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(7)

Date Referred: February 18, 1992

FURTHER REFERRALS:

State Affairs
Finance

Date of Committee Action: 4/1/92

The COMMUNITY AND REGIONAL AFFAIRS Committee considered:

HB 526

HOUSE BILL NO. 526

CONTRACTORS AND LOCAL PUBLIC WORKS

"An Act relating to certain public construction contracts and contractors and to certain procurements."

RECOMMENDATIONS:

be replaced with CS HB 526 (C&RA) the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): _____ (pt)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal impact C&ED 4/1/92

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) _____

SIGNING <u>DO</u> PASS	DP	<u>OTHER</u> RECOMMENDATIONS	DNP	NR	AM
		<i>J.C. Bonilla</i>		<input checked="" type="checkbox"/>	
		<i>Cheri Davis</i>		<input checked="" type="checkbox"/>	
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>		<input checked="" type="checkbox"/>	
<i>Betty Davis</i>	<input checked="" type="checkbox"/>	<i>Neil Phillips</i>		<input checked="" type="checkbox"/>	
<i>Richard [Signature]</i>	*				

[Signature]
CHAIRMAN'S SIGNATURE

HESS Committee, Co-Chair
Resources Committee, Vice-Chair

Budget Subcommittees
Health and Social Services
Revenue



P.O. Box V
Juneau, Alaska 99811

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Alatna
Allakaket
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Arctic Village
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Lime Village
Lower Kalskag
Manley Hot Springs
Marshall
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Minto
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Pilot Station
Pitkas Point
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Ruby
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Shageluk
Sleetmute
St. Mary's
Stevens Village
Sony River
Takatna
Tanana
Telida
Tuluksak
Tyonek
Venetie
Wiseman

SPONSOR SUMMARY FOR HOUSE BILL 526

An Act relating to certain public construction contracts and contractors and to certain procurements

Background

Compared with other states, the construction industry in Alaska is virtually unregulated. The contractor licensing process has few requirements, and license renewal is almost guaranteed. For large-scale projects administered by state agencies, residents of the community where the construction is to take place have little say in how the contractor does business within their boundaries.

Administration of large-scale public projects for the State of Alaska is generally handled by the Department of Transportation and Public Facilities. While the department has made a creditable attempt to deal with its responsibilities as the contracting agency, there have been problems. Concern has been expressed that contractors do their work with little sensitivity to local concerns, and no accountability to the local government. The only binding relationship that exists is between the state contracting agency and the contractor.

REAA's and incorporated municipalities have limited authority to take on all or part of the administration of large publicly funded capital projects, but this provision excludes unincorporated communities. Further, the request to assume all or part of the project administration may be unilaterally denied by the commissioner.

Final project inspection is conducted by state agencies whose inspectors are often temporary or seasonal employees with little vested interest in the final outcome of the project.

There are many small construction contracts awarded by the state that could be performed by businesses in more remote areas of the state. However, even where these small

contracts are let for projects in remote communities, they are often awarded to contractors from outside the region or outside the state.

CONTRACTOR LICENSING

At present, all a contractor has to do to get an Alaskan contractor's license is pay the \$210 fee, post a surety bond (\$10,000 for general contractors and \$5,000 for mechanical contractors) and take a 16 hour course or demonstrate experience in, arctic construction. Public projects do not require a performance bond on any contract of less than \$100,000. If a contractor does not perform according to the terms of these small contracts, the only recourse is through the courts.

HB 526 would allow both urban and rural communities, whether incorporated or unincorporated, the opportunity to participate in the capital projects process as a partner with state agencies and contractors through the licensing process. These communities would be authorized, but not required, to form local citizen's commissions which would monitor contracts in progress and evaluate contractor performance.

Other states require business, legal and/or professional certification in order to obtain a contractor's license. These requirements are administered and enforced by multiple boards and commissions, some of which have subpoena and injunctive powers.

House Bill 526 proposes a simpler and more effective approach through a process involving the contractor's renewal of registration. When the Commissioner of the Department of Commerce and Economic Development determines whether to renew a certificate of registration of a contractor who has worked on a public construction project in a particular community, the commissioner shall base his decision on the recommendations of local commissions which may be established by that community's local government. It is up to the community to determine if they wish to participate in this process.

The recommendation by the local commission must be supported by a preponderance of evidence in order for the decision to stand. The contractor has the right to appeal the action taken by the commissioner based on the recommendation, and take this into a hearing. If after a hearing it is determined there is not a preponderance of evidence, the commissioner may renew the certificate. Title 8 would be amended so the commissioner would suspend a contractor's registration if the local commission recommends revocation. The commission's recommendation must be based on serious misconduct or failure of performance by the contractor.

PUBLIC PARTICIPATION IN CONTRACT ADMINISTRATION

HB 526 would give unincorporated communities the same opportunity to participate in contract administration that is already enjoyed by municipal governments throughout the state under AS 35.15.080. It requires that both contractors and state agencies to accept direct public participation in contract administration if requested. This may be accomplished by two different approaches.

The local government in either incorporated or unincorporated communities may request assumption of all or part of the department's administrative responsibilities relating to the public works project funded by the state, and located within the local government jurisdiction. Upon receipt of the request, the department shall provide for transfer to, and assumption by, the local government of the department's responsibilities relating to the project. The bill also provides for the option of cooperative administration of projects between the department and local government or between local governments. When a community requests the assumption of these administrative duties, it is with the understanding the local capabilities exist to administer the project, and the local government is aware of the legal responsibilities that go along with this. This would be a major determining factor for a community to consider when making that request.

SMALL PROCUREMENT REQUIREMENTS

Unemployment is a chronic problem in rural Alaska. One of the best long term approaches to this problem is to foster business opportunities in rural areas, thereby creating jobs. HB 526 relieves small communities (under 2,000 residents) from the competitive bid process on contracts for goods and services on small projects (under \$100,000), creating opportunities for small business in "bush" Alaska.

SUMMARY

House Bill 526 provides for increased local control in the administration and evaluation of large publicly funded capital projects. The bill would give unincorporated communities the same opportunity to participate in contract administration that is already enjoyed by municipal governments throughout the state. It expands the powers of both urban and rural local communities to protect their interests.

Those contractors who have not performed satisfactorily as determined in the provisions of this bill, would not have their certificate renewed. Project inspection would be done by both the state and by the local inspection commission.

Contractor evaluation would be done by the local inspection commission, whose members would be able to observe contractor performance on a daily basis and who will live with the final product.

In days of declining revenues, we need to look at creative ways to make sure our dollars are spent wisely and will bring the highest benefits to the state's residents. We can no longer afford to have contractors whose poor performance has resulted in shoddy construction continue to do business in the State of Alaska. We can no longer afford to have projects constructed in our communities that won't work and that create more problems than they solve due to a lack of involving those individuals with the most knowledge of what will or will not work in their communities. House Bill 526 is a beginning in trying to reform how construction is done in our communities by involving our local governments.

How HB 526 Works

What it does:

1) --HB 526 would give unincorporated villages the same opportunity to participate in contract administration that is already enjoyed by municipal governments throughout the state under AS 35.15.080.

2) --HB 526 allows both urban and rural communities the opportunity to participate in the capital projects process as an equal partner with the state agencies and contractors through the licensing process.

--It would give the both urban and rural Alaskans a better chance to participate directly in capital projects by giving them the opportunity to form local citizen's commissions which would monitor contracts in progress and evaluate contractor performance.

--Under present law, the public's only recourse for redress of grievances against contractors is through law suits. Regulation of an industry by law suit is not good business.

--The bill gives local government the option to form local inspection commissions to protect state and local interests as stated by existing laws, regulations and the terms of the contract.

--It relieves small communities (under 2000 residents) from the competitive bid process on small projects (under \$100,000) thereby creating opportunities for small businesses in the bush.

What it Doesn't Do

--HB 526 does not mandate the formation of local inspection and evaluation commissions. It gives local government the option to form local inspection and evaluation commissions if they feel it useful to do so.

--HB 526 does not leave contractors at the mercy of recommendations made by local commissions. The contractor may appeal the local evaluation to the commissioner of DC&ED. If the commissioner determines that a preponderance of evidence does not support allegations of misconduct, he may renew the registration. Contractors who perform in good faith are unlikely to ever have a problem getting reregistered.

--It will not perpetuate a system that allows contractors who don't fulfill contract terms to continue to work in Alaska. Local contractors who are incompetent will no longer enjoy the protection of an indifferent bureaucracy and will be held accountable.

--It will not create more bureaucracy. Unpaid local commissions will be based on the model of borough service area commissions, a concept that has served the public well. In the long run, it should save contractors from the proliferation of legislation, boards, commissions and police powers that have grown up in other states to regulate their activities.

HB 526

Sectional Analysis

Section #1 - AS 08.18.031 - Amended

--Amended so that commissioner may not renew contractor license without a hearing if the contractor has received a negative evaluation from a local inspection commission.

--Commissioner may renew if recommendation is not supported by a "preponderance of evidence."

Section #2 - AS 08.18.121 - Amended

--If local commission recommends revocation, commissioner shall suspend contractor's registration.

--If, after a hearing, the commissioner determines that serious misconduct or failure to perform occurred, commissioner shall revoke registration.

Section #3 - As 35.15.080(a) - Amended

--Gives unincorporated villages powers equivalent to those already granted to municipalities in this statute.

--Mandates that the commissioner must surrender authority requested by local government.

--Establishes authority of local government to form a commission to inspect projects for compliance with state and local statute and terms of contract.

--Establishes local authority to approve final documents.

--Establishes local authority to make recommendations regarding contractor license renewal and sets standards for these recommendations.

Section #10 - AS 35.15.120(2) - Amended

--Expands definition of "governing body" to include, for a village, its village council or other appropriate entity.

Section #11 - AS 35.15.120 - Amended

--Defines "village" as a contiguous rural community of 25 or more residents.

Section #12 - AS 36.30.305(a) - Amended

--Contracts for goods and services under \$100,000 in remote areas may be awarded without use of the competitive sealed bidding process.

--Existing law provides that procurements must be made with whatever competition is practicable under the circumstances.

Section #7 - As 35.15.100 - Amended

--Includes unincorporated villages in existing law.

--Existing law provides that the department is relieved of responsibility to the extent that local government assumes it, that department may provide technical assistance to the extent requested by local government and that the department will be reimbursed for services from escrow account established in AS 35.15.090.

Section #8 - AS 35.15.110(a) - Amended

--Includes unincorporated villages in existing statute.

--Existing subsection (a) gives local government right to site approval before contracts are let.

-AS 35.15.110(b) - Amended

--Gives local government right to participate with department in final approval of project and documents.

--Reflects the provisions of subsection (c), added by this bill in section #9, that local commission and control are optional, not mandatory.

Section #9 - AS 35.15.110(c) - Amended

--Complements existing statute AS 35.15.080



City of Galena

Antoski Hall • P.O. Box 149 • Galena, Alaska 99741 • Telephone (907) 656-1301

3/12/92

Rep. Georgianna Lincoln
Rm. 112 Capitol Building
P.O. Box V
Juneau, AK 99811

Dear Rep. Lincoln,

This letter is written in support of House Bill 526 which would give local governments more control over State funded capital projects in their communities. This Bill would hold contractors accountable for the work that they perform on a local level, which is in keeping with the Governors goals of increased local control.

The amount of State monies that have been squandered through poor performance by contractors, in the State of Alaska on capital projects, is sinful. Presently when a community witnesses such atrocities their options to act upon the situation are limited to letter writing to state and congressional officials. By the end of the construction season the contractor is off to another project leaving the community "holding the bag" as it were. It appears that this bill could give some teeth to local control where it needs it most; within the words that keep rising as of late, accountability and responsibility. These words go hand in hand with the "do more with less" message that is being sent out from Juneau at present.

I am also in agreement with relieving the community from the competitive bid process for small projects. It is very costly, in the Bush, to fly in three prospective bidders on a project under \$100,000K. In some cases it would cost more to get the bids than to do the project; with the increased costs in travel as of late, the deletion of this requirement will surely save the State money.

Required contractor liscencing can only help to ensure that State funds are spent by competent buisness firms and disenchant the fly by night operators. I encourage that this Bill be passed by the Legislature this session.

Sincerely,

Chris Hladick
City Manager

END

HB 526

Sectional Analysis

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--Amended so that commissioner may not renew contractor license without a hearing if the contractor has received a negative evaluation from a local inspection commission.

--Commissioner may renew if recommendation is not supported by a "preponderance of evidence."

Section #2 - AS 08.18.121 - Amended

--If local commission recommends revocation, commissioner shall suspend contractor's registration.

--If, after a hearing, the commissioner determines that serious misconduct or failure to perform occurred, commissioner shall revoke registration.

Section #3 - As 35.15.080(a) - Amended

--Gives unincorporated villages powers equivalent to those already granted to municipalities in this statute.

--Mandates that the commissioner must surrender authority requested by local government.

Section #4 - AS 35.15.080(c) - Amended

--Includes unincorporated villages in existing local government authority for the purposes of this statute.

--Provides for cooperative administration of project between department and local government or between local governments.

--Limits commissioner's power to resolving jurisdictional disputes between local governments.

--Provides for appeal of commissioner's decision by judicial review (superior court).

Section #5 - AS 35.15.080(d) - Amended

--Includes unincorporated villages with municipalities and REAA's in existing law governing public works.

--Statute's provisions supercede conflicting local ordinances.

Section #6 - As 35.15.090 - Amended

--Includes unincorporated villages in existing statute.

--Existing statute provides escrow account for local government to draw on for expenses incurred while administering contract.

Section #7 - As 35.15.100 - Amended

--Includes unincorporated villages in existing law.

--Existing law provides that the department is relieved of responsibility to the extent that local government assumes it, that department may provide technical assistance to the extent requested by local government and that the department will be reimbursed for services from escrow account established in AS 35.15.090.

Section #8 - AS 35.15.110(a) - Amended

--Includes unincorporated villages in existing statute.

--Existing subsection (a) gives local government right to site approval before contracts are let.

-AS 35.15.110(b) - Amended

--Gives local government right to participate with department in final approval of project and documents.

--Reflects the provisions of subsection (c), added by this bill in section #9, that local commission and control are optional, not mandatory.

Section #9 - AS 35.15.110(c) - Amended

--Complements existing statute AS 35.15.080

--Establishes authority of local government to form a commission to inspect projects for compliance with state and local statute and terms of contract.

--Establishes local authority to approve final documents.

--Establishes local authority to make recommendations regarding contractor license renewal and sets standards for these recommendations.

Section #10 - AS 35.15.120(2) - Amended

--Expands definition of "governing body" to include, for a village, its village council or other appropriate entity.

Section #11 - AS 35.15.120 - Amended

--Defines "village" as a contiguous rural community of 25 or more residents.

Section #12 - AS 36.30.305(a) - Amended

--Contracts for goods and services under \$100,000 in remote areas may be awarded without use of the competitive sealed bidding process.

--Existing law provides that procurements must be made with whatever competition is practicable under the circumstances.

Section # 13 - AS 36.30.305(d)

--Sole source procurements may not be made under under this section except for communities of less than 2,000 residents.

Section #14 - AS 36.30.320(c) - Amended

--Commissioner shall exempt small procurements in rural areas from competition requirements.

Section #15 - AS 35.15.080(b) - Repealed

--Repeals commissioner's authority to deny local government's request for full or shared control because he deems it not "practicable" or "in the best interests of the state."

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BULL NO. HB 526

Revision Date: _____

Department Affected: Administration

Title: An Act relating to certain public construction contracts.

BRU: General Services

Component: Purchasing

Sponsor: Lincoln

Requestor: _____

COMPONENT SERIAL NO.

6	0		
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
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
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

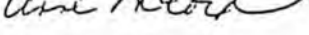
POSITIONS:

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

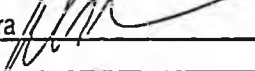
Estimate of current year impact: None.

ANALYSIS: (Attach a separate page if necessary.)

This bill revises sections of the procurement code which would restrict limited competition procurements to \$100,000 or less, and diminish competition for small procurements in rural areas. It has no fiscal impact on the activities of the division.

Prepared by: Anne McCord, Director 
Division: General Services

Phone: 465-2250
Date: February 28, 1992

Approved by Commissioner: Nancy Bear Usura 
Agency: Administration

Date: 3/13/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

1992 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Commerce & Economic Development
 Title: Relating to certain public construction BRJ: Occupational Licensing
contracts and contractors and to certain procurements. Component: Administration
 Sponsor: Rep. Lincoln
 Requestor: House C&RA COMPONENT SERIAL NO.

0	3	5	6
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	81.3	81.3	81.3	81.3	81.3	81.3
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	5.0	5.0	5.0	5.0	5.0	5.0
SUPPLIES	2.0	2.0	2.0	2.0	2.0	2.0
EQUIPMENT	11.6	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	99.9	88.3	88.3	88.3	88.3	88.3

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	99.9	88.3	88.3	88.3	88.3	88.3
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	99.9	88.3	88.3	88.3	88.3	88.3

POSITIONS:

FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
PART-TIME	1.0	1.0	1.0	1.0	1.0	1.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

HB 526 places new conditions on the renewal or issuance of a construction contractor's certificate of registration. Only Sections 1 and 2 directly affect the construction contractor registration program. (Continued on the attached)

Prepared By: Jennifer Strickler Phone: 465-2144
 Division: Occupational Licensing Date: 03/12/92
 Approved by Commissioner: Glenn A. Olds
 Agency: Commerce & Economic Development Date: 3/13/92

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Continuation of Fiscal Note Analysis - HB 526

The bill creates an additional requirement upon the issuance or renewal of a construction contractor's certificate of registration by requiring that consideration be given to recommendations of local commissions from municipalities and villages in which the work was performed. The bill also states that a registration may not be renewed if recommendations are against the renewal unless, after a hearing, evidence determines otherwise.

Presently there are over 3,349 construction contractors registered with the State. Although the expiration date of the certificate of registration is slightly different for the individual categories of construction contractor registrations (General, Specialty, Residential, and Mechanical), the added requirement in the bill will require additional staff to process and evaluate additional paperwork and to coordinate the need for any hearings when needed. Since hearings must be conducted in accordance with the Administrative Procedure Act which provide for due process, and which must occur before a license can be issued or renewed, additional staff will be necessary to administer the provisions of the bill in a timely manner. Therefore, this fiscal note is based on the following:

Personal Services: \$ 81.3

- 1 - Licensing Examiner I, Range 12A
GGU, 12 months (\$40.1)
- 1- Hearing Examiner, Range 24A
XE, 6 months (\$41.2)

Contractual Services: \$ 5.0

This funding will provide for public notices of the new requirement, printing costs, and communication costs involved with providing notices to all contractors.

Supplies: \$ 2.0

This funding provides for daily operating supplies (paper, desk supplies, etc.).

Equipment: (One-time costs) \$ 11.6

This funding will provide equipment for the new positions requested, including furniture.

TOTAL: \$ 99.9

Continuation of Fiscal Note Analysis - HB 526

Revenue:

The provisions of the bill are additional requirements for issuance or renewal of a certificate of registration and is not anticipated to generate revenue. Therefore, the costs associated with this bill must be supported with general funds.



ASSOCIATED GENERAL CONTRACTORS of A

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To	Bob Ward	From
Co.	AGC	Co.
Dept.		Phone #
Fax #	586-1649	Fax #
		581-5354

31. March 1992

To
 House of Representatives
 Committee on Community and Regional Affairs
 Juneau, Ak.

Subject: House Bill No. 526
 "An Act relating to certain construction contracts and
 contractors and to certain procurements".

This letter will formalize some of the testimony given by our representative
 Mr. Robert Ward to your subcommittee last week.

Although we recognize the good intentions by the prime sponsor to solve
 some problems in rural Alaska, we think that the aim of this bill is in
 the wrong direction, that it will solve few problem cases, and that it
 adds unnecessary regulations, procedures and costs to the process. I have
 been involved for over 30 years in construction projects in rural Alaska
 and am familiar with about all the aspects of construction contracting
 and the desire and necessity of local residents to have a major say in
 these matters. I am supportive of efforts to resolve some of the experienced
 problems.

I am unable to support the bill in its present form. Some of the points of
 concern are as follows:

- 1) "VILLAGES" as defined in the bill have been a legal problem in the State,
 because of the legal relationship between the State of Alaska
 and local Government as it is recognized by the State. I think some progress
 has been made, however, no clear legal determination has been made and some
 of the issues of "None-municipalities" is still in the courts. Regardless,
 the bill freely intermixes municipalities, village and REAAs and clarification
 is needed who has the leadrole in cases where two or three such bodies exist
 at a given location (Sect. 10)
- 2) "LOCAL COMMISSION": It is very doubtful that in any given village or small
 community commission members could be found who possess the knowledge and
 ability to provide the functions as detailed in Sect. 9 (AS 35.15.110) of the
 bill. Construction contracts in their present form are very complex and dispute
 resolve processes are very involved, expensive and controversial as experienced
 at the present in public works contracting. DoT/PF and the Attorney Generals
 office who have extensive expertise in these matters will concur with my state-
 ment. It is inconceivable to me that such a body would conduct inspections,

P. 2, Springer to House DCRA 3/31/92

assure contract compliance, approve documents and recommends renewal of contracting licenses". A review of the State job descriptions for project personnel and their qualifications in use, would show that only in rarest of circumstances are such people available at local levels. It is unrealistic to think that such involved and complex work could be done through unpaid members.

3) SECTION 9 states, that the commission shall

"consider the quality and timeliness of the contractor's performance under the contract, the responsiveness of the contractor to matters of public concern in the municipality or village that affect or are affected by the performance of the contract, and the contractor's ability to assist in the informal, peaceful, fair resolution of disputes that relate to the public construction project or to the presence in the municipality or village of persons engaged in the project."

Most of these items are impossible to formulate in legally binding terms as part of a construction contract. It goes way beyond the mandate of good public policy to safeguard the interests of the State and local residents to such an extent. Such matters need to be incorporated in the planning- and design-stage. Only tasks and activities which are reasonable and which can be clearly legally defined can be incorporated in specification type contracts, which are based on competitive bidding procedures in accordance with the State procurement code.

4) COMMISSIONER OF COMMERCE; his vital role is stated in Sections 1, 2, 4 etc.

Revocation or non-renewal of a license is a serious matter, since it effects the livelihood of an individual or group. Although the Division of Occupational Licensing in the Dept. of Commerce controls the licensing of contractors, this Department is ill equipped to deal with the administrative and legal aspects of contract compliance. This needs to involve the Attorney General's office and would be better handled by the DoT/PF or DoAdmin. since they are in that business already. We should not think for one minute that the described processes are simple, fast or cheap.

5) SECTIONS 3, 4 and 5 let the local entity (ies) assume responsibility for planning, design and construction. "CAPABILITY" as outlined in Sec. 3 is an interesting but troublesome criteria. Judging from the track-record of the State's pass-through grants programs real problems can be expected, because local- and State politics are usually involved to a high degree and the lack of qualified local residents is rarely acknowledged. Phases of work are mostly contracted to professional consultants groups and here again often with problematic results considering the cost/benefit ratios. State agencies are better equipped to work through the professional services contracts procedures. We support use of private sector work to the highest degree possible.

6) LIMITATION; there needs to be some limitation as to project types, size and complexity, if local people assume control.

7) In most cases the villages have access to the processes through the prescribed public hearing processes, EIS review, Coastal Management compliance, Division Governmental Coordination permitting etc. These procedures are mandatory under Federal and State laws. In addition the State procurement code allows debarment of contractors with a bad record by the administering agency.

P. 3 Springer to House DCRA 3/31/92

8) The process as envisioned, lends itself to misuse of authority and harassment of any contractor who does not do whatever the "commission" deems warranted. If such is the case, and the contractor ultimately wins the case, there is no way to recover costs or collect a liability assignment, because many of the communities have no tangible assets. Appropriate bonding or liability insurance for such local entities would have to be part of the bill.

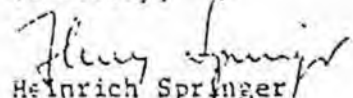
9) If a license would get revoked, it is very easy for a contractor to create a new business with a new name, or form a joint venture (often with a minority enterprise partner), or form a minority enterprise. The present law has no mechanism to prevent this; as a matter of fact it is the preferred method of businesses with shady methods and poor financial record.

10) Under present law and regulations, contractors can be required to PRE-QUALIFY in the pre-construction period of a construction contract. There are also State BONDING - and INSURANCE requirements to obtain a license. There are requirements for BID BONDING AND PERFORMANCE BONDING. There are safeguards in the State procurement code. There are innumerable references in the standard contracts for involvement by various enforcement agencies to assure contract compliance (Safety, Labor, Environmental etc) by contractors. The Local Service Roads and Trails (LSRT) statutes provide for an effective process for State- and local project execution. In addition anyone has access to the legal system through civil court procedures. These are existing and effective safeguards to prevent abuse and assure compliance and performance if they are used correctly.

I realize that in some cases contractors may not have performed as expected. In most such cases it appears that either the contract provisions were insufficient, or that the State's project administration did poorly. The bonding requirements assure that a project is built in compliance with plans and specifications and that the requirements are fulfilled, even in cases of failure by a contractor.

I would be glad to work with you on some other ways to assure sufficient local participation in rural areas, such as State qualifications for contractors, more binding formal pre-construction processes etc.

Sincerely,


Heinrich Springer
Exec. Director

MEMORANDUM

TO: JERRY
FROM: NANCY
RE: TODAY'S MEETING 3/16/92

HB 384 - Current law limits administrative costs of day care assistance to 10%; this bill would increase it to 15%. DCRA fiscal note reflects that the 5% increase in administrative costs will remove \$570,000 from the program and eliminate funding for 160 children if new funds are not received for the program to cover the increase. The department supports the bill because it believes the increased administrative funding will encourage more municipalities to participate. I also note that DCRA proposes to reduce day care assistance by \$884.7 under their budget reduction scenario.

HB 526 - Rep. Lincoln is meeting this morning with Commerce and DOTPF to try to work out some issues with the bill. DOTPF apparently has problems with the bill; Commerce has submitted a \$99.9 fiscal note (none received as yet from DOTPF). This bill allows communities to form local citizen's commissions to monitor state construction contracts in progress and evaluate performance. Commerce would be required to base decisions on the renewal of a contractor's license on the recommendation of these local commissions. Unincorporated communities would be given the right to participate in contract administration; they may assume all or part of the public works administration, or jointly administer with the department (DOTPF). Small communities (under 2,000) would be relieved from the competitive bid process for contracts for goods or services on projects under \$100,000.

HB 476 - We have a new draft CS. I have incorporated amendments which include: the fiscal note will be requested at the second committee of referral; will reflect only costs and not savings; will be done by C&RA in cooperation with any affected state agencies; will be distributed in accordance with AS 24.08.035(d); will include information required in AS 24.08.035(c) (1), (2), (6) and (7) - (9); and will sunset in five years.

I did not include two of the amendments requested by the AML. One was to define "mandate", a term which does not appear in the bill; the other one provided that no legislation or agency rule would be binding on local governments if a fiscal note form was not attached. The legislature cannot pass a bill which binds them to any future action; also, if you have a bill with only one committee referral, there would be no requirement for a fiscal note to be prepared. I was also confused by the term "agency rule"; I would assume that includes policy and regulation, which goes beyond the scope of this bill.

CS FOR HOUSE BILL NO. 526 ()
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE LINCOLN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to certain public construction contracts and contractors and to certain
2 procurements."

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

4 * Section 1. AS 08.18.031 is amended by adding a new subsection to read:

5 (c) In determining whether to issue or renew a certificate of registration of a contractor
6 who has held a contract for work on a public construction contract under AS 35.15, the
7 commissioner shall consider the recommendations of local commissions established under
8 AS 35.15.110(c) by the municipalities and villages in which the contractor performed contracting
9 work. The commissioner may not renew the certificate of a contractor who has received a
10 recommendation against renewal under AS 35.15.110(c) unless, after a hearing, the commissioner
11 determines that the recommendation is not supported by a preponderance of the evidence.

12 * Sec. 2. AS 08.18.121 is amended by adding a new subsection to read:

13 (i) If a local commission reviewing the performance of a contractor on a public
14 construction contract under AS 35.15 recommends that the contractor's registration be revoked,

1 the commissioner shall consider the evidence and may suspend the contractor's registration. If,
2 after a hearing, the commissioner determines that the recommendation for revocation is based on
3 serious misconduct or failure of performance by the contractor under AS 35.15.110(c), the
4 commissioner shall revoke the registration of the contractor.

5 * Sec. 3. AS 35.15.080(a) is amended to read:

6 (a) A municipality or village may, by resolution of its governing body, request the
7 assumption of all or part of the department's responsibilities relating to the planning, design, and
8 construction of a public works project of the state that is to be located within the boundaries of
9 the municipality or in or adjacent to a village and that would otherwise be constructed in the
10 manner provided in AS 35.15.010. After receipt of the request, the department shall [MAY]
11 provide by agreement for transfer to and assumption by the municipality or village of the
12 department's responsibilities relating to the project, unless the commissioner determines that
13 [ASSUMPTION OF RESPONSIBILITIES BY] the municipality or village is not capable of
14 assuming the responsibilities [PRACTICABLE OR NOT IN THE BEST INTERESTS OF THE
15 STATE].

16 * Sec. 4. AS 35.15.080(b) is amended to read:

17 (b) If the commissioner of transportation and public facilities determines that assumption
18 of responsibilities by a municipality or village under (a) of this section is not within the
19 capability of the municipality or village [PRACTICABLE OR NOT IN THE BEST
20 INTERESTS OF THE STATE], the commissioner shall notify the governing body of the
21 municipality or village of the finding and specify reasons for it. If the governing body requests
22 reconsideration of the decision, the commissioner shall hold a hearing in the municipality or
23 village within 30 days following mailing of the request. Following the hearing, the commissioner
24 may affirm, modify, or reverse the initial decision and shall specify in writing the reasons. The
25 decision of the commissioner may be reviewed by the superior court.

26 * Sec. 5. AS 35.15.080(c) is amended to read:

27 (c) A municipality or village may request joint assumption of responsibilities with the
28 department relating to the planning, design, and construction of a public works project. Two or
29 more municipalities or villages may by agreement provide for cooperative assumption of
30 responsibilities relating to the planning, design, and construction of a public works project. If
31 two or more municipalities or villages request assumption of responsibilities for a project and

1 meet: the standard of capability [PRACTICABILITY] set out in (a) of this section, the
2 commissioner shall determine which municipality or village is best able to direct planning,
3 design, and construction of the project and enter into an agreement with that municipality or
4 village or provide for joint or cooperative administration, as the parties may agree or the
5 commissioner may determine. Decisions of the commissioner under this subsection are subject
6 to review under (b) of this section [FINAL].

7 * Sec. 6. AS 35.15.080(d) is amended to read:

8 (d) Provisions of this title governing planning, design, and construction of public works
9 by the department, and regulations adopted under the provisions, govern the administration of
10 projects assumed by a municipality, village, or regional educational attendance area under this
11 section. For that purpose, the provisions supersede any conflicting provisions of ordinance or
12 charter of a municipality.

13 * Sec. 7. AS 35.15.090 is amended to read:

14 Sec. 35.15.090. USE OF APPROPRIATED FUNDS. Upon execution of an agreement
15 under AS 35.15.080(a), state funds appropriated for a public works project that is the subject of
16 the agreement shall be transferred to a special account in the state treasury. A municipality or
17 village administering the project under the agreement may draw on the account for costs of the
18 project, under fiscal control of the department. If an agreement provides for joint or cooperative
19 administration of the project, payment of costs shall be made to the party incurring the costs.

20 * Sec. 8. AS 35.15.100 is amended to read:

21 Sec. 35.15.100. RESPONSIBILITY OF DEPARTMENT. When a municipality, village,
22 or regional educational attendance area has assumed responsibility for a public works project
23 under AS 35.15.080 - 35.15.120, the department is relieved of responsibility to the extent it is
24 assumed by the municipality, village, or regional educational attendance area. The department
25 may provide technical assistance on the responsibility assumed if requested to do so by the
26 municipality, village, or area and shall be reasonably compensated for that assistance from the
27 account established under AS 35.15.090.

28 * Sec. 9. AS 35.15.110 is amended to read:

29 Sec. 35.15.110. TITLE TO SITE AND COMPLETION OF PROJECT. (a) Before
30 advertisement for bids or construction contract negotiations, the department shall approve both
31 the project site and the land interest in the site, except that, if the project involves construction

1 of an educational facility, title or sufficient interest determined acceptable by the department to
2 an approved site for a school building shall be vested in the municipality, village, the regional
3 educational attendance area, or the state before advertisement for bids or initiation of construction
4 contract negotiations.

5 (b) Responsibility for maintenance of the project shall be established in the original
6 contract agreement. The department and the local commission, if one has been established
7 under (c) of this section, shall participate in the final inspection of the project and approve of
8 the final documents on the project.

9 * Sec. 10. AS 35.15.110 is amended by adding a new subsection to read:

10 (c) A municipality or village that assumes sole or shared responsibility for a public works
11 project of the state under this chapter may, by ordinance of the municipality or formal action of
12 the village council, establish a local commission to conduct inspections of the project for
13 compliance with the terms of the contract and with state and local law, approve the final
14 documents, and make recommendations to the state under AS 08.18 concerning license renewals
15 and license revocations of contractors who worked on the project. In making recommendations
16 concerning license renewal or revocation, the local commission shall consider the quality and
17 timeliness of the contractor's performance under the contract, the responsiveness of the contractor
18 to matters of public concern in the municipality or village that affect or are affected by the
19 performance of the contract, and the contractor's ability to assist in the informal, peaceful, fair
20 resolution of disputes that relate to the public construction project or to the presence in the
21 municipality or village of persons engaged in the project. The recommendations of the local
22 commission must be based on substantial evidence.

23 * Sec. 11. AS 35.15.120(2) is amended to read:

24 (2) "governing body" means, in the case of a
25 (A) municipality, its assembly or council;
26 (B) [, AND, IN THE CASE OF A] regional educational attendance area,
27 its regional school board; and
28 (C) village, its village council or other appropriate entity.

29 * Sec. 12. AS 35.15.120 is amended by adding a new paragraph to read:

30 (3) "village" means an incorporated or unincorporated contiguous rural community
31 of at least 25 residents.

House Bill 526

House C&RA Committee
Wednesday, April 1
1:30 p.m.

COMMENTS

An Act relating to certain public construction contracts and to certain procurements

**Subcommittee meeting was held March 27

**Between the first full C&RA Committee meeting & the subcommittee meeting, my staff has been working with state agencies to address concerns they had with the bill that were technical in nature.

**We feel these concerns have been satisfactorily addressed and are reflected in the proposed committee substitute you have before you

**I received a letter from the AGC yesterday, and my staff met with their representative to discuss their concerns. Apparently they feel more comfortable in bringing their concerns before the full committee today.

**I want to stress again, today, the intent of this bill

**HB 526 will provide all local governments in both incorporated and unincorporated communities the opportunity to participate in the administration, monitoring and evaluation of state agency construction projects in their communities

**Local governments will have a voice in evaluating the performance of the contractors on construction projects in their communities. The local residents are the ones who must "live" with the contractor while the project is being built. The local residents are the ones who will live with the project long after the construction has been completed

**We are working to create a partnership between communities, state agencies and contractors, one that in the long run will benefit all concerned parties

**It is assumed by those who oppose this bill that HB 526 will lead to a situation where every village will administer multi-million state agency contracts

HB 526 would allow local commissions to evaluate contractors based on their performance and based on the final product. There is a fear these evaluations would be frivolous and the Department of Commerce would be forced to act on them. The Department will not act on frivolous complaints and hearsay. They would have a legal obligation to look at evidence before revoking or suspending any contractor's certificate.

**HB 526 was introduced because communities have had problems with contractors in the past. However, given the legal binding relationship that exists between the state agency and the contractor, but does not include the local community, they have had little say in how business is done within their community boundaries and no say as to whether an irreputable contractor gets to continue doing business in a neighboring village.

Any changes will bring about some degree of resistance.

The contractors feel this bill is aimed to cause them harm

We are looking at more local control for local governments on state agency projects conducted within local communities

We are looking at putting out of business those contractors who have left communities with shoddy workmanship, have not lived up to the terms of their contracts and have performed in an irresponsible manner under state and local laws.

I feel strongly that we work toward building a partnership between state agencies, local governments and contractors.

Those contractors who have conducted their business in a responsible manner have nothing to fear from this legislation

**Local governments must be determined "capable" to administer any such project, and past track records on small construction projects they have administered on their own will be considered.

**Since a local government will assume legal responsibility for the project if they opt to undertake administration and are found capable, this is not something that will be considered lightly by the department

**It has also been assumed the local commissions will put contractors out of business on a mere whim

**The intent of this bill is to involve local commissions in these projects from the beginning, including the planning, site location, contract stipulations, etc.

We feel early involvement in the process by those who will benefit from the project will address concerns before any project is completed and before any evaluation is done of the contractor

In order for the commissioner to consider non-renewal of a certificate to do business, the local commission must bring forth information constituting a "preponderance of evidence". You can rest assured the commissioner will not take a simple statement from the local commission with no back-up evidence and automatically not renew the certificate. This is an "alarmist" concern and one that is not warranted.

**Concern has been expressed about the ability of local commissions to inspect the projects.

I would hope the Committee would not automatically assume the capability to inspect projects does not exist in our villages.

The committee should also note that not only would the local commission inspect the final project and sign off, but the department would also do that

**Contractors will have problems with items the communities may want to include in the contract. However, if these stipulations make good business sense, protect the interests of the state and protect the common good of the people in the communities, how can we argue against this?

Safeguarding the interests of the state and the local residents to the greatest extent possible is good public policy

**We agree the revocation or non-renewal of a license is a serious matter. We also agree poor quality work and irresponsible actions by contractors are serious.