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HOUSE STATE AFFAIRS COMMITTEE

NEXT COMMITTEE: LABOR AND COMMERCE

BILL: HB 523

CURRENT VERSION: CS HB 523 (SA)

SCHEDULED: MARCH 2, 1988

SPONSOR: FRANK

PHONE NO: 3709

CONTACT FILE: \_\_\_\_\_

BILL SUBJECT: AN ACT RELATING TO PROCUREMENT PREFERENCES FOR CERTAIN PRODUCTS

SPONSOR BACKUP: IN PACKET

AFFECTED AGENCIES:

<u>DEPARTMENT</u>	<u>CONTACT/PHONE</u>	<u>COMMENT</u>
ADMIN	PUSHPENDER/2200	NOTIFIED 2/24/88
DCED	LINDA WILD	

FISCAL NOTES

<u>AGENCY</u>	<u>REQUESTED</u>	<u>DATED</u>	<u>FY 88 AMT</u>	<u>FY 89 AMT</u>
ADMIN	2/25/88	2/29/88	-0-	-0-
COMMERCE & ECONOMIC DEVELOPMENT		3/1/88	-0-	-0-

ACTION

<u>DATE</u>	<u>COMMENT</u>
3/2/88	CS HB 523 (SA) PASSED FROM COMMITTEE

# HOUSE COMMITTEE REPORT

(7)

Date referred: 2/15/88

FURTHER REFERRALS: Labor & Commerce  
Finance

DATE: 3-2-88

The State Affairs Committee has considered HB 523

"An Act relating to procurement preferences for certain products."

**RECOMMENDS:**

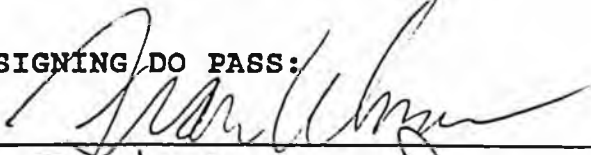
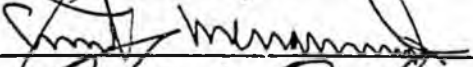
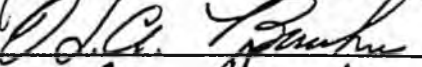

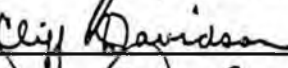
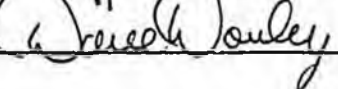
- replace with CS HB 523  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

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

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

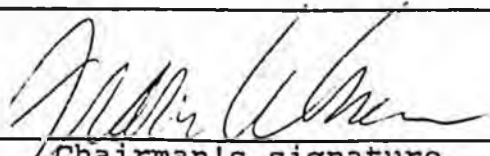
- fiscal impact  same as previous fiscal note published \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published \_\_\_\_\_
- 2  zero with analysis

**SIGNING/DO PASS:**

**SIGNING OTHER RECOMMENDATIONS:**

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

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

Original sponsors: Frank and Menard

IN THE HOUSE

BY THE STATE AFFAIRS COMMITTEE

CS FOR HOUSE BILL NO. 523 (State Affairs)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to procurement preferences for certain products."

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

\* Section 1. AS 36.30.324 is amended to read:

Sec. 36.30.324. USE OF ALASKA PRODUCTS. Alaska products shall be used whenever practicable in procurements for an agency. Alaska recycled products shall be used whenever appropriate for the intended use and when of comparable quality.

\* Sec. 2. AS 36.30.332(a) is amended to read:

(a) The commissioner of commerce and economic development shall adopt regulations establishing the value added in the state for materials and supplies produced or manufactured in the state that are used in a state procurement and establishing whether a product qualifies as a recycled Alaska product. The commissioner [AND] shall publish a list of the products annually. A supplier may request inclusion of its product on the appropriate list.

\* Sec. 3. AS 36.30.338 is amended by adding a new paragraph to read:

(4) "recycled Alaska product" means an Alaska product of which not less than 50 percent of the value of the product consists of a product that was previously used in another product, if the recycling process is done in the state.

STATE OF ALASKA  
THE LEGISLATURE

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JUNEAU, ALASKA 99811  
907-465-3800

May, 1988

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 State Affrs:*

*March 2 - 1988*

1 IN THE HOUSE

BY FRANK

2

HOUSE BILL NO. 523

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 procurement preferences for  
7 certain products."

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

9 \* Section 1. AS 36.30.328 is amended to read:

10 Sec. 36.30.328. GRANT OF PREFERENCE. In the evaluation of a bid  
11 or proposal for a procurement for an agency, a bid or offer that  
12 designates the use of Alaska products identified in the contract  
13 specifications and designated as Class I, Class II, or Class III state  
14 products under AS 36.30.332 is decreased by

15 (1) the percentage of the value of the designated Alaska  
16 products under AS 36.30.332; and

17 (2) an additional five percent, if the product also quali-  
18 fies as a recycled Alaska product.

19 \* Sec. 2. AS 36.30.330(b) is amended to read:

20 (b) A person is not a responsible bidder or offeror if, in the  
21 preceding three years, the person has twice designated the use of an  
22 Alaska product or a recycled Alaska product in a bid or proposal for a  
23 procurement for an agency and has each time failed to use the desig-  
24 nated [ALASKA] product for reasons within the control of the bidder or  
25 offeror.

26 \* Sec. 3. AS 36.30.330(c) is amended to read:

27 (c) The procurement officer shall report to the commissioner of  
28 commerce and economic development each contractor penalized under (a)  
29 or (d) of this section. The commissioner of commerce and economic

1 development shall maintain a list of contractors determined not to be  
2 responsible bidders under (b) of this section.

3 \* Sec. 4. AS 36.30.330 is amended by adding new subsections to read:

4 (d) If a successful bidder or offeror who designates the use of  
5 a recycled Alaska product in a bid or proposal for a procurement for  
6 an agency fails to use the designated product for a reason within the  
7 control of the successful bidder or offeror, each payment under the  
8 contract shall be reduced by five percent.

9 (e) If a successful bidder or offeror receives a percentage  
10 reduction under both (a) and (d) of this section, the percentage of  
11 the reduction shall equal the sum of both reductions.

12 \* Sec. 5. AS 36.30.332(a) is amended to read:

13 (a) The commissioner of commerce and economic development shall  
14 adopt regulations establishing the value added in the state for mate-  
15 rials and supplies produced or manufactured in the state that are used  
16 in a state procurement and establishing whether a product qualifies as  
17 a recycled Alaska product. The commissioner [AND] shall publish a  
18 list of the products annually. A supplier may request inclusion of  
19 its product on the appropriate list.

20 \* Sec. 6. AS 36.30.338 is amended to read:

21 Sec. 36.30.338. DEFINITIONS. In AS 36.30.322 - 36.30.338

22 (1) "Alaska product" means a product of which not less than  
23 25 percent of the value, as determined in accordance with regulations  
24 adopted under AS 36.30.332(a), has been added by manufacturing or  
25 production in the state;

26 (2) "manufactured lumber products" does not include recycled  
27 Alaska products;

28 (3) "produced or manufactured" means processing, develop-  
29 ing, or making an item into a new item with a distinct character and

1 use through the application within the state of materials, labor,  
2 skill, or other services;

3 (4) [(3)] "product" means materials or supplies but does  
4 not include gravel and asphalt;

5 (5) "recycled Alaska product" means an Alaska product of  
6 which not less than 50 percent of the value of the product consists of  
7 a product that was previously used in another product.

8

Recognize

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AAC is amended by adding a new chapter to read:

CHAPTER 92. ALASKA PRODUCT PREFERENCE.

Section

10. Alaska product preference list
20. Certification of eligibility for product preference
30. Product classification
40. Inspection of manufacturing facilities
50. Records provided by the contractor
60. Disputes regarding classification
70. Preference determination for printing and duplication
80. Forest products
90. Eligibility for preference on a bid
900. Definitions

3 AAC 92.010. ALASKA PRODUCT PREFERENCE LIST (a) The department will publish a semiannual final "Alaska product preference list" required by AS 36.30.332 on the first working day of April and on the first working day of October. Copies of the current list are available from any office of the department.

(b) Only products included in the most recently published final list may be given a preference under AS 36.30.328 and AS 36.30.332.

(c) A product will be included in the next list published at least 60 days after the product is certified by the department under 3 AAC 92.020 as eligible for a Class I, Class II, or Class III preference.

(d) If the department inspects premises of a firm whose product has been included in the list under (c) of this section and determines that the product no longer qualifies for its

certified product preference, the department will make the appropriate change when it publishes the next list.

(e) Forty-five (45) days before the publication day for a semiannual final list under (a) of this section, a preliminary list will be published and distributed to those whose products are included and to other interested parties who have provided their addresses to the department. Objections to any aspect of a preliminary list must be made in writing to the commissioner no later than 30 days before the publication date for the final list. The commissioner will make a written ruling on an objection no later than 15 days before the publication of the final list. The final list may be appealed to the Superior Court under AS 22.10.020. (Eff. / / , Register )

Authority: AS 36.30.332(a)

3 AAC 92.020. CERTIFICATION OF ELIGIBILITY FOR PRODUCT PREFERENCE. (a) A person or firm wishing to receive an Alaska product preference and be included on the list must

(1) apply for certification on a form provided by the department; and

(2) have its production or manufacturing facility inspected by, or receive a waiver of inspection from, the department under 3 AAC 92.040.

(b) A certification is valid for two years after publication of the first list on which the product is included. A person or firm wishing to renew a certification must apply for renewal to the department by completing a renewal form provided by the department.

(c) The certification of eligibility for an Alaska product preference will contain the date of the list on which product will first be included and the deadline for submission of an application for renewal of the certification.

(d) To qualify for certification of eligibility for an Alaska product preference, a product must be produced or manufactured at a facility that is separate from the job site where the product is installed or delivered. (Eff. / / , Register )

Authority: AS 36.30.332(a)

3 AAC 92.030. PRODUCT CLASSIFICATION. (a) The commissioner will only classify a product that is verified by the applicant under the penalties for unsworn falsification, on the form required by 3 AAC 92.020(a)(1), to be an "Alaska product" as defined in AS 36.30.338(1).

(b) The commissioner will classify an Alaska product as a Class III product if

(1) it is produced or manufactured, as defined in AS 36.30.338(2), in Alaska;

(2) responsibility for the final outcome of the production or manufacturing process is controlled by an Alaskan producer or manufacturer; and

(3) either

(A) no manufacturing step is performed outside Alaska; or

(B) a manufacturing step or section, the absence of which would not alter the distinctiveness of the character of the product, is sub-contracted out of state.

(c) The commissioner will classify an Alaska product as a Class II product if

(1) it is primarily produced or manufactured, as defined in AS 36.30.338(2), in Alaska; and

(2) responsibility for the final outcome of the production or manufacturing process is controlled by an Alaskan producer or manufacturer but a significant step or section is sub-contracted out of state.

(d) The commissioner will classify an Alaskan product as a Class I product if

(1) it is produced or manufactured, as defined in AS 36.30.338(2), in Alaska;

(2) responsibility for the final outcome of the production or manufacturing process is controlled by an Alaskan producer or manufacturer; and

(3) the product either

(A) involves the custom assembly in Alaska of prefabricated parts that are primarily manufactured outside Alaska such that the finished product is still defined by the same generic name as the prefabricated parts; or

(B) a majority of the total steps of the manufacturing process are subcontracted outside Alaska, but a significant portion of the steps, or the final assembly or finishing, which determine the distinct character of the product are performed in Alaska. (Eff. / / , Register )

Authority: AS 36.30.332(a)

3 AAC 92.040. INSPECTION OF MANUFACTURING FACILITIES. (a) A person or firm must be inspected by, or receive a waiver of inspection from, the department before their product can receive a certification of eligibility for the Alaska product preference list described in 3 AAC 92.010. The department will grant a waiver of inspection if, in its discretion, it determines that an inspection would not be necessary or feasible.

(b) When a manufacturing facility is being inspected, the manufacturer must provide access as required by 2 AAC 12.510.

(c) A product that has been certified as eligible for an Alaska product preference must be manufactured at the location that was inspected by the department as the production or manufacturing site for that product.

(d) If the facility at which a product certified as eligible for an Alaska product preference is produced or manufactured is relocated after certification, the producer or manufacturer must request an inspection of the relocated facility at least 15 days before either

(1) the publication of the invitation to bid or request for proposals for which the producer or manufacturer is seeking a product preference; or

(2) the production or manufacture of the product if contract has already been let at the time of the relocation.

(e) After a relocated production or manufacturing facility has been inspected under (d) of this section or the department has waived the inspection under (a) of this section, the department will issue a revised product certification. A copy of the revised certification must be included in the contract documentation by a contractor who has received an Alaska product preference for an Alaska product produced or manufactured at the facility, if the relocation occurred during performance of the contract. (Eff. / / , Register )

Authority: AS 36.30.332

3 AAC 92.050. RECORDS PROVIDED BY THE CONTRACTOR. (a) A firm or person that received an Alaska product preference in a bid or offer shall keep records documenting the use of the Alaska product. These records must be provided to the procurement officer of the department awarding the contract

- (1) on the written request of the procurement officer;
- (2) on the anniversary date of the contract award if the contract performance has been completed; and
- (3) on final completion of contract performance.

(b) A contractor who, under AS 36.30.322(a), has supplied Alaska timber, lumber, or manufactured lumber products to a state agency or for a state project that involves Alaska forest products, shall provide the records required by AS 36.30.322(c) to the appropriate procurement officer as required by (a) of this section and at least every six months. (Eff. / / , Register )

Authority: AS 36.30.322(c)

AS 36.30.332(a)

3 AAC 92.060. DISPUTES REGARDING CLASSIFICATION. (a) If a dispute arises about the classification under 3 AAC 92.030 of a type of product, the classification determination made by the

department shall be the classification in effect until the department adopts more detailed regulations for classification for that particular product type. Any interested person or firm may petition the commissioner under AS 44.62.220 to adopt such regulations.

(b) A dispute regarding classification of, or certification of, an Alaska product or regarding any other aspect of the Alaska product preference list must be resolved under 3 AAC 92.010(e) and is not grounds for a protest to a procurement officer under AS 36.30.560 -- 36.30.699 of a contract award, proposed award, or solicitation by an agency. (Eff. / / , Register )

Authority: AS 36.30.332(a)

3 AAC 92.070. CLASSIFICATION DETERMINATION FOR PRINTING AND DUPLICATION. (a) If a section of a larger publication or document is printed outside Alaska but all other steps are performed in Alaska, the product will be classified as a Class II Alaska product.

(b) If printing of a publication or document is performed in Alaska but a finish step including binding, finishing, and trimming is performed outside Alaska, the product will be classified as a Class II Alaska product.

(c) If printing of a publication or document is performed in Alaska but steps executed by a color trade house including

preparation and proofing of plate ready film occur outside Alaska, the product will be classified as a Class II Alaska product. (Eff. / / , Register )

Authority: AS 36.30.332(a)

3 AAC 92.080. FOREST PRODUCTS. (a) A manufacturer or supplier of timber, lumber, and manufactured lumber products originating from Alaska forests shall file with the commissioner by March 1 of each year an annual statement of willingness to manufacture or supply Alaska forest products to state agencies or for state projects. The commissioner will include those who file such a statement in a separate section of the April final Alaska product preference list. Procurement officers of state agencies may use that section of the list to give the notice of forest products needs required by AS 36.30.322(a).

(b) Procurement preference for timber and lumber harvested in Alaska, and for products manufactured in Alaska from timber and lumber that has been harvested in Alaska, is governed by AS 36.15.050, not by this chapter or by AS 36.30.326 - 36.30.332. (Eff. / / , Register )

Authority: AS 36.15.050  
AS 36.30.332(c)  
AS 36.30.332(a)  
AS 36.30.336

3 AAC 92.090. ELIGIBILITY FOR PREFERENCE ON A BID. (a) The final Alaska product preference list that was published at least 30 days before an invitation to bid or request for proposal is issued will be the basis for establishing the percentage of Alaska product preference for the products to be included in responses to the invitation or request.

(b) The Alaska products preference percentages set out in AS 36.30.332 will be applied to the unit cost of the Alaska product or products designated for use by the contractor in his or her bid or proposal and not to the contractor's total bid or proposal. (Eff. / / , Register )

Authority: AS 36.30.332

3 AAC 92.900. DEFINITIONS. In this chapter

(1) "commissioner" means the commissioner of commerce and economic development;

(2) "department" means the Department of Commerce and Economic Development.

(b) In AS 36.30.332(b), "value added" does not include the cost of transportation.

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: An Act relating to procurement preferences for certain products  
Sponsor: Frank  
Requestor: House State Affairs

Agency Affected: Administration  
BRU: General Services & Supply  
Components: Purchasing

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)

This fiscal note addresses the administrative cost of the bill on the bidding process.

Prepared By: Robert J. Link *Robert J. Link*  
Division: General Services & Supply

Phone: 465-2250  
Date: 02/25/88

Approved by Commissioner: John M. Andrews *John M. Andrews*  
Agency: Department of Administration

Date: 2/29/88

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

POSITION PAPER  
HB 523

This bill attempts to encourage the manufacture of recycled products within Alaska by providing a 5% preference above existing preferences. A bidder offering Alaskan products made of recycled products could qualify for a total of 17% in preferences. The impact of the cost of administering the bid process would be minimal.

We have a neutral position on this bill because we have no way to assess the positive impact of encouraging the use of recycled products versus the potential increase in purchase price and having a preference which favors one Alaskan bidder over another.

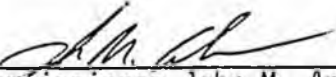
We would recommend amending the bill as follows:

Section 6, Section 36.30.338(5) "recycled Alaska product" means an Alaskan product of which not less than 50% of the value of the product consists of a product that was previously used in another product and the recycling process was performed in Alaska.

This would avoid the situation in which one Alaskan vendor received a 5% greater preference for using a product which was recycled someplace other than Alaska.

  
\_\_\_\_\_  
Robert J. Link, Director  
Division of General Services & Supply

2/25/88  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Commissioner John M. Andrews  
Department of Administration

2/29/88  
\_\_\_\_\_  
Date

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Commerce & Econ. Dev.  
Title: "An Act relating to procurement preference for certain products" BRU: Division of Business Development  
Sponsor: Representative Frank Components: \_\_\_\_\_  
Requester: State Affairs Committee

EXPENDITURES / REVENUES : (Thousands of Dollars)

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

CAPITAL		-0-	-0-	-0-	-0-	-0-
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REVENUE		-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

HB 523 states that, in the evaluation of a bid or proposal for procurement for an agency, the offeror or bidder receive additional five percent preference for products that qualify as recycled Alaskan products. The implementation of this legislation can be handled within the division budget at this time.

Prepared by: Larry Mercurieff, Director Phone: 465-2017  
Division: Business Development Date: March 1, 1988

Approved by Commissioner: J. Anthony Smith Date: March 1, 1988  
Agency: Department of Commerce & Economic Development

Distribution (by preparer):

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



# MAKE IT ALASKAN, INC.

3202 Spenard Road, Suite 200  
P.O. Box 93001  
Anchorage, Alaska 99509-3001  
(907) 258-2878

FEB 19 1988

February 17, 1988

## EXECUTIVE COMMITTEE

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Doug Wise

Connie Yoshimura

## EX-OFFICIO

Charity Kallow

Caren Mathis

James Wiedeman

Rep. Drue Pearce  
Post Office Box V  
Juneau, Alaska 99811

Dear Rep. Pearce:

Make It Alaskan, Inc., supports and encourages the passage into legislation of House Bill 450, an act relating to out-of-state solicitation for state contracts and state employees.

Considering Alaska's current economic condition and the high rate of unemployment, it is now more important than ever to take positive steps to ensure that, whenever possible, Alaskans and Alaskan firms are given the maximum opportunity to participate in the economic recovery and development of the state. The vitality generated by employed and contributing citizens and businesses in the state of Alaska will provide an energy and source of pride in state and community that promises to surpass even the financial benefit.

House Bill 450 gives Alaskan residents and Alaskan businesses the advantage of being asked first. Make It Alaskan, Inc., firmly believes that the state SHOULD ask Alaskans first; now, in these difficult times, and always.

Please consider this a statement of support and we will help in any way possible to assure passage in the Legislature this year. Let me know what we can do.

Kindest personal regards,

P. David Choquette  
President  
Make It Alaskan, Inc.

PDC/tal

POSITION PAPER  
HB 523

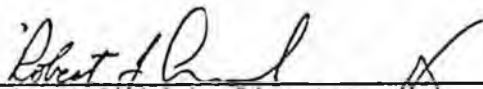
This bill attempts to encourage the manufacture of recycled products within Alaska by providing a 5% preference above existing preferences. A bidder offering Alaskan products made of recycled products could qualify for a total of 17% in preferences. The impact of the cost of administering the bid process would be minimal.

We have a neutral position on this bill because we have no way to assess the positive impact of encouraging the use of recycled products versus the potential increase in purchase price and having a preference which favors one Alaskan bidder over another.

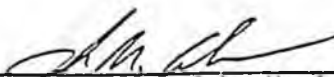
We would recommend amending the bill as follows:

Section 6, Section 36.30.338(5) "recycled Alaska product" means an Alaskan product of which not less than 50% of the value of the product consists of a product that was previously used in another product and the recycling process was performed in Alaska.

This would avoid the situation in which one Alaskan vendor received a 5% greater preference for using a product which was recycled someplace other than Alaska.

  
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Robert J. Link, Director  
Division of General Services & Supply

2/25/88  
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Date

  
\_\_\_\_\_  
Commissioner John M. Andrews  
Department of Administration

2/29/88  
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Date