 99811

(907) 465-3892



CHAIRMAN
LABOR AND COMMERCE
COMMITTEE

MEMBER
STATE AFFAIRS COMMITTEE
HEALTH, EDUCATIONAL
AND SOCIAL SERVICES COMMITTEE
INTERNATIONAL TRADE
SUB-COMMITTEE

March 3, 1987

M E M O R A N D U M

To: Members, House Labor and Commerce Committee

From: Representative Dave Donley

Re: HJR 18 - "Proposing an amendment to the Constitution of the State of Alaska relating to resident preference under the equal protection clause"

HJR 18 was introduced in response to concerns voiced by some Alaska State Supreme Court Justices in the Francis v Robinson case that overturned the 1985 Alaska hire law.

Specifically, the justices implied that Alaska's Constitution has potentially stronger prohibitions against local hire than federal law requires.

HJR 18 proposes an amendment to Alaska's Constitution to clarify the right of state government to give reasonable preferences to Alaskans and to make Alaska's constitution consistent with the U.S. Constitution (see attached).

This measure would help clear our way in adopting meaningful local hire legislation that can meet a constitutional challenge.

HJR 18

BURKE, Justice, concurring.

I concur in the determination that Alaska's "local hire" law¹ violates the Privileges and Immunities Clause of the Constitution of the United States,² 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.³

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

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.

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						
REVENUE						

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)

Prepared by: Linda Edgeworth
Division: Elections
Approved by Commissioner: [Signature]
Agency: Office of the Governor

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

1 IN THE HOUSE

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

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,

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the pursuit of happiness, and the enjoyment of the rewards of their

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own industry; that all persons are equal and entitled to equal rights,

16

opportunities, and protection under the law; and that all persons have

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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.

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* 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-

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tion laws of the state.