

**SB**

**158**

SFIN

FILE

# SENATE FINANCE COMMITTEE REPORT

REPORTED OUT  
APR 15 2005  
SENATE FINANCE  
COMMITTEE

DATE: 4/7/05

FURTHER:

DATE TURNED  
IN TO OFFICE: 4/15/05

Finance Committee considered SENATE BILL NO. 158

## SB 158 MUNI TAX ON STATE CONSTRUCTION CONTRACTS

"An Act prohibiting the imposition of municipal sales and use taxes on state construction contracts and certain subcontracts; and providing for an effective date."

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

<b>CS Senate Bill:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
<b>SCS House Bill:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Ind.	Zero	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Ind.	Zero	FN#
DCCED	4/6/05			✓	1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>George P. Kelly</i>	✓	✓		
<i>Paul Ryan</i>	✓			
<i>Bob Johnson</i>	✓			
COCHAIR: <i>Gary Williams</i>	✓			
COCHAIR: <i>Lyle Green</i>	✓			

APR 15 2005

SENATE FINANCE  
COMMITTEE

# FISCAL NOTE

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: SB 158  
(S) Publish Date: 4/7/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Commerce  
Title: MUNI TAX ON STATE CONSTRUCTION RDU: Comm Assist & Ec Dev (405)  
CONTRACTS Component: Community Advocacy  
Sponsor: Huggins  
Requester: Community & Regional Affairs Component No: 2703

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This legislation stipulates that boroughs and cities, both home rule and general law, can not impose a sales or use tax on a construction contract awarded by the state or a state agency, or on a subcontract awarded in connection with the project funded under the construction contract.

It would not create a fiscal impact on the operations of the department

Prepared by: Michael Black, Director Phone: 259-4535  
Division: Community Advocacy Date/Time: 4/6/05 10:28 AM  
Approved by: Edgar Blatchford, Commissioner Date: 4/6/2005  
Agency: Commerce, Community, and Economic Development

# ALASKA STATE LEGISLATURE

Senate District H  
600 E. Railroad Avenue  
Wasilla AK 99654  
907-376-4866  
907-373-4724 – Fax  
Senator\_Charlie\_Huggins@legis.state.ak.us



State Capitol, Room 417  
Juneau AK 99801-1182  
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Fax: 907-465-3265  
800-862-3878  
[www.akrepublicans.org/huggins/](http://www.akrepublicans.org/huggins/)

## Charlie Huggins Senator

4/3/05

### Sponsor Statement

**SB 158 – “An Act prohibiting the imposition of municipal sales and use taxes on state construction contracts and certain subcontracts; and providing for an effective date.”**

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During the course of business in the last couple of years, subcontractors in the construction industry, who work in some areas of the state, have experienced negative financial impact due to the imposition of local sales taxes on state DOT/PF funded projects.

In the case of a construction contract being awarded and a primary contractor doing business with the state, the state is the purchaser of those services and, as such, the legal incidence for the tax falls on the state. Based on the state's sovereign immunity and the fact that the state is immune from taxation no tax is owed.

However, when a subcontract is awarded and a primary contractor hires another contractor to do work for him, the subcontractor is not working directly for the state, but for the original contractor, and in some cases a sales tax has been levied on the value of the subcontract.

In one instance, on a Nome Airport Project, a construction contract was awarded to Quality Asphalt Paving (QAP). QAP and Dimond Electric entered into a subcontract directly in connection with the project funded under the construction contract. Dimond Electric was assessed a sales tax of over \$20,000 on the value of their subcontract. This tax was unexpected and not considered in their bid.

The state cannot afford to have an increase in the cost of construction projects due to the levying of sales taxes on state construction contracts or subcontracts directly awarded in connection with the project funded under the construction contract. While all municipalities do not assess this sales tax the policy needs to be consistent statewide.

SB 158 will prohibit the imposition of municipal sales and use tax on state construction contracts and certain subcontracts and remedy the inequity that exists.

Contact Information – Deborah Grundmann 465-4711

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101


State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

April 5, 2005

**SUBJECT:** Taxation of construction contracts; sectional summary (SB 158)

**TO:** Senator Charlie Huggins, Chair  
Senate Transportation Committee  
Attn: Deborah Grundmann

**FROM:** Tamara Brandt Cook  
Director 

Sec. 1. Adds to the list of statutes that apply as limitations on home rule municipalities (boroughs and unified municipalities) a reference to the new subsection added in bill sec. 3.

Sec. 2. Adds to the list of statutes that apply as limitation on home rule municipalities (cities) a reference to the new subsection added in bill sec. 4.

Sec. 3. Prevents a borough from levying a sales or use tax on state construction contracts or on subcontracts awarded in connection with the state construction project. (For an example of a definition of public construction see AS 36.95.010(3) in the State Procurement Code.)

Sec. 4. Prevents a city from levying a sales or use tax on state construction contracts or on subcontracts awarded in connection with the state construction project.

Sec. 5. Immediate effective date.

TBC:jad  
05-193.jad



## Alaska State Legislature

Senate Majority Web: [www.akrepublicans.org](http://www.akrepublicans.org)

Sponsor: Senator Charlie Huggins  
Current Version: SB 158  
Contact: Deborah Grundmann, 465-4711

### Fact Sheet for: Senate Bill 158

**Short Title:** MUN! TAX ON STATE CONSTRUCTION CONTRACTS

**Summary:**

- Prohibits the imposition of municipal sales and use tax on a construction contract awarded by the state or a state agency, or on a subcontract awarded in connection with the project funded under the construction contract.

**Benefits:**

- Prevents escalating costs for construction contracts and subcontracts that are awarded directly in connection with a project.
- Makes the local tax policy regarding contractors and subcontractors on state construction projects consistent throughout the state.

**Background:**

- Municipalities in some areas of the state impose a local sales or use tax on projects funded through the State. Because of sovereign immunity, the State owes no taxes, but in some cases a sales tax has been levied on subcontractors who are working for the contractor and not directly for the state. On one Nome airport project, a construction contract was awarded to Quality Asphalt Paving (QAP). QAP subcontracted with Dimond Electric, and Dimond was assessed a sales tax of more than \$20,000, which had not been factored into the bid.

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES

Fifty Years Serving Alaska



# NECA

ALASKA CHAPTER  
1953-2003

Commissioner Mike Barton  
Alaska Dept. of Transportation  
and Public Facilities  
3132 Channel Dr.  
Juneau, AK 99801-7898

May 15, 2003

Re: City of Nome Sales Tax

Dear Commissioner Barton:

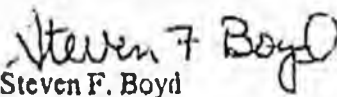
I am writing to you regarding an issue one of our member contractors is facing in Nome, Alaska as a result of their status as a subcontractor to Quality Asphalt Paving on the Nome Airport R/W 27 Rehabilitation & Obstruction Removal, #AIP 3-02-0199-1201/60905. The City of Nome has taken action to assess and collect a sales tax on the value of the subcontract of Dimond Electric and in fact other subcontractors as well. Dimond Electric has unsuccessfully tried to reason with the City of Nome that not only is this not a retail sale, but the project is owned by the State of Alaska which does not pay sales tax on its purchases. Unfortunately, the City has indicated that they will be filing a lawsuit to collect the tax they have estimated as due and Dimond is faced with an expensive legal defense.

The reason we bring this to your attention is in the hope that your department may be able to investigate this and possibly intervene. If the City of Nome prevails in this action, the State will eventually be facing higher construction costs in every community with a local sales tax as word of this practice spreads. In the instant case, several subcontractors who bid the work as they normally do will suffer unexpected and substantial costs that they will not be able to recover.

If you need further information please feel free to contact me at 907 561-1958 or Dave Lantz with Dimond Electric at 907 344-1121.

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Sincerely,  
Alaska Chapter, NECA

  
Steven F. Boyd



November 13, 2004

Senator John Cowdery  
Alaska State Senate  
716 W. 4<sup>th</sup>, Ste. 500  
Anchorage, AK 99501

Dear Senator Cowdery:

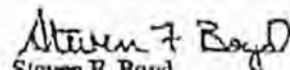
Congratulations on your recent reelection to the State Senate. Our contractor members look forward to another four years of your experience and leadership in the State Senate.

During the course of business in the last two years, subcontractors in the construction industry who work in some rural areas have experienced negative financial impact due to the imposition of local sales taxes on State D.O.T. funded projects. In our efforts to mitigate this impact, our research has shown that while the General Contracting entity is not subject to local sales tax due to their direct relationship with the State D.O.T. (which is exempt from local sales tax), the subcontractors who have a relationship to the General Contractor have been ruled to be subject to the local sales tax. Efforts on the local level, the legal system and pleas to the State D.O.T. have been fruitless. We are therefore requesting a meeting with you to provide you with the information we have and a request to pursue legislative remedy to this inequity.

I would like to suggest a meeting on the morning of November 23<sup>rd</sup> if possible since one of our out of town members who has done considerable work on this issue will be in town and available. Obviously we realize you probably have a busy schedule and we will work with you and your staff to set something up.

Thank you for your consideration.

Sincerely,  
Alaska Chapter, NECA

  
Steven F. Boyd  
Chapter Manager

CC: Scott Bringmann, Alcan Electrical & Engineering  
David Lantz, Dimond Electric Co.  
Ralph Kibby, Chatham Electric

# ALASKA STATE LEGISLATURE

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600 E. Railroad Avenue  
Wasilla AK 99654  
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Senator\_Charlie\_Huggins@legis.state.ak.us



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**Charlie Huggins**  
**Senator**

4/13/05  
4/13/05  
SF11

## TESTIMONY

Thank you Madam Chair and members of the committee.

For the record my name is Deborah Grundmann staff to Senator Charlie Huggins.

SB 158 – “An Act prohibiting the imposition of municipal sales and use taxes on state construction contracts and certain subcontracts; and providing for an effective date.”

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During the course of business in the last couple of years, subcontractors in the construction industry, who work in some areas of the state, have experienced negative financial impact due to the imposition of local sales taxes on state DOT/PF funded projects.

These taxes have been assessed on the value of the subcontract – we are not talking about the

- 1.) purchase of incidental materials,
- 2.) renting of equipment,
- 3.) purchasing food or lodging –

Those items would be taxed. Again, we are talking about the construction contract or subcontract.

- 1.) The State cannot afford to have an increase in the cost of construction projects due to the levying of sales taxes on state construction contracts and subcontracts awarded directly in connection with the project funded under the construction contract.
  
- 2.) While all municipalities do not assess this sales tax, and many municipalities DO have tax caps - the policy needs to be consistent statewide.

**Example**

In one instance, on a Nome Airport Project, a construction contract was awarded to Quality Asphalt Paving (QAP). QAP and Dimond Electric entered into a subcontract directly in connection with the project funded under the construction contract. Dimond Electric was assessed a sales tax of over \$20,000 on the value of their subcontract. This tax was unexpected and not considered in their bid.

**SB 158 will prohibit the imposition of municipal sales and use tax on state construction contracts and certain subcontracts and remedy the inequity that exists.**

Association of E.C. 30 members & representative of another 40 contributing employers

Who we is Dave Lantz w/ Diamond Electric, member of association and subcontractor impacted by the local sales tax

We feel that the scope of State projects logically binds the subcontractors to the general contractor and therefore subcontract values should be exempt from local taxes.

Bids on projects are generally solicited from G.C. for a total product including subcontractor work and the coordination of their work thereof. Subcontractors can therefore only work for the State via this "conduit" established by the State and the Gen Contractor and language that binds the subcontractor to the State is much like the G.C. is bound to the State.

~~This concept has been~~

It has come to our attention that subcontractors have been charged local sales taxes and in particular the City of Nome assessed Diamond Electric, Alaska Industrial (6100) Insulation and Fireproofing, Night Sun Services, Northland Tiles Arctic Striping and Turmeric Construction on an airport project in Nome, while Air Tels from Seldotera was assessed tax<sup>of (1500)</sup> by the City of Sand Point on an airport project.

This is not just an electrical contractor issue, but one that impacts any subcontractor. For example a painting contractor . . . . .

22,000  
2,000  
24,000

Neg. financial impact to State. For example a tax of \$20,000 assessed on a subcontractor would probably result in a mark-up of for discussion sake of 10%, or \$22,000 included in the bid to the G.C. which perhaps marks-up the value of the subcontract by 10%, so the State would see \$24,200 increase in project cost.

As an industry association it is our goal to create a consistent and equitable practice state wide so everyone knows the rules. This is why we are here today after evaluating the steps the contractor took in seeking relief. We feel clarification of the statute would be in the best interest of the State and our industry.

**Mayor**  
Denise Michels

**Manager**  
Randy Romenesko

**Clerk/Treasurer**  
Leslee Wessel



**Nome Common Council**

Stan Andersen  
Mary Knodel  
Randy Pomeranz  
Jon Larson  
John Bockman  
Mary Bourdon

102 Division St. • P.O. Box 281  
Nome, Alaska 99762  
(907) 443-6663  
Fax (907) 443-5349

**Public testimony regarding Senate Bill No. 158 "An act prohibiting the imposition of municipal sales and use taxes on state construction contracts and certain subcontracts; and providing for an effective date."**

The City of Nome is opposed to SB 158. The bill is punitive and unfairly restricts local control. The bill diminishes the existing statutory authority of local governments to raise needed revenues through the levy of taxes.

Municipal sales tax codes and exemptions have been refined and tailored to meet individual community needs. A municipality needs control over sales and property tax as they are the principle source of local government revenue. This tax is established by the residents of a community for local needs.

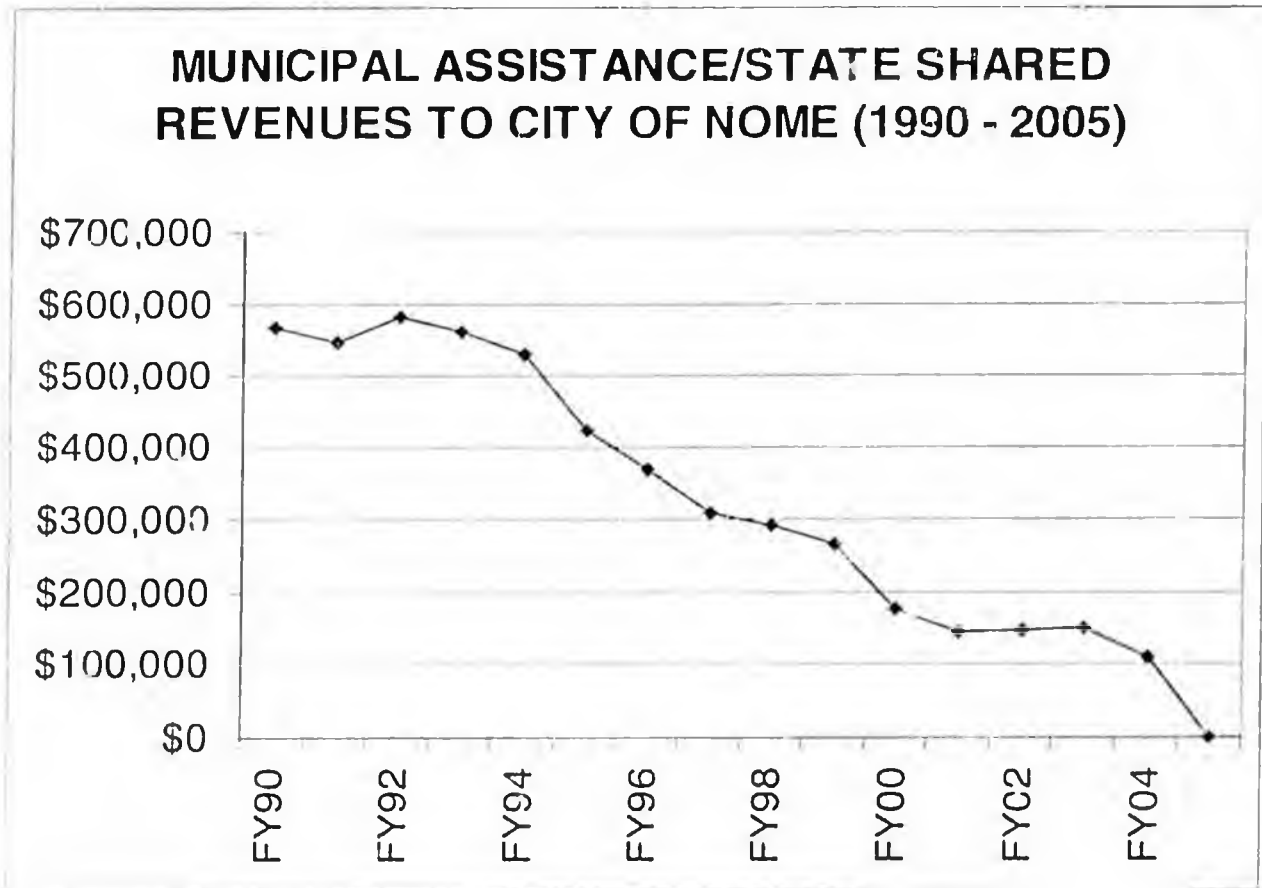
The State has already burdened local communities with unfunded mandates. The mandatory state property tax exemptions, such as the senior citizen/disabled veteran property tax exemption, are not funded by the state according to Alaska Statutes. The State Property Tax Exemption shifts the cost of protecting and serving state facilities to local taxpayers. 40% of all property in Nome is exempted by State Statutes. Yet these properties receive service from our police, ambulance, fire departments. These properties have snow removed and roads repaired by City public works. The tenants of these facilities use the locally taxpayer funded libraries and recreation centers. This lost revenue must be made up by the local community, here in Nome it is through a sales tax.

When a contractor works in a community like Nome on a state or federal job, they utilize municipal services every day. Our ambulance treats and transports their injured workers, our police arrest their law breakers, they drive on city streets and use city facilities – all at no cost as proposed by SB 158. The municipality supports the contractor as it provides their services to the state of Alaska yet it expects to not pay in kind for the services it receives.

Sales tax is only applied in some communities throughout the state. This is a community choice. The "rules of engagement" differ in every community for a myriad of reasons. Contractors and residents doing business and living in a community need to be responsible and perform due diligence when working in the different communities within the state. There is no legal reason for consistent application of sales tax within the state. This is a power invested with a municipality by State Statutes.

The State of Alaska takes portions of Department of Education grants for overhead, Department of Transportation pass-through grants for administration, imposes fees for landfill, air and water permits. The State continues to take funds from municipalities while cutting state shared revenue/municipal assistance.

Over the past 10 years Nome has seen a reduction of about \$500,000, the equivalent of 2.7 mills to property owners or 1% in sales tax. This revenue source shortfall has to be made up to cover ever rising insurance costs, retirement costs, fuel (gasoline and diesel fuel are at almost \$3.00/gallon) and electricity costs.



Sales tax is a local issue controlled by the locally elected officials to meet the needs of the community. SB 158 takes away local control and further cripples a community's ability to survive in today's economy.

I would like to thank the Senate Finance Committee for taking the time to hear the City of Nome's concerns on a bill that will negatively impact the finances of the City.

Respectfully,  
City of Nome

*Denise Michels*  
Denise Michels  
Mayor

**SENATE COMMITTEE REPORT  
First Committee of Referral**

DATE: 4/1/05

FURTHER: Finance

Date of 5-Day Notice: 3/31/05  
(in accordance with Uniform Rule 23)

DATE TURNED  
IN TO OFFICE: 4/6/05

Community and Regional Affairs Committee considered SENATE BILL NO. 158

**SB 158 MUNI TAX ON STATE CONSTRUCTION CONTRACTS**

"An Act prohibiting the imposition of municipal sales and use taxes on state construction contracts and certain subcontracts; and providing for an effective date."

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
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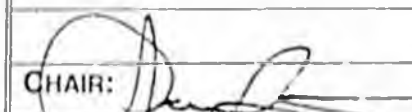
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Department	Date	Fiscal	Indet.	Zero	FN#
DCCED	4/1/05			✓	1

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
 WAGNER			✓	
 STEDMAN	✓			
 KOOKESH			✓	
CHAIR:  G. STEVENS	X			