

ALASKA LEGISLATURE

1178

HOUSE and SENATE FINANCE COMMITTEE FILES,

1993-1994

252

UAA Small Business Development Center
Procurement Task Force

Larry Cash, Chair
Ph: 258-7777
FAX: 279-8195

Cash, Barner, Usher Architects, Partner

Eleanor Andrews,
PH: 276-1454
FAX: 279-2757

The Andrews Group, President

Victor Gould
PH: 276-1454
FAX: 279-2757

The Andrews Group, Operations Manager

Jerry Neeser
PH: 276-1058
FAX: 276-8533

Neeser Construction, President

Charlie Deer
PH: 479-5874
FAX: 479-7996

Alaska Window, Owner

Dick Wells
PH: 561-1752
FAX: 561-3178

Automated Laundry Systems, Owner

Mike Gifford
PH: 274-5484
FAX: 277-4389

Norstar Color, Owner

Charles Gray
PH: 456-6661
FAX: 452-5054

Fairbanks Daily News Miner

Shari Schlotfeldt
PH: 586-2323
FAX: 463-5515

Alaska State Chamber of Commerce

Joe Beedle
Ph: 344-3699
FAX: 349-8389

Beedle and Associates, Owner

Cindy Matson
PH: 786-6511
FAX: 786-6519

UAA Purchasing, Acting Director

(7)
Date Referred: March 4, 1994

FURTHER REFERRALS:

Finance

Date of Committee Action: 3/22

The LABOR AND COMMERCE Committee considered:

CSSB 212(FIN) am

CS FOR SENATE BILL NO. 212(FIN) am

STATE PROCUREMENTS AND PUBLICATIONS

"An Act relating to the giving of procurement notices; changing the content of the required procurement reports to the legislature by the commissioner of administration; relating to publications produced by state agencies; establishing an innovative construction procurement methods pilot program; and establishing legislative findings, a legislative purpose, and legislative intent for state procurement; and providing for an effective date."

RECOMMENDATIONS:

be replaced with HCS SB 212(L+C) am

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 _____

fiscal note(s) DOT, Adm

zero fiscal note _____

zero fiscal note(s) _____ (2/92) Adm.

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i>	<input checked="" type="checkbox"/>				
<i>[Signature]</i>	<input checked="" type="checkbox"/>				
<i>[Signature]</i>	<input checked="" type="checkbox"/>			*	
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[Signature]
CHAIRMAN'S SIGNATURE

NFIB Alaska

National Federation of
Independent Business

POSITION PAPER

OF

NATIONAL FEDERATION OF INDEPENDENT BUSINESS
NFIB/ALASKA

HOUSE FINANCE COMMITTEE

APRIL 22, 1994

IN SUPPORT OF

SB 212 - STATE AGENCY PUBLICATIONS

9159 Skywood Lane
Juneau, AK 99801



The Guardian of
Small Business

CHAIRMAN, MEMBERS OF THE COMMITTEE, MY NAME IS RESA JERREL, AND I AM THE STATE DIRECTOR FOR THE NATIONAL FEDERATION OF INDEPENDENT BUSINESS - NFIB/ALASKA. I AM APPRECIATE THE OPPORTUNITY TO COMMENT IN FAVOR OF SB 212.

BACKGROUND: NFIB/ALASKA IS COMPRISED OF 4,800 SMALL AND INDEPENDENT BUSINESS OWNERS. THE LEGISLATIVE AGENDA OF NFIB/ALASKA IS DETERMINED BY OUR BALLOT. THE BALLOT IS OUR ANNUAL POLL OF OUR MEMBERS ON A SERIES OF ISSUES DEEMED CRITICAL TO SMALL BUSINESS. A MAJORITY VOTE, OF THE MEMBERS IN RESPONSE TO THE POLL, SETS OUR POLICY AND POSITION ON LEGISLATIVE ISSUES.

FOR THE RECORD THE FOLLOWING IS THE RESULT OF THE 1990 NFIB/ALASKA BALLOT QUESTION REGARDING GOVERNMENT COMPETITION:

Should legislation be passed that would restrict government agencies from competing with private business in Alaska?

Yes 83% No 6% Undecided 11%

CURRENT LAW REQUIRES PUBLICATIONS OF STATE AGENCIES TO BE PRODUCED AT A STATE OPERATED FACILITY WHENEVER POSSIBLE. THIS PUTS THE STATE IN DIRECT COMPETITION WITH SMALL BUSINESSES. IT ALSO, PUTS SMALL BUSINESSES AT A DISTINCT DISADVANTAGE IF THEY WANT TO DO BUSINESS WITH THE STATE.

SECTION 5, ON PAGE 5, STARTING AT LINE 6, REPEALS THAT LAW AND SHIFTS THE PREFERENCE FROM STATE OPERATED PRINTING FACILITIES TO PRIVATELY OWNED BUSINESSES. NFIB/ALASKA BELIEVES THAT SB 212 WILL HELP LIMIT THE SIZE AND COST OF STATE GOVERNMENT AND FOSTER ECONOMIC GROWTH IN THE PRIVATE SECTOR.

NFIB/Alaska
SB 212
Page: 2

ALTHOUGH IT DOES NOT ELIMINATE COMPETITION FROM OTHER STATE OR LOCAL AGENCIES - IT IS CERTAINLY A BIG STEP IN THE RIGHT DIRECTION.

THANK YOU FOR THE OPPORTUNITY TO COMMENT IN SUPPORT OF THIS WORTHY LEGISLATION. I WOULD URGE YOU TO MOVE THE BILL OUT OF COMMITTEE SO WE CAN, HOPEFULLY, SEE IT BECOME LAW THIS YEAR. IF YOU HAVE ANY QUESTION, I WOULD BE HAPPY TO TRY AND ANSWER THEM.

STATE OF ALA A
 1994 LEGISLATIVE SESSION
FISCAL NOTE

3
 Bill Version: SB 212
 (S) Publish Date: 2-9-94

Revision Date: 1/27/94 Department Affected: DOT&PF
 Title: State Procurements and Publications BRU: E&OS
 Component: D&C
 Sponsor: Senate L&C Committee Component Serial Number: 547

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	5.0	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:	5.0	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)

1002 FEDERAL RECEIPTS	0	0	0	0	0	0
1003 GF MATCH	0	0	0	0	0	0
1004 GF	5.0	0	0	0	0	0
1005 GF/PROGRAM RECEIPTS	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL FUNDING:	5.0	0	0	0	0	0

POSITIONS

FULL-TIME
PART-TIME
TEMPORARY

Changes in CSSB 212 (Fin)
 reflect NO FISCAL CHANGE from the original
 fiscal note. This fiscal note is appropriate.
 2-15-94 date hcl Comte Aide (initial)

Changes in CSSB 212 (L&C)
 reflect NO FISCAL CHANGE from the original
 fiscal note. This fiscal note is appropriate.
 2/8/94 date ADT Comte Aide (initial)

estimate of current year (FY94) impact: \$ 0

ANALYSIS: (Attach a separate page if necessary) The \$5,000 will be used to develop regulations for the pilot program. Since this is a pilot program, it will not be applied to all state funded projects but on selected ones with the most opportunity for success. In FY94 about \$30 million in state funded projects were awarded. We anticipate it being used on approximately 10% of the projects. Although any bonuses should be off set by lower bids, it may be necessary to set aside project specific funds to pay for the bonuses.

Prepared by: Mal Linthwaite, Director

Phone: 465-2951

Division: E&OS

Date: February 1, 1994

Approved by Commissioner: B.A. Campbell

Phone: 465-3901

Agency: Department of Transportation and Public Facilities

Date: February 2, 1994

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XPRT CONSULTANTS

9701 Brien Street
Anchorage, Alaska 99516
(907) 346-3416

(907) 463-3241

FAXNOTE TO: (907) 465-2293

FAXNOTE - 11 pages:

Consists of this page + 10 pages
of attachments

Date: 22 April 1994

TO: Cileen Maclean, Co-Chair
Ron Larson, Co-Chair
House Finance Committee
Alaska State Legislature
Juneau, AK 99801

Phone (907) 465-3757 or 4833 or 3878

Attached is/are Copy of letter & comments re: SB 212

"Innovative Contracting" is a bad idea.
Bonuses will not be limited to just Alaska businesses
Outside Contractors can earn the bonuses also!
You can't cut the budget while giving away
millions through bonuses!

FROM: XPRT CONSULTANTS

Peggy R. Thomas
PEGGY R. THOMAS
Chief Executive Officer

DON'T GIVE AWAY 5%
OF THE CAPITAL BUDGET.
Delete "innovative contracting"
from SB 212

See Details in attachments.

PEGGY R. THOMAS
9701 Brien Street
Anchorage, Alaska 99516
(907) 346-3416

FYI
Info Copy to:
Co-Chair of House
Finance Committee
4/22/94
- P. Thomas

TO: FAX (907) 465-4565

FAX LETTER

16 March 1994

Hon. Ramona Barnes, Speaker,
and Members of
The Alaska House of Representatives
Box V
Juneau, AK 99811

RE: CSSB 212 (FIN) AM - State Procurement Code Amendments

Dear Madam Speaker and Members of the House:

**PLEASE REFER COPIES OF THIS LETTER TO STAFF AND MEMBERS!
GREAT CARE AND MORE STUDY IS NEEDED BEFORE SB 212 IS PASSED!**

Specific detailed comments are attached for your use and action.

Although parts of the bill provide valid, even laudable solutions, Section 8, regarding innovative contracting, is not a plausible solution to perceived problems, and may have grave consequences. Purity of motive for adoption of Section 8 (Innovative Contracting) is not entirely clear. Therefore, you should at least be aware that incentive contracting methods are already acceptable under federal guidelines regarding federal funding and also under AS 36.30. By making a special exception to the law, hidden or private agendas may result in and promote corrupt practices.

My attached review is no smoke screen, but the proposed Section 8 of subject bill may be. I am a qualified expert, with over forty years experience in government agencies engaged in public procurement and contracting. For the purposes stated, Section 8 is not needed.

Please give weight to the attached review comments and suggestions regarding subject bill in your deliberations.

If I can be of any further assistance, or service please call (907) 346-3416.

Sincerely,

Peggy R. Thomas
PEGGY R. THOMAS, C.P.M.
Chief Executive Officer

Attachment

Review Comments - CSSB 212 (FIN) AM (9 pages)

REVIEW COMMENTS - CSSB 212(FIN)AM - AMEND STATE PROCUREMENT CODE

Very few changes are needed to make the proposed bill plausible. EXCEPT that Section 8 should not be enacted at all. Comments include specific reference to CSSB 212(FIN)AM, section-by-section, as indicated herein.

Because of the nature and importance of fundamental principles which will be affected if Section 8 is enacted, that section is addressed first below. Comments regarding other sections of the bill follow Section 8.

Section 8. INNOVATIVE CONSTRUCTION PROCUREMENT METHODS PILOT PROGRAM.

The Legislature SHOULD NOT ADOPT this section based on numerous questions which remain unanswered for valid reasons outlined below:

1. Proposed "innovative" methods were crafted to circumvent federal rules which specifically prohibit application of local preference in procurement. (This purpose was clear in explanatory information distributed at hearings on the bill.)
2. Proposed "innovative" methods attempt to legitimize "buying in" or "low-balling" of bids under the guise of innovation, even though such practices fly in the face of recognized fundamentals of good procurement practice.
3. Proposed "innovative" methods preclude compliance with cost and pricing data requirements which are absolutely essential to determination of reasonableness of price for change orders and price adjustments.
4. Proposed "innovative" methods make it impossible for a contractor to certify the accuracy and completeness of current cost and pricing data which is submitted for a contract. Contractor cost and pricing data are required by both federal and state law. Also see COST OR PRICING DATA DISCUSSION below.
5. Proposed "innovative" methods equate to cost-plus-percentage-of-cost contracting if a "bonus" is to be provided subsequent to completion of the work as a percent of the contract amount. Both federal law and AS 36.30.370 prohibit the use of such contracts. The basic contract amount is based on costs, and the promise of provision of a fee, bonus, or whatever it may be called as a percent of the actual violates the prohibition.) If the amount of fee or bonus is known (at award) by provision in the contract, then the amount of it must properly be included in the bid/contract total for purposes of bid evaluation.
6. Proposed "innovative" methods will require contractors to finance and carry an additional 5% (or other bonus percentage of the cost of a job until after the "bonus" is paid, including the interest cost of money, much to their financial detriment. It is usual to retain a percentage of the contract amount of completed work pending final completion of a construction contract. If the retainage is 10%.

then the contractor is already perhaps footing the bill for interest on the retainage, and if interest on an extra 5% (or other bonus percentage) is added to that it may be injurious. This will place additional burden on local contractors.

7. Proposed "innovative" methods will result in inadequate bonding of construction contracts. Bonding requirements are based on the amount of the bid and/or contract, and probably will not include any potential after-the-fact 5% (bonus) which in reality should be a part of the contract bid price. Insufficient bonding, anything short of bonding based on the full amount required for completion of the work, does not adequately protect either State or surety interests.

8. Proposed "innovative" methods will cause bonding companies to raise the cost of, or perhaps even refuse to bond State contractors due to inconsistency between bonding provisions, bond penal sums, contract amount(s), and the actual liability of the surety.

9. Proposed "innovative" methods either put the contractor at risk for potential failure to "earn" an after-the-fact bonus (which an agency could arbitrarily or otherwise subjectively determine)

or

Proposed "innovative" methods constitute promise to pay the fee or bonus whether or not it is merited, thus said fee or bonus is part of the basic contract price which effectively raises the price of the original bid.

10. Proposed "innovative" method is based on belief and hope that if contractors know they will receive a bonus after-the-fact, they will bid lower to get the job. This is intended to provide the same advantage to Alaska businesses that 5% Alaska bidder preference would give. Either concept is anti-competitive, and will not succeed in fostering Alaska's economy. In the trade, this is called "buying in" and is totally contrary to acceptable contracting practices.

Proposed "innovative" methods are based on a false premise which assumes that Alaska bidders cannot successfully compete with outside firms for State construction contracts. Alaska bidders quite frequently compete successfully against outside firms for federal construction contracts.

If there is a serious negative flow of State business going "outside" it is surely not concentrated in the construction area!

Construction contracts are performed in Alaska.

Why then should it be necessary to "innovate" construction contracting? More realistically, then, the real problem may be in other contracting areas, i.e., equipment and materials purchases, or contracts for services other than construction.

PREFERENCE IS NO ANSWER - THE REAL PROBLEM NEEDS A VALID SOLUTION.

PARTIAL PROBLEM DEFINITION AND SOLUTION CAN BE ACHIEVED AS FOLLOWS:

It is unlikely that any consistent success of outside firms in competition for State contracts to the exclusion of Alaska firms can be explained as differences in costs alone. Logically, the differences in costs for an Alaska contractor to perform a construction contract versus the costs incurred by an outside firm to do the same project in Alaska are probably minimal, i.e.:

- All construction contracts over \$2,000 require that labor shall be paid no less than statutorily prescribed wage rates. (This is also true for federal contracts.) Therefore, labor costs should be virtually the same for both Alaskan and outside firms.

- Materials which are incorporated in the work if not already in Alaska, must be purchased and shipped to Alaska. This is true for both Alaskan and outside firms, and therefore material costs should be virtually the same for both.

- Alaska firms generally hire local labor, thus no transportation of personnel from outside Alaska is required. This should lower costs for Alaska firms. Also, even if only outside firm managers or supervisors are transported here from outside, and their salaries are lower than Alaska's norm, they also must be housed in Alaska during the job, which should increase the cost for the outside firm.

- Equipment required for performance of a job is normally already in Alaska if used by Alaska firms, but an outside firm will either have to obtain/rent and operate equipment on the Alaska economy or ship in equipment from outside. Therefore, Alaska firms seem not to be at a disadvantage.

- Bonding and insurance requirements are the same for outside and Alaska contractors.

- Business management by long distance usually costs more than local management presence.

- If contract provisions regarding wage rates, insurance, supervision, proper handling of changes, and other aspects of job performance are properly administered, there should not be any substantial differences in COSTS incurred by either local or outside contractors.

So, where are the differences? Apparently, there is some laxity or advantage which is enjoyed by the outsiders which is not afforded the locals. If labor laws and other contract requirements are upheld and enforced by the State's Procurement and Contracting Officers then Alaska firms should be able to bid on a par with outsiders. They do it in federal work (Many years of personal experience of the undersigned has shown that wage laws and other provisions which are actively and effectively enforced by the fed promote fairness in competition), so why can't we do it with State

work? Bidder awareness and assurance of agency dedication to fair, effective administration of State contracts will promote trust in the fairness and increased opportunity of the competitive process.

If the State wishes to use "incentive" type contracts, the law already provides for that, and new "innovative" methods are not needed. AS 36.30.370 currently permits "any type of contract" except cost-plus-percent-of-cost. Properly designed incentive type contracts are fully acceptable under both federal and State contracting law. The contract type used will not necessarily cause change in the number of contract awards to Alaska firms. BUT, if other more complex types of contract are needed, i.e., incentive fee, performance incentive, etc., etc., then these should be competently developed and used by the procurement and contracting professionals who are engaged in spending the State's money, within existing law.

Use of the more complex contracts, i.e., cost type, incentive type, etc., usually is not a good idea because of the excessive amount of administrative effort required for both contractors and agencies. Contracts obviously are lacking in proper administration and enforcement now, and to further complicate the already weak function now would simply result in more waste. Incentive type contracts are much more costly to administer than the more simple fixed price type of contract. Also, the most preferable type of contract for purposes of transferring risk to the contractor, instead of to the State, is the firm fixed price type of contract. Variations from the firm fixed price type of contract routinely lessen the risk on the Contractor and increase the risk on the contracting agency.

Not to despair! It is possible to beef up the force, and make effective contract administration by contracting professionals a way of life. Actions which can be taken to produce better performance, professionalism, and excellence in State contracting include:

- Emphasis on pertinent training and development,
- Better definition of qualifications and duties, and
- Improved and more comprehensive regulations and procedures,

All of the above will go further toward fostering Alaska's economy than any amendment one could make in the State Procurement Code.

AS 36.30 is good, and good law should neither be cluttered nor watered down by addition of any unnecessary or overly indulgent provisions.

(Continued Next Page)

Section 1. FINDINGS, PURPOSE, AND INTENT

This section gives insight into the background (problems) which the enactment of CSSB 212(FIN)AM is purportedly intended to resolve.

However,

(1) If Section 8 is enacted as proposed, it will not help "develop and maintain a strong, stable, and prosperous economy based on private investment" as stated in subsection (a)(1). The State's contribution of "bonus" money to contractors is not by any stretch of the imagination, "private investment." (See details under Section 8.)

(2) If Section 8 is enacted as proposed, the intended "strong and healthy free enterprise system and opportunity for Alaskan businesses to have free entry into the business market and to grow and expand," will not be fulfilled. Legalization of "low-balling" of bids in order to "buy-in" to State contracts (as permitted by Section 8) will work in direct opposition to the admitted benefits of the free enterprise system. In effect, Section 8 will dampen ability of Alaskan business by snatching away opportunity from those businesses who are not willing or not in a position to finance the added amount of the proffered bonus money during the progress of a contract from beginning to end. This concept is hardly "free entry" into the business market. Depending upon the rate of interest for financing a job, a contractor could even spend more than the amount of the bonus (5% ?) which may be dangled as a carrot under "innovative" methods, but payable only after-the-fact. The after-the-fact bonus won't help a contractor to "grow and expand" if the cost of money during the job erodes the bonus to be paid at the end. (See details under Section 8.)

(3) Certainly, maximum use of Alaska's products "strengthens, stabilizes, and diversifies Alaska's economy. There should never be any question as to the true economic value of the State's use of products of Alaska origin. The real problem is not really economic value or diversity, it is lack of product knowledge and/or zeal on the part of those who either specify, purchase, or issue contracts. If those who make the procurement/contracting decisions had more incentive to make full use of Alaska-origin products, i.e., reward if successful, and/or reflection in negative performance evaluations if unsuccessful, then the true economic value of the State's acquisitions would, no doubt, quickly prove to be more beneficial to Alaska's economy. (Also see comments under Section 8.)

(4) No matter whether "governmental agencies purchase and use "out-of-state products or services, money will continue to flow outside of Alaska unless all products required are manufactured in Alaska. As for out-of-state services, there must be more zeal on the part of those who either specify, purchase, or issue contracts to develop and utilize in-state sources. If the incentive to issue service contracts to Alaska firms were increased as discussed under (3) above, there would be much more utilization of local business for services.

(5) Bid documents for State contracts should always specify "Alaskan products" especially when "comparable" to "out-of-state goods" which would be purchased instead. (Also see discussion under (3) above.) It is doubtful that the "loss of revenue in the state" is any greater than the excess cost of purchasing goods for which the price may have been increased by the amount of any bonus or preference afforded to Alaska bidders. (5? ?) When true comparability exists between in-state and out-of-state products, there is actual financial benefit to the State from procurement of the lowest priced item. If there is desire and capacity in the State by a business to compete as a true production base for manufactured products, then the market will evolve to the benefit of the local source. However, in most cases there is not a base of production in Alaska from which to acquire manufactured products, i.e., manufacturing is not a predominant trend in Alaska industry. Until it is, only the markup (if any) on manufactured items will benefit Alaska businesses who sell to the State.

(6) Reasons underlying the "frequently awarded" contracts "to out-of-state firms, even though Alaska suppliers . . . are more accessible and responsive" may be more than just the most obvious reasons. At first blush, it may seem that those who specify, purchase, or contract for items and services are simply not doing their jobs by failure to utilize Alaska products and provide ample opportunity to Alaska businesses. The reasons may go much deeper than that, and there may be a darker side to the flow of business to outside firms. As previously discussed, it matters not where the products are purchased, if goods are not manufactured in Alaska, money will flow outside. However, in acquiring goods which are not of Alaska origin, Alaska businesses still realize their own markup, above costs of getting the goods to Alaska. The difference in price then is merely the amount of markup, because an Alaska business may avail itself of good purchasing practices (lower cost) by shopping the market effectively to hold down costs, including shipping. The cost of getting the goods to Alaska is going to be an element of price whether purchase is from an outside source or from an Alaskan business. Likely, the flow of contracts to outside businesses for the State's construction contracts stems from lack of enforcement of labor laws, subcontracting provisions, and/or other statutory compliance requirements present in the State's contracts. There is no question that local contractors are preferable for the State's business, but innovative contracting as proposed by Section 8 is not the answer. (See details under Section 8.)

(7) Yes, Alaska MUST "examine its purchasing practices in order to ensure that state agencies support Alaskan businesses by making every reasonable effort to identify available Alaskan goods and services and to foster bidding by local businesses and labor forces." However, the State must first look inside its operations to assure top quality in the administration of its contracting and procurement programs. External fixes, like paying contractors to bid low, to entice them to do business with the State to their own financial detriment, and perpetuation of preferences, etc., will not yield the desired result. Fixing the in-house capacity, getting the SERIOUS attention of those engaged in SPENDING the State's money is the real answer. Refer to the discussion in (3) above. (Also see details under Section 8.)

(8) Once the State (or the Legislature) has the full SERIOUS attention of those engaged in SPENDING the State's money, i.e.,

They (procurement and contracting officers) must either zealously pursue and fulfill legislative intent, serve the best interests of the State, and uphold the public trust in implementation and execution of the provisions of AS 36.30 in order to receive incentive awards for success in their jobs,

OR

Their failure will be reflected in periodic performance evaluation.

Section 2. AS 36.30.130 (a) is amended . . .

Subsection (3)(B) of amended AS 36.30.130(a) should be deleted.

Under subsections (3)(A) and (B) regarding mailing of notices "to all active prospective contractors on the appropriate list maintained under AS 36.30.050" but only "on request" to outsiders, the question needs to be asked:

Have prospective contractors
"requested" the mailing if they paid a
fee, and asked to be on the mailing
list for specific items or services?

The answer probably is a resounding "Yes!"

Whatever the intent, if competition is restricted in the way proposed by this section, i.e., issuing solicitations only within the State, before and separately from soliciting outside, it will constructively be anti-competitive, and will slow down (double the time required for) processing a State procurement and/or contract from solicitation to award. (The period from user request to award of a contract/purchase order in professional procurement vernacular is normally referred to as procurement "lead-time".)

SUGGESTION FOR IMPROVEMENT IN PUBLIC NOTICE REQUIREMENTS:

It could greatly benefit Alaskan businesses, and give them more incentive if the law prescribed public announcement (press releases) of bid awards as a result of competitive procurement methods. Procurement Officers who read the news would become more aware of the successful bidders for all types of State contracts. Public awareness would increase pressure on agencies to do business in Alaska. Such notices should be by press release to local newspapers in the State, and should contain the information which is not unlike that which the Legislature will require in reports submitted under AS 36.30.540 (6) as amended by Section 4 below.

When two rounds of competition (first inside the State, then another outside) are required for award of a State contract, it will more likely increase the urgency of need. Such delay in the process will likely result in more frequent resort to emergency authority under AS 36.30.310, thus reducing competition and further eroding opportunity for Alaska business.

COST OR PRICING DATA DISCUSSION

AS 36.30.040 (b) (11) and (12) require the adoption of regulations pertaining to "(11) providing for conducting price analysis; (12) use of payment and performance bonds . . ."

Cost or pricing data as required by AS 36.30.400, in the case of a change order or modification to a contract is impossible to certify as accurate, if the price as submitted does not include all costs, or is not truly reflective of the actual or ultimate known price of the contract. Whenever a contract is to be awarded, such as a construction contract, which contains provisions for change orders and/or price adjustments of any kind, it is known going in, that there will be non-competitive negotiations in the event that such changes or adjustments become necessary during the performance of the contract. Since this is the case, in satisfaction of the statutory requirement of AS 36.30.400, it is only prudent to obtain cost and pricing data certified as accurate, complete, and current as of date of the contract award. Without such cost and pricing data, it is impossible to determine at a later date the actual extent and exactly which elements of cost are affected by changes or adjustments. If changes and adjustments are made in absence of overall cost and pricing data for the entire contract, it is highly probable that increases in contract amount will be too generous and decreases will be too small to assure the best and fairest deal is obtained for the State.

Change orders and price adjustments are non-competitive, i.e., these actions are not based on adequate price competition, even though the basic contract was. Unless procurement officers are obtaining some form of certified cost and pricing data from successful contractors at time of award, if the contract contains provisions for future change orders or price adjustments they have not complied with the statutory mandate to obtain such data.

There is no purpose to be served by getting separate and distinct cost and pricing data only for and at the time of each individual change order and/or price adjustment. Standing alone, in isolation, there is no credence to be gained from a contractor's proposed prices (or cost breakdowns) for only the change or adjustment unless it is possible to also know the amounts included in the original contract price of the work to be changed or the original cost of the amount(s) related to any authorized adjustment in price.

It is sheer folly to attempt to evaluate the reasonableness of proposed price changes, whether up or down, or price adjustments due to changed conditions or any other authorized reason, without first knowing how much the contractor had in the job for that element of the work up front. In order to assure that the cost elements are not out of balance, it is appropriate to get that information at the beginning of the job, before the need for identification of which elements of the job will be affected by the pricing exercise to finalize a change order or adjustment.

Appropriate public announcement of contract awards must include:

The name and address of the successful bidder.

Date of award.

Amount of the contract.

Description of goods, services, construction.

Statement of basis for award, i.e., "As a result of competitive bids solicited under Invitation for Bids (IFB) number _____."

Number of bids/offers solicited.

Number of bids/offers received.

Section 3. AS 36.30.130(a) is repealed and reenacted . . .

This section is not needed if Section 2 is revised as suggested above. This Section 3 will generate confusion due to its delayed effective date. Section 3 should be deleted in its entirety. If a time limit is needed for Section 2, it should be put into Section 2, i.e., "Subsections (3)(A) and (3)(B) shall expire four years after the effective date of this Act" or better yet, state a certain date, i.e., " . . . shall expire September 1, 1998."

Section 4. AS 36.30.540 is amended . . .

Proposed reporting requirements are not excessive, and should keep the legislature well-informed as to State performance of its procurement function. In particular, if subsection (6) data which would provide statistical information, is accumulated as suggested under Section 2 above re: public announcement of contract awards, it will provide a constant flow of information which could be consolidated for reporting purposes annually, or as desired.

It may be a good idea in future, particularly with the advent of annual instead of biennial reports, to encourage agencies to develop techniques for validating their data. Some prescription of management reports requirements may be appropriate for inclusion in agency regulations.

Professional analysis of reports to the Legislature would greatly enhance their usefulness, and provide insight to potential or existing problems and trends.

Section 5, 6, 7. (Repeals and amendments: AS 44.99 Production, Disclosures, etc., of State Publications)

The changes made in these sections are good correction of current law regarding State Publications, and should go a long way toward avoidance of State competition with the private sector. Alaskan businesses are fully capable and deserving of receiving contracts to perform printing services.

Section 8. (See Page 1 of Review Comments)

Sections 9 and 10. Effective dates

Section 3 should be deleted, and therefore Section 10 will not be needed. Delay of four (4) years for an effective date will create extreme confusion.

SB

212

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 2/9/94

FURTHER:

DATE TURNED INTO OFFICE: 2-15-94

The Finance Committee considered **SENATE BILL NO. 212**

"An Act relating to publications produced by state agencies and to the procurement of property, property interests, and services by state agencies."

and recommends:

- replace with CS SB 212 (FINANCE)
- or adopt previous CS _____
- attaches amendment(s)

- same title
- new title
- technical title change (HB only)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

NEW FISCAL NOTES

Department	Date	Zero	Fiscal
Admin	2-2-94	✓	
Admin-Statewide	2-2-94		\$256.1
DOT & PF	2-2-94		\$ 5.0

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

DO PASS.

Tim Kelly
[Signature]
Barry [Signature]
George [Signature]

OTHER RECOMMENDATIONS:

[Signature]

1. [Signature] DO PASS
 Co-Chair: Signature/Recommendation

2. [Signature] 10/23/94
 Co-Chair: Signature/Recommendation

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

№ 1
Bill Bill Version: SB 212
(C) (S) Publish Date: 2-9-94

Revision Date: _____ Dept. Affected: Administration
Title: An Act relating to the giving of procurement notices: changing the content of the requirement procurement. BRU: General Services
Sponsor: Senate Labor & Commerce Component: Purchasing
Requestor: Senate Labor & Commerce COMPONENT SERIAL NO. 60

Expenditures / Revenues: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
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
---------	---	---	---	---	---	---

REVENUE FUND SOURCE:	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GEMatch	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS

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

Changes in CS SB 212 (KCC) have no fiscal impact. This fiscal note is appropriate.
2/8/94 [Signature]
date/ Comte Aide (initial)

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

ANALYSIS: (attach a separate page if necessary.)

This bill will require one-time notices of the revised statute to all bidders on the contractors list maintained under AS 36.30.050. Thereafter notices will be mailed only to bidders with Alaska zip codes unless a bidder specifically requests a bid solicitation for a specific Invitation to Bid.

Fiscal impact to the Division will be minimal.

Prepared By: Dugan Petty, Director Phone: 465-2250
Division: General Services Date: _____

Approved by Commissioner: Nancy Bear Usara Date: 2/12/94
Agency: Department of Administration

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FISCAL NOTE

No. 2
 Bill Number: SB 212
 (S) Publish Date: 2-9-94

STATE OF ALASKA
 1994 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Statewide* Admin
 Title: An Act relating to the giving of procurement BRU: _____
notices; changing the content of the required procurement... Component: _____
 Sponsor: Senate Labor & Commerce
 Requestor: Senate Labor & Commerce COMPONENT SERIAL NO. _____

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	256.1*	256.1*	256.1*	256.1*	256.1*	256.1*
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	256.1*	256.1*	256.1*	256.1*	256.1*	256.1*

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE FUND SOURCE:	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

FUNDING:

1002 Federal Receipts	*	*	*	*	*	*
1003 GF Match	*	*	*	*	*	*
1004 GF	*	*	*	*	*	*
1005 GF/Program Receipts	*	*	*	*	*	*
1006 GF/MHTIA	*	*	*	*	*	*
Other	*	*	*	*	*	*
TOTAL	256.1*	256.1*	256.1*	256.1*	256.1*	256.1*

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 (FY94) impact: \$ 0

Changes in CS SB 212 (L&C)
 reflect NO FISCAL CHANGE from the original
 fiscal note. This fiscal note is appropriate.
2/8/94 [Signature]
 date Corde Aide (initial)

ANALYSIS: (attach a separate page if necessary.)

See attached.

*Bids are awarded by the Division on behalf of customer agencies that have a variety of funding sources. This analysis reflects potential cost impacts to all agencies as a result of potentially higher bid awards. These are not cost impacts to the Division of General Services.

Prepared By: Dugan Petty, Director
 Division: General Services

Phone: 465-2250
 Date: _____

Approved by Commissioner: Nancy Bear Usura
 Agency: Department of Administration

Date: 2/2/94

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STATE OF ALA. A
1994 LEGISLATIVE SESSION

FISCAL NOTE

Bill Version: SB 212

(S) Publish Date: 2-9-94

Revision Date: 1/27/94
Title: State Procurements and Publications

Department Affected: DOT&PI
BRU: E&OS
Component: D&C
Component Serial Number: 547

Sponsor: Senate L&C Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	5.0	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:	5.0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE FUND SOURCE	0	0	0	0	0	0
---------------------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

1002 FEDERAL RECEIPTS	0	0	0	0	0	0
1003 GF MATCH	0	0	0	0	0	0
1004 GF	5.0	0	0	0	0	0
1005 GF/PROGRAM RECEIPTS	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL FUNDING:	5.0	0	0	0	0	0

POSITIONS

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

Changes in CS SB 212 (L&C)
reflect NO FISCAL CHANGE from the original
fiscal note. This fiscal note is appropriate.
2/8/94 [Signature]
date Comptroller (initial)

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

ANALYSIS: (Attach a separate page if necessary) The \$5,000 will be used to develop regulations for the pilot program. Since this is a pilot program, it will not be applied to all state funded projects but on selected ones with the most opportunity for success. In FY94 about \$30 million in state funded projects were awarded. We anticipate it being used on approximately 10% of the projects. Although any bonuses should be off set by lower bids, it may be necessary to set aside project specific funds to pay for the bonuses.

Prepared by: Mal Linthwaite, Director

Phone: 465-2951

Division: E&OS

Date: February 1, 1994

Approved by Commissioner: [Signature]

Phone: 465-3901

B.A. Campbell

Agency: Department of Transportation and Public Facilities

Date: February 2, 1994

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AMENDMENT

S. Kelly MOVED
(no objections)

OFFERED IN THE SENATE
TO: CSSB 212(L&C)

BY SENATOR PEARCE

Page 5, line 10, following "\$1,500,":

Insert "or if the actual annual costs of a state agency publication that is a report required by law are paid from a source other than the general fund and exceed \$1,500."

Page 5, line 24, following "use,":

Delete "or"

Insert "[OR]"

Page 5, line 25, following "agency":

Insert ", or to materials used by a state agency to develop a market for the agency's services or products"

SENATE FINANCE
COMMITTEE

Amendment Number: ①
Bill Number: SSB 212
Sponsor: Pearce Date: 2/14/94
Logged In By: (Bm)

CS FOR SENATE BILL NO. 212(Fin)(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered: 2/9/94
Referred: Finance

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE BY REQUEST OF THE SENATE ECONOMIC TASK FORCE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the giving of procurement notices; changing the content of
2 the required procurement reports to the legislature by the commissioner of
3 administration; relating to publications produced by state agencies; establishing an
4 innovative construction procurement methods pilot program; and establishing
5 legislative findings, a legislative purpose, and legislative intent for state
6 procurement; and providing for an effective date."

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

8 * Section 1. FINDINGS, PURPOSE, AND INTENT. (a) The legislature finds that
9 (1) the state needs to develop and maintain a strong, stable, and prosperous
10 economy based on private investment;
11 (2) the existence of a strong and healthy free enterprise system is directly
12 related to the well-being and competitive strength of Alaskan businesses and to the opportunity
13 for Alaskan businesses to have free entry into the business market and to grow and expand;

1 (3) the use of products manufactured, grown, or produced in Alaska
2 strengthens, stabilizes, and diversifies Alaska's economy;

3 (4) when governmental agencies purchase and use out-of-state products and
4 services, they reduce job-creating investments and limit the growth of the economy of Alaska;

5 (5) contracts are frequently awarded to out-of-state firms, even though Alaskan
6 suppliers, manufacturers, and providers of services are more accessible and responsive to the
7 needs of Alaska's business community than their out-of-state counterparts;

8 (6) there is a need for Alaska to examine its purchasing practices in order to
9 ensure that state agencies support Alaskan businesses by making every reasonable effort to
10 identify available Alaskan goods and services and to foster bidding by local and resident
11 businesses and labor forces;

12 (7) state agencies should look outside Alaska for goods and services only if
13 they have provided notice of the procurement in Alaska.

14 (b) The legislature declares that the purpose of this Act is to foster a procurement
15 process where Alaskan businesses obtain a fair proportion of Alaska's total procurement
16 contracts by providing Alaskan businesses with a fair, equitable, and competitive bid process.

17 (c) It is the intent of the legislature that

18 (1) except as prohibited under AS 36.30.320(d), a state agency shall, when
19 practicable and economically feasible, design procurements in a way that fosters participation
20 by Alaska bidders or offerors;

21 (2) except as prohibited under AS 36.30.320(d), and unless it is anticipated that
22 two or more Alaska bidders or offerors would be capable of performing the procurement, an
23 agency that is proposing a procurement shall, when practicable and economically feasible,
24 divide or otherwise structure the procurement so that it can be performed by Alaska bidders
25 or offerors, if the proposed procurement is too large to be performed by Alaska bidders or
26 offerors, and if the procurement officer determines that Alaska bidders or offerors generally
27 would be capable of performing the procurement if the procurement were reduced in size or
28 otherwise restructured; in this paragraph, "Alaska bidders or offerors" means persons who
29 qualify as Alaska bidders under AS 36.30.170(b).

30 * Sec. 2. AS 36.30.130(a) is amended to read:

31 (a) The procurement officer shall give adequate public notice of the invitation

1 to bid at least 21 days before the date for the opening of bids. If a determination is
2 made in writing that a shorter notice period is necessary for a particular bid, the
3 21-day period may be shortened. The determination shall be made by the chief
4 procurement officer for bids for supplies, services, or professional services. The
5 determination shall be made by the commissioner of transportation and public facilities
6 for bids for construction or acquisition of property for the state equipment fleet.
7 Notice shall be published in the Alaska Administrative Journal. The time and manner
8 of notice must be in accordance with regulations adopted by the commissioner of
9 administration. When practicable, notice may include

10 (1) publication in a newspaper calculated to reach prospective bidders
11 located in the state;

12 (2) notices posted in public places within the area where the work is
13 to be performed or the material furnished; and

14 (3) notices mailed to all active prospective contractors on the
15 appropriate list maintained under AS 36.30.050

16 (A) if the contractors are located in the state;

17 (B) upon request, if the contractors are not located in the
18 state.

19 * Sec. 3. AS 36.30.130(a) is repealed and reenacted to read:

20 (a) The procurement officer shall give adequate public notice of the invitation
21 to bid at least 21 days before the date for the opening of bids. If a determination is
22 made in writing that a shorter notice period is necessary for a particular bid, the
23 21-day period may be shortened. The determination shall be made by the chief
24 procurement officer for bids for supplies, services, or professional services. The
25 determination shall be made by the commissioner of transportation and public facilities
26 for bids for construction or acquisition of property for the state equipment fleet.
27 Notice shall be published in the Alaska Administrative Journal. The time and manner
28 of notice must be in accordance with regulations adopted by the commissioner of
29 administration. When practicable, notice may include

30 (1) publication in a newspaper calculated to reach prospective bidders;

31 (2) notices posted in public places within the area where the work is

1 to be performed or the material furnished; and

2 (3) notices mailed to all active prospective contractors on the
3 appropriate list maintained under AS 36.30.050.

4 * Sec. 4. AS 36.30.540 is amended to read:

5 Sec. 36.30.540. REPORT TO LEGISLATURE. The [BEGINNING WITH
6 DECEMBER 1, 1989, THE] commissioner shall biennially report to the legislature
7 concerning procurements by agencies. The report must include

8 (1) the records maintained by the commissioner under AS 36.30.510
9 and the records maintained under as 36.30.520(a) for the previous two fiscal years;

10 (2) recommendations for changes in this chapter or other laws based
11 on implementation of this chapter in the previous two fiscal years;

12 (3) a description of any matters that involved litigation concerning this
13 chapter in the previous two fiscal years;

14 (4) a list of procurements made under this chapter from out-of-state
15 sources during the previous two fiscal years together with the total number of
16 procurement contracts entered into during that period with out-of-state contractors and
17 the total value of these contracts; this paragraph does not apply to procurements made
18 under AS 36.30.320; and

19 (5) a list of procurements made under this chapter from state sources
20 during the previous two fiscal years together with the total number of procurement
21 contracts entered into during that period with state contractors and the tota. value of
22 these contracts; this paragraph does not apply to procurements made under
23 AS 36.30.320;

24 (6) the number of bidders and offerors that bid on or made
25 proposals for procurements under this chapter, the number of these bidders and
26 offerors that were located in the state, and the number of these bidders and
27 offerors that were located outside the state; this paragraph does not apply to
28 procurements made under AS 36.30.320.

29 * Sec. 5. AS 44.99.200 is repealed and reenacted to read:

30 Sec. 44.99.200. PRODUCTION OF PUBLICATIONS. The publications of a
31 state agency shall be produced at a private sector facility located in the state when

1 practicable. The Department of Administration shall establish standards for the
2 production of publications by state agencies, except that the Board of Regents of the
3 University of Alaska shall establish the standards for the university. The standards
4 shall be designed to promote simplicity, low cost, and consistency.

5 * Sec. 6. AS 44.99.210 is amended to read:

6 Sec. 44.99.210. DISCLOSURES ON PUBLICATION. If [A PUBLICATION
7 OF A STATE AGENCY IS EXEMPTED UNDER AS 44.99.200(a) FROM BEING
8 PRODUCED AT A STATE-OPERATED FACILITY AND IF] the actual annual costs
9 for a [THE] publication of a state agency that are paid from the general fund exceed
10 \$1,500, the publication must include a statement that gives the name of the agency
11 releasing the publication, the purpose of the publication, the cost for each copy of the
12 publication, and the city and state where the printing was done. The statement must
13 read: "This publication was released by . . . (name of state agency) . . . , produced at
14 a cost of \$ per copy to . . . (statement of purpose) . . . , and printed in
15 . (city and state where printed)." If the publication is required by law, the statement
16 must also include: "This publication is required by . . . (appropriate citation to Alaska
17 law)." The statement may include, if applicable, a declaration of the revenue raised
18 by the sale of the publication or from the purchase of advertising in the publication.
19 The statement shall be printed in one conspicuous place in the body of the publication
20 in a type size that is not smaller than eight points and shall be placed in a box
21 composed of at least one point rule. In this section, "cost for each copy" means the
22 figure that results after dividing the total contract cost of producing the publication by
23 the number of copies produced. This section does not apply to a publication that is
24 intended primarily for foreign or other out-of-state use, or to a program for a public
25 ceremony of a state agency.

26 * Sec. 7. AS 44.99.230 is repealed.

27 * Sec. 8. INNOVATIVE CONSTRUCTION PROCUREMENT METHODS PILOT
28 PROGRAM. (a) Within six months after the effective date of this section, the commissioner
29 of transportation and public facilities shall begin a two-year pilot program for the use of
30 innovative methods for the procurement of construction services by using bonuses to replace
31 the preferences required under AS 36.30.

1 (b) Notwithstanding the provisions of AS 36.30, if the commissioner determines in
2 writing that using innovative construction procurement methods for the procurement of
3 construction contracts would be in the best interests of the state, the commissioner may, by
4 regulation, adopt procedures different than those provided under AS 36.30 as necessary to use
5 bonuses instead of preferences in the procurement of construction contracts. The
6 determination must find that the innovative methods are not contrary to the intent and
7 purposes of AS 36.30, demonstrate that the innovative methods are in the best interests of the
8 state, and describe how the innovative methods modify the procurement methods and
9 procedures of AS 36.30.

10 (c) Within 15 months after the pilot program begins, the commissioner shall report
11 to the legislature on the construction contracts awarded during the first year of the pilot
12 program. Within 27 months after the pilot program begins, the commissioner shall report to
13 the legislature on the construction contracts awarded during the second year of the pilot
14 program. In a report under this subsection, the information must include for each contract
15 awarded during the period covered by the report

16 (1) the geographical region where the construction is to be performed; and

17 (2) whether the contractor is classified as a minority contractor.

18 (d) The legislature may review the pilot program at any time during the program and
19 may make the program permanent or broaden the scope of the innovative procurement
20 program.

21 (e) In this section,

22 (1) "best interests of the state" means that the proposed action would provide

23 (A) an economic benefit to the private businesses and citizens of the
24 state;

25 (B) an economic benefit to state government; and

26 (C) greater administrative efficiencies than existing procedures provide;

27 (2) "commissioner" means the commissioner of transportation and public
28 facilities.

29 * **Sec. 9. APPLICABILITY.** AS 36.30.540(6), enacted by sec. 4 of this Act, applies to
30 reports due after the effective date of sec. 4 of this Act.

31 * **Sec. 10.** Section 3 of this Act takes effect on the date that is four years after the effective

1 date of sec. 2 of this Act.

Rec'd
2-16-94

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSSB 212(L&C)

Revision Date: _____ Dept. Affected: Statewide*
 Title: An Act relating to the giving of procurement BRU: _____
notices: changing the content of the required procurement... Component: _____
 Sponsor: Senate Labor & Commerce
 Requestor: Senate Labor & Commerce COMPONENT SERIAL NO. _____

Expenditures / Revenues: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	256.1*	256.1*	256.1*	256.1*	256.1*	256.1*
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	256.1*	256.1*	256.1*	256.1*	256.1*	256.1*

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE FUND SOURCE:	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

FUNDING:

1002 Federal Receipts	*	*	*	*	*	*
1003 GF Match	*	*	*	*	*	*
1004 GF	*	*	*	*	*	*
1005 GF/Program Receipts	*	*	*	*	*	*
1006 GF/MHTA	*	*	*	*	*	*
Other	*	*	*	*	*	*
TOTAL	256.1*	256.1*	256.1*	256.1*	256.1*	256.1*

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 (FY94) impact: \$ -0-

ANALYSIS: (attach a separate page if necessary.)
 See attached.

*Bids are awarded by the Division on behalf of customer agencies that have a variety of funding sources. This analysis reflects potential cost impacts to all agencies as a result of potentially higher bid awards. These are not cost impacts to the Division of General Services.

Prepared By: Dugan Petty, Director
 Division: General Services

Phone: 465-2250
 Date: _____

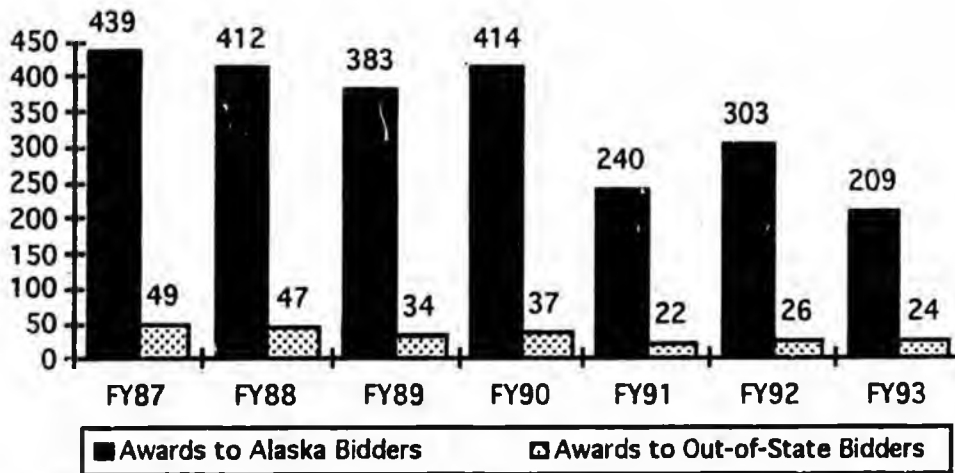
Approved by Commissioner: Nancy Bear Usara
 Agency: Department of Administration

Date: 2/2/94

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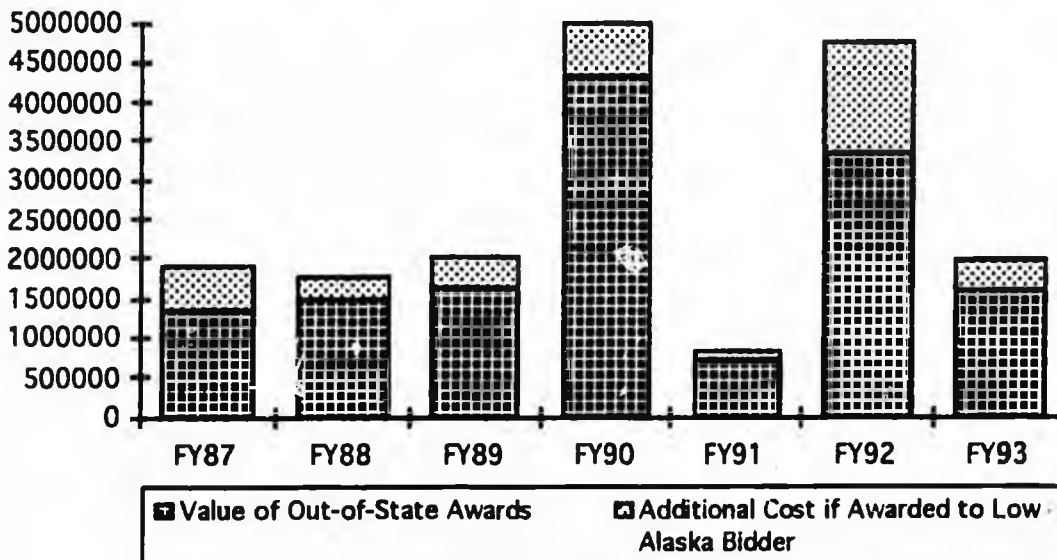
Section 2 of the bill requires notices of bids and proposals to be mailed only to in-state bidders on the contractors list when practicable. We estimate this bill will result in Alaska bidders receiving 66% more of the awards that currently go out-of-state. On average, over the past seven years 34 bids a year are awarded to out-of-state bidders. The graph below demonstrates the number of out-of-state awards in relationship to in-state bid awards over the past seven years.

Invitations to Bid Issued by Department of Administration



An analysis of out-of-state bids issued from FY87 through FY93 indicate that prior implementation of this bill, if 66% effective, would have kept an average of \$1.3 million per year worth of contracts issued by the Department of Administration in-state. The average annual addition costs to State agencies of not purchasing from the otherwise low bidder would be approximately \$356.0. (See graph and table below.)

Difference in Cost Between Alaska Bidders and Low Bidder When Award was Made to Out-of-State Bidder



FISCAL NOTE

**STATE OF ALASKA
1994 LEGISLATIVE SESSION**

BILL NO. CSSB 212(L&C)

Page 3 of 3

	FY87	FY88	FY89	FY90	FY91	FY92	FY93
Value Out-of-State Awards	\$1,335.1	\$1,499.5	\$1,618.7	\$4,324.0	\$730.0	\$3,340.0	\$1,605.0
Value of Low AK Bidders	\$1,922.0	\$1,754.0	\$2,010.1	\$4,992.1	\$835.1	\$4,730.1	\$1,993.0
Cost if Awarded to Low AK Bidders	\$586.8	\$254.5	\$391.4	\$668.1	\$105.2	\$1,390.0	\$388.0

The bill permits bids to be issued to out-of-state bidders when specifically requested or when the notice limitation to only in-state bidders is not practicable. We estimate the number of bids that will go to out-of-state vendors and the number of out-of-state bid awards to be reduced by 66%. Therefore we project, based on the most recent FY93 data, the potential fiscal impacts associated with 66% of the out-of-state awards going to the low Alaska bidder to be:

- Projected Awards Captured for In-State Business $24 \times 66\% =$ 16 awards
- Projected Value of Low Alaska Bidder
 Captured for In-State Business $\$1,993.0 \times 66\% =$ \$1,315.40
- Projected Value of Out-of-State Awards $\$1,605.0 \times 66\% =$ \$1,059.30
- Projected Fiscal Impact (Difference) \$256.1

Alaska State Legislature

Senator Tim Kelly, Chair
Senator Steve Rieger, Vice Chair
Senator Bert Sharp
Senator Judy Salo
Senator Georgianna Lincoln



STATE CAPITOL, SUITE 101
JUNEAU, ALASKA 99801-1182
PHONE: (907) 465-3822
FAX: (907) 465-3756

SENATE LABOR AND COMMERCE
COMMITTEE

716 W. 4TH, SUITE 400
ANCHORAGE, AK 99501-2133
PHONE: (907) 258-8180
FAX: (907) 258-4524

SPONSOR STATEMENT

SB 212: "BUY ALASKA" LEGISLATION

State government is one of the largest purchasers of goods and services in the Alaskan economy, purchasing everything from road design and construction services to copy machines and paper and pencils. The use of services and products provided by Alaskan businesses stabilizes and diversifies Alaska's economy.

SB 212 aims to help strengthen Alaska's economy by increasing the share of State government's contracts for goods and services going to Alaskan businesses.

Specifically, this legislation would establish an Innovative Construction Procurement Methods Pilot Program within the DOT/ PF for a period of two years to implement an Alaska Bonus Program to replace the current preferences.

Current incentives include the Alaskan Bidders Preference, Alaska Subcontracting, Disadvantage Business Enterprises/Equal Employment Opportunity programs, and Alaska Products Preference, and the Alaska Hire Program. The latter two are largely unworkable and consequently underutilized or not utilized at all. Allowing the DOT/PF to test on a trial basis a bonus system which provides bonuses at project completion and encourages the same policy goals would be more economically beneficial for vendors, reduce administrative costs and bid protests, and could likely be used in joint federal/state projects where State preferences are currently not allowed.

The commissioner would establish this program through regulation and report to the legislature on the program's progress 15 and 27 months after implementation. If successful, the legislature could expand and extend this program indefinitely, replacing the current preferences.

Lastly, this bill incorporates a number of provisions from the "Make-It-Alaskan" legislation from the 17th Legislature, House Bill 245, which would also increase the amount of State work going to Alaskans. This bill would:

- 1) Encourage procurement officers to restrict notice of contract solicitation to Alaskan suppliers and providers of services desiring to compete for state contract work. (This practice is already standard in DOT/PF);
- 2) Require the commissioner to include in his report to the legislature on State procurements the number of bidders located in-state and out-of-state that bid or made proposals on procurements;
- 3) Replace the statutory requirement that State publications be produced at State-operated facilities with a requirement that State publications be produced at a private sector facility located in the State when practicable. In addition, standards for the production of publications would be established by the Department of Administration, and a cost box would be required for all publication's exceeding \$1,500 in cost.

SB 212: "An Act relating to publication by state agencies and to the procurement of property, property interests, and services by state agencies."

The department supports passage of this bill.

1. **THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT IS INTERESTED IN ONE ASPECT OF THE BILL MORE THAN OTHERS, THAT OF COMMENCING AN INNOVATIVE CONSTRUCTION PROCUREMENT METHODS PILOT PROGRAM TO ADDRESS CURRENT SYSTEM SHORT-FALLS.**

The mission of the Department of Commerce and Economic Development is, in part, to promote a viable private sector in the State of Alaska. SB 212 is an effort to assist Alaskan businesses to better compete for state government purchases of goods and services vis-a-vis out-of-state suppliers.

Section 13 of SB 212 calls for the Commissioner of the Department of Transportation and Public Facilities to begin a two-year program for the use of innovative methods of the procurement of construction services by using bonuses to replace the preferences required under AS 36.30.

The bonus system is envisioned to offer the same type of preference to contractors who use it that currently exist under AS 36.30 with the process being changed, somewhat, for the bonus system. Under the new program, the process would be changed to one that simply accounts for the purchase of Alaskan products at the end of the contract and then makes the incentive adjustment to the final payment to the contractor.

Background:

AS 36.30.322-.338 establishes current preferences for Alaskan products. These statutes are administered on a regular basis by the Department of Transportation and Public Facilities and the Department of Commerce and Economic Development as well as other state departments.

The purpose of the existing statute is to provide a useful, working incentive to encourage Alaskan contractors to use Alaskan products in meeting state agency needs. The changes in SB 212 respond to the fact that there are problems in the current approach that limit its effectiveness in meeting the intent of the original 1986 legislation.

In 1986, the state created a statutory preference for Alaska that states:

(AS 36.30.328)

In the evaluation of a bid or proposal for a procurement for an agency, a bid or offer that designates the use of Alaska products identified in the contract specifications and designated as Class I, Class II or Class III state products under AS 36.30.332 is decreased by the percentage of the value of the designated Alaska products under AS 36.30.332.

(Class I is a 4% incentive, where more than 25% and less than 50% of the product is produced or manufactured in the state; Class II products offer a 5% preference, and are at least 50% but not more than 75% produced or manufactured in the state; and Class III products carry a 7% incentive, and are greater than 75% produced or manufactured in Alaska.)

The Department of Commerce and Economic Development regularly determines, in advance, the class of products submitted for use in the program.

The current preference program is restricted to evaluations of competitive bids for state procurements. This requires bidders to know and submit names of approved products and vendors at the time of the bid. It also locks the contractor or supplier into actually supplying the specified product that was stated in the bid whether or not it was wise to do so in the light of the current requirements of an ongoing project.

Under existing statute, there is a substantial penalty for not using a designated product noted on the original bid document. The statute (AS 36.30.330) requires the Commissioner of Commerce and Economic Development to declare a contractor "not a responsible bidder or offeror" if he/she has, twice in the preceding three years, failed to use a designated Alaska product "for reasons within the control of the bidder or offeror." The declaration of "not a responsible bidder" has potentially grave consequences for future contractors' participation on other state contracts. The penalty and the system requiring the product preference program to be a bid adjustment mechanism act as disincentives for the existing product preference program. The bonus system would eliminate penalty fear in that there would be no stated Alaskan product/services use at the outset, but rather a simple accounting of the degree of such usage at the conclusion of the contract. It would also allow the proper use of Alaskan services and products given the events occurring on the project at any given day.

2. DCED IS INTERESTED IN PROVIDING INCENTIVES TO USE ALASKAN SUBCONTRACTORS AND SUPPLIERS THROUGHOUT THE COURSE OF WORK, NOT JUST AN INCENTIVE AT THE TIME OF BID.

The system of requiring carefully specified products and suppliers to be identified in the beginning of the project severely limits a contractor's incentive to use the existing Alaska Product Preference incentives at latter stages of the period. The contractor is legally bound to his/her selection, arguments can and are raised as to when it either was or was not in the bidder's control to use the specified product, and there is no incentive for contractors to make decisions toward Alaskan suppliers

once the bids have been opened, since no benefit accrues to the contractor as a result of the purchase (or of a product substitution).

3. DCED IS INTERESTED IN ESTABLISHING A SIMPLER, LESS PROCEDURALLY COMPLEX PROCESS.

The existing statute requires extensive accounting efforts at the time of the bid as well as throughout the life of the purchase or procurement contract. When a bid is submitted in response to a solicitation by a state agency, it must be carefully evaluated along with the then-current product preference certification book published by the Department of Commerce and Economic Development. At times, objections are raised by unsuccessful bidders regarding the applicability of a particular product or vendor to its class designation. These objections must be addressed in a rigorous and formal manner prior to awarding the contract in order to avoid returning the bid process.

Other administrative tasks are burdensome as well:

1. monitoring the use of designated products throughout the life of each procurement contract - even where Alaska products are covered up as a result of construction;\
2. amending the contract when Alaska products cannot be used - beyond the control of the contractor;
3. deducting 4% to 7% on all future pay requests for individual Alaskan items originally specified in a bid and subsequently amended out of a contract;
4. handling contractor complaints arising from the application of the program at the time of bid;
5. handling contractor complaints that arise during the course of a contract;
6. finalizing the contract in light of the actual use of designated Alaskan products compared to the items proposed at time of bid; and
7. managing product preference complaints and/or arbitration.

4. DCED IS INTERESTED IN PROVIDING AN ALASKAN PRODUCT PREFERENCE INCENTIVE FOR FEDERAL CONTRACTS MANAGED THROUGH ADOT&PF.

Under the current system, the Alaska Product Preference program cannot be used when obligating federal pass through or grant funds such as Federal Highway trust fund receipts. These receipts account for a significant portion of all capital spending in Alaska and currently prohibit bid-based incentive programs. It is possible, but as yet untested, that an after-the-fact bonus system, which provides an incentive for the use of Alaskan suppliers, may be found consistent with federal procurement regulations.

5. THE PROPOSED INNOVATIVE CONSTRUCTION PROCUREMENT METHODS PILOT PROGRAM HAS THE ABILITY TO MAKE THE INCENTIVE PROGRAM WORK BETTER THAN IT CURRENTLY DOES, AND TO BETTER ACCOMPLISH THE GOALS OF THE INCENTIVE PROGRAM.

The bonus system could be designed to encourage the choice of Alaska products, subcontractors and services throughout the life of a construction project without adding to the administrative burdens of either the contractor or the state. The bonus would encourage contractors to use the incentive to the limit of its effect. The program would provide an economic incentive for an "outside" general contractor to choose an Alaskan subcontractor, perhaps over a more comfortable choice, in order to obtain the bonus payment at the end of the contract.

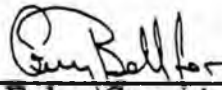
The program eliminates the need for continuous administrative monitoring of the project as the burden of proof for the inclusion of Alaskan products or services will be on the contractor to establish through paid invoices and/or photographs at the end of the construction. The program is more user friendly at the time of the bid in that all bids would be evaluated on the basis of the bottom line number submitted for the project, rather than on the complicated accounting of incentives that currently takes place. As the program matures, in-state contractors may wish to build in a percentage of the expected bonus amount into a lowering of the bid for a particular job as a competitive edge. This can be expected to lower the cost of the program over time as reduced construction costs are enjoyed by the state.

Project administration and close-out would also be easier in that one bonus amount is paid to the contractor, in addition to the final payment at the end of the job. There is a built-in incentive due to the presence of a significant bonus payment at the end of the job, to resolve disputes, and to finish marginally profitable contracts, as well as to avoid marginal litigation over claims.

In summary, the poor performance of the existing program due to:

1. the severe penalties associated with failures to use specified products;
2. the inability of the program to be used on federal grant monies;
3. the cumbersome administrative requirements; and
4. the inability to be paid for substitutions of Alaskan products after bid award . . .

is addressed by the establishment of an after-the-fact bonus system that is simpler to administer, provides ongoing incentives to use Alaskan products and services throughout the life of the contract, better assists Alaskan subcontractors to take advantage of the program, and which possibly allows expansion of the incentive program to federal construction contracts administered by the state. For these reasons, the Department of Commerce and Economic Development urges your support of the innovative construction procurement methods pilot program as contained in Section 13 of Sb 212.



Paul Fuhs, Commissioner

Date: 2-3-94

2/7/94
(S) L3C, THIEN
FIN



*Department of Transportation
and Public Facilities*

POSITION PAPER

BILL NO: CS SB 212

APPROVED: 

TITLE: State Procurements and
Publications

DATE: February 2, 1994

The Department of Transportation and Public Facilities is generally supportive of innovative ways of contracting which will reduce the bureaucratic process. Even with an innovative program of bonuses, it may be difficult to alternate the basic process of awarding, furnishing materials, etc. Nearly all successful contractors are Alaska based and only a very small percentage of material originates from out of state.

For Further Information contact J.K. Ginger Johnson at 465-3904.

Discussion Bullets for:

Procurement Code Modifications to Implement a State Bonus Program

Background:

For several years those agencies conducting public works contracts have been concerned over the effectiveness of incentive programs such as "Disadvantaged Business Enterprises/ Equal Employment Opportunity", "Alaskan Hire", and Alaska "preferences" within the State Procurement. And while a considerable effort in both manpower and money have gone into these areas, it remains their belief that the fullest, most positive results possible from these incentive programs have not been attained. Therefore it is suggested that the current preferences be replaced with a bonus program.

Benefits:

The following benefits will be achieved by incorporating a bonus program:

- The program will be more "economically" beneficial to vendors and hence more readily used.
- Administrative enforcement costs associated with bid protests, record keeping requirements and inspections will be reduced.
- "Game playing" on the part of vendors, for the sole purpose of obtaining the contract, would be decreased or eliminated.
- Federal and state mandated incentives could still be implemented, but at a time more conducive to the overall project and with reduced administration costs to all parties.
- Federal regulations which prohibit "localized bidding preferences" do not prohibit performance incentives – and in fact the federal agencies may even provide funding.
- Reciprocal trade statutes based on "preferences" would become inconsequential.
- Over time effectiveness of the incentive programs would improve, administrative costs would decrease, and bid prices would return to the competitive levels that were encountered prior to the bonus program.

Suggested Overview of the Bonus Program:

It is envisioned that the bonus program could pay up to 5% of the contract award amount in additional bonus money. By basing the value of the bonus on the contract award amount, contingency funds could be set aside at the time of award for payment of the bonus at a later date. Upon satisfactory performance, bonus payments in the following areas and in the suggested amounts, could be paid. The various levels of a bonus would be set in the specifications or regulations so they could be adjusted to the changing procurement needs.

(see table on following page)

Incentive Under Consideration	Suggested Bonus Value (maximum percent of contract)
<ul style="list-style-type: none"> • <i>Disadvantaged Business Enterprises/ Equal Employment Opportunity</i>, both state and federal mandates are address by the current program. (5% of the value of the qualifying DBE/EEO contracted services, up to the allowable maximum dollar amount, would be paid.) 	Recommended bonus . . . 2%
<ul style="list-style-type: none"> • <i>Alaska Hire Program</i>, currently a state program which mandates the use of the local work force on state funded construction projects. (5% of the salaries – as documented in the certified payroll - for all alaskan workers, up to the allowable maximum dollar amount, would be eligible for a bonus.) 	Recommended bonus . . . 2%
<ul style="list-style-type: none"> • <i>Alaska Bidder's Preference</i>, currently a state preference program within AS 36.30 which gives bidders residing in Alaska a bidding advantage over non-resident bidders. In its present form this is not an allowable incentive on federal aid contracts. 	Recommended bonus . . . 2%
<ul style="list-style-type: none"> • <i>Alaska Products Preference</i>, currently a state preference program within AS 36.30 which gives bidders a bidding advantage when using products made in Alaska. In its present form this is not an allowable incentive on federal aid contracts. (3, 5 or 7% of the invoice amount – as documented by the manufacturer - for all alaskan products, up to the allowable maximum dollar amount, would be eligible for a bonus.) 	Recommended bonus . . . 2%
<ul style="list-style-type: none"> • <i>Subcontracting</i>, currently the state requirements within AS 36.30 make it difficult, though not impossible, for non-resident subcontractors to work on state funded construction projects. An alternative to this approach is to reward prime contractors for using local subcontractors. (5% of the value of the qualifying alaskan subcontracted services, up to the allowable maximum dollar amount, would be paid.) 	Recommended bonus . . . 2%

Bonus Program Details:

The department has developed conceptual guidelines and parameters in each of the above incentive areas. We would be happy to share this information with lawmakers or assist them in whatever way possible.

Example:

A bridge project with an award amount of \$1,000,000 to resident bidder; locally manufactured materials valued at \$300,000; a local workforce payroll for the prime contractor of \$400,000; local subcontractor services valued at \$100,000; and DBE contracts valued at \$50,000 would produce the following bonus.

- Bidder's Preference for the prime yields a bonus of $\$1,000,000 \text{ times } .02 = \$20,000.00$
- Alaska Product preference for locally manufactured concrete components with a manufactured value of \$300,000 and a DCED Class III certification yields $\$300,000 \text{ times } .07 = \$21,000.00$, but by specification this amount is capped at $\$20,000.00$
- Alaska Hire based upon a certified payroll of \$400,000 yields $\$400,000 \text{ times } .05 = \$20,000.00$
- Subcontracting Bonus based on subcontracts valued at \$100,000 yields $\$100,000 \text{ times } .05 = \$5,000.00$
- DBE Subcontracting Bonus based on subcontracts valued at \$50,000 yields $\$100,000 \text{ times } .05 = \underline{\$2,500.00}$
Yields a subtotal Project bonus of $= \$67,500.00$

But, the OVERALL PROJECT bonus is capped at 5%. Thus the maximum amount payable to the contractor on a \$1 million award is $\$50,000.00$

NFIB Alaska

National Federation of
Independent Business

POSITION PAPER

OF

NATIONAL FEDERATION OF INDEPENDENT BUSINESS
NFIB/ALASKA

IN
SUPPORT
OF

SB 212 - STATE AGENCY PUBLICATIONS

9159 Skywood Lane
Juneau, AK 99801



The Guardian of
Small Business

NFIB Position Paper

CHAIRMAN, MEMBERS OF THE COMMITTEE, MY NAME IS RESA JERREL, AND I AM THE STATE DIRECTOR FOR THE NATIONAL FEDERATION OF INDEPENDENT BUSINESS - NFIB/ALASKA. I AM HAPPY TO BE HERE TODAY IN SUPPORT OF SB 212.

NFIB/ALASKA IS COMPRISED OF 4,400 SMALL AND INDEPENDENT BUSINESS OWNERS. THE LEGISLATIVE AGENDA OF NFIB/ALASKA IS DETERMINED BY OUR BALLOT. THE BALLOT IS OUR ANNUAL POLL OF OUR MEMBERS ON A SERIES OF ISSUES DEEMED CRITICAL TO SMALL BUSINESS. A MAJORITY VOTE, OF THE MEMBERS IN RESPONSE TO THE POLL, SETS OUR POLICY AND POSITION ON LEGISLATIVE ISSUES.

FOR THE RECORD THE FOLLOWING IS THE RESULT OF THE 1990 NFIB/ALASKA BALLOT QUESTION REGARDING GOVERNMENT COMPETITION:

Should legislation be passed that would restrict government agencies from competing with private business in Alaska?

Yes 83% No 6% Undecided 11%

CURRENT LAW REQUIRES PUBLICATIONS OF STATE AGENCIES TO BE PRODUCED AT A STATE OPERATED FACILITY WHENEVER POSSIBLE. THIS PUTS THE STATE IN DIRECT COMPETITION WITH SMALL BUSINESSES. IT ALSO, PUTS SMALL BUSINESSES AT A DISTINCT DISADVANTAGE IF THEY WANT TO DO BUSINESS WITH THE STATE.

SECTION 10 ON PAGE 5, LINE 12 SB 212 REPEALS THAT LAW AND SHIFTS THE PREFERENCE FROM STATE OPERATED PRINTING FACILITIES TO PRIVATELY OWNED BUSINESSES. NFIB/ALASKA BELIEVES THAT SB 212 WILL HELP LIMIT THE SIZE AND COST OF STATE GOVERNMENT AND FOSTER ECONOMIC GROWTH IN THE PRIVATE SECTOR.

ALTHOUGH IT DOES NOT ELIMINATE COMPETITION FROM OTHER STATE OR

LOCAL AGENCIES WHOSE COMMERCIAL ACTIVITIES RANGE FROM GIFT SHOPS TO DAY CARE AND VIDEO OUTLETS - IT IS CERTAINLY A BIG STEP IN THE RIGHT DIRECTION.

THANK YOU FOR THE OPPORTUNITY TO BE HERE TODAY AND TO SUPPORT THIS WORTHY LEGISLATION. I WOULD URGE YOU TO MOVE THE BILL OUT OF COMMITTEE SO WE CAN, HOPEFULLY, SEE IT BECOME LAW THIS YEAR. IF YOU HAVE ANY QUESTION, I WOULD BE HAPPY TO TRY AND ANSWER THEM.

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 5/7/93

FURTHER: FINANCE ^B

John
Date of 5-Day Notice: 5-1-20-94
(in accordance with Uniform Rule 20)

DATE TURNED INTO OFFICE: 2-8-94

L&C Committee considered SB 212

"An Act relating to publications produced by state agencies and to the procurement of property, property interests, and services by state agencies."

and recommends: **and recommends it be replaced with**

replace with _____ CS SB 212 (L&C)

- same title
- new title
- technical title change (HB only)

attaches amendment(s) **and report it back as follows**

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

*2 FN
OK*

FISCAL NOTE INFORMATION

*SB&CS
" "*

Department	Date	Zero	Fiscal
Admin	2/2/94	✓	
Admin-Statewide	2/2/94		✓
DOTPE	2/2/94		✓

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

Governor's Bill with Previous Fiscal Notes (enter information above)

DO PASS:

OTHER RECOMMENDATIONS:

Bob Sharp

Steve King
Sen
no rec
no rec

T. Kelly - Do Pass
Chair: Signature and Recommendation

File notes.

Did not
travel w/ the
bill.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 212

Revision Date: _____ Dept. Affected: Administration
 Title: An Act relating to publications produced by BRU: General Services
State agencies and to the procurement of property. ... Component: Purchasing
 Sponsor: Senate Labor & Commerce
 Requestor: _____ COMPONENT SERIAL NO. 60

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	24	0	1.6	0	1.6	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	33	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	5.7	0	1.6	0	1.6	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	5.7	0	1.6	0	1.6	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	5.7	0	1.6	0	1.6	0

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	1 mo.*	0	1 mo.*	0	1 mo.*	0

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

ANALYSIS: (attach a separate page if necessary.)

See attached.

* The additional work exceeds current staff capacity and would require minor addition of one staff month.

Prepared By: Dugan Petty, Director
 Division: General Services

Phone: 465-2250
 Date: _____

Approved by Commissioner: Nancy Bear Usara
 Agency: Department of Administration

Date: 1/24/94

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Section 2 - provides for mailing of notices of bids and proposals to prospective contractors located in the state.

To comply with this section the Division of General Services would purge the existing list, send out revised bidder applications and put bidders on the list with the understanding that only bids would be sent to bidders located in the state.

Total estimated one time cost to purge and send out applications, enter new applications and implement revised contractors list:

Personal Services	\$ 805.65
Contractual Services	<u>\$3,343.50</u>
Total	\$4,149.15

Section 3 - changes the frequency of procurement reporting to the legislature from biennial to yearly and requires the Department to capture and report data on the number of bidders/proposers that respond to solicitations and if they are located in-state or out-of-state.

Total added cost in personal services to produce the report every other year is estimated to be approximately \$1.6.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 212

Revision Date: _____ Dept. Affected: Statewide*
 Title: An Act relating to publications produced by BRU: _____
State agencies and to the procurement of property... Component: _____
 Sponsor: Senate Labor & Commerce
 Requestor: _____ COMPONENT SERIAL NO. _____

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	500.0*	500.0*	500.0*	500.0*	500.0*	500.0*
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	500.0*	500.0*	500.0*	500.0*	500.0*	500.0*

CAPITAL	0	0	0	0	0	0
----------------	---	---	---	---	---	---

REVENUE FUND SOURCE:	0	0	0	0	0	0
-----------------------------	---	---	---	---	---	---

FUNDING:

1002 Federal Receipts	*	*	*	*	*	*
1003 GF Match	*	*	*	*	*	*
1004 GF	*	*	*	*	*	*
1005 GF/Program Receipts	*	*	*	*	*	*
1006 GF/MHTIA	*	*	*	*	*	*
Other	*	*	*	*	*	*
TOTAL	500.0*	500.0*	500.0*	500.0*	500.0*	500.0*

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 (FY94) impact: \$ 0

ANALYSIS: (attach a separate page if necessary.)

See attached.

*Bids are awarded by the Division on behalf of agency Purchase Requisitions that have a variety of funding sources. This cost impact reflects costs to all agencies as a result of potentially higher bid awards. These are not cost impacts to the Division of General Services.

Prepared By: Dugan Petty, Director
 Division: General Services

Phone: 465-2250
 Date: _____

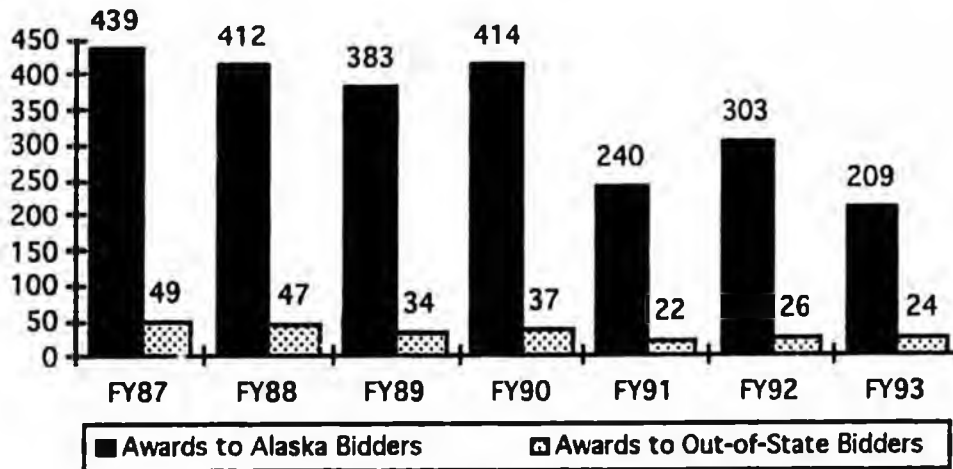
Approved by Commissioner: Nancy Bear Usura
 Agency: Department of Administration

Date: 1/24/94

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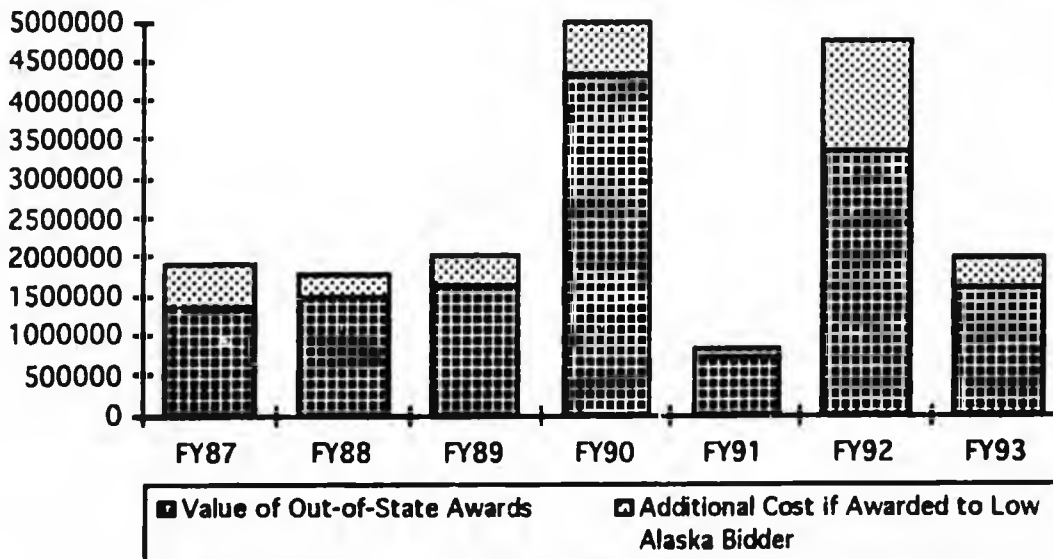
Section 2 of the bill requires notices of bids and proposals to be mailed only to in-state bidders on the contractors list. In practice, only Alaska bidders would receive Invitations to Bid or Competitive Sealed Proposals. On average, 34 bids a year are awarded to out-of-state bidders. The graph below demonstrates the number of out-of-state awards in relationship to in-state bid awards.

Invitations to Bid Issued by Department of Administration



An analysis of out-of-state bids issued from FY87 through FY93 indicate that prior implementation of this bill would have kept an average of \$2 million per year worth of contracts issued by the Department of Administration in-state. The average annual addition costs to State agencies of not purchasing from the otherwise low bidder would be approximately \$540.0. (See graph and table below.)

Difference in Cost Between Alaska Bidders and Low Bidder When Award was Made to Out-of-State Bidder



FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 212
Page 3 of 3

	FY87	FY88	FY89	FY90	FY91	FY92	FY93
Value Out-of-State Awards	\$1,335.1	\$1,499.5	\$1,618.7	\$4,324.0	\$730.0	\$3,340.0	\$1,605.0
Value of Low AK Bidders	\$1,922.0	\$1,754.0	\$2,010.1	\$4,992.1	\$835.1	\$4,730.1	\$1,993.0
Cost if Awarded to Low AK Bidders	\$586.8	\$254.5	\$391.4	\$668.1	\$105.2	\$1,390.0	\$388.0

If no out-of-state bids were received, the State would have paid more to award to the lowest Alaska bidder.

For example, in FY93 the value of the 24 awards to the out-of-state low bidders totaled \$1,605.0. If no out-of-state bids were received, the value of awards that would have been made to the low Alaska bidder would have been \$1,993.0. The difference of \$388.0 would have been increased cost to the State.

Based on the average cost difference from FY87 to present, mailing notices to only prospective bidders with an Alaska address could have an annual fiscal impact of approximately \$500.0 to all agencies in the State.

SB

213

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 4/11/94

FURTHER:

DATE TURNED INTO OFFICE: 4-19-94

The Finance Committee considered **SENATE BILL NO. 213**

"An Act extending the Alaska Public Utilities Commission and the regulatory cost charge."

and recommends:

- replace with _____ CS SB 213 (FINANCE)
- or adopt previous _____ CS _____
- attaches amendment(s)

- same title
- new title
- technical title change (HB only)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

NEW FISCAL NOTES

Department	Date	Zero	Fiscal
<u>DATED</u>	<u>4-11-94</u>	<u>0</u>	
<u>DOR</u>	<u>3-28-94</u>	<u>0</u>	

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

DO PASS:

Tim Kelly
Steve K...
Barb N...

OTHER RECOMMENDATIONS:

Justine No Pass

1. [Signature]
 Co-Chair: Signature/Recommendation

2. [Signature]
 Co-Chair: Signature/Recommendation

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSSB 213 (FPN)

Revision Date:	Dept. Affected: Revenue
Title: APUC Extension and Regulatory Cost Charge	BRU: Revenue Operations
	Component: Income and Excise Audit
Sponsor: (S) L&C	
Requestor: (S) JUD	COMPONENT SERIAL NO. 113

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE FUND SOURCE: General	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: \$ 0.0

ANALYSIS: (Attach a separate page if necessary.)
 (See Attached)

Prepared by: <u>Larry E. Meyers</u>	Phone: <u>465-2320</u>
Division: <u>Director</u>	Date: <u>March 28, 1994</u>
Approved by Commissioner: <u>Darrel J. Rexwinkel</u>	Date: <u>March 28, 1994</u>
Agency: <u>Department of Revenue</u>	

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 213

Revision Date: 4/11/94
 Title: Extending the Alaska Public Utilities Commission
 Sponsor: Senate Judiciary Committee
 Requestor: _____

Department Affected: Commerce and Economic Development
 BRU: Alaska Public Utilities Commission
 Component: _____
 COMPONENT SERIAL NO. 364

Expenditures/Revenues:

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	0	60.7	60.7	60.7	60.7	60.7
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	60.7	60.7	60.7	60.7	60.7

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	0	60.7	60.7	60.7	60.7	60.7
1006 GF/MHTIA						
Other						
TOTAL						

Estimate of current year (FY 94) cost: \$ _____

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary.) An additional Assistant Attorney General (half time) would be required to handle litigation resulting from the deletion of "liberally construed" from AS 42.05.141(a)(1). Therefore, an amount equal to one quarter of the current Reimbursable Services Agreement (RSA) with the Department of Law would be required.

The zero fiscal note for FY95 reflects the proposed July 1, 1995 effective date for this section.

Prepared by: Robert A. Lohr
 Division: Alaska Public Utilities Commission

Phone: 276-6222
 Date: 4/11/94

Approved by Commissioner: Paul Fuhs

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSSB 213 (H.C.N.)

Revision Date: _____ Dept. Affected: Revenue
 Title: APUC Extension and Regulatory Cost Charge BRU: Revenue Operations
 Component: Income and Excise Audit
 Sponsor: (S) L&C
 Requestor: (S) JUD COMPONENT SERIAL NO. 113

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE FUND SOURCE: General	0.0	0.0	0.0	0.0	0.0	0.0
-------------------------------------	------------	------------	------------	------------	------------	------------

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: \$ 0.0

ANALYSIS: (Attach a separate page if necessary.)

(See Attached)

Prepared by: Larry E. Meyers *Larry E. Meyers* Phone: 465-2320
 Division: Director Date: March 28, 1994
 Approved by Commissioner: Darrel J. Rexwinkel *Darrel J. Rexwinkel* Date: March 28, 1994
 Agency: Department of Revenue

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Bill Analysis

Sections 1 and 10 of this bill increase the maximum rate of regulatory cost charges (RCC) paid by regulated public utilities and pipeline carriers to the Alaska Public Utilities Commission (APUC) from .61% to .8% of gross revenue derived from operations in the state. The RCC is typically passed on to utility customers on their utility bills.

Section 2 of this bill allows electric utilities subject to RCC to reduce gross revenues by subtracting the cost of power for calculating RCCs paid to APUC.

Sections 3 and 11 authorize the legislature to appropriate the balance of APUC's operating budget which lapses to the general fund to APUC for its operating costs for the next fiscal year. These sections provide that "The Department of Revenue shall identify the amount of the operating budget of the commission that lapses into the general fund each year." The sentence should substitute the Department of Administration for the Department of Revenue.

Sections 4 through 9 deal with provisions which increase gross revenue amounts which exempt utilities from regulation and requirements to pay RCCs to APUC.

Section 12 extends the termination date for APUC to June 30, 1998 and section 14 authorizes staggered terms for APUC commissioners.

Section 13 repeals the sunset date of the RCC program which, under chapter 2, FSSLA 1992, was to sunset December 31, 1994.

Operating Costs

Department of Revenue is currently charged with collecting and accounting for RCCs paid quarterly by approximately 100 public utilities and pipeline carriers. The Department does not envision that the rate increase will have an impact on its operating budget.

Revenue

According to APUC officials, increased revenue derived from rate increases authorized under this bill will be offset against reductions in revenues attributable to exemption amount increases and the provision which allows electric utilities to reduce gross revenues by cost of power for calculating RCCs. As a result, this bill is not expected to generate additional revenue.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 213

Revision Date: 4/11/94
 Title: Extending the Alaska Public Utilities Commission
 Sponsor: Senate Judiciary Committee
 Requestor: _____

Department Affect: Commerce and Economic Development
 BRU: Alaska Public Utilities Commission
 Component: _____
COMPONENT SERIAL NO. 364

Expenditures/Revenues:

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	0	60.7	60.7	60.7	60.7	60.7
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	60.7	60.7	60.7	60.7	60.7

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	0	60.7	60.7	60.7	60.7	60.7
1006 GF/MHTIA						
Other						
TOTAL						

Estimate of current year (FY 94) cost: \$ _____

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary.) An additional Assistant Attorney General (half time) would be required to handle litigation resulting from the deletion of "liberally construed" from AS 42.05.141(a)(1). Therefore, an amount equal to one quarter of the current Reimbursable Services Agreement (RSA) with the Department of Law would be required.

The zero fiscal note for FY95 reflects the proposed July 1, 1995 effective date for this section.

Prepared by: Robert A. Lohr
 Division: Alaska Public Utilities Commission

Phone: 276-6222
 Date: 4/11/94

Approved by Commissioner: Paul Futs
 Agency: Commerce and Economic Development

Date: _____

4-19-94
3064
FOR APUC bill
(4)
Adopted

Proposed Amendment to AS 42.05.431(a)

Alaska law now provides utilities that are owned by municipalities and cooperatives with a guarantee of rates that is not available to other utilities. Specifically, the Alaska Public Utilities Commission is required to set rates so as to assure that bond covenants of municipal and cooperative utilities are met. (AS 42.05.431(a); APUC v. Municipality of Anchorage, 555 P2d. 262 (Alaska 1976))

In general, it may be appropriate to provide municipally owned utilities with protections that are not available to other utilities. However, municipally owned utilities (particularly ATU) are now entering new business that are not rate regulated by the APUC and that are in competition with other businesses. Such utilities could place its regulated ratepayers at great risk by issuing bonds to finance the provision of new services. Current law requires the APUC to set rates to ensure that bond covenants are met, therefore the APUC would be required to set rates for local regulated services to cover losses of the utility in businesses that the APUC does not regulate.

For example, ATU has announced its intentions to invest over \$100 million to provide "video dialtone" service and to compete in the interstate long distance market. Although the APUC cannot regulate either video dialtone service or interstate toll service, the APUC would be required to set local regulated rates high enough to meet bond covenants and cover losses in these businesses it does not regulate.

The proposed amendment provides that the Commission is not required to set regulated rates to cover the allocated costs and debt coverage requirements of services it does not regulate. Thus, although the Commission would still be required to set rates to recover all the costs and associated debt coverage requirements of the services it regulates, it would not be required to set rates to recover shortfalls incurred in services it does not regulate.

Additionally, the proposed amendment requires that debt issued to provide unregulated, competitive ventures be structured so

SENATE FINANCE
COMMITTEE
Amendment Number: 2064
Bill Number: 213
Sponsor: [Signature]
Date: 4/15/94
Logged In By: [Signature]

that, upon default, creditors would not have recourse to the assets of the basic regulated utility. This provision protects the assets of the regulated utility, and thus the utility's ability to provide basic utility services to ratepayer, from the very real possibility that the utility may incur substantial losses in competitive activities.

AS 42.05.431(a) should be amended as follows: (addition underlined)

Sec. 42.05.431. Power of commission to fix rates. (a) When the commission, after an investigation and hearing, finds that a rate demanded, observed, charged or collected by a public utility for a service subject to the jurisdiction of the commission, or that a classification, rule, regulation, practice, or contract affecting the rate, is unjust, unreasonable, unduly discriminatory or preferential, the commission shall determine a just and reasonable rate, classification, rule, regulation, practice, or contract to be observed or allowed and shall establish it by order.

(b) A municipality may covenant with bond purchasers regarding rates of a municipally owned utility, and the covenant is valid and enforceable and is considered to be a contract with the holders from time to time of the bonds, and rates set by the commission must be adequate to meet those covenants. However, the commission is not required to set rates for services regulated by the commission to recover the allocated costs and coverage requirements of services that are not regulated by the commission. Bonds or other debt issued to finance unregulated, competitive ventures by a municipally owned utility shall not be incurred in a manner that would permit a creditor, on default, to have recourse to the assets of the basic regulated utility business.

(c) The financial covenants contained in mortgages and other debt instruments of cooperative utilities organized under AS 10.25 are also valid and enforceable, and rates set by the commission must be adequate to meet those covenants. However, a cooperative utility that is negotiating to enter a mortgage or other debt instrument that provides for a times-interest-earned ratio (TIER) greater than the ratio the commission most recently approved for that cooperative shall submit the mortgage or debt instrument to the commission before the instrument takes effect. The commission may disapprove the instrument within 60 days after its submission. If the commission has not acted within 60 days, the instrument is considered to be approved.

[The remaining subsections of AS 42.05.431 would be re-lettered but not substantively amended.]

4-19-94
BS-3
DPE
2/17/94
5-1 (JK)
Adopted

A M E N D M E N T

CS for SB-213(Jud)

Delete all material from page 1, lines 5 through 11.

Insert the following:

Section 1. AS 42.05.141(a) is amended to read:

(a) The Alaska Public Utilities Commission may do all things necessary, or proper, to carry out the purposes and exercise the powers expressly granted or ^{reasonably SR Adopted} necessarily implied in this chapter, including

(1) regulate every public utility engaged or proposing to engage in a utility [SUCH A] business inside the state, except to the extent exempted by AS 42.05.711 [, AND THE POWERS OF THE COMMISSION SHALL BE LIBERALLY CONSTRUED TO ACCOMPLISH ITS STATED PURPOSES];

SENATE FINANCE
COMMITTEE
Amendment Number: #4
Bill Number: SB 213
Sponsor: SHARP Date: 19 APR 94
Logged In By: [Signature]

4-19 94

8-LS1115X.1
Cramer
4/16/94

TR
DP
4-2
DP
BR

Adopted

AMENDMENT

OFFERED IN THE SENATE
TO: CSSB 213(JUD)

BY SENATOR KELLY

Page 4, lines 4 - 5:

Delete "may elect to be [IS]"
Insert "is"

SENATE FINANCE
COMMITTEE

Amendment Number: #5
Bill Number: SB 213
Sponsor: KELLY Date: 4/16/94
Logged In By: [Signature]

Page 4, line 5, after "42.05.281":

Insert "[,] unless [25 PERCENT OF] the subscribers petition the commission for regulation"

Page 4, lines 6 - 7:

Delete "[, UNLESS 25 PERCENT OF THE SUBSCRIBERS PETITION THE COMMISSION FOR REGULATION]"

Post-It™ brand fax transmittal memo 7671		# of pages ▶	6
To	Legal Services	From	[Signature]
Co.		Co.	Senate Finance
Dept.		Phone #	46935
Fax #	3024	Fax #	

Fin
CS FOR SENATE BILL NO. 213(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 4/11/94
Referred: Finance

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act extending the Alaska Public Utilities Commission; and relating to
2 regulation of public utilities and to regulatory cost charges; and providing for an
3 effective date."

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

5 * Section 1. AS 42.05.141(a) is amended to read:

6 (a) The Alaska Public Utilities Commission may

7 (1) regulate every public utility engaged or proposing to engage in a
8 utility [SUCH A] business inside the state, except to the extent exempted by
9 AS 42.05.711; [, AND] the powers of the commission shall be those specifically
10 conferred by statute or necessarily implied by a statutory grant of authority
11 [LIBERALLY CONSTRUED TO ACCOMPLISH ITS STATED PURPOSES];

12 (2) investigate, " on complaint or upon its own motion, the rates,
13 classifications, rules, regulations, practices, services, and facilities of a public utility
14 and hold hearings on them;

1 (3) make or require just, fair, and reasonable rates, classifications,
2 regulations, practices, services, and facilities for a public utility;

3 (4) prescribe the system of accounts and regulate the service and safety
4 of operations of a public utility;

5 (5) require a public utility to file reports and other information and
6 data;

7 (6) appear personally or by counsel and represent the interests and
8 welfare of the state in all matters and proceedings involving a public utility pending
9 before an officer, department, board, commission, or court of the state or of another
10 state or the United States and to intervene in, protest, resist, or advocate the granting,
11 denial, or modification of any petition, application, complaint, or other proceeding;

12 (7) examine witnesses and offer evidence in any proceeding affecting
13 the state and initiate or participate in judicial proceedings to the extent necessary to
14 protect and promote the interests of the state.

15 * Sec. 2. AS 42.05.253(a) is amended to read:

16 (a) A regulated public utility operating in the state shall pay to the commission
17 an annual regulatory cost charge in an amount not to exceed .8 [.61] percent of gross
18 revenue derived from operations in the state, as modified under (c) of this section if
19 appropriate. An exempt utility shall pay the actual cost of services provided to it by
20 the commission.

21 * Sec. 3. AS 42.05.253(c) is amended to read:

22 (c) In determining the amount of the regulatory cost charge imposed under (a)
23 of this section,

24 (1) a utility selling utility services at wholesale shall modify its gross
25 revenue by deducting payments it receives for wholesale sales;

26 (2) a local exchange telephone utility shall modify its gross revenue by
27 deducting payments received from other carriers for settlements or access charges;

28 (3) an electric utility shall reduce its gross revenue by subtracting
29 the cost of power; in this paragraph, "cost of power" means the costs of
30 generation and purchased power reported to the commission.

31 * Sec. 4. AS 42.05.253(e) is amended to read:

1 (e) The commission shall administer the charge imposed under this section.
2 The Department of Revenue shall collect and enforce the charge imposed under this
3 section. The Department of Administration shall identify the amount of the
4 operating budget of the commission that lapses into the general fund each year.
5 The legislature may appropriate an amount equal to the lapsed amount to the
6 commission for its operating costs for the next fiscal year. If the legislature does
7 so, the commission shall reduce the total regulatory cost charge collected for that
8 fiscal year by a comparable amount.

9 * Sec. 5. AS 42.05.711(e) is amended to read:

10 (e) Notwithstanding any other provisions of this chapter, any electric or
11 telephone utility that does not gross \$50,000 annually is exempt from regulation under
12 this chapter unless [25 PERCENT OF] the subscribers petition the commission for
13 regulation under AS 42.05.712(h).

14 * Sec. 6. AS 42.05.711(f) is amended to read:

15 (f) Notwithstanding any other provisions of this chapter, an electric or
16 telephone utility that does not gross \$500,000 [\$325,000] annually may elect to be
17 exempt from the provisions of this chapter other than AS 42.05.221 - 42.05.281 under
18 the procedure described in AS 42.05.712

19 * Sec. 7. AS 42.05.711(g) is amended to read:

20 (g) A utility, other than a telephone or electric utility, that does not gross
21 \$150,000 [\$100,000] annually may elect to be exempt from the provisions of this
22 chapter other than AS 42.05.221 - 42.05.281 under the procedure described in
23 AS 42.05.712.

24 * Sec. 8. AS 42.05.711(i) is amended to read:

25 (i) A utility that [WHICH] furnishes collection and disposal service of
26 garbage, refuse, trash, or other waste material and has annual gross revenues of
27 \$300,000 [\$200,000] or less is exempt from the provisions of this chapter, other than
28 the certification provisions of AS 42.05.221 - 42.05.281, unless [25 PERCENT OF]
29 the subscribers [OR SUBSCRIBERS REPRESENTING 25 PERCENT OF THE
30 GROSS REVENUE OF THE UTILITY] petition the commission for regulation under
31 AS 42.05.712(h). Notwithstanding AS 42.05.712(b) and (g), if subscribers

1 representing 25 percent of the gross revenue of the utility petition the commission
2 for regulation, the utility is subject to the provisions of this chapter.

3 * Sec. 9. AS 42.05.711(k) is amended to read:

4 (k) A utility that [WHICH] furnishes cable television service ~~may elect to be~~^{is}
5 ~~[IS]~~ exempt from the provisions of this chapter other than AS 42.05.221 - 42.05.281
6 under the procedure described in AS 42.05.712 [, ~~UNLESS 25 PERCENT OF THE~~
7 ~~SUBSCRIBERS PETITION THE COMMISSION FOR REGULATION~~]. *Amend #5*

8 * Sec. 10. AS 42.05.712(h) is amended to read:

9 (h) A utility or cooperative that is already exempt from regulation under this
10 section or that is exempt from regulation under AS 42.05.711(e), (i), or (k) may
11 elect to terminate its exemption in the same manner.

12 * Sec. 11. AS 42.06.285(a) is amended to read:

13 (a) A pipeline carrier operating in the state shall pay to the commission an
14 annual regulatory cost charge in an amount not to exceed .8 [.61] percent of gross
15 revenue derived from operations in the state. A regulatory cost charge may not be
16 assessed on pipeline carrier operations unless the operations are within the jurisdiction
17 of the commission.

18 * Sec. 12. AS 42.06.285(c) is amended to read:

19 (c) The commission shall administer the charge imposed under this section.
20 The Department of Revenue shall collect and enforce the charge imposed under this
21 section. The Department of Administration shall identify the amount of the
22 operating budget of the commission that lapses into the general fund each year.
23 The legislature may appropriate an amount equal to the lapsed amount to the
24 commission for its operating costs for the next fiscal year. If the legislature does
25 so, the commission shall reduce the total regulatory cost charge collected for that
26 fiscal year by a comparable amount.

27 * Sec. 13. AS ~~42.66.010~~(a)(4) is amended to read

28 (4) Alaska Public Utilities Commission (AS 42.05.010) -- June 30,
29 1998 [1994];

30 * Sec. 14. REPEAL OF SUNSET OF REGULATORY COST CHARGES. Sections 22,
31 26, 36, and 38, ch. 2, FSSLA 1992, are repealed.

- 1 * **Sec. 15.** APUC STAGGERED TERMS. Notwithstanding AS 42.05.030(a), after the
2 expiration in 1999 of the term of the member of the Alaska Public Utilities Commission with
3 a major or experience in engineering, the vacancy shall next be filled for a term of four years
4 in order to adjust the staggering of the terms of the members of the commission so that no
5 more than one commission member's term expires each year.
- 6 * **Sec. 16.** APPLICATION TO ONGOING PROCEEDINGS. The amendment to
7 AS 42.05.141(a), made by sec. 1 of this Act. applies to proceedings begun on or after the
8 effective date of sec. 1 of this Act.
- 9 * **Sec. 17.** Section 1 of this Act takes effect July 1, 1995.
- 10 * **Sec. 18.** Except as provided in sec. 16, this Act takes effect July 1, 1994.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

Bill Version: SB 213
(S) Publish Date: 3-16-94

Revision Date: 2/4/93
Title: Extending the Alaska Public Utilities Commission and the regulatory cost charge
Sponsor: Senator Kelly
Requestor: Senate Labor & Commerce

Department Affected: Commerce and Economic Development
BRU: Alaska Public Utilities Commission
Component: _____

COMPONENT SERIAL NO. _____

Expenditures/Revenues:

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	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 EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES ()	0	0	0	0	0	0
------------------------	---	---	---	---	---	---

FUND SOURCE

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GFMHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

Estimate of current year (FY 94) cost: \$ 0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary.)
date 4/8/94 Comte Aide (initial) [Signature]
Changes in CS SB 213 JUD have no fiscal impact. This fiscal note is appropriate.
date 3/15/94 Comte Aide (initial) [Signature]
Changes in CS SB 213 (4C) have no fiscal impact. This fiscal note is appropriate.

Prepared by: Bob Lohr, Executive Director
Division: Alaska Public Utilities Commission

Phone: 276-6222
Date: _____

Approved by Commissioner: Paul Fuhs
Agency: Commerce and Economic Development

Date: 2-7-94

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FISCAL NOTE

4/20/94
(S) RLS

**STATE OF ALASKA
1994 LEGISLATIVE SESSION**

BILL NO. SB 213

Revision Date: 4/11/94
 Title: Extending the Alaska Public Utilities Commission
 Sponsor: Senate Judiciary Committee
 Requestor: _____

Department Affected: Commerce and Economic Development
 BRU: Alaska Public Utilities Commission
 Component: _____
 COMPONENT SERIAL NO. 364

Expenditures/Revenues:

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	0.	60.7	60.7	60.7	60.7	60.7
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	60.7	60.7	60.7	60.7	60.7

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	0	60.7	60.7	60.7	60.7	60.7
1006 GF/MHTIA						
Other						
TOTAL						

Estimate of current year (FY 94) cost: \$ _____

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary.)

An additional Assistant Attorney General (half time) would be required to handle litigation resulting from the deletion of "liberally construed" from AS 42.05.141(a)(1). Therefore, an amount equal to one quarter of the current Reimbursable Services Agreement (RSA) with the Department of Law would be required.

The zero fiscal note for FY 95 reflects the proposed July 1, 1995 effective date for this section.

Prepared by: Robert A. Lohr, Executive Director
 Division: Alaska Public Utilities Commission

Phone: 276-6222
 Date: 4/11/94

Approved by Commissioner: Paul Fuhs
 Agency: Commerce and Economic Development

Date: 4/12/94

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SB 213

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

April 19, 1994

SUBJECT: CSSB 213 (FIN) (Extending the Alaska Public Utilities Commission; regulation of public utilities)

TO: Senator Drue Pearce, Co-Chair
Senator Steve Frank, Co-Chair
Senate Finance Committee

FROM: Teresa B. Cramer *TBC*
Legislative Counsel

Enclosed is the final of CSSB 213(Fin), passed from your committee this morning. One of the amendments adopted by the committee required a technical change. As adopted, the amendment would have split existing AS 42.05.431(a) into three subsections, designated subsections (a), (b), and (c), and added new language to the second of the new subsections. This change would have required relettering the remaining existing subsections of AS 42.05.431 and amending other sections that contain cross-references to AS 42.05.431. As a matter of drafting style, we do not reletter subsections unless the entire statutory section is repealed and reenacted with changes throughout the statute.

After speaking with Marie Murray of the Senate Finance Committee staff, I have amended subsection (a) to repeal the language that will become the new subsections and added two new subsections as AS 42.05.431(i) and (j). See bill sections 5 and 6. Please let me know if this is unsatisfactory.

TC:mi:gc
94-090.mai

Enclosure

p. 4, line 12-

*Return - "assets of the" to final bill
inadvertently left out in
final drafting. - tk/per Stephanie.*

CS FOR SENATE BILL NO. 213(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act extending the Alaska Public Utilities Commission; relating to regulation
2 of public utilities and to regulatory cost charges; and providing for an effective
3 date."

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

5 * Section 1. AS 42.05.141(a) is amended to read:

6 (a) The Alaska Public Utilities Commission may do all things necessary or
7 proper to carry out the purposes and exercise the powers expressly granted or
8 reasonably implied in this chapter, including

9 (1) regulate every public utility engaged or proposing to engage in a
10 utility [SUCH A] business inside the state, except to the extent exempted by
11 AS 42.05.711 [, AND THE POWERS OF THE COMMISSION SHALL BE
12 LIBERALLY CONSTRUED TO ACCOMPLISH ITS STATED PURPOSES];

13 (2) investigate, upon complaint or upon its own motion, the rates,
14 classifications, rules, regulations, practices, services, and facilities of a public utility

1 and hold hearings on them;

2 (3) make or require just, fair, and reasonable rates, classifications,
3 regulations, practices, services, and facilities for a public utility;

4 (4) prescribe the system of accounts and regulate the service and safety
5 of operations of a public utility;

6 (5) require a public utility to file reports and other information and
7 data;

8 (6) appear personally or by counsel and represent the interests and
9 welfare of the state in all matters and proceedings involving a public utility pending
10 before an officer, department, board, commission, or court of the state or of another
11 state or the United States and to intervene in, protest, resist, or advocate the granting,
12 denial, or modification of any petition, application, complaint, or other proceeding;

13 (7) examine witnesses and offer evidence in any proceeding affecting
14 the state and initiate or participate in judicial proceedings to the extent necessary to
15 protect and promote the interests of the state.

16 * Sec. 2. AS 42.05.253(a) is amended to read:

17 (a) A regulated public utility operating in the state shall pay to the commission
18 an annual regulatory cost charge in an amount not to exceed .8 [.61] percent of gross
19 revenue derived from operations in the state, as modified under (c) of this section if
20 appropriate. An exempt utility shall pay the actual cost of services provided to it by
21 the commission.

22 * Sec. 3. AS 42.05.253(c) is amended to read:

23 (c) In determining the amount of the regulatory cost charge imposed under (a)
24 of this section,

25 (1) a utility selling utility services at wholesale shall modify its gross
26 revenue by deducting payments it receives for wholesale sales;

27 (2) a local exchange telephone utility shall modify its gross revenue by
28 deducting payments received from other carriers for settlements or access charges;

29 (3) an electric utility shall reduce its gross revenue by subtracting
30 the cost of power; in this paragraph, "cost of power" means the costs of
31 generation and purchased power reported to the commission.

1 * Sec. 4. AS 42.05.253(e) is amended to read:

2 (e) The commission shall administer the charge imposed under this section.
3 The Department of Revenue shall collect and enforce the charge imposed under this
4 section. The Department of Administration shall identify the amount of the
5 operating budget of the commission that lapses into the general fund each year.
6 The legislature may appropriate an amount equal to the lapsed amount to the
7 commission for its operating costs for the next fiscal year. If the legislature does
8 so, the commission shall reduce the total regulatory cost charge collected for that
9 fiscal year by a comparable amount.

10 * Sec. 5. AS 42.05.431(a) is amended to read:

11 (a) When the commission, after an investigation and hearing, finds that a rate
12 demanded, observed, charged, or collected by a public utility for a service subject to
13 the jurisdiction of the commission, or that a classification, rule, regulation, practice,
14 or contract affecting the rate, is unjust, unreasonable, unduly discriminatory or
15 preferential, the commission shall determine a just and reasonable rate, classification,
16 rule, regulation, practice, or contract to be observed or allowed and shall establish it
17 by order. [A MUNICIPALITY MAY COVENANT WITH BOND PURCHASERS
18 REGARDING RATES OF A MUNICIPALLY OWNED UTILITY, AND THE
19 COVENANT IS VALID AND ENFORCEABLE AND IS CONSIDERED TO BE A
20 CONTRACT WITH THE HOLDERS FROM TIME TO TIME OF THE BONDS.
21 THE FINANCIAL COVENANTS CONTAINED IN MORTGAGES AND OTHER
22 DEBT INSTRUMENTS OF COOPERATIVE UTILITIES ORGANIZED UNDER
23 AS 10.25 ARE ALSO VALID AND ENFORCEABLE, AND RATES SET BY THE
24 COMMISSION MUST BE ADEQUATE TO MEET THOSE COVENANTS.
25 HOWEVER, A COOPERATIVE UTILITY THAT IS NEGOTIATING TO ENTER A
26 MORTGAGE OR OTHER DEBT INSTRUMENT THAT PROVIDES FOR A
27 TIMES-INTEREST-EARNED RATIO (TIER) GREATER THAN THE RATIO THE
28 COMMISSION MOST RECENTLY APPROVED FOR THAT COOPERATIVE
29 SHALL SUBMIT THE MORTGAGE OR DEBT INSTRUMENT TO THE
30 COMMISSION BEFORE THE INSTRUMENT TAKES EFFECT. THE
31 COMMISSION MAY DISAPPROVE THE INSTRUMENT WITHIN 60 DAYS

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AFTER ITS SUBMISSION. IF THE COMMISSION HAS NOT ACTED WITHIN 60 DAYS, THE INSTRUMENT IS CONSIDERED TO BE APPROVED.]

* Sec. 6. AS 42.05.431 is amended by adding new subsections to read:

(i) A municipality may covenant with bond purchasers regarding rates of a municipally owned utility, and the covenant is valid and enforceable and is considered to be a contract with the holders from time to time of the bonds. Rates set by the commission must be adequate to meet those covenants. However, the commission is not required to set rates for services regulated by the commission to recover the allocated costs and coverage requirements of services that are not regulated by the commission. Bonds or other debt issued to finance unregulated, competitive ventures by a municipally owned utility may not be ^{Drafters changed "shall" to "may"} ~~incurred~~ in a manner that would permit a creditor, on default, to have recourse to the ^{assets removed} ~~basic~~ regulated utility business.

(j) The financial covenants contained in mortgages and other debt instruments of cooperative utilities organized under AS 10.25 are also valid and enforceable, and rates set by the commission must be adequate to meet those covenants. However, a cooperative utility that is negotiating to enter a mortgage or other debt instrument that provides for a times-interest-earned ratio (TIER) greater than the ratio the commission most recently approved for that cooperative shall submit the mortgage or debt instrument to the commission before the instrument takes effect. The commission may disapprove the instrument within 60 days after its submission. If the commission has not acted within 60 days, the instrument is considered to be approved.

* Sec. 7. AS 42.05.711(e) is amended to read:

(e) Notwithstanding any other provisions of this chapter, any electric or telephone utility that does not gross \$50,000 annually is exempt from regulation under this chapter unless [25 PERCENT OF] the subscribers petition the commission for regulation under AS 42.05.712(h).

* Sec. 8. AS 42.05.711(f) is amended to read:

(f) Notwithstanding any other provisions of this chapter, an electric or telephone utility that does not gross \$500,000 [\$325,000] annually may elect to be exempt from the provisions of this chapter other than AS 42.05.221 - 42.05.281 under the procedure described in AS 42.05.712.

1 * Sec. 9. AS 42.05.711(g) is amended to read:

2 (g) A utility, other than a telephone or electric utility, that does not gross
3 \$150,000 [\$100,000] annually may elect to be exempt from the provisions of this
4 chapter other than AS 42.05.221 - 42.05.281 under the procedure described in
5 AS 42.05.712.

6 * Sec. 10. AS 42.05.711(i) is amended to read:

7 (i) A utility that [WHICH] furnishes collection and disposal service of
8 garbage, refuse, trash, or other waste material and has annual gross revenues of
9 \$300,000 [\$200,000] or less is exempt from the provisions of this chapter, other than
10 the certification provisions of AS 42.05.221 - 42.05.281, unless [25 PERCENT OF]
11 the subscribers [OR SUBSCRIBERS REPRESENTING 25 PERCENT OF THE
12 GROSS REVENUE OF THE UTILITY] petition the commission for regulation under
13 AS 42.05.712(h). Notwithstanding AS 42.05.712(b) and (g), if subscribers
14 representing 25 percent of the gross revenue of the utility petition the commission
15 for regulation, the utility is subject to the provisions of this chapter.

16 * Sec. 11. AS 42.05.711(k) is amended to read:

17 (k) A utility that [WHICH] furnishes cable television service is exempt from
18 the provisions of this chapter other than AS 42.05.221 - 42.05.281 [,] unless [25
19 PERCENT OF] the subscribers petition the commission for regulation under the
20 procedure described in AS 42.05.712. (was deleted)

21 * Sec. 12. AS 42.05.712(h) is amended to read:

22 (h) A utility or cooperative that is already exempt from regulation under this
23 section or that is exempt from regulation under AS 42.05.711(e), (i), or (k) may
24 elect to terminate its exemption in the same manner.

25 * Sec. 13. AS 42.06.285(a) is amended to read:

26 (a) A pipeline carrier operating in the state shall pay to the commission an
27 annual regulatory cost charge in an amount not to exceed .8 [.61] percent of gross
28 revenue derived from operations in the state. A regulatory cost charge may not be
29 assessed on pipeline carrier operations unless the operations are within the jurisdiction
30 of the commission.

31 * Sec. 14. AS 42.06.285(c) is amended to read:

1 (c) The commission shall administer the charge imposed under this section.
2 The Department of Revenue shall collect and enforce the charge imposed under this
3 section. The Department of Administration shall identify the amount of the
4 operating budget of the commission that lapses into the general fund each year.
5 The legislature may appropriate an amount equal to the lapsed amount to the
6 commission for its operating costs for the next fiscal year. If the legislature does
7 so, the commission shall reduce the total regulatory cost charge collected for that
8 fiscal year by a comparable amount.

9 * Sec. 15. AS 44.66.010(a)(4) is amended to read:

10 (4) Alaska Public Utilities Commission (AS 42.05.010) -- June 30,
11 1998 [1994];

12 * Sec. 16. REPEAL OF SUNSET OF REGULATORY COST CHARGES. Sections 22,
13 26, 36, and 38, ch. 2, FSSLA 1992, are repealed.

14 * Sec. 17. APUC STAGGERED TERMS. Notwithstanding AS 42.05.030(a), after the
15 expiration in 1999 of the term of the member of the Alaska Public Utilities Commission with
16 a major or experience in engineering, the vacancy shall next be filled for a term of four years
17 in order to adjust the staggering of the terms of the members of the commission so that no
18 more than one commission member's term expires each year.

19 * Sec. 18. APPLICATION TO ONGOING PROCEEDINGS. The amendment to
20 AS 42.05.141(a), made by sec. 1 of this Act, applies to proceedings begun on or after the
21 effective date of sec. 1 of this Act.

22 * Sec. 19. Section 1 of this Act takes effect July 1, 1995.

23 * Sec. 20. Except as provided in sec. 18, this Act takes effect July 1, 1994.