

HB

526

ALASKA STATE LEGISLATURE

Representative Georgianna Lincoln



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

Budget Subcommittees
Health and Social Services
Revenue

P.O. Box V
Juneau, Alaska 99811

Phone: (907) 465-3732
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Alatna
Allakaket
Aniak
Anvik
Arctic Village
Beaver
Bettles
Birch Creek
Chalkyitsik
Chuathbaluk
Crooked Creek
Evansville
Fort Yukon
Galena
Grayling
Holy Cross
Hughes
Huslia
Kalskag
Kaltag
Koyukuk
Lake Minchumina
Lime Village
Lower Kalskag
Manley Hot Springs
Marshall
McGrath
Minto
Mountain Village
Nikolai
Nulato
Pilot Station
Pitkas Point
Rampart
Red Devil
Ruby
Russian Mission
Shageluk
Sleetmute
St. Mary's
Stevens Village
Stony River
Taketna
Tanana
Telida
Tuluksat
Tyonek
Venetie
Wiseman

SPONSOR SUMMARY FOR CS HB 526 (CRA)

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

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 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.

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.

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 the local commission. The formation of these commissions by local government is optional. It is up to the community to determine if they wish to participate in this process. Additionally, it is not up to the commissioner to solicit the input of the commissions; it is up to the local commissions to provide their evaluation to the commissioner.

The recommendation by the local commission against renewal of a contractor's registration 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 and take this into a hearing. If after a hearing it is determined there is not a preponderance of evidence supporting the recommendation, 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 supported by the evidence.

PUBLIC PARTICIPATION IN CONTRACT ADMINISTRATION

HB 526 would give unincorporated communities the same opportunity to participate in the administration of state agency construction projects that is already enjoyed by municipal governments throughout the state under AS 35.15.080.

The local governments in 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 that 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 must have demonstrated technical and financial capabilities to administer portions or all of the project.

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.

Sectional Analysis CS HB 526 (CRA)

Section #1 - AS 08.18.031 - Amended, new subsection (c)

--The Commissioner of DC&ED shall consider the evaluations of contractor performance provided by local commissions. If the local entity recommends revocation of registration, the commissioner may not renew it unless the recommendation is not supported by a preponderance of evidence.

Section #2 - AS 08.18.121 - Amended, new subsection (i)

--If local commission recommends revocation, commissioner shall consider the evidence and may suspend a contractor's registration. If, after a hearing, the commissioner determines that serious misconduct or failure to perform occurred, commissioner shall revoke the contractor's registration.

Section #3 - As 35.15.080(a) - Amended

--Gives unincorporated communities powers to assume all or part of the department's responsibilities for administration of capital projects which are equivalent to those already granted to municipalities in this statute. Mandates that the commissioner must surrender authority requested by local government if that local government is capable of assuming those responsibilities.

Section #4 - AS 35.15.080(b) - Amended

-- Provides local government with a process to appeal the commissioner's decision.

Section #5 - AS 35.15.080(c) - Amended

--Includes unincorporated villages in existing law regarding public project administration. Gives the commissioner the power to resolve jurisdictional disputes between local governments. Provides for cooperative administration of project between the department and local government.

Section #6 - As 35.15.080(d) - Amended

--Includes unincorporated villages in existing statute. Statute's provisions supercede conflicting local ordinances.

Section #7 - AS 35.15.090 - Amended

--Includes unincorporated villages in existing law providing an escrow account for local government to draw on for expenses incurred while administering the contract.

Section #8 - AS 35.15.100 - Amended

--Includes unincorporated villages in existing statute which relieves the department of responsibility to the extent that local government assumes it. The department may provide technical assistance to the extent requested by local government and will be reimbursed for services from the escrow account.

Section #9 - AS 35.15.110 - Amended

--Includes unincorporated communities in existing statute regarding site approval and final inspection. Reflects the provisions added by HB 526, that local commissions are optional.

Section #10 - AS 35.15.110 - Amended

--Establishes authority of local government to form a local commission to inspect projects for compliance with state and local statutes and contract terms. Establishes authority for local commissions to make recommendations regarding contractor license renewal.

Section #11 - AS 35.15.120(2) - Amended

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

Section #12 - AS 35.15.120 - Amended

--Defines "village" as an incorporated or unincorporated contiguous rural community of 25 or more residents.

How HB 526 Works

What it does:

--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.

--HB 526 allows both urban and rural communities the opportunity to participate in the capital projects process as equal partners with the state agencies and contractors.

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

--Under present law, the public's only recourse for redress of grievances against contractors is by law suit. 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.

What HB 526 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 the evidence does not support the 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 are incompetent or don't perform in good faith, to continue to work in Alaska.

--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. The local commissions will be responsible for providing evidence of their allegations to DC&ED.

--In the long run, HB 526 will save contractors from the proliferation of legislation, boards, commissions and police powers that have grown up in other states to regulate their activities.

(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): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact C&ED 4/1/92

[] fiscal note(s) _____

[] zero fiscal note _____

[] zero fiscal note(s) _____

SIGNING <u>DO PASS</u>	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
		<i>[Signature]</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>Beth Davis</i>	<input checked="" type="checkbox"/>	<i>Mail Phillips</i>		<input checked="" type="checkbox"/>	
<i>Richard [Signature]</i>	*				

[Signature]

COMMITTEE SIGNATURE

1992 LEGISLATIVE SESSION

Revision Date: 04/01/92 Department Affected: Commerce & Economic Development
 Title: Relating to certain public construction contracts and contractors and to certain procurements. BRU: Occupational Licensing
 Component: Administration
 Sponsor: Rep. Lincoln
 Requestor: House C&RA COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	38.3	38.3	38.3	38.3	38.3	38.3
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	56.9	45.3	45.3	45.3	45.3	45.3

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	56.9	45.3	45.3	45.3	45.3	45.3
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	56.9	45.3	45.3	45.3	45.3	45.3

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	2.0	2.0	2.0	2.0	2.0	2.0
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: 04/01/92
 Approved by Commissioner: Glenn A. Olds for [Signature] Cost. Comm.
 Agency: Commerce & Economic Development Date: 4-1-92

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 new requirement in the bill will require additional staff to process and evaluate the recommendations 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, the hearings must be held before a license can be issued or renewed. The additional staff will be necessary to administer the provisions of the bill in a timely manner. This fiscal note is therefore based on the following:

Personal Services: **\$ 38.3**

- 1 - Licensing Examiner I, Range 12A
GGU, 3 months (\$10.0)
- 1 - Hearing Examiner, Range 24A
XE, 4 months (\$28.3)

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: **\$ 56.9**

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.



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 Hiadick
City Manager

END

P.O. BOX 55109
NORTH POLE, ALASKA
99705



APR -2 REC'D

TOP OF THE WORLD
PHONE: 907-488-2281
AT YOUR SERVICE

March 31, 1992

Representative Georgianna Lincoln
Alaska House of Representatives
State Capital
Juneau, Alaska 99801-1182


Re: HB 526

Dear Representative Lincoln:

This correspondence is in support of HB 526. I believe this Bill would allow the smaller local governments a better ability to control contracts within its' boundaries. This would also put much more of the planning and designing of projects in the hands of the people who have a better understanding of the effects on the local citizens. It is my opinion that the more control that is returned to the local community, the better control the citizens will have on various projects that may effect them.

Please feel free to contact me if I can be of further assistance.

Sincerely,


Lute Cunningham
Mayor, City of North Pole

LC/KJ

City of Soldotna

• 177 North Birch • Soldotna, Alaska 99669 • Phone: 262-9107

Soldotna



March 29, 1992

Jon Holland
Office of Representative Georgianna Lincoln
PO Box V
Juneau, Alaska 99811

APR -2 REC'D

Re: HB 526, Local Control of Public Contracts

Dear Mr. Holland:

Thank you for sending another copy of this bill (as it has been revised by a work draft dated March 26) to me for review and comment.

I can now personally support this bill as it has been revised.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Underkofler".

Richard Underkofler
City Manager



TANANA CHIEFS CONFERENCE, INC.

122 FIRST AVENUE
FAIRBANKS, ALASKA 99701-4897
PHONE (907) 452-8251 FAX (907) 451-8936

MAR 20 REC'D

Representative Georgianna Lincoln
P.O. Box V
State Capital
Juneau, Alaska 99801

March 13, 1992

Subject; HB 526, Local Control of Public Contracts

Dear Representative Lincoln,

On behalf of the Tanana Chiefs Conference, Inc., I would like to extend my support for House Bill 526, relating to the local control of public contracts.

Providing small communities or unincorporated villages an opportunity to choose the participation level they would like to play in contract administration up to an equal basis with other municipal governments, is only fair.

Choosing, as compared to mandating, the participation level is appropriate wording for this particular legislation. Reason being, that some communities or villages may not have the desire or capabilities to be as involved as other state agencies who currently administer capital project funding and/or handle contract licensing. Then again, other villages may have wanted to partake in this process previously, but up to now have not had any alternatives.

Without question, the residents of a small community or village should have specific decision making powers over a contractor's progress and evaluation of their own local projects. After all, they are the ones who will have to live with the results, not the contractor.

Currently, any significant grievance filed against a contractor by the public would end up in court to be resolved. Law suits to resolve grievances between these parties can be costly, unproductive, time consuming and can result in tarnished business reputations for both parties. A local commission's oversight during a project's construction may be able to catch certain problems before they escalate to costly situations, thereby avoiding possible litigation.

Another favorable portion of this bill, includes relieving a small community or village¹ from the bidding process of small projects². This will create business opportunities for those rural businesses who were underbid for these same type of projects previously by larger urban businesses.

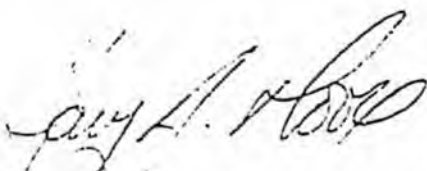
This would appear to be damaging or taking away from urban based businesses. However, there is more which should be considered first. The boosting or creating of businesses in rural Alaska will result in a better economy for our most economically deprived people, whom reside in the bush areas and of which make up roughly half the population in the state. Financial growth for rural residents will directly benefit urban businesses by providing additional customers who prefer purchasing goods from urban distributors.

As each year passes, it becomes more difficult to live a truly subsistence lifestyle in rural Alaska. This economic hardship has created a vacuum, whereby rural residents are now flocking to urban areas to compete for fewer jobs against long term urban dwellers.

Economic development in our small communities and villages has been slow and repressed at best. This legislation would open a new door by assisting those communities with additional chances for self-sufficiency and less dependance on state funding.

I urge your continued pursuit for passage of House Bill 526.

Sincerely,



Gary A. Moore
Economic Development Specialist

Subregional Directors
Ed Rutledge, Planning & Development
Robert Silas, Subregional Liaison Officer

1 Small communities or villages with a population under 2000

2 Projects under \$100,000



ASSOCIATED GENERAL CONTRACTORS of /

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P.O. BOX 249421 • ANCHORAGE, ALASKA 99524-0421
TELEPHONE (907) 561-5354 • FAX (907) 562-6118

Post-It™ brand fax transmittal memo 7671		# of pages
To	Bob Ward	From
Co.	AGC	Co.
Dept.		Phone #
Fax #	586-1649	Fax #

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, villages 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 statement. It is inconceivable to me that such a body would "conduct inspections,

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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.

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.

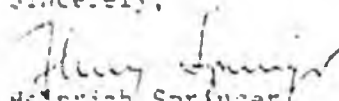
9) If a license would get revoked, it is very easy for a contractor to create a new business with a new name, or form a joint venture (often with a minority enterprize partner), or form a minority enterprize. The present law has no mechanism to prevent this; as a matter of fact it is the preferred method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

PROPOSED NEW CS FOR HB 526

SUMMARY OF CHANGES FROM CS HB 526 (CRA)

SECTION 1: AS 08.18.031 - Amended, new subsection (c)

--The Commissioner of DC&ED shall consider the evaluations of contractor performance provided by local commissions. If the local entity recommends revocation of registration, the commissioner may not renew it unless the recommendation is not supported by a preponderance of evidence.

SECTION 1 AMENDED:

--The Commissioner of DC&ED shall consider the evaluations of contractor performance provided by local commissions.

Language contained in Section 2 amended addresses the renewal of the contractor's certificate.

SECTION 2: AS 08.18.121 - Amended, new subsection (i)

--If local commission recommends revocation, commissioner shall consider the evidence and may suspend a contractor's registration. If, after a hearing, the commissioner determines that serious misconduct or failure to perform occurred, commissioner shall revoke the contractor's registration.

SECTION 2 AMENDED:

--If local commission recommends the contractor's registration be suspended or revoked, or renewal denied, the department shall consider the evidence. After a hearing under the Administrative Procedures Act, the department shall suspend, revoke or refuse renewal of the contractor's registration if the department finds the contractor has (1) knowingly violated this chapter or a lawful order or departmental regulation; (2) is incompetent or has engaged in fraudulent practices; or (3) has engaged in serious misconduct or failure of performance under AS 35.15.

This amendment was made in response to due process concerns and the need for contractors to know what the local commissions would be reviewing in terms of their performance when making recommendations to the department.

SECTION 3: - AS 35.15.080(a) - Amended

--Gives unincorporated communities powers to assume all or part of the department's responsibilities for administration of capital projects which are equivalent to those already granted to

municipalities in this statute. Mandates that the commissioner must surrender authority requested by local government if that local government is capable of assuming those responsibilities.

NO CHANGE

SECTION 4: AS 35.15.080(b) - Amended

--Provides local government with a process to appeal the commissioner's decision.

SECTION 4 AMENDED:

--Provides local government with a process to appeal the commissioner's decision in accordance with the Alaska Rules of Appellate Procedure.

Technical change requested by DOT/PF.

SECTION 5: AS 35.15.080(c) - Amended

--Includes unincorporated villages in existing law regarding public project administration. Gives the commissioner the power to resolve jurisdictional disputes between local governments. Provides for cooperative administration of project between the department and local government.

NO CHANGE

SECTION 6: AS 35.15.080(d) - Amended

--Includes unincorporated villages in existing statute. Statute's provisions supercede conflicting local ordinances.

NO CHANGE

SECTION 7: AS 35.15.090 - Amended

--Includes unincorporated villages in existing law providing an escrow account for local government to draw on for expenses incurred while administering the contract.

NO CHANGE

SECTION 8 ADDED: AS 35.15 - New Section

--Includes airports and highways as "public facility" or "public work" projects for purposes of this chapter.

Technical amendment suggested by DOT/PF to ensure highways and airports are covered under the provisions of the bill as intended.

REMAINING SECTIONS RENUMBERED ACCORDINGLY

SECTION 9: AS 35.15.100 - Amended

--Includes unincorporated villages in existing statute which relieves the department of responsibility to the extent that local government assumes it. The department provide technical assistance to the extent requested by local government and will be reimbursed for services from the escrow account.

NO CHANGE

SECTION 10: AS 35.15.110 - Amended

--Includes unincorporated communities in existing statute regarding site approval and final inspection. Reflects the provisions added by HB 526, that local commissions are optional.

NO CHANGE

SECTION 11: AS 35.15.110 - Amended/new subsection

--Establishes the authority of local government to form a local commission to inspect projects for compliance with state and local statutes and contract terms. Establishes authority for local commissions to make recommendations regarding contractor license renewal.

SECTION 11 AMENDED: Deletes language regarding concerns the local commission may consider when making recommendations concerning license renewal or revocation (quality and timeliness of the contractor's performance under the contract; responsiveness of the contractors to matters of public concern; contractor's ability to assist in the informal, peaceful, fair resolutions of disputes).

These concerns can be addressed earlier in the process, either when the contract goes out to bid or in the contract.

SECTION 12: AS 35.15.120(2) - Amended

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

NO CHANGE

SECTION 13: AS 35.15.120 - Amended

--Defines "village" as an incorporated or unincorporated contiguous rural community of at least 25 residents.

NO CHANGE

7-LS2008M:
Cramer
4/30/92

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 construction contractors and to certain public construction projects."

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

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

4 (c) In determining whether to issue or renew a certificate of registration of a contractor
5 who has held a contract for work on a public construction contract under AS 35.15, the
6 department shall consider the recommendations of local commissions established under
7 AS 35.15.110(c) by the municipalities and villages in which the contractor performed contracting
8 work.

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

10 (i) If a local commission reviewing the performance of a contractor on a public
11 construction contract under AS 35.15 recommends that the contractor's registration be suspended
12 or revoked, or that renewal of the registration be denied, the department shall consider the
13 evidence. The department shall, after a hearing under AS 44.62 (Administrative Procedure Act),
14 suspend, revoke, or refuse to renew a contractor's registration if the department finds that the

1 contractor

2 (1) has knowingly violated this chapter or a lawful order or regulation of the
3 department;

4 (2) is incompetent or has engaged in fraudulent practices; or

5 (3) has engaged in serious misconduct or failure of performance in performing
6 work on a public construction contract under AS 35.15.

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

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

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

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

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

30 (c) A municipality or village may request joint assumption of responsibilities with the
31 department relating to the planning, design, and construction of a public works project. Two or

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

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

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

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

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

23 * Sec. 8. AS 35.15 is amended by adding a new section to read:

24 Sec. 35.15.095. APPLICATION TO AIRPORTS AND HIGHWAYS. Notwithstanding
25 the definition of "public facility" or "public work" contained in AS 35.95.100, the provisions of
26 this chapter that permit municipalities and villages to assume, separately or jointly, all or part of
27 the department's responsibilities relating to a public works project and that establish and grant
28 powers to local commissions apply to the construction, expansion, renovation, or major repair
29 of an airport or highway.

30 * Sec. 9. AS 35.15.100 is amended to read:

31 Sec. 35.15.100. RESPONSIBILITY OF DEPARTMENT. When a municipality, village,

1 or regional educational attendance area has assumed responsibility for a public works project
2 under AS 35.15.080 - 35.15.120, the department is relieved of responsibility to the extent it is
3 assumed by the municipality, village, or regional educational attendance area. The department
4 may provide technical assistance on the responsibility assumed if requested to do so by the
5 municipality, village, or area and shall be reasonably compensated for that assistance from the
6 account established under AS 35.15.090.

7 * Sec. 10. AS 35.15.110 is amended to read:

8 Sec. 35.15.110. TITLE TO SITE AND COMPLETION OF PROJECT. (a) Before
9 advertisement for bids or construction contract negotiations, the department shall approve both
10 the project site and the land interest in the site, except that, if the project involves construction
11 of an educational facility, title or sufficient interest determined acceptable by the department to
12 an approved site for a school building shall be vested in the municipality, village, the regional
13 educational attendance area, or the state before advertisement for bids or initiation of construction
14 contract negotiations.

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

19 * Sec. 11. AS 35.15.110 is amended by adding a new subsection to read:

20 (c) A municipality or village that assumes sole or shared responsibility for a public works
21 project of the state under this chapter may, by ordinance of the municipality or formal action of
22 the village council, establish a local commission to conduct inspections of the project for
23 compliance with the terms of the contract and with state and local law, approve the final
24 documents, and make recommendations to the state under AS 08.18 concerning license renewals
25 and license suspensions or revocations of contractors who worked on the project. The
26 recommendations of the local commission must be based on substantial evidence.

27 * Sec. 12. AS 35.15.120(2) is amended to read:

28 (2) "governing body" means, in the case of a
29 (A) municipality, its assembly or council;
30 (B) [, AND, IN THE CASE OF A] regional educational attendance area,
31 its regional school board; and

CS For HB 526: "An Act relating to construction contractors and certain public construction projects."

The department is unable to fully support the bill for the following reasons:

Sections 1 and 2 of the bill would authorize the department to consider evidence and hold hearings under the Administrative Procedures Act against a contractor's registration based on a complaint from a local commission in regard to certain public construction projects.

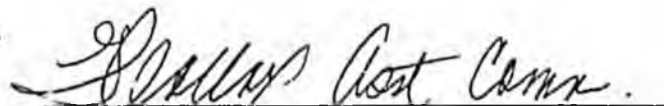
If sections 1 and 2 became law, they would mandate that the department suspend, revoke, or refuse to renew the contractor's registration if a hearing officer found the charges to be true. There are varying degrees of seriousness in the violations itemized in this bill, yet there is no provision for probation instead of revocation or suspension.

Currently, the only ground for taking action against the contractor registration (excluding the residential endorsement) is failure to carry insurance and/or a bond. Thus, it would take one or more substantial regulation projects to define the violations noted in this chapter. For example, there has not been a statewide uniform building code adopted despite years of attempts. This would make it difficult to define the standard of work performed. Incompetence is a difficult issue to prove in court. Finally, some of the social issues referred to are unrelated to a person's ability to practice the profession.

We have written a fiscal note to reflect that the village is to provide the "evidence." Section 2, AS 08.18.121(i), states the local commission reviews and recommends and the department shall consider the evidence. As a practical matter, if it became necessary for the department to conduct an investigation, the amount would increase.

Based on input recently received from the Department of Law, it would appear that there would be a substantial cost for an Assistant Attorney General's time as there would be a high probability of Superior Court appeals to the hearing officer's decision.

The department feels that while the sponsor's goals have merit, they could perhaps be better addressed in the initial contract.



Glenn A. Olds, Commissioner

Date: 4.30.92

MEMORANDUM

State of Alaska
Department of Law

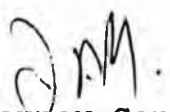
TO: Paul Fuhs
Legislative Liaison
Office of the Governor

DATE: April 28, 1992

FILE NO:

TEL. NO: 465-3603

SUBJECT: CSHB 526 and Contractor's
certificate of registration

FROM: Jack B. McGee 
Assistant Attorney General
Transportation Section-Juneau

You have requested that our office provide you with a brief review of those sections of CSHB 526 that deal with a contractor's certificate of registration.

Before a person can bid or work as a contractor in Alaska, that person must be issued a certificate of registration by the Department of Commerce and Economic Development. See AS 08.18.011.

Section 1 of CSHB 526 permits a local commission created by section 10 of the bill to make recommendations to the commissioner of Commerce and Economic Development as to whether the commissioner should issue a new or renewed certificate of registration to a contractor. If the recommendation made by the local commission is not to issue or renew a certificate of registration, the commissioner may not issue or renew a certificate to the contractor unless, after a hearing, the commissioner determines that the recommendation is not supported "by a preponderance of evidence."

Section 2 permits a local commission to recommend that a contractor's current registration be revoked. When such a recommendation is made, the commissioner of Commerce and Economic Development may suspend a contractor's registration. If, after a hearing, the commissioner determines that the recommendation is based on "serious misconduct" or the failure of the contractor to perform the contract, the commissioner must revoke the registration of the contractor.

Recommendations that are made to the commissioner by a local commission under sections 1 or 2 above may be based on:

- 1) the quality and timeliness of the contractor's performance under the contract,
- 2) the responsiveness of the contractor to matters of public concern in the municipality or village "that

Paul Fuhs
Legislative Liaison
Office of the Governor

April 28,
Pi

affect or are affected by the performance of t
contract" and

- 3) the contractor's ability to assist in the informal, peaceful, fair resolution of disputes that relate to the construction project "or to the presence in the municipality or village of person's engaged in the project."

See section 10 of the bill.

Each of these three elements has a subjective quality to it. Moreover, section 2 permits a contractor's registration to be suspended before a hearing. Because of these difficulties, it is likely that substantial legal challenges will be made to the entire revocation process. As a probable consequence of these challenges, the state can expect to incur sizeable legal costs.

JBM:ebc

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. CSHB 526 (CRA)

Revision Date: _____

Department Affected: Administration

Title: An Act relating to certain public construction contracts.

BRU: General Services

Sponsor: Lincoln

Component: Purchasing

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 has no fiscal impact on the activities of the division.

Prepared by: Anne McCord, Director *Anne McCord*

Phone: 465-2250

Division: General Services

Date: April 6, 1992

Approved by Commissioner: Nancy Bear Usura *Nancy Bear Usura*

Agency: Administration

Date: 4/8/92

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



*Department of Transportation
and Public Facilities*

POSITION PAPER

BILL NO: CSHB 526(CRA)

APPROVED: *[Signature]* for FT

TITLE: " An Act relating to construction and to certain construction contracts"

DATE: 4-24-92

The Department is neutral to generally supportive of the bill with certain modifications. The bill will provide a possible means for transferring to local entities the construction of roads, airports and other public facilities which are not of a statewide or regional significance. It may also assist in transferring maintenance of roads to local entities. This position is consistent with the Transportation Policy Plan.

Presently Alaska Statute 35.15.080(b) provides that the Department may transfer to a municipality the responsibilities for the construction of all or part of a public works project. The bill will extend this authority to a village; however, the Department must make a finding that the entity is capable of performing the construction.

The bill expands the meaning of a "governing body" to a village, its village council or other appropriate entity and further defines a "village" to mean an incorporated or unincorporated contiguous rural community of at least 25 residents.

In sections 4 & 5 the reviews by the superior court should be clarified to mean the use of the Alaska Rules of Appellate Procedures. The Department of Law has made this suggestion and is similar to the process used in the procurement code.

FISCAL NOTE

Revision Date: 4/2/92
 Title: "An Act relating to certain public contracts and contractors and to certain procurements"
 Sponsor: Rep Lincoln
 Requestor:

Department Affected: DOT&PF
 BRU: Statewide Engineering & Operations Standards
 Component: Engeer. & Operations Stand.
 Component Serial Number: 547

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY93	FY94	FY95	FY96	FY97	FY98
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	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL FUNDING:	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:

ANALYSIS: (Attach a separate page if necessary)

The bill provides that a village, if they are capable, can assume the responsibilities for the planning, design and construction of public works projects, just as municipality can under present law.

Prepared by: Loren Rasmussen, Chief, D&C

Phone: 465-2951

Division: Engineering and Operations Standards

Date:

Approved by Commissioner: 

Phone: 465-5900

Agency: Department of Transportation and Public Facilities

Date:

Distribution By Preparer:

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS

MUNICIPAL & REGIONAL ASSISTANCE DIVISION

- | | | | |
|---------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|
| <input checked="" type="checkbox"/> 323 W. 4TH AVENUE, SUITE 220
ANCHORAGE, ALASKA 99501-2341
PHONE: (907) 269-4500 | <input type="checkbox"/> P.O. BOX 348
DETHEL, ALASKA 99559-0348
PHONE: (907) 543-3475 | <input type="checkbox"/> P.O. BOX 295
DILLINGHAM, ALASKA 99576-0205
PHONE: (907) 842-5135 | <input type="checkbox"/> 1001 NOBLE ST., SUITE 430
FAIRBANKS, ALASKA 99701-4940
PHONE: (907) 452-7126 |
| <input checked="" type="checkbox"/> P.O. BOX 112100
JUNEAU, ALASKA 99811-2100
PHONE: (907) 465-4750 | <input type="checkbox"/> 710 MILL BAY RD.
KODIAK, ALASKA 99615-6340
PHONE: (907) 486-5736 | <input type="checkbox"/> P.O. BOX 350
KOTZEBUE, ALASKA 99752-0350
PHONE: (907) 442-3696 | <input type="checkbox"/> P.O. BOX 41
NOME, ALASKA 99762-0041
PHONE: (907) 443-5457 |

April 15, 1992

Sandra Borbridge
Office of Rep. Georgianna Lincoln
State Capitol Building, Room 112
Juneau, Alaska 99811-1182

RE: HB 526 - Construction contractors/public construction
contracts - House State Affairs Committee

Dear Ms. Borbridge:

After the first hearing of HB 526 in the House State Affairs Committee, you called to request a position paper from this department. I have reviewed the bill and do not believe that it pertains directly to the activities of this department.

Sections 1 and 2 of the bill deal with the powers and duties of the Commissioner of Commerce and Economic Development over the licensing of contractors. The remainder of the bill pertains to Title 35, which is administered by the Department of Transportation and Public Facilities.

While our department works with both rural municipalities and unincorporated rural villages and, in general, advocates for rural Alaska, we do not have the expertise or the assigned mission of the Department of Commerce and Economic Development over contractor licensing or of the Department of Transportation and Public Facilities over letting of public construction contracts. For that reason, we have not taken a position on this bill. We will be glad, however, to provide any technical information at our disposal that might be of assistance to the sponsor or the committees hearing the bill. Please let me know if you have any specific questions to which we can respond.

Sondra Borbridge
April 15, 1992
Page Two

I understood from you that Representative Baker had a question during the State Affairs Committee hearing about whether this bill somehow diluted the powers of the department over planning in rural Alaska. I spoke to Representative Baker about the specifics of his question and then checked our enabling statute, AS 44.47.050. All of our powers are stated in permissive rather than mandatory language. For instance, the statute states "the department may...supervise planning, management, and other activities required for local eligibility for financial aid under those federal and state programs which provide assistance to community and regional governments." In fact, because of staffing cuts over the years, we no longer have much ability to assist communities with planning activities although we could do so under our enabling legislation. HB 526 does not conflict with our powers.

Enclosed with this letter is a copy of our 1992 Community/Borough map. On it, the black dots represent unincorporated communities to which HB 526 would apply. Please let me know if we can help you in any other way.

Sincerely,



Sandra J. Wicks
Deputy Director

Enclosure

cc: Representative Gene Kubina
Representative Tom Moyer
Representative Betty Bruckman
Representative Dave Choquette
Representative Max Gruenberg
Representative Larry Baker
Representative Mike Miller
Department of Commerce & Economic Development
Department of Transportation & Public Facilities

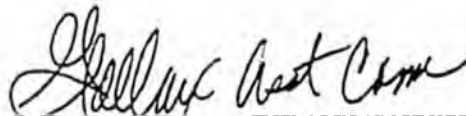
CSHB 526 (CRA): "An Act relating to construction contractors and to certain public construction contracts."

Sections 1 and 2, if passed, would authorize the Commissioner to hold a hearing and suspend, revoke, or deny registration or renewal of a contractor's certificate of registration to a contractor who is the subject of a complaint by a municipal or village commission established under AS 95.15.110(c) if it is found that the contractor is guilty of serious misconduct or failure of performance.

It is reasonable to consider whether or not one branch of state government should grant a privilege to someone who has been proven to have transgressed against another government entity.

There would need to be regulations to clearly define serious misconduct and failure of performance. This will be a major project.

Currently, the only grounds for suspension or denial of certificate of registration for contractors is failure to carry insurance or bonding.



Glenn A. Olds, Commissioner

Date: 4.14.92

A M E N D M E N T

OFFERED IN HOUSE STATE AFFAIRS

BY REPRESENTATIVE LINCOLN

To: CSHB 526 (CRA)

page 3, line 13

Add:

Section 7. AS 35.15.080 is amended by adding a new subsection to read:

(g) For purpose of this section public works projects include airports and highways

Renumber remaining sections accordingly

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE LINCOLN

TO: CSHB 526 (CPA)

Page 1, line 14

Delete "the commissioner shall consider the evidence and may suspend the contractor's registration."

Add "a hearing shall be held according to the Administrative Procedures Act."

Page 2, line 1

After "hearing, the" Delete "commissioner" and insert "hearing officer"

Page 2, line 3

After "commissioner shall"

Delete "revoke the registration of the contractor."

and Insert "either accept the hearing officer's proposed decision, remand it to another hearing officer, or call for the record and render a final decision."

Page 2, line 24

After "by the superior court"

Add "in accordance with the Alaska Rules of Appellate Procedure"

Page 4, line 14

Delete "In making recommendations"

Page 4, lines 15 through 19

Delete

Page 4, line 20

Delete "municipality or village of persons engaged in the project."

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

BY THE HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered: 4/2/92

Referred: State Affairs, Finance

Sponsor(s): REPRESENTATIVE LINCOLN

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

12 (i) If a local commission reviewing the performance of a contractor on a public
13 construction contract under AS 35.15 recommends that the contractor's registration be revoked,
14 the commissioner shall consider the evidence and may suspend the contractor's registration. If,

1 after a hearing, the commissioner determines that the recommendation for revocation is based on
2 serious misconduct or failure of performance by the contractor under AS 35.15.110(c), the
3 commissioner shall revoke the registration of the contractor.

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

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

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

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

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

26 (c) A municipality or village may request joint assumption of responsibilities with the
27 department relating to the planning, design, and construction of a public works project. Two or
28 more municipalities or villages may by agreement provide for cooperative assumption of
29 responsibilities relating to the planning, design, and construction of a public works project. If
30 two or more municipalities or villages request assumption of responsibilities for a project and
31 meet the standard of capability [PRACTICABILITY] set out in (a) of this section, the

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

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

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

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

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

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

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

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

28 Sec. 35.15.110. TITLE TO SITE AND COMPLETION OF PROJECT. (a) Before
29 advertisement for bids or construction contract negotiations, the department shall approve both
30 the project site and the land interest in the site, except that, if the project involves construction
31 of an educational facility, title or sufficient interest determined acceptable by the department to

1 an approved site for a school building shall be vested in the municipality, village, the regional
2 educational attendance area, or the state before advertisement for bids or initiation of construction
3 contract negotiations.

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

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

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

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

23 (2) "governing body" means, in the case of a

24 (A) municipality, its assembly or council;

25 (B) [, AND, IN THE CASE OF A] regional educational attendance area,
26 its regional school board; and

27 (C) village, its village council or other appropriate entity.

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

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

HOUSE BILL NO. 526

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE LINCOLN

Introduced: 2/18/92

Referred: Community & Regional Affairs, State Affairs, Finance

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 suspend the contractor's registration. If, after a hearing, the commissioner
2 determines that the recommendation for revocation is based on serious misconduct or failure of
3 performance by the contractor under AS 35.15.110(c), the commissioner shall revoke the
4 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
13 DETERMINES THAT ASSUMPTION OF RESPONSIBILITIES BY THE MUNICIPALITY IS
14 NOT PRACTICABLE OR NOT IN THE BEST INTERESTS OF THE STATE].

15 * Sec. 4. AS 35.15.080(c) is amended to read:

16 (c) A municipality or village may request joint assumption of responsibilities with the
17 department relating to the planning, design, and construction of a public works project. Two or
18 more municipalities or villages may by agreement provide for cooperative assumption of
19 responsibilities relating to the planning, design, and construction of a public works project. If
20 two or more municipalities or villages request assumption of responsibilities for a project [AND
21 MEET THE STANDARD OF PRACTICABILITY SET OUT IN (a) OF THIS SECTION], the
22 commissioner shall determine which municipality or village is best able to direct planning,
23 design, and construction of the project and enter into an agreement with that municipality or
24 village or provide for joint or cooperative administration, as the parties may agree or the
25 commissioner may determine. Decisions of the commissioner under this subsection are subject
26 to judicial review by the superior court [FINAL].

27 * Sec. 5. AS 35.15.080(d) is amended to read:

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

1 charter of a municipality.

2 * Sec. 6. AS 35.15.090 is amended to read:

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

9 * Sec. 7. AS 35.15.100 is amended to read:

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

17 * Sec. 8. AS 35.15.110 is amended to read:

18 Sec. 35.15.110. TITLE TO SITE AND COMPLETION OF PROJECT. (a) Before
19 advertisement for bids or construction contract negotiations, the department shall approve both
20 the project site and the land interest in the site, except that, if the project involves construction
21 of an educational facility, title or sufficient interest determined acceptable by the department to
22 an approved site for a school building shall be vested in the municipality, village, the regional
23 educational attendance area, or the state before advertisement for bids or initiation of construction
24 contract negotiations.

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

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

30 (c) A municipality or village that assumes sole or shared responsibility for a public works
31 project of the state under this chapter may, by ordinance of the municipality or formal action of

1 the village council, establish a local commission to conduct inspections of the project for
2 compliance with the terms of the contract and with state and local law, approve the final
3 documents, and make recommendations to the state under AS 08.18 concerning license renewals
4 and license revocations of contractors who worked on the project. In making recommendations
5 concerning license renewal or revocation, the local commission shall consider the quality and
6 timeliness of the contractor's performance under the contract, the responsiveness of the contractor
7 to matters of public concern in the municipality or village that affect or are affected by the
8 performance of the contract, and the contractor's ability to assist in the informal, peaceful, fair
9 resolution of disputes that relate to the public construction project or to the presence in the
10 municipality or village of persons engaged in the project.

11 * Sec. 10. AS 35.15.120(2) is amended to read:

12 (2) "governing body" means, in the case of a

13 (A) municipality, its assembly or council;

14 (B) [, AND, IN THE CASE OF A] regional educational attendance area,
15 its regional school board; and

16 (C) village, its village council or other appropriate entity.

17 * Sec. 11. AS 35.15.120 is amended by adding a new paragraph to read:

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

20 * Sec. 12. AS 36.30.305(a) is amended to read:

21 (a) A contract for supplies, services, professional services, or a construction contract
22 under \$100,000 [,] may be awarded without competitive sealed bidding or competitive sealed
23 proposals, in accordance with regulations adopted by the commissioner. A contract, other than
24 a contract for construction under \$100,000 in a remote area, may be awarded under this
25 section only when the commissioner, or, for construction contracts under \$100,000 or
26 procurements for the state equipment fleet, the commissioner of transportation and public
27 facilities, determines in writing that a situation exists that makes competitive sealed bidding or
28 competitive sealed proposals impractical or contrary to the public interest. The commissioner
29 of transportation and public facilities shall permit a contract for construction under
30 \$100,000 that is located in a remote area to be awarded without competitive sealed bidding
31 or competitive sealed proposals. Procurements under this section shall be made with

1 competition that is practicable under the circumstance. Except for procurements of supplies,
2 services, or construction that do not exceed the amount for small procurements under
3 AS 36.30.320(a), the authority to make a determination required by this section may not be
4 delegated.

5 * Sec. 13. AS 36.30.305(d) is amended to read:

6 (d) Except for procurements in a community with a population of less than 2,000
7 residents [SOLE] source procurements may not be made under this section.

8 * Sec. 14. AS 36.30.320(c) is amended to read:

9 (c) Small procurements need not be made through competitive sealed bidding or
10 competitive sealed proposals but shall be made with competition that is practicable under the
11 circumstances. The commissioner shall exempt small procurements for supplies, services,
12 or construction in a rural area from the requirement for competition.

13 * Sec. 15. AS 35.15.080(b) is repealed.