

CSHB

45

SENATE COMMITTEE REPORT

FURTHER

DATE TURNED INTO OFFICE 5/5/88

4/30/88

Mr. President:

FINANCE Committee considered CSHB 45 (FIN) am

Alaska business bidder preference, an Alaska products preference, and to procurement involving state money; efd

and recommended

replace with 5 CS CSHB 45 (FIN)) same title
 or adopt _____ CS _____) new title

attached amendment(s) and

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

letter of intent adopted _____

Committee attached or adopted fiscal note(s)

new updated or previous
505 (FIN)] zero fiscal impact 55.0

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Signature]
Paul Brink
Jan Dusen
[Signature]
[Signature]

No Rec. With Henry

[Signature]
Chairman signature and recommendation

Committee Backup attached

SB 356

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

Finance
BY THE ~~LABOR AND~~
COMMERCE COMMITTEE

1 IN THE HOUSE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 45 (L&C) *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 an Alaska business bidder prefer-
7 ence, an Alaska products preference, and to procure-
8 ment involving state money; and providing for an
9 effective date."

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

11 * Section 1. FINDINGS AND PURPOSE. (a) The legislature finds that due
12 to the state's noncontiguous geographic location and unique climate, busi-
13 ness dealings with non-Alaskan firms produce administrative expenses not
14 commonly incurred in business dealings with resident businesses.

15 (b) The purpose of the Alaska business bidder preference when the
16 state acts as a market participant is to reduce state administrative costs,
17 strengthen the state's tax and revenue base, encourage local industry,
18 reduce the social ills created by unemployment and an unstable economy, and
19 to strengthen and stabilize the state's economy.

20 * Sec. 2. AS 36.15.050(e) is amended to read:

21 (e) An interested party [, AS DEFINED IN AS 36.30.699,] may seek
22 administrative or judicial review of the award of a contract in viola-
23 tion of this section and may recover damages and seek other remedies
24 provided by law for the violation of this section, except that the
25 party may not recover lost profits.

26 * Sec. 3. AS 36.15.050(g) is amended to read:

27 (g) In this section,

28 (1) "agricultural products" includes, but is not limited
29 to, dairy products, timber and lumber harvested in the state and

SB 356
W. J. ...
R

1 products manufactured in the state from timber and lumber that has
2 been harvested in the state;

3 (2) "interested party" has the meaning given in AS 36.30.-
4 699;

5 (3) "state money" includes state grants and reimbursement
6 to municipalities, [AND] school districts, and other entities for
7 school or related construction, foundation funding for education,
8 municipal assistance, revenue sharing, and state funds for capital
9 projects. *Municipal Code*

10 * Sec. 4. AS 36.30.170(b) is repealed and reenacted to read:

11 (b) When awarding a contract based on solicited bids, the pro-
12 curement officer shall determine the lowest responsible and responsive
13 bidder after applying the preference applicable to the bid under
14 AS 36.30.322 - 36.30.338 and after applying the following preference
15 to the bid of each Alaska bidder:

16 (1) one percent, when the lowest nonresident bidder's bid
17 is \$10,000,000 or more;

18 (2) two percent, when the lowest nonresident bidder's bid
19 is more than \$500,000 and less than \$10,000,000;

20 (3) five percent, when the lowest nonresident bidder's bid
21 is more than \$100,000 and \$500,000 or less; or

22 (4) 10 percent, when the lowest nonresident bidder's bid is
23 \$100,000 or less.

24 * Sec. 5. AS 36.30.170(c) is amended to read:

25 (c) Notwithstanding (b) of this section, if [IF] a bidder qual-
26 ifies under (e) [(b)] of this section as an Alaska bidder, is offering
27 services through an employment program as defined under AS 36.30.-
28 100(c), and is the lowest responsible and responsive bidder after
29 receiving a 10 percent preference [WITH A BID THAT IS NOT MORE THAN 10

1 PERCENT HIGHER THAN THE LOWEST BID OF A NONRESIDENT], the procurement
2 officer shall award the contract to that bidder.

3 * Sec. 6. AS 36.30.170 is amended by adding a new subsection to read:

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

5 (1) holds a current Alaska business license;

6 (2) does more than \$1,000,000 worth of annual business in
7 the state or performs more than 50 percent of the person's annual
8 business in the state, whichever is less;

9 (3) has maintained a permanent place of business in the
10 state staffed by the bidder or an employee of the bidder for a period
11 of six months immediately preceding the date of the bid;

12 (4) submits a bid for goods or services under the name that
13 appears on the person's current Alaska business license;

14 (5) is incorporated or qualified to do business under the
15 laws of the state, is a sole proprietorship and the proprietor is a
16 resident of the state, or is a partnership and all partners are resi-
17 dents of the state;

18 (6) if a joint venture, is composed entirely of persons who
19 qualify under (1) - (5) of this subsection; and

20 (7) is an Alaska domestic insurer, if the contract is
21 insurance-related and the procurement is based on solicited bids.

22 * Sec. 7. AS 36.30.250(b) is amended to read:

23 (b) In determining whether a proposal is advantageous to the
24 state, the procurement officer shall take into account, in accordance
25 with regulations of the commissioner, whether the offeror qualifies as
26 an Alaska bidder under AS 36.30.170(e) [AS 36.30.170(b)] or is offer-
27 ing the services of an employment program as defined in AS 36.30.-
28 100(c).

29 ~~* Sec. 8. AS 36.30.850(e) is amended to read:~~

WH unanimous.

1 ~~(e) AS 36.30.170 and 36.30.322 - 36.30.338 apply [APPLIES] to~~
2 ~~all [INSURANCE] contracts involving state money, including state~~
3 ~~grants and reimbursement to municipalities, school districts, and~~
4 ~~other entities for school or related construction, foundation funding~~
5 ~~for education, municipal assistance, revenue sharing, and state funds~~
6 ~~for capital projects.~~

7 * Sec. 9. AS 36.30 is amended by adding a new section to read:

8 Sec. 36.30.895. COMBINATION OF PREFERENCES. In the evaluation
9 of a bid or proposal, if a contractor qualifies for an Alaska bidder
10 preference under AS 36.30.170(b) or (c) and is also entitled to an
11 Alaska products preference under AS 36.30.328 for a contract, the
12 procurement officer shall for the purpose of evaluation decrease the
13 bid or proposal price by the total of the two applicable percentage
14 preferences.

15 * Sec. 10. AS 36.30.900 is amended to read:

16 Sec. 36.30.900. PREFERENCE FOR ALASKA PRODUCTS. This chapter
17 does not modify AS 36.15.010 and 36.15.020 regarding preference for
18 Alaska forest products, or AS 36.15.050 and 36.15.060, regarding
19 preference for Alaska agricultural and fisheries products [, EXCEPT AS
20 PROVIDED IN AS 36.30.170(b) AND (c)].

21 * Sec. 11. AS 36.30.170(d) is repealed.

22 * Sec. 12. This Act takes effect January 1, 1989.

STATE OF ALASKA
1988 LEGISLATIVE SESSIONBILL VERSION: SCSCSHB 45 (Fin)
PUBLISH DATE: HOUSE 3/9/88

REQUEST: FISCAL NOTE

Revision Date:
Title: An Act Relating to an Alaska Business
Bidder Preference
Sponsor: Donley & Gruessendorf
Requestor: AdamsAgency Affected: DOT&PF
BRU: Engineering & Operations Stds.
Design & Construction Stds
Components:

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	2.0	0	0	0	0
CONTRACTURAL	0	3.0	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	5.0	0	0	0	0

CAPITAL	0	50.0	50.0	50.0	50.0	50.0
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REVENUE	0	0	0	0	0	0
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FUNDING: (THOUSANDS OF DOLLARS)

GENERAL FUND	0	55.0	50.0	50.0	50.0	50.0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	55.0	50.0	50.0	50.0	50.0

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)

Prepared by: Loren L. Rasmussen
Division: Engineering & Operations Standards
Approved by Commissioner: Mark S. Hickey
Agency: Department of Transportation and Public Facilities

Phone: 465-2960

Date: 3-7-88

Date: 3-7-88

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

An Act Relating to an Alaska Business Bidder Preference

The bill was analyzed considering only State funded projects administered directly by DOT&PF. The preference could not be applied to any Federally assisted projects.

This analysis was based on contracts awarded during the 1987 calendar year (approximately \$17,000,000). Based on 1987 bid results, approximately 10% of the contracts could be non-residents. The additional cost (i.e. fiscal impact) would be as follows.:

Contract Range	Total contracts	Assume 10% Awards	Additional Costs
1 to 100,000	495,079	49,508 @ 10%	4,951
100,000 to 500,000	3,694,612	369,461 @ 5%	18,473
500,000 to 10,000,000	13,503,237	1,350,324 @ 2%	27,006
10,000,000	0	@ 1%	<u>0</u>
			50,430

Assuming State funded CIP is in the same level as last year the impact would be approximately \$50,000. This is the figures used in the fiscal note.

There would be some additional administrative cost associated with the preference. These include updating the Alaska Administrative Code, DOT&PF procedures and the impact on individual bid openings in determining the low bidder. For appropriate public input it is assumed that two public hearings will be required. The estimated total cost is \$5,000 and would be a one time only cost. The estimated cost of each hearing is \$1,000 for travel and \$500 for advertising, printing, etc. In addition \$2,000 is estimated for review by the Attorney General's Office.

The above analysis was based on the DOT&PF's very low volume year for construction. If there was a substantial increase in future years, this would obviously impact the costs.

For example, if the awards were \$50,000,000 annually and the range of out of state bidders was from 2% to 10%, the costs could vary from \$28,000 to \$140,000, as the following analysis shows:

\$50,000,000 in Contracts
10% Out of State Contractors

Contract Range	Total Contracts	Assume 10% Award	Additional Costs
1 to 100,000-(5%)(50,000,000)	= 2,500,000	250,000 @ 10%	25,000
100,000 to 500,000-(20%)(50,000,000)	= 10,000,000	1,000,000 @ 5%	50,000
500,000 to 10,000,000-(55%)(50,000,000)	= 27,500,000	2,750,000 @ 2%	55,000
10,000,000 + -(20%)(50,000,000)	= 10,000,000	1,000,000 @ 1%	<u>10,000</u>
			\$140,000

\$50,000,000 In Contracts
2 % Out of State Contractors

Contract Range	Total Contracts	Assume 10% Award	Additional Costs
1 to 100,000-(5%)(50,000,000)	= 2,500,000	50,000 @ 10%	5,000
100,000 to 500,000-(20%)(50,000,000)	= 10,000,000	200,000 @ 5%	10,000
500,000 to 10,000,000-(55%)(50,000,000)	= 27,500,000	550,000 @ 2%	11,000
10,000,000 + -(20%)(50,000,000)	= 10,000,000	200,000 @ 1%	<u>2,000</u>
			\$28,000

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3600

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 6, 1988

SUBJECT: Changes to and constitutional ramifications of
SCS CSHB 45(Finance)

TO: Senator John Binkley, Co-Chair
Senate Finance Committee

FROM: Theresa L. Bannister *TB*
Legislative Counsel

This memo accompanies the draft that you requested for
SCS CSHB 45(Finance).

In addition to the change you initially requested (deleting
the section dealing with AS 36.30.850(e)), I have added
language to adjust your bill to HCS CSSB 356(Fin) which has
passed the legislature. The main changes are to secs. 2, 5,
13, 14, and 15. Please review them to determine if they are
consistent with your intent.

Please be aware that the Alaska bidder preference provisions
of the draft raise federal and state constitutional ques-
tions. These questions are not raised initially by any
change that you have requested in this CS. The problems are
based on the federal privileges and immunities clause of the
federal constitution and on the equal protection clauses of
the state and federal constitutions. Since you are probably
very much aware of the nature of these problems, I will not
discuss them further in this memo. However, if you wish
additional information, please advise.

If I may be of further assistance, please advise.

Enclosure

TLB:bb
b5/105

5-0307T
Bannister
5/6/88

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

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 45 (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 an Alaska business bidder prefer-
7 ence, an Alaska products preference, and to procure-
8 ment involving state money; and providing for an
9 effective date."

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12 to the state's noncontiguous geographic location and unique climate, busi-
13 ness dealings with non-Alaskan firms produce administrative expenses not
14 commonly incurred in business dealings with resident businesses.

15 (b) The purpose of the Alaska business bidder preference when the
16 state acts as a market participant is to reduce state administrative costs,
17 strengthen the state's tax and revenue base, encourage local industry,
18 reduce the social ills created by unemployment and an unstable economy, and
19 to strengthen and stabilize the state's economy.

20 * Sec. 2. AS 29.71.040(h), as added by sec. 2 of HCS CSSB 356(Fin),
21 Second Session of the Fifteenth Alaska State Legislature, is amended to
22 read:

23 (h) In this section,

24 (1) "agricultural products" includes dairy products, timber
25 and lumber, and products manufactured from timber and lumber;

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

1 * Sec. 3. AS 36.15.050(e) is amended to read:

2 (e) An interested party [, AS DEFINED IN AS 36.30.699,] may seek
3 administrative or judicial review of the award of a contract in viola-
4 tion of this section and may recover damages and seek other remedies
5 provided by law for the violation of this section, except that the
6 party may not recover lost profits.

7 * Sec. 4. AS 36.15.050(g) is amended to read:

8 (g) In this section,

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

13 (2) "interested party" has the meaning given in AS 36.30.-
14 699;

15 (3) "state money" includes state grants and reimbursement
16 to municipalities, [AND] school districts, and other entities for
17 school or related construction, foundation funding for education,
18 municipal assistance, revenue sharing, and state funds for capital
19 projects.

20 * Sec. 5. AS 36.15.050(g), as amended by sec. 7 of HCS CSSB 356(Fin),
21 Second Session of the Fifteenth Alaska State Legislature, is amended to
22 read:

23 (g) In this section,

24 (1) "agricultural products" includes dairy products, timber
25 and lumber, and products manufactured in the state from timber and
26 lumber;

27 (2) "interested party" has the meaning given in AS 36.30.-
28 699;

29 (3) "school district" includes a regional educational

1 attendance area established under AS 14.08;

2 (4) [(3)] "state money" includes state grants and reim-
3 bursement to school districts and other entities for school or related
4 construction, foundation funding for education, municipal assistance,
5 revenue sharing, and state funds for capital projects; in this para-
6 graph, "other entities" does not include municipalities.

7 * Sec. 6. AS 36.30.170(b) is repealed and reenacted to read:

8 (b) When awarding a contract based on solicited bids, the pro-
9 curement officer shall determine the lowest responsible and responsive
10 bidder after applying the preference applicable to the bid under
11 AS 36.30.322 - 36.30.338 and after applying the following preference
12 to the bid of each Alaska bidder:

13 (1) one percent, when the lowest nonresident bidder's bid
14 is \$10,000,000 or more;

15 (2) two percent, when the lowest nonresident bidder's bid
16 is more than \$500,000 and less than \$10,000,000;

17 (3) five percent, when the lowest nonresident bidder's bid
18 is more than \$100,000 and \$500,000 or less; or

19 (4) 10 percent, when the lowest nonresident bidder's bid is
20 \$100,000 or less.

21 * Sec. 7. AS 36.30.170(c) is amended to read:

22 (c) Notwithstanding (b) of this section, if [IF] a bidder qual-
23 ifies under (e) [(b)] of this section as an Alaska bidder, is offering
24 services through an employment program as defined under AS 36.30.-
25 100(c), and is the lowest responsible and responsive bidder after
26 receiving a 10 percent preference [WITH A BID THAT IS NOT MORE THAN 10
27 PERCENT HIGHER THAN THE LOWEST BID OF A NONRESIDENT], the procurement
28 officer shall award the contract to that bidder.

29 * Sec. 8. AS 36.30.170 is amended by adding a new subsection to read:

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

2 (1) holds a current Alaska business license;

3 (2) does more than \$1,000,000 worth of annual business in
4 the state or performs more than 50 percent of the person's annual
5 business in the state, whichever is less;

6 (3) has maintained a permanent place of business in the
7 state staffed by the bidder or an employee of the bidder for a period
8 of six months immediately preceding the date of the bid;

9 (4) submits a bid for goods or services under the name that
10 appears on the person's current Alaska business license;

11 (5) is incorporated or qualified to do business under the
12 laws of the state, is a sole proprietorship and the proprietor is a
13 resident of the state, or is a partnership and all partners are resi-
14 dents of the state;

15 (6) if a joint venture, is composed entirely of persons who
16 qualify under (1) - (5) of this subsection; and

17 (7) is an Alaska domestic insurer, if the contract is
18 insurance-related and the procurement is based on solicited bids.

19 * Sec. 9. AS 36.30.250(b) is amended to read:

20 (b) In determining whether a proposal is advantageous to the
21 state, the procurement officer shall take into account, in accordance
22 with regulations of the commissioner, whether the offeror qualifies as
23 an Alaska bidder under AS 36.30.170(e) [AS 36.30.170(b)] or is offer-
24 ing the services of an employment program as defined in AS 36.30.-
25 100(c).

26 * Sec. 10. AS 36.30 is amended by adding a new section to read:

27 Sec. 36.30.895. COMBINATION OF PREFERENCES. In the evaluation
28 of a bid or proposal, if a contractor qualifies for an Alaska bidder
29 preference under AS 36.30.170(b) or (c) and is also entitled to an

1 Alaska products preference under AS 36.30.328 for a contract, the
2 procurement officer shall for the purpose of evaluation decrease the
3 bid or proposal price by the total of the two applicable percentage
4 preferences.

5 * Sec. 11. AS 36.30.900 is amended to read:

6 Sec. 36.30.900. PREFERENCE FOR ALASKA PRODUCTS. This chapter
7 does not modify AS 36.15.010 and 36.15.020 regarding preference for
8 Alaska forest products, or AS 36.15.050 and 36.15.060, regarding
9 preference for Alaska agricultural and fisheries products [, EXCEPT AS
10 PROVIDED IN AS 36.30.170(b) AND (c)].

11 * Sec. 12. AS 36.30.170(d) is repealed.

12 * Sec. 13. Sections 2 and 5 of this Act take effect January 1, 1989, if
13 HCS CSSB 356(Finance), the Second Session of the Fifteenth Alaska State
14 Legislature, becomes law.

15 * Sec. 14. Section 4 of this Act takes effect January 1, 1989, if
16 HCS CSSB 356(Finance), the Second Session of the Fifteenth Alaska State
17 Legislature, does not become law.

18 * Sec. 15. Sections 1, 3, and 6 -12 of this Act take effect January 1,
19 1989.

5/5/88
with 3
~~_____~~
withdrawn

Amendment to SCS CS HB 45 (L&C)

BY: Hensley

Page 3, Line 3

Add new subsection:

(d) Notwithstanding (b) of this section, if a bidder qualifies under (f) as an Alaskan bidder and is also a resident of a distressed economic zone (AS 36.10.160), and is the lowest responsible and responsive bidder offering services in that zone after receiving a 10 percent preference, the procurement officer shall award the contract to that bidder.

reletter remaining subsections accordingly

page 3, line 26 insert after "under"

AS 36.30.170(d)

and change AS 36.30.170(e) to

AS 36.30.170(f)

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

- P.O. BOX B
JUNEAU, ALASKA 99811-2100
PHONE: (907) 465-4700
- 949 E. 36TH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99508-4302
PHONE: (907) 563-1073

April 29, 1988

Position Paper

RE: CS HB 45 (Fin) am

ORIGINAL SPONSORS: Donley, Grussendorf, Gruenberg, et. al.

Program Effects:

This bill would extend Alaska preference provisions in law by expanding the coverage of existing preferences for certain Alaska products and Alaska bidders.

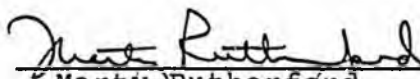
Comments:

While the department supports the concept of encouraging the purchase of Alaska products and use of Alaska businesses, it is also concerned that the expanded coverage, particularly as provided in Section 8, may have negative consequences to municipalities across the state, particularly the smaller, less sophisticated ones. The negative effects include the following:

- increased costs for services and products subject to the bidder preference at a time when municipalities are suffering from significant financial distress;
- increased administrative costs to properly monitor and administer contracts subject to the new requirements;
- legal liability of a municipality resulting from even the unintentional failure to observe new conditions placed upon the use of state funds which previously had not been restricted in this manner.

CS HB45 (Fin) am
April 29, 1988
Page Two

When the legislature adopted the Municipal Code revision in 1985, the intent was to give municipalities a greater degree of self-government and to reduce state regulation and conditions placed upon municipalities. This intent was seen to be consistent with the constitutional mandate to " provide for maximum local self-government . . ." (Article X, Section 1) It is the department's position that bidder preference issues are more appropriately covered at the local level where requirements may be crafted to meet local needs and benefit local residents. Further, those municipalities which have adopted local preference ordinances of their own may now be subject to an additional hardship with the addition of these preference requirements on top of local requirements.



Marty Rutherford

Acting Deputy Commissioner

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

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14 commonly incurred in business dealings with resident businesses.

15 (b) The purpose of the Alaska business bidder preference when the
16 state acts as a market participant is to reduce state administrative costs,
17 strengthen the state's tax and revenue base, encourage local industry,
18 reduce the social ills created by unemployment and an unstable economy, and
19 to strengthen and stabilize the state's economy.

20 * Sec. 2. AS 36.15.050(e) is amended to read:

21 (e) An interested party [, AS DEFINED IN AS 36.30.699,] may seek
22 administrative or judicial review of the award of a contract in viola-
23 tion of this section and may recover damages and seek other remedies
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1 been harvested in the state;

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6 school or related construction, foundation funding for education,
7 municipal assistance, revenue sharing, and state funds for capital
8 projects.

9 * Sec. 4. AS 36.30.170(b) is repealed and reenacted to read:

10 (b) The procurement officer shall award a contract based on
11 solicited bids to the lowest responsible and responsive Alaska bidder
12 if the bid, after receiving a preference applicable to the bid under
13 AS 36.30.322 - 36.30.338, is not more than

14 (1) one percent higher than the lowest nonresident bidder's
15 and the contract is \$10,000,000 or more;

16 (2) two percent higher than the lowest nonresident bidder's
17 and the contract is more than \$500,000 and less than \$10,000,000;

18 (3) five percent higher than the lowest nonresident bid-
19 der's and the contract is more than \$100,000 and \$500,000 or less; or

20 (4) 10 percent higher than the lowest nonresident bidder's
21 and the contract is \$100,000 or less.

22 * Sec. 5. AS 36.30.170(c) is amended to read:

23 (c) Notwithstanding (b) of this section, if [IF] a bidder qual-
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25 services through an employment program as defined under AS 36.30.-
26 100(c), and is the lowest responsible and responsive bidder with a bid
27 that is not more than 10 percent higher than the lowest bid of a
28 nonresident, the procurement officer shall award the contract to that
29 bidder.

1 * Sec. 6. AS 36.30.170 is amended by adding a new subsection to read:

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

3 (1) holds a current Alaska business license;

4 (2) does more than \$1,000,000 worth of annual business in
5 the state or performs more than 50 percent of the person's annual
6 business in the state, whichever is less;

7 (3) has maintained a permanent place of business in the
8 state staffed by the bidder or an employee of the bidder for a period
9 of six months immediately preceding the date of the bid;

10 (4) submits a bid for goods or services under the name that
11 appears on the person's current Alaska business license;

12 (5) is incorporated or qualified to do business under the
13 laws of the state, is a sole proprietorship and the proprietor is a
14 resident of the state, or is a partnership and all partners are resi-
15 dents of the state;

16 (6) if a joint venture, is composed entirely of persons who
17 qualify under (1) - (5) of this subsection; and

18 (7) is an Alaska domestic insurer, if the contract is
19 insurance-related and the procurement is based on solicited bids.

20 * Sec. 7. AS 36.30.250(b) is amended to read:

21 (b) In determining whether a proposal is advantageous to the
22 state, the procurement officer shall take into account, in accordance
23 with regulations of the commissioner, whether the offeror qualifies as
24 an Alaska bidder under AS 36.30.170(e) [AS 36.30.170(b)] or is offer-
25 ing the services of an employment program as defined in AS 36.30.-
26 100(c).

27 * Sec. 8. AS 36.30.850(e) is amended to read:

28 (e) AS 36.30.170 and 36.30.322 - 36.30.338 apply [APPLIES] to
29 all [INSURANCE] contracts involving state money, including state

1 grants and reimbursement to municipalities, school districts, and
2 other entities for school or related construction, foundation funding
3 for education, municipal assistance, revenue sharing, and state funds
4 for capital projects.

5 * Sec. 9. AS 36.30 is amended by adding a new section to read:

6 Sec. 36.30.895. COMBINATION OF PREFERENCES. In the evaluation
7 of a bid or proposal, if a contractor qualifies as an Alaska bidder
8 under AS 36.30.170(e) and is also entitled to an Alaska products
9 preference under AS 36.30.328 for a contract, the procurement officer
10 shall decrease the bid or proposal price by the total of the two
11 applicable percentages.

12 * Sec. 10. AS 36.30.900 is amended to read:

13 Sec. 36.30.900. PREFERENCE FOR ALASKA PRODUCTS. This chapter
14 does not modify AS 36.15.010 and 36.15.020 regarding preference for
15 Alaska forest products, or AS 36.15.050 and 36.15.060, regarding
16 preference for Alaska agricultural and fisheries products [, EXCEPT AS
17 PROVIDED IN AS 36.30.170(b) AND (c)].

18 * Sec. 11. AS 36.30.170(d) is repealed.

19 * Sec. 12. This Act takes effect January 1 of the calendar year that
20 follows the calendar year in which the voters of the state ratify the state
21 constitutional amendment contained in the version of HJR 18 that is passed
22 by the Fifteenth Alaska State Legislature.



RECEIVED MAY 3

1988
**Alaska State Legislature
House of Representatives**

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MEMBER
RESOURCES COMMITTEE
TRANSPORTATION COMMITTEE
COMMERCE AND ECONOMIC DEVELOPMENT
BUDGET SUBCOMMITTEE

MEMORANDUM

TO: Senator Rick Halford
Co-Chairman, Senate Finance Committee

FROM: Representative Drue Pearce *Pearce*

DATE: May 3, 1988

SUBJECT: HCR 45 - "Relating to encouraging private industry to hire state residents and to contract with local businesses."

HCR 45 passed the House today on a vote of 39-1. One amendment was presented which failed. It was reconsidered the same day with an identical vote.

This resolution encourages private industry to hire state residents and to contract with local businesses. It was designed to be non-punitive. In order to produce the desired result of increased hire of Alaskans, it proposes that the Commissioner of Labor embark upon a public awareness campaign.

The Department of Labor testified in House Labor and Commerce that it strongly favors this resolution. The proposed program would begin on January 1, 1988 and would include trade show presentations, newspaper, radio and television advertising. In addition, public service announcements provided by radio and television stations (usually in non-prime time) would be fully utilized.

I believe it is imperative that foreign, domestic, and nonresident business owners and operators understand clearly that Alaska has a skilled workforce -- ready, willing, and able to work. The current practice of the Department of Labor is to work with businesses on a one-on-one, reactive basis. HCR 45 encourages the Department to be proactive.

I will appreciate your help in seeing that this resolution moves quickly and smoothly through the Senate Finance. Because of my position as a member of the House Minority, I have been unable to move anything through the House in four years! I need to have at least one thing pass this year.


Many thanks. I will be available if you have questions.

Alaska MUNICIPAL League

TELEPHONE
(907) 586-1325

105 MUNICIPAL WAY, SUITE 301
JUNEAU, ALASKA 99801

TO: Senator Tim Kelly, Chair
Members of the Senate Labor and Commerce Committee

FROM: Scott A. Burgess, Executive Director 

DATE: April 29, 1988

SUBJECT: HB 45 - Alaska Bidder and Product Preferences

The AML opposes CS for HB 45 (Finance) and any proposed CS which includes municipalities in the requirements to give preferences. While the AML supports local hire and Alaska products, it cannot support a state mandate that potentially increases the cost of doing business. The AML requests that the bill not pass or that the language including municipalities be deleted. As introduced, HB 45 did not apply to municipalities.

Municipalities have suffered significant reductions in federal and state financial assistance while at the same time they have experienced population growth and increased responsibilities i.e. costs. Federal and state governments have told municipalities to do more with less and yet this proposed legislation could potentially increase the cost of products and services from one percent to seventeen percent or higher, not including the cost of administration and potential liability.

Alaska municipalities support local hire, local businesses and local products. To that end, several municipalities have local preferences for purchases and hiring within the municipality. These true "local" hire ordinances have more successfully withstood court challenges nationwide than state preferences. In addition, they benefit the specific municipality more than general Alaska preferences. A product purchased or contractor hired from one municipality does not do another Alaskan community as much good as when that product or contractor is purchased or hired locally. The proposed legislation provides for no exclusion or credit for local preferences.

Another major problem is the cumulative nature of the preferences. The existing preferences and the ones added and extended by HB 45 would be cumulative! It is unclear but, presumably, these preferences would also be added to local preferences. These provisions could result in significantly higher costs. At some point, the benefits of Alaska hire or preferences exceed the benefits of providing services and products at the lowest cost to the taxpayer, and competition in the free marketplace.

Senate Labor and Commerce Committee re HB 45
April 29, 1988
Page 2

The legislation also extends preferences to municipal entitlement monies and capital funds which have traditionally been disbursed to municipalities without "strings" to be spent by communities on locally-determined priorities. The legislation also will result in more complicated purchasing procedures and adds liability language for not granting the preferences.

Again, under the provisions for maximum local control in the Alaska Constitution and the potential for increased costs for municipalities in the face of declining federal and state assistance, the AML opposes CSHB 45 (Finance) and, specifically, its expansion of preferences and their application to municipalities. Thank you.



Dept. of Transportation & Public Facilities

POSITION PAPER

BILL NO: CS HB 45 (Finance)

TITLE: An Act Relating to an Alaska Business
Bidder

W. Hickey
APPROVED: Mark S. Hickey
Commissioner
DATE: March 7, 1988

House Bill 45 amends the procurement bill (which became effective January 1, 1988) to provide for a preference for an Alaska business in award on contracts. The preference is 1) 1% for contracts over \$10,000,000 2) 2% for contracts over \$500,000 but less than \$10,000,000 3) 5% for contracts over \$100,000 but less than \$500,000 4) 10% for contracts under \$100,000.

It appears that the Alaska bidder qualifications as written could be discriminatory toward any newly created Alaska firms desiring to bid on State projects. A new firm would first have to have a permanent place of business in the State for at least six months preceding the date of the bid. Then the bidder would have to have done more than \$1,000,000 worth of annual business or perform more than 50 percent of his or her annual business in Alaska, whichever is less. Taken literally, a new firm would have to be in business in Alaska for a period of at least one year before qualifying as an Alaska bidder.

The proposed revisions in HB 45 can be awkward to put into practice and can lead to delays in determining the low bidder.

We would propose to amend CS HB 45 (Finance), Sec. 3, AS 36.30.170(b) to read:

(b) The procurement officer shall award a contract based on solicited bids to the lowest responsive and responsible bidder after an Alaska bidder preference and an Alaska products preference as described in AS 36.30.222 -- 36.30.388 have been applied. The Alaska bidder preference shall be as follows:

1. one percent for the Alaska bidder's if the contract is \$10,000,000 or more;
2. two percent for the Alaska bidder's if the contract is more than \$500,000 and less than \$10,000,000;
3. five percent for the Alaska bidder's if the contract is more than \$100,000 and \$500,000 or less; or
4. ten percent for the Alaska bidder's if the contract is \$100,000 or less.

With this proposed amendment, at a bid opening, the apparent low bidder could be determined and announced easily and quickly. The language is compatible with the present procurement code.

We would prefer an Alaska bidder preference process that was included in the bid specifications and not be left to the bidders to determine. We would be willing to work with the Attorney General's office to propose some specific language.

SENATE COMMITTEE REPORT

FURTHER

FINANCE

4/22/88

DATE TURNED INTO OFFICE

Mr. President:

LABOR AND COMMERCE

Committee considered

CSHB 45 (FIN) am

Alaska business bidder preference, an Alaska products preference, and to procurement involving state money; efd

and recommended

[X] replace with [S CS] CS HB (Lic)) [X] same title
[] or adopt _____) [] new title

[] attached amendment(s) and

*reports it back with
for a majority "no rec"*

[] do pass

[] do not pass

[X] no recommendation

[] individual recommendations

[] further referral to _____

[] letter of intent adopted _____

Committee [X] attached or [] adopted fiscal note(s)

[] new [] updated or [] previous

[] zero [X] fiscal impact

MEMBERS SIGNING DO PASS

2 Mike Spivey

OTHER RECOMMENDATIONS

*1 McKelvin no rec.
1 Saburung no rec.*

1 Tim Kelly - No Rec
Chairman signature and recommendation