

**НВВ**

**490**

**HFIN**

**FILE**

HOUSE COMMITTEE REPORT

(11)

Date Referred: March 18, 1994

FURTHER REFERRALS:

Date of Committee Action: 4/11/94

The FINANCE Committee considered:

HB 490

HOUSE BILL NO. 490

SCHOOL CONST: ALASKA BIDDER PREFERENCE

"An Act allowing a local bidder preference in certain contracts for school construction."

RECOMMENDATIONS:

be replaced with \_\_\_\_\_ [ ] the same title

[ ] have attached amendments(s) [ ] a new title

[ ] 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 \_\_\_\_\_

[] fiscal note(s) ED 3/18/94

[ ] zero fiscal note \_\_\_\_\_

[ ] zero fiscal note(s) \_\_\_\_\_

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Richard Mache</i> <sup>Mache</sup>	<input checked="" type="checkbox"/>	<i>Ronald J. Linsin</i> <sup>Linsin</sup>		<input checked="" type="checkbox"/>	
<i>Ben Gussendorf</i> <sup>Gussendorf</sup>	<input checked="" type="checkbox"/>	<i>Mark Stanley</i> <sup>Stanley</sup>		<input checked="" type="checkbox"/>	
<i>Richard J. [unclear]</i> <sup>[unclear]</sup>	<input checked="" type="checkbox"/>	<i>Perry Martin</i> <sup>Martin</sup>		<input checked="" type="checkbox"/>	
		<i>John R. Parnell</i> <sup>Parnell</sup>		<input checked="" type="checkbox"/>	
		<i>Jay Brown</i> <sup>Brown</sup>		<input checked="" type="checkbox"/>	
		<i>Constance [unclear]</i> <sup>[unclear]</sup>		<input checked="" type="checkbox"/>	

*Ronald J. Linsin* <sup>Linsin</sup> *E.P. Mache* <sup>Mache</sup>  
 CHAIRMAN'S SIGNATURE

# FISCAL NOTE

( No. 1  
 Bill Version: HB 490  
 (H) Publish Date: 3/18/94

STATE OF ALASKA  
 1994 LEGISLATIVE SESSION  
 Revision Date: March 10, 1994  
 Title: "An Act allowing a local bidder preference in certain contracts for school construction."  
 Sponsor: Representative Vezey  
 Requester: Representative Vezey

Department Affected: Education  
 BRU: School Finance  
 Component: Educational Facilities Support

COMPONENT SERIAL NO. 1957

**Expenditures/Revenues:**

(Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS (Range)	\$0.0	\$1,250.0 to \$1,500.0	\$1,250.0 to \$1,500.0	\$1,250.0 to \$1,500.0	\$1,250.0 to \$1,500.0	\$1,250.0 to \$1,500.0
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

<b>CAPITAL</b>						
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<b>REVENUE FUND SOURCE:</b>						
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**FUNDING:**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: \$ -0-

**ANALYSIS:** (Attach a separate page if necessary.) The estimated impact for FY95 is \$0, because it is too late for districts to modify budget requests. The estimate for FY96 through FY00 is in the range of \$1,250,000 to \$1,500,000. Please see attached continuation page for detail

Prepared by: Duane Guiley Phone: 465-8679  
 Division: School Finance Date: March 10, 1994

Approved by Commissioner: *Duane Guiley* Jerry Covey  
 Agency: Education Date: March 10, 1994

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FISCAL NOTE (continued): DEPARTMENT OF EDUCATION

Division School Finance Bill Number HB 490

Bill Title An Act allowing a local bidder preference in certain contracts for school construction

Sponsor Representative Al Vezev

This legislation requires provision for a 5% Alaska bidder preference on all competitively bid school construction contracts. There is no fiscal impact on the agency directly. The fiscal impact will be due to increased school construction grant estimates submitted by districts and subsequent grant awards and construction contracts, which may or may not, include an Alaska's bidder preference. Because the legislation requires the provision for a 5% Alaska bidder preference, districts will likely increase the project budgets accordingly. Once a grant award is made, districts spend the total amount provided. Rarely are excess funds refunded.

Had this legislation been in place prior to the passage of SB 60, the potential fiscal year 1994 increased cost would have been \$8,608,465. At the present time, the fiscal year capital budget is unknown and districts have no opportunity to adjust project budget requests to allow for the 5% Alaska bidder preference. As such, the FY95 impact is \$0.

Based on annual average funding levels for school construction, the projected impact on future years will range from \$1,250,000 to \$1,500,000.

APPROVED:

Director Duane Guilev Division School Finance

Signature \_\_\_\_\_ Date March 10, 1994

Commissioner/Deputy \_\_\_\_\_

Signature *Neil Palma* Date 3/10/94

**HOUSE BILL NO. 490**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**EIGHTEENTH LEGISLATURE - SECOND SESSION**

**BY REPRESENTATIVE VEZEY**

**Introduced: 2/14/94**

**Referred: Health, Education & Social Services, Finance**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act allowing a local bidder preference in certain contracts for school  
2 construction."

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

4 \* **Section 1.** AS 14.11.017 is amended by adding a new subsection to read:

5 (d) The department shall include in the grant agreement a provision that allows  
6 a municipality that is a school district or a regional educational attendance area to  
7 include an Alaska bidder preference as provided under AS 36.30.170(b) when  
8 determining the award of a contract.

# Alaska State Legislature



While in Session:  
State Capitol Building  
Juneau, Alaska 99801-1182  
907-465-3719

Interim:  
119 N. Cushman  
Suite 211  
Fairbanks, Alaska 99701  
907-456-5081

Representative Al Vezey

March 3, 1994

## SPONSOR STATEMENT HB 490

"An Act allowing a local bidder preference in certain contracts for school construction."

Currently 4 AAC 31.080 prohibits political subdivisions of the state from granting a local bidder preference on project funded under AS 14.11.011 - 14.11.020 and AS 14.11.100.

This bill does not mandate that a local bidder preference be granted but it will require that the DOE permit a local bidder preference if the political subdivision sees fit to do so.

**Sec. 14.11.017. Grant conditions.** (a) The department shall require in the grant agreement that a municipality that is a school district or a regional educational attendance area

(1) agree to construction of a facility of appropriate size and use that meets criteria adopted by the department if the grant is for school construction:

(2) provide reasonable assurance by a means acceptable to the department, that the cost of the project will be uniform with the costs of the most current construction or major maintenance projects, as appropriate, in the area:

(3) agree to limit equipment purchases to that required for the approved project plan submitted under (5) of this subsection and account for all equipment purchased for the project under a fixed asset inventory system approved by the department;

(4) submit project budgets for department approval and agree that the grant amount may, at the discretion of the department, be reduced or increased by amounts equal to the amounts by which contracts vary from the budget amounts approved by the department; and

(5) submit to the department for approval, before award of the contract, a plan for the project that includes educational specifications, final drawings, and contract documents.

(b) The cost of any school construction or major maintenance activity encompassed by the definition of "costs of school construction" under AS 14.11.135 is payable under a grant awarded from the appropriate fund under AS 14.11.015 without regard to whether the costs were incurred before the

(1) award of the grant;

(2) approval of the grant application by the board; or

(3) effective date of an appropriation to the appropriate grant fund for the year in which the grant is funded.

(c) The department, by regulation, may establish the time period in which activities described in (b) of this section must have occurred in order to be paid under a grant. (§ 6 ch 5 SLA 1990; am §§ 11, 12 ch 78 SLA 1993)

**Effect of amendments.** — The 1993 amendment, effective June 26, 1993, added "if the grant is for school construction" in paragraph (a)(1); inserted "or major maintenance" and references to "appropriate" in paragraph (a)(2) and subsection (b); substituted "project" or "appropriate" for "school construction" throughout; inserted "submitted under (5) of this subsection" in paragraph (a)(3); deleted "construction" preceding the first "contract" and "drawings" in paragraph

(a)(5); added subsection (c); and made stylistic changes.

**Editor's notes.** — Section 23(a), ch. 78, SLA 1993 provides that the amendment of (a) and (b) by § 11, ch. 78, SLA 1993 does not apply to grants awarded under AS 14.11.005 — 14.11.019 after June 30, 1993.

Section 23(b), ch. 78, SLA 1993 provides that the addition of (c) by § 12, ch. 78, SLA 1993 does not apply to capital improvement grants included in appropriations for fiscal year 1994.

**Sec. 36.30.170. Contract award after bids.** (a) Except as provided in (b) — (h) of this section, the procurement officer shall award a contract based on the solicited bids with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set out in the invitation to bid.

(b) The procurement officer shall award a contract based on solicited bids to the lowest responsive and responsible bidder after an Alaska bidder preference of five percent, an Alaska products preference as described in AS 36.30.322 — 36.30.338, and a recycled products preference under AS 36.30.339 have been applied. In this subsection, "Alaska bidder" means a person who

(1) holds a current Alaska business license;

(2) submits a bid for goods, services, or construction under the name as appearing on the person's current Alaska business license;

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

(4) is incorporated or qualified to do business under the laws of the state, is a sole proprietorship and the proprietor is a resident of the state, or is a partnership and all partners are residents of the state; and

(5) if a joint venture, is composed entirely of ventures that qualify under (1) — (4) of this subsection.

(c) Except as otherwise provided under (e) or (f) of this section, if a bidder qualifies under (b) of this section as an Alaska bidder, is offering services through an employment program, and is the lowest responsible and responsive bidder with a bid that is not more than 15 percent higher than the lowest bid, the procurement officer shall award the contract to that bidder. This subsection does not give a bidder who would otherwise qualify for a preference under this subsection a preference over another bidder who would otherwise qualify for a preference under this subsection.

(d) The procurement officer shall award an insurance-related contract based on solicited bids to the lowest responsive and responsible bidder after an Alaska bidder preference of five percent. In this subsection, "Alaska bidder" means a person who meets the criteria set out in (b)(1) — (5) of this section and who is an Alaska domestic insurer.

(e) If a bidder qualifies under (b) of this section as an Alaska bidder, is a sole proprietorship owned by an individual who is a person with a disability, and is the lowest responsible and responsive bidder with a bid that is not more than 10 percent higher than the lowest bid, the procurement officer shall award the contract to that bidder. This subsection does not give a bidder who would otherwise qualify for a preference under this subsection a preference over another bidder who

would otherwise qualify for a preference under this subsection or (f) of this section.

(f) If a bidder qualifies under (b) of this section as an Alaska bidder, if 50 percent or more of the bidder's employees at the time the bid is submitted are persons with a disability, and if the bidder is the lowest responsible and responsive bidder with a bid that is not more than 10 percent higher than the lowest bid, the procurement officer shall award the contract to that bidder. The contract must contain a promise by the bidder that the percentage of the bidder's employees who are persons with a disability will remain at 50 percent or more during the contract term. This subsection does not give a bidder who would otherwise qualify for a preference under this subsection a preference over another bidder who would otherwise qualify for a preference under this subsection or (e) of this section.

(g) The division of vocational rehabilitation in the Department of Education shall add to its current list of qualified employment programs a list of individuals who qualify as persons with a disability under (e) of this section and of persons who qualify under (f) of this section as employers with 50 percent or more of their employees being persons with disabilities. A person must be on this list at the time the bid is opened in order to qualify for a preference under (e) or (f) of this section.

(h) A preference under (c), (e), or (f) of this section is in addition to any other preference for which the bidder qualifies, including the preference under (b) of this section; however, a bidder may not receive a preference under both (e) and (f) of this subsection for the same contract.

(i) This section applies to all insurance contracts involving state money. In this subsection, "state money" includes state grants and reimbursement to municipalities, school districts, and other entities.

(j) In this section, "person with a disability" means an individual

(1) who has a severe physical or mental disability that seriously limits one or more functional capacities in terms of employability; in this paragraph, "functional capacities" means mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills;

(2) whose physical or mental disability

(A) results from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders, paraplegia, quadriplegia, other spinal cord conditions, sickle cell anemia, specific learning disability, or end stage renal disease; in this subparagraph, "neurological disorders" include stroke and epilepsy; or

(B) is a disability or combination of disabilities that are not identified in (A) of this paragraph and that are determined on the basis of an evaluation of rehabilitation potential to cause substantial functional limitation comparable to a disability identified in (A) of this paragraph; and

(3) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time. (§ 2 ch 106 SLA 1986; am §§ 7 — 9 ch 65 SLA 1987; am §§ 6, 18 ch 102 SLA 1989; am § 3 ch 175 SLA 1990; am §§ 1 — 3 ch 114 SLA 1992)

**Revisor's notes.** — Subsection (i) was formerly AS 36.30.850(e). Renumbered in 1992. Subsection (j) enacted as (i). Relettered in 1992.

**Effect of amendments.** — The 1989 amendment, effective September 10, 1989, deleted "as defined under AS 36.30.100(c)" following "employment program" in subsection (c); and divided subsection (i) (formerly AS 36.30.850(e)) into two sentences, substituting "In this subsection, 'state money' includes" for "Including" at the beginning of the present second sentence.

The 1990 amendment, in subsection (b), inserted "and a recycled products preference under AS 36.30.339" in the first sentence in the introductory paragraph and

made a series of minor stylistic changes throughout the subsection.

The 1992 amendment, effective June 23, 1992, made a subsection reference substitution in subsection (a); rewrote subsection (c); and added subsections (e)-(i).

**Editor's notes.** — Section 6, ch. 114, SLA 1992 provides that the 1992 amendments to this section apply "to procurements that begin on or after June 23, 1992."

**Opinions of attorney general.** — An agent will be considered the bidder only if the agent is in fact a principal with the power to convey a leasehold interest in its own right. Otherwise, he is not entitled to the bidder preference. July 1, 1989 Op. Att'y Gen.

#### NOTES TO DECISIONS

Quoted in *State v. Johnson*, 779 P.2d 778 (Alaska 1989).

**Collateral references.** — Validity, construction, and effect of requirement under state statute or local ordinance giv-

ing local or locally qualified contractors a percentage preference in determining lowest bid. 89 ALR4th 587.

**Sec. 36.30.180. Purpose.** The legislature finds that there exists in the state continuing high unemployment, underutilization of resident construction and supply firms, and high costs unfavorable to the welfare of Alaskans and to the economic health of the state. The purpose of bidder preference for resident firms when the state acts as a market participant is to encourage local industry, strengthen and stabilize the economy, decrease unemployment, and strengthen the tax and revenue base of the state. (§ 1 ch 70 SLA 1985)

# HOUSE COMMITTEE REPORT

(9)

Date Referred: February 14, 1994

FURTHER REFERRALS:

Finance

Date of Committee Action: 3/17/94

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HB 490

HOUSE BILL NO. 490

SCHOOL CONST: ALASKA BIDDER PREFERENCE

"An Act allowing a local bidder preference in certain contracts for school construction."

RECOMMENDATIONS:  the same title  
 be replaced with \_\_\_\_\_  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 Education

fiscal note(s) \_\_\_\_\_

zero fiscal note \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
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<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				

*[Signature]*  
 CHAIRMAN'S SIGNATURE