

9688966 HJ 14 - SB 18  
2002

TO: [ Senator H.E. Dankworth  
Alaska State Legislature

DATE: February 21, 1979

Thru: R.H. Eakins  
Director  
Division of Economic Enterprise

FILE NO:

TELEPHONE NO:

FROM:

Ronald S. Walt  
Development Specialist  
Division of Economic Enterprise  
Department of Commerce & Economic  
Development

SUBJECT:

Manufacturers' Seal

The following wording is designed as an addition to your Senate Bill on Alaska business preference, per your suggestion. The reasoning behind requiring a "permit" is to provide the authorized manufacturers a means of identification which may be used to purchase seals directly from the printer as needed.

I have attempted to construct the wording so as to be restrictive, yet not exclude the paint, peat and airplane manufacturers, among others, already in the State.

"Identification Seal for Alaska Manufacturers"

A manufacturer who, in his own plant, located within the geographic boundaries of the State of Alaska, transforms raw materials into a new finished product for marketing to the general public, may apply for a permit to identify his product with an official seal authorized by the State certifying that product as "Manufactured in Alaska."

Alaska companies whose finished product is the result of the assembly of previously finished components are not eligible to utilize the "Manufactured in Alaska" seal. Assembly plants whose finished product is patented and is assembled to its final form only in the State of Alaska may be eligible to bear the "Manufactured in Alaska" seal.

Design of the Seal. The seal shall be of an appropriate design, as determined by the Commissioner with the advice of the manufacturers, bearing the wording "Manufactured in Alaska."

Permits to Use the Identification Seal. The Commissioner may examine or investigate the applicant to determine eligibility for a permit. The Commissioner shall prescribe the form of the seal, the application, the permit, the period for which the permit is valid and the procedure for renewal of the permit.

Penalties

- (a) A person who knowingly or willfully issues the document for, or affixes or attaches the identification seal provided for in Sections \_\_\_\_\_ of this chapter to an article knowing that it is not an authentic article of Alaskan manufacture is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$10,000, or by imprisonment for not more than one year, or by both.

- (b) A person who knowingly or willfully sells or offers for sale an article with the seal affixed or attached knowing that the article is not an authentic article of Alaska manufacture, is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$10,000, or by imprisonment for not more than one year, or by both.
- (c) A person who willfully alters, changes, or counterfeits an identification seal or document is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$10,000, or by imprisonment for not more than one year, or by both.

Definitions. In Sections of this chapter, unless the context otherwise requires:

- (1) "Commissioner" means the Commissioner of the Department of Commerce and Economic Development;

RSW/sa2/5

cc: Ron Fullerton

Chamberlain

SB-114 - Possible Amend.

(2)

"Alaska manufacturer" means a person engaged in a business activity in the state by which he, through labor, art, or skill, transforms raw or partially finished materials into some kind of article of trade.

pg. 4, line 16

delete  
current  
section  
replace w/ →

ED

From: Sen. Dankworth

PROPOSED AMENDMENTS FOR SB 114 - HOUSE JUDICIARY, APRIL 24, 1979

1. page 1, line 7, after the word "Act;" insert  
"and the identification of Alaska manufactured goods;"
2. page 2, line 16, after the word "has" delete all material  
and insert "executed an affidavit, under penalty of perjury  
that no delinquent taxes are owing, and has sent a copy  
of the affidavit to the Department of Revenue."
3. page 2, line 27, after the word "materials," insert  
"services"
4. page 3, after line 1, insert "(11) subcontracting will  
be prohibited with busiesses outside of Alaska."
5. page 3, line 15, after the word "seals" insert  
"or permit number"
6. page 3, line 15, after the word "goods." insert  
"Identification seals or permit numbers may be  
printed on labels of goods."
7. page 3, line 16 & 17, delete "The commissioner shall  
investigate the applicant to determine his eligibility  
for the permit."
8. page 4, line 18, after the word "raw" insert  
"or partially finished materials into some kind of  
article of trade." Capitalize "it" on line 18.

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF REVENUE

STATE OFFICE BUILDING POUCH SA - JUNEAU 99811

April 10, 1979

The Honorable Charles H. Parr  
House of Representatives  
Chairman, House Judiciary Committee  
Pouch V  
Juneau, AK 99811

Dear Mr. Parr:

RE (S FOR SB 114 RULES) AM

While SB 114, as amended, does not affect the Department of Revenue directly, it is noted that there would be some problems with the amendment to AS 37.05.230 (5) in Section 3 of the bill (page 2, line 16). As amended, AS 37.05.230 (5) (d) reads "has no delinquent state taxes;..." This amendment is an addition of a qualification for a bidder for state contracts to be an "Alaska bidder."

There are two areas that appear to need clarification. First of all, what is the meaning of "delinquent state taxes?" I presume that the term includes all taxes levied by the Department of Revenue under Title 43 and by Department of Labor under Title 23. However, the term "delinquent" can have various meanings.

- a. Those taxes legally assessed, due and owing where there is no appeal or contest, either administrative or judicial, or where the time period for filing an appeal has not yet lapsed.
- b. All of the taxes under (a), but also including those items under appeal and those items where appeal still could be filed.
- c. All of the taxes under (b), but also including "potential taxes" where a return or report is past due but the taxpayer has not yet filed and the Department has not yet assessed the tax.
- d. Those taxes under (a) and those "potential taxes" under (c), but excluding those taxes under appeal under (b).

The second problem with the amendment deals with the confidential nature of the filings of taxes under Title 43 (and possibly Title 23) as outlined in AS 43.05.230. In the Department of Revenue testimony before your committee on another bill (HB 354), Mr. Jenkins and myself pointed out that AS 43.05.230 prohibits the Department from divulging any information regarding the filings of taxes under Title 43 to the public or any other

April 10, 1979

state agency, except as specifically provided for. As the bill is currently drafted and as AS 43.05.230 currently exists, I believe the Department of Revenue:

- a. could tell the Department of Administration whether a firm had a business license or not;
- b. could tell the Department of Administration whether any public tax liens had been filed on a firm;
- c. could not tell the Department of Administration whether all returns that should have been filed have in fact been filed;
- d. could not tell the Department of Administration of assessments of taxes where "hidden liens" exist, but no public liens have been filed.

There would seem two different approaches to this conflict could be taken:

- a. Require the firm seeking a status of "Alaska bidder" to state in writing, under the penalties of perjury, that no delinquent taxes are owing, advising it that copies of the affirmation would be turned over to the Departments of Revenue and Labor.
- b. Amend AS 43.05.230 to allow the Department of Revenue to provide such information to Department of Administration.

From the Department of Revenue's standpoint, (a) would be preferable. First of all, the review of the potential "Alaska bidders" would add workloads for a review of all tax years filing for all types of taxes. This is especially a problem for the peak workloads, such as filing season (January - May). Secondly, a prior review by the Department of Revenue could slow down, sometimes considerably, the process of placing a firm on "Alaska bidder" list.

If the purpose for the amendment is to ensure that "Alaska bidders" pay any required tax, the notification process would afford the Department the knowledge of the existence of potential contracts with the state. We believe that the enforcement provisions of Title 43 gives the Department of Revenue adequate authority to collect the taxes in question.

If you have any questions concerning this, please contact me.

Sincerely,



Michael S. McCormick  
Director  
Enforcement Division

cc Richard C. Bradley  
Director, Division of General  
Services and Supply  
Department of Administration

SB 114  
Rosenstein

- need as soon  
as possible -

amendments SB 114 - House Judiciary

- 1) <sup>amend</sup> (title) (Bradley) and an act relating to identification of Alaska Manufactured goods
- 2) delinquent taxes - page 2 - line 16 require the firm seeking "Alaska Bidder" status to state in an affidavit, under the penalties of perjury, that no delinquent taxes are owing, and copies sent to the Alaska Departments of Revenue and Labor.
- 3) ~~the~~ "OR permit number" <sup>line 15 after "goods"</sup> (pg. 3 - Sec. 45.67.020) OR print on labels - (not a sticker) <sub>line 16 pg 3 after "goods"</sub>
- 4) <sup>1984</sup> subcontracting ~~not allowed with companies out of state~~
- 5) page 2, line 27 - after "materials" insert "services" (Bradley)
- 6) Pat O'Connell - Delete pg 3, line 16 "The commissioner ... permit." line 17
- 7) (Dankworth) pg. 4, line 16 delete & replace w/ "Alaska M. ..."

4-18-79

SB 114

Mike McCormick - Dept. Revenue

Dick Bradley - Dept. Admin.

requires sole bidding with ~~holders~~

include a provision so that if  
nothing exists in the state -  
can look "outside"

gross receipts - (10) pg. 2

pg. 2 - (9) inventory

Parr questions the definition  
on page 4, line 16

Deegan  
Bradley  
McCormick

permit #

printing of labels

delinquent taxes? affidavit

subcontracting - Rensley & Martin

Dankworth 1/2 the bill -

change title\*

pg. 2 - line 27 insert "services"

A M E N D M E N T

OFFERED IN THE SENATE:

By: Senator Bradley

To: CS SB 114 (Rules) SENATE BILL No. \_\_\_\_\_

HOUSE BILL No. \_\_\_\_\_

PAGE: 1 and 2

LINE: 7 and 26

Page 1, Line 7:

Following the word "Act", insert "and the identification of Alaska manufactured goods"

*title #1*  
✓

Page 2, Line 26:

Following the word and comma, "materials", insert "services"

✓  
*#5*

# Buy Alaskan Committee

4604 BUSINESS PARK BLVD.  
ANCHORAGE, ALASKA 99503

April 17, 1979

Charles H. Parr  
Chairman Judiciary Committee  
Pouch V  
Juneau, Alaska 99811

Dear Mr. Parr:

My name is Harry Gray and I am the chairman of the Buy Alaskan Committee, and I spoke with you this past week concerning Senate Bill 114, which you have scheduled for hearing tomorrow evening at 7:00 on the Judiciary Committee.

We naturally are very interested in this bill and seeing that if at all possible getting it passed this session.

We have two changes that we would like to make on this bill, if it would be possible without changing the course of the bill. They are as follows:

Sec. 4. AS 37.05.230 is amended by adding new paragraphs to read:

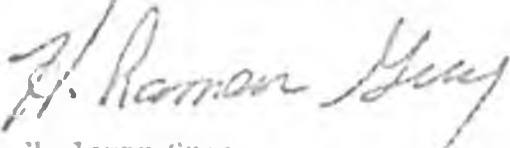
(9) The Department of Administration shall compile and update annually a "certified Alaska bidders list" containing the names of bidders certified to be Alaska bidders who are required to maintain inventories and are taxed on their majority operational inventories for purposes of doing business within the State of Alaska.

(10) Each proposal contract for or purchase of multiple requirements of supplies, materials, services or equipment shall provide for an award of not less than 40 per cent of the total value of the purchase to the lowest responsible Alaska bidder who maintains no offices outside the State larger than their Alaskan operation and who for the previous year gross business receipts not in excess of \$1,000,000.

Any help that you can give us on getting this bill passed this year we will appreciate.

Sincerely,

BUY ALASKAN COMMITTEE



H. Lamar Gray  
Chairman

4-18-79

SB 114

Residency requirement of  
ownership of vendors -

penalize vendors that  
have owners living outside Alaska  
(they pay state income tax)

(restraint of trade)

N C Company - Machinery -  
9-0181 Error Champion

9-2055

wants to testify

page 2 - line 17 (E)

~~HB 155~~ (HB 155 Comp Bidding)

A M E N D M E N T 1

OFFERED IN THE SENATE:

BY: Sen. Bradley  
A

To: \_\_\_\_\_ SENATE BILL No. \_\_\_\_\_

HOUSE BILL No. \_\_\_\_\_

PAGE: 1 and 2

LINE: 7, 23, 24, 25, 26, 28

Page 1, Line 7:

Following the word "Act", insert <sup>and</sup> "the identification of Alaska manufactured goods"

Page 2, Line 23 and 24:

Following the words "Alaska bidders", delete the remainder of the sentence, and insert "who are required to maintain, and are taxed on, operational inventories for the purpose of doing business in the State of Alaska."

Page 2, Line 25:

Following the word "of," insert "multiple requirements of"

Page 2, Line 26:

Following the word and comma, "materials,", insert "services,"

Page 2, Line 28:

Following the word "state", insert "larger than their Alaskan operation"

# TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.  
P.O. BOX 114  
ANCHORAGE, ALASKA 99503

1972 MAR 28 PM 3 51

02281 P01 ANCHORAGE ALASKA 15 03-29 937P AST

PMS SEN W E BRAD BRADLEY

JUN

I SUPPORT SB114. COME ON GUYS LETS HELP ALASKANS.

BIG JACK ARNOLD, GENERAL MANAGER, KANC.

8245 JEWEL LAKE RD, ANCHORAGE AK 99509

1972 MAR 30 AM 1 05

# TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.  
P.O. BOX 114  
ANCHORAGE, ALASKA 99503

0244 P01 ANCHORAGE ALASKA 15 03-28 1155A AST

PMS SENATOR BRAD BRADLEY

JUNEAU AK

I SUPPORT SB114 AND WANT THE SENATE TO SUPPORT IT  
TOO.

ADDRE YONKIN 7543 ROVENA ANCHORAGE AK 99503

1972 MAR 28 PM 3 51

# TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.  
PHONE: 806-6442  
JUNEAU, ALASKA (907)

02280 P01 ANCHORAGE ALASKA 15 03-29 653P AST

PMS SEN W E BRADLEY

JUN

I, MY STAFF, AND MY MODELS PERSONALLY SUPPORT SB114.

EILEEN STALS, MODELS INTERNATIONAL

401 EAST NORTHERN LIGHTS, ANCHORAGE AK 99503

# TELEGRAM

HCA ALASKA COMMUNICATIONS, INC.

JUNEAU, ALASKA 99901

# 0845 PM ANCHORAGE ALASKA IS 03-29 1957A AST

PWS SENATOR BRAD BRADLEY

JUNEAU AK

I SUPPORT SB114 AND WANT THE SENATE TO SUPPORT IT  
TOO.

GENE YONKIN 7543 SOVENA ANCHORAGE ALASKA 99507

1979 MAR 28 PM 3 51

# TELEGRAM

HCA ALASKA COMMUNICATIONS, INC.

JUNEAU, ALASKA 99901

# 02155 PM ANCHORAGE ALASKA IS 03-29 3000 AST

PWS SENATOR BRAD BRADLEY

JUNEAU AK

CONGRATULATIONS SB114 ITS ABOUT TIME WE SUPPORT YOU

LINDA EDGEWORTH ADVERTISING FEDERATION OF ALASKA

DIRECTOR 2531 LYVONA ANCHORAGE AK 9500



1979 MAR 28 PM 3 51

RCA

22446 POM ANCHORAGE 5 ALASKA 15 33-28 1058A AST  
PMS SENATOR BRAD BRADLEY  
JUNEAU AK

I SUPPORT SB114 AND WANT THE SENATE TO SUPPORT IT  
TOO.

ELAINE CRAWFORD 207 EAST NORTHEMN LIGHTS ANCHORAGE AK 99500

1979 MAR 28 PM 3 51

RCA

22440 POM ANCHORAGE ALASKA 15 03-23 1052A AST  
PMS SENATOR BRAD BRADLEY  
JUNEAU AK

I SUPPORT SB114 AND WANT THE SENATE TO SUPPORT IT  
TOO.

VIRGIE GREEN 5632 B ST ANCHORAGE AK 99500

# TELEGRAM

RCA ALASKA COMMUNICATIONS COMPANY

ANCHORAGE, ALASKA

TELEPHONE NUMBER 25402

32443 PDM ANCHORAGE ALASKA 15 23-28 1954A AST

PWS SENATOR BRAD BRADLEY

JUN

I SUPPORT SB114 AND WANT THE SENATE TO SUPPORT IT  
TOO.

STEPHEN FDE 1127 F ST ANCHORAGE AK 99501

1979 MAR 28 PM 3 51

# TELEGRAM

RCA ALASKA COMMUNICATIONS COMPANY

#

02447 PDM ANCHORAGE ALASKA 15 23-28 1104A AST

PWS SENATOR BRAD BRADLEY

JUNEAU ALASKA

I SUPPORT SB 114

MARY W LOY 2828 WEST 79TH AVE APT 6

ANCHORAGE AK 99502

1979 MAR 28 PM 3 51

TELETYPE

RCA ALASKA COMMUNICATIONS, INC.  
PHONE 576-6442  
JUNEAU, ALASKA 99802

#

02440 POM ANCHORAGE ALASKA 15 23-28 1048A AST  
PMS SENATOR BRAD BRADLEY  
JUNEAU AK  
I SUPPORT SB114 AND WANT THE SENATE TO SUPPORT IT TOO.  
ARCHIE GREEN 5633 B ST ANCHORAGE AK 99510

1979 MAR 23 PM 3 51



STATE OF ALASKA  
THE LEGISLATURE

POUCHY - STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 29, 1979

SUBJECT: CSSB 114 - Provisions relating to the identification  
of Alaska manufactured goods.  
(Work Order No. 5858)

TO: Senator W. E. "Brad" Bradley

FROM: Kenneth M. Rosenstein, Legislative Counsel *KMR*

You have requested a brief explanation of the reasons for Sec. 6 of CSSB 114. Sec. 6 would amend the penalty provisions of Sec. 45.67.030, effective January 1, 1980, by designating the various offenses described in that section as class B misdemeanors. It would also remove the language that specifies the maximum punishment upon conviction of those offenses.

The designation of the offenses as class B misdemeanors is necessitated by the new criminal code, to go into effect on January 1, 1980, which classifies crimes according to their relative seriousness. The maximum punishment upon conviction is established for each class of crimes by AS 12.55.035, 12.55.125, and 12.55.130.

Thus, a class B misdemeanor will carry a maximum fine of \$1,000, AS 12.55.035(b)(4), and a maximum term of imprisonment of 90 days, unless a different term is specified in the provision defining the offense, AS 12.55.135(b).

If CSSB 114 becomes law, the penalty upon conviction of any of the offenses described in Sec. 45.67.030 would, until December 31, 1979, be a fine of up to \$1,000, or imprisonment for up to one year, or both. On January 1, 1980, the offenses would be classified as class B misdemeanors and would carry maximum penalties upon conviction of a fine of up to \$1,000, or imprisonment for no longer than 90 days, or both.

KMR:nem

senco alaska, inc.



877 DOWLING ROAD  
ANCHORAGE, ALASKA 99502  
(907) 349-1522 or  
(907) 349-1523

March 26, 1979

Senator Brad Bradley  
Pouch V  
Juneau, Alaska 99811  
Mail Stop 3100

Dear Senator Bradley:

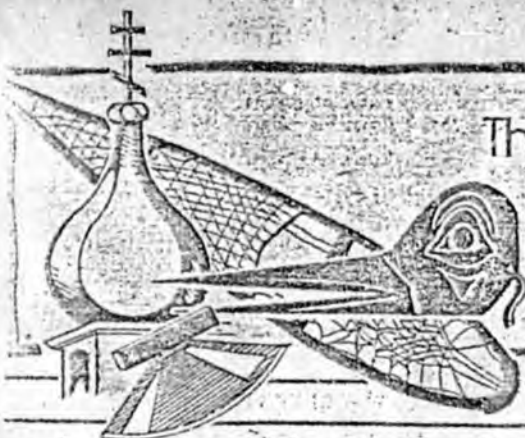
In making our opinion known to our elected officials, we ask that you pass Senate Bill 114, as being in the best interest to the people of Alaska.

Respectively yours.

A handwritten signature in cursive script, appearing to read "Elwood K. Watson", written over a horizontal line.

Elwood K. Watson

EKW/tb



The

# Great Lander

Shopping News & Sourdough Saver. Classified

Volume 11, No. 10

Anchorage, Alaska

March 7

Tourism fiasco . . .

## Who Cares About Sex?

All the buzz as to whether State tourism ads in Vogue are too 'Sexy' is off target and a bad shot.

The 'point' -- sharp, clear and stinging -- is that the million dollars a year spent by the State on such promotion could be done by Alaskans . . . but that has not been the case for five years.

Worse yet the new state contract is again headed back to sunny Hawaii, assuring the state's tourism director Richard Montague a perpetual suntan.

The time has come for Alaskans to buy Mr. Montague a one-way ticket to Aloha land.

For an administration that won power on a promise of 'Jobs For Alaskans' and 'Alaska Hire' and for a state with the nation's highest unemployment, the tourist promotion program is a dismal disgrace . . . whatever the boast of end results.

The state was to announce a new advertising firm by mid-February, but failed to do so. The state admits it is talking to the 'successful bidder' but the only Alaska survivor in the contest says their phone lines are strangely silent.

The word is that the contract is again going west to Hawaii where ad writers, layout people, models, photographers, printers, and creative people must 'outshine' Alaskan talent -- much of which is without work.

Among 14 agencies that sought the lucrative Alaska contract, which is a joint operation between State tourism and the Alaska Visitors Association, only one Alaska firm was held to be eligible. Another 'local' spent \$4000 on a presentation only to be advised that since it never previously held a tourism contract, it was ineligible.

A number of other agencies bit the dust on this volley too.

Why was this 'ineligibility factor' not included in State tourism's call for bids? Much time was wasted. Much money went down the ol' tube . . . tempers blazed like the Mt. Katmai of 1912.

The history of the contract is a shadow on the administration. Five years ago the award was made in Seattle. Then in Hawaii for one year with an option to renew. Alaskan protests won a promise for new bids with the expiration of the pact in Honolulu.

That never happened. Instead Mr. Montague renewed the Honolulu contract two more times. Some challenge the legality of such high handed methods. Then, court fights are expensive.

And one must ask 'why must Alaskans, sue Alaskans to obtain jobs for Alaskans?'

Aloha is a versatile word, meaning 'love', 'hello', and 'goodbye.'

Perhaps, like the pineapples, the time is ripe for wishing Mr. Montague a hearty . . . 'Aloha.'

And that, of course, would be 'goodbye'.

STATE OF ALASKA  
THE LEGISLATURE

FOUCHY - STATE CAPITOL  
JUNEAU, ALASKA 99811  
507-455-3500

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 8, 1979

SUBJECT: State purchasing exclusively from Alaska businesses:  
(Work Order No. 6243)

TO: Senator Patrick Rodey

FROM: Kenneth M. Rosenstein, Legislative Counsel *KMR*

You have requested a legal analysis of the Buy Alaska Committee's legislative proposal requiring that state purchasing be exclusively from Alaska businesses when practicable.

It is not clear that the draft supplied by the Committee accomplishes their purpose. As drafted, it requires that state purchasing contracts be based on competitive bids advertised to Alaska bidders. The award is to be made to the lowest responsible bidder, without limitation to Alaska bidders. To accomplish what I perceive to be the Committee's intent, the award of contract would need to be limited to the lowest Alaska bidder.

Legally, I can find no precedent holding that such a preference is unconstitutional or otherwise unlawful. Indeed, there is precedent specifically upholding such a preference, but on a much more limited scope than proposed by the Committee.

In American Yearbook Co., v. Askey, 339 F. Supp. 719, aff'd mem. 409 U.S. 904 (1972), the plaintiff challenged a Florida statute that required all printing required by a state agency be done within the state. The statute was attacked on the basis that it violated the 14th amendment and commerce clause of the U.S. Constitution. Holding that the statute was a valid exercise of the state's proprietary power, a three judge district court stated:

... [I]n framing specifications for its printing work, the state performs a proprietary function and stands in the shoes of a private party who is entitled in most instances to choose where and by whom his printing will be done. In that posture the state is like a trustee; the citizens are the beneficiaries. It may be necessary for the state to adopt discriminatory purchasing policies, such as those questioned here, to insure that the interest of the people is best served. In fact it is conceivable that the failure to do so would constitute a breach of the state's duty to its residents. In a case such as this, it is not for the Court to question the wisdom of the legislature in discharging that trust obligation.

399 F. Supp. 719, 722 - 723.

In dealing with the commerce clause challenge, the court cited numerous authorities, including MacMillan Co. v. Johnson, 269 F. 28 (1920), to support its holding that the commerce clause was not violated by the Florida statute. In MacMillan a Michigan statute specified the "conditions under which a book dealer could sell text books to state school districts." 339 F. Supp. 719, 724 (E.D. Mich. 1920). In discussing American Yearbook's commerce clause claims, the court stated:

The [MacMillan] Court laid plaintiff's arguments to rest in language no less pertinent here [in American Yearbook

"... Plaintiff has no vested right, without the consent of the state, to sell and ship its books to the school officials of Michigan in interstate commerce. This situation depends on the old, familiar rule that a sale or contract cannot be made without the consent and agreement of both of the contracting parties." [269 F. 28, 31]

Senator Patrick Rodey  
Page 3  
February 8, 1979

... What plaintiff [American Yearbook] fails to recognize is that those statutes [cited by American Yearbook as having been successfully challenged as violative of the commerce clause] regulated private industry. Trade regulations are clearly subject to Commerce Clause restrictions, but statutes that merely specify the conditions of state purchases are not.

399 F. Supp. 719, 724 - 725.

As noted above, the district court's decision in American Yearbook was affirmed by the U.S. Supreme Court in a memorandum decision (409 U.S. 904), but the precedent set by the case need not necessarily be followed by the Alaska Supreme Court.

The Alaska Supreme Court has laid a legal foundation that could serve to justify the preference requested by the Committee. In State v. Reefer King Co. Inc., 559 P.2d 56 (Alaska 1976), the court affirmed the constitutionality of Alaska's fish processors' tax found at AS 43.75.060. That statute distinguishes between shore-based processors and floating processors and taxes the floating processors at a rate four times greater than the rate applied to shore-based processors. The court, in rejecting the challenge based upon the equal protection clauses of the Alaska and U.S. Constitutions, stated:

... [T]he statute reflects a... legislative judgment, that "shore-based" processors make a more valuable contribution to the state and local economies than do the "floating" processors. While the processors may argue that they contribute as much as the "shore-based" processors do, it cannot be disputed that the impacts of the two types of operations on the local communities are substantially different in character.

... [T]he tax differential bears a fair and substantial relationship to the goal of encouraging societal contributions of the type made by "shore-based" processors... The state may legitimately encourage, through tax incentives or exemptions, industries or types of industries which it considers desirable, and this method of encouragement does not deprive other taxpayers, who do not qualify for the benefit, of their equal protection rights.

559 P.2d 56, 65 - 66.

This same rationale may support the legislature's enactment of legislation granting Alaska businesses an exclusive preference with regard to purchases by the state. This is especially so when it is considered that a court would seem to scrutinize an allegedly discriminating tax more closely than state purchasing policy. There this appears to be fairly persuasive authority that would indicate that there are no serious constitutional issues involved in the Committee's proposal.

KMR:nem

LAND  
DESIGN  
NORTH

LANDSCAPE ARCHITECTURE  
RESOURCE/RECREATION PLANNING  
1709 S BRAGAW ST., SUITE J  
ANCHORAGE, ALASKA 99504  
(907) 277-7122

March 25, 1979

Senator W.E. Brad Bradley  
Alaska State Senate  
Pouch V  
Juneau, AK 99811

Re: CS Senate Bill 114  
Competitive Bidding

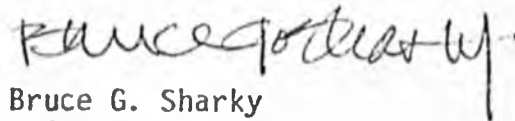
Senator Bradley:

By way of this letter we wish to express our support of CS Senate Bill 114 and urge you to support the bill by voting for its passage when it is heard on the Senate Floor.

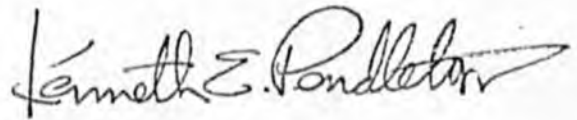
The bill offers a fair solution to a fairly serious problem that now exists in the State. The bill is workable and provides a legitimate mechanism for increasing competition in the State in matters involving competitive bidding for goods and services. We believe the present situation leaves businesses operating in the State at an unfair disadvantage to firms bidding from other states.

Please support passage of CS Senate Bill 114 when it reaches the Senate Floor this session.

Very Sincerely,



Bruce G. Sharky  
Principal



Kenneth E. Pendleton  
Principal

THE LEGISLATURE OF THE STATE OF ALASKA  
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CSSB 114 (Chapter 67 only)  
 Title An act relating to competitive bidding under the Fiscal Procedures Act  
 Requested by Senator Bradley Date 3-30-79

II. FISCAL DETAIL

Agency Affected Department of Commerce and Economic Development  
 Program Category Affected Development  
 BRU, Program, or Subprogram(s) Affected Economic Enterprise  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
100 PERSONAL SERVICES	0	0	0	0	0	
200 TRAVEL	0	0	0	0	0	
300 CONTRACTUAL	0	50.0	25.0	15.0	10.0	
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
<b>TOTAL</b>	<b>0</b>	<b>50.0</b>	<b>25.0</b>	<b>15.0</b>	<b>10.0</b>	

FUNDING (Thousands of Dollars)

GENERAL FUND		50.0	25.0	15.0	10.0	
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME	0	0	0	0	0	
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

The contractual costs include printing of articles and tags and required advertising to introduce Alaska manufacturers' seals and gain public recognition and approval. Future year fiscal requirements will decline as printing of materials will be the major expenditure. The Division of Economic Enterprise will charge manufacturers using large quantities of the seal for the cost of printing.

IV. DATE 3-30-79

*J. Deagen*  
 PREPARED BY JM Deagen  
 AGENCY Economic Enterprise  
 PHONE 465-2021

Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)

RULES CS FOR SB 114

MR. PRESIDENT, I MOVE THE ADOPTION OF THE RULES CS.

THE MAJOR DIFFERENCE BETWEEN THE RULES CS AND THE COMMERCE CS IS THAT IN THIS CS WE HAVE INCLUDED A "CERTIFIED ALASKA BIDDERS LIST" WHICH THE DEPARTMENT OF ADMINISTRATION SHALL COMPILE AND UPDATE ANNUALLY BASED ON ALASKA BIDDERS WHO MAINTAIN INVENTORIES IN THE STATE. THE COMMISSIONER WILL PROVIDE FURTHER IMPLEMENTING GUIDANCE OF IN THIS REGARD BY REGULATION, AND THE BIDDERS ON THIS CERTIFIED LIST SHALL BE NOTIFIED TO BID ON STATE CONTRACTS BY MAIL.

ALSO, EACH CONTRACT SHALL PROVIDE FOR AN AWARD OF NOT LESS THAN 40 PERCENT OF EACH CONTRACT PURCHASE TO THE LOWEST RESPONSIBLE BIDDER WHO HAD FOR THE PREVIOUS YEAR GROSS BUSINESS RECEIPTS OF NOT MORE THAN \$1,000,000. THIS ALLOWS THE ALASKA SMALL BUSINESS TO GET A PIECE OF THE ACTION. THE FEDERAL GENERAL SERVICES ADMINISTRATION (GSA) HAS A SIMILAR PROGRAM.

IN ADDITION, THIS CS PERMITS LARGE NATIONAL CORPORATIONS LOCATED IN THE STATE THE OPPORTUNITY TO ALSO BID ON STATE CONTRACTS IF THE MAJORITY OF THE PERSONS EMPLOYED IN THE BIDDER'S ALASKA OFFICE ARE RESIDENTS OF THIS STATE. THIS PROVISION PERMITS LARGE BUSINESSES SUCH AS SEAR, MONTGOMERY WARD, GRAYBAR ELECTRIC, ETC., TO ALSO BID ON CONTRACTS.

THERE WERE NOT CHANGES IN CHAPTER 67, WHICH PERTAINS TO THE "IDENTIFICATION OF ALASKA MANUFACTURED GOODS."

CSSB 114 (RULES)

MR. PRESIDENT,

- Ⓟ
- Ⓢ THIS BILL PROVIDES THAT A STATE CONTRACT FOR GOODS OR SERVICES MUST BE BASED ON COMPETITIVE BIDS AND THAT AN AWARD OF THE CONTRACT SHALL BE MADE TO THE LOWEST RESPONSIBLE BIDDER AFTER ADVERTISING FOR BIDS;
  
  - Ⓢ HOWEVER, COMPETITIVE BIDS SHALL NOT BE REQUIRED WHERE NO COMPETITION EXISTS, OR IN A GOVERNOR DECLARED EMERGENCY (FOR EXAMPLE: FLOOD, EARTHQUAKE), OR WHERE RATES ARE FIXED BY LAW OR LOCAL ORDINANCE, OR FOR ITEMS TRADED IN ON LIKE ITEMS (TYPEWRITERS, ETC.), OR FOR PROFESSIONAL SERVICES (SERVICES OF CERTAIN CONSULTANTS, ATTORNEYS, ARCHITECTS, ETC.)
  
  - Ⓢ IF THE AMOUNT OF THE CONTRACT IS ESTIMATED TO EXCEED \$2,500, SEALED BIDS MUST BE SOLICITED, AND THE SOLICITATION OF BIDS SHALL BE MADE BY MAIL TO ALL BIDDERS ON THE "CERTIFIED ALASKA BIDDERS LIST." FOR ALL OTHER BIDDERS, ADVERTISING FOR BIDS WILL BE ACCOMPLISHED BY --
    - 1) PUBLISHING NOTICES IN NEWSPAPERS,
    - 2) POSTING NOTICES IN PUBLIC PLACES,
    - 3) MAILING NOTICES TO PROSPECTIVE ALASKA BIDDERS, AND ALSO,
    - 4) THE DEPARTMENT OF ADMINISTRATION MAY PUBLISH NOTICES IN TRADE JOURNALS.
  
  - Ⓢ ALL BIDS SHALL BE SEALED WHEN RECEIVED, AND SHALL BE OPENED IN PUBLIC AT THE HOUR STATED IN THE NOTICE.
  
  - Ⓢ TO BE A RESPONSIBLE BIDDER, A PERSON OR A BUSINESS MUST HAVE NO DELINQUENT TAXES, AND THE MAJORITY OF THE PERSONS EMPLOYED IN THE BUSINESSES IN ALASKA OFFICES MUST BE RESIDENTS OF ALASKA.
  
  - Ⓢ ABOUT THE LAST HALF OF THIS BILL PERTAINS TO THE "IDENTIFICATION OF ALASKA MANUFACTURED GOODS":

- 1) THE DESIGN OF AN ALASKA MANUFACTURERS' IDENTIFICATION SEAL
- 2) PERMITS TO USE THE IDENTIFICATION SEALS, AND --
- 3) PENALTIES FOR KNOWINGLY AND WILLFULLY MISUSEING THE IDENTIFICATION SEALS.

THE REASON FOR THE TWO SECTIONS ON PENALTIES IS -- (EXPLAIN OR READ ROSENSTEIN'S EXPLANATION).

THE IMPORTANCE OF THIS LEGISLATION TO ALASKANS IS IMMEASURABLE IN TERMS OF ECONOMIC GROWTH AND EMPLOYMENT.

IT IS ESTIMATED THAT AS A RESULT OF TAXATION BY THE STATE, THIS BIDDING PLAN WILL WELL REPAY ANY ADDITIONAL FIRST YEAR COST BY THE END OF THE SECOND YEAR, AND --

THE ADDITIONAL LOCAL AND CITY TAXES ON PROPERTY, REDUCED PAYOUTS ON UNEMPLOYMENT, INCREASED EMPLOYER CONTRIBUTIONS AND STATE INCOME TAXES UPON THE INDIVIDUALS AND CORPORATIONS WILL CERTAINLY INSURE GREATER FINANCIAL MOBILITY AND GROWTH FOR THE STATE AS A WHOLE.

THIS BILL IS ESSENTIALLY THE "BUY ALASKA COMMITTEE'S" BILL (EXPLAIN ORGANIZATION). IT WAS INITIALLY PREPARED BY THE "BUY ALASKA COMMITTEE'S" ATTORNEYS AND REFINED BY THE COMMERCE AND RULES COMMITTEES WITH THE HELP OF OUR LEGAL SERVICES SECTION.

THIRTY-SEVEN STATES HAVE SOME TYPE OF LOCAL PREFERENCE OPTION.

- A. 23 STATES, EITHER BY LAW OR PRACTICE, AWARD CONTRACTS PREFERENTIALLY TO LOCAL BIDDERS WHERE THERE IS NO LOSS IN QUALITY OF PRODUCT OR SERVICE. (*no mention of cost*).
- B. FOUR OTHER STATES HAVE A RECIPROCAL PREFERENCE WHERE OUT-OF-STATE BIDDERS ARE PENALIZED BY THE AMOUNT OF PREFERENCE THEY ARE GIVEN IN THEIR HOME STATES. -- *and* --

C. 10 STATES PROVIDE A LOCAL PREFERENCE PERCENTAGE WHICH VARIES BETWEEN 3 PERCENT TO 10 PERCENT. IN VIEW OF THIS, ALASKA BIDDERS CERTAINLY NEED SOME PREFERENTIAL TREATMENT, SINCE WE ARE NOT CONTIGUOUS TO THE REMAINDER OF THE CONTINENTAL UNITED STATES, AND SINCE WE HAVE A HIGHER COST OF LIVING AND HIGHER WAGES (even a higher minimum wage -- not to mention transportation costs)

P • THE DEPARTMENT OF COMMERCE TESTIFIED IN FAVOR OF THIS BILL.

P • THE NEW COMMISSIONER OF ADMINISTRATION HAS STUDIED THE BILL AND SUPPORTS IT, AND --

P • IT IS LEGAL (I HAVE EXAMPLES OF COURT CASES IF YOU WOULD LIKE TO HEAR THEM. READ OR PASS OUT ROSENSTEIN'S LEGAL ANALYSIS),

## CHAPTER 67

1. CHAPTER 67, PERTAINS TO IDENTIFICATION OF ALASKA MANUFACTURED GOODS. SEVERAL STATES HAVE A SIMILAR SYSTEM FOR IDENTIFYING GOODS MANUFACTURED IN THEIR STATE. WE HAVE  IDENTIFIED ABOUT 30 MANUFACTURERS IN THE STATE, MOST OF WHICH ARE MEMBERS OF "BUY ALASKA COMMITTEE." WE HAVE MANUFACTURERS OF AIRCRAFT, FURNITURE, PAINT, AND MANY OTHER PRODUCTS IN THIS STATE.
  
2. THIS PART OF THE BILL PROVIDES FOR THE COMMISSIONER OF THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT TO DESIGN AN APPROPRIATE SEAL TO BE PLACED ON ALASKA MANUFACTURED GOODS, AFTER HE HAS HAD PUBLIC HEARINGS TO OBTAIN MANUFACTURERS' ADVICE ON A SUITABLE LOGO. IN ADDITION TO A LOGO, THE SEAL WILL BEAR THE WORDS "MANUFACTURED IN ALASKA."
  
3. THIS PART OF THE BILL ALSO PROVIDES FOR ELIGIBILITY PERMITS FOR ALASKA MANUFACTURERS TO PURCHASE IDENTIFICATION SEALS AND PROVIDES FOR PENALTIES FOR THE MISUSE OF SUCH SEALS.
  
4. TWO SECTIONS ON PENALTIES (EXPLAIN).

Transcription of CSSB 114 (Rules)

Mr. Richard Bradley, Department of Administration

Bradley: This committee substitute I am very well aware of. In fact, some of the other people that will be testifying on this CSSB I have discussed this with them at a meeting in Anchorage several weeks ago. Of course we know what this bill does; it will give preference for the bidding to Alaskan vendors as long as the competition exists at the exclusion of all others. I look at this from strictly a professional purchasing standpoint and when I see competition reduced or eliminated, I see problems. Competition in business makes the world go round. I do realize that Alaskan vendors have a unique problem and I am very sympathetic to some form of subsidy or whatever it takes to acknowledge the fact that Alaskan vendors do have a higher cost of doing business. I might note that my division of General Services, which purchases primarily goods and services for the state in lieu of public works type contracts, spends about \$27 million of state funds per year for various types of state contracts. Out of this \$27 million, about 62% of it does stay in state now. Approximately 38% goes to outside vendors. We do have on the books now a 5% Alaska bidders preference. This is exercised very seldom, in fact, to the tune of only \$55,000.00 out of the total plus \$27 million which indicates that the Alaskan vendors right now are extremely competitive. The problem is that with any other type of business, as I stated earlier, competition pretty much makes the world go 'round, and once we eliminate competition then it's very possible that people are not going to have to sharpen their pencils quite as much as they have in the past. We have also found, in some cases, that the Alaskan vendors are just unable to perform particular services that we may need, at least to the point where we have competition. I think in one area where people or vendors have been

most vocal has been in the area of printing, and I really have no problem with the vendors preference for printers. This is not unusual, and there are many states that do have a vendor's preference for in-state printing. What we cause here, in effect, is a price escalation. It is just a sure face of reducing your competition. I would rather see another form of assistance to the in-state bidders in the form of perhaps tax forgivenesses or low interest loans, these types of things. This way, I think we could spread the business so that all Alaskans could take advantage of the reduction in prices. The Alaskan vendors now have somewhat of an advantage over out-of-state bidders, and this is in the form of transporting their goods to Alaska. Often times the Alaskan vendor is amalgamating his freight with freight that he is already bringing in, which in turn reduces the price to everyone and allows him to be more competitive than the outside vendor whose going to have to ship in his goods at LCL costs for freight rates. As I pointed out earlier, it does indicate that the Alaska vendors are competitive now. As I pointed out, the variation of the 62 and 38 percent. The other point is that it is discriminatory. I know that we should be favoring our local vendor as opposed to those outside. People have used the fact that they are an Alaskan bidder as being more of a store front or pass through operation. In other words, under these requirements, one needs to have a business license and will have to have had a place of business within the state for the prior 6 months. Competition is not defined here. Would it be more than one, several, how would we make this kind of determination. The other thing administratively, if we were to solicit bids feeling that we had adequate competition, we ended up without adequate competition, we would have to cancel that bid and rebid

it and circulate it to outside vendors which administratively could slow down process of providing goods and services that the agencies need in a timely fashion.

Senator Bradley: You said that a small percentage of the Alaska businesses take advantage of the five percent. Don't you suppose that that's due to the fact that they can't be competitive with just the five percent. Most businesses can't. You say in your fiscal note that it would reduce bid competition. It might reduce bid competition outside, but it would encourage bid competition on the inside. You also say reduction in vendor competition has an obvious effect of reducing price competition as well. Even if it was. . . the product or the service did cost more, the Alaska businesses would be able to pay more people who pay taxes and the business would be making more money and therefore paying more taxes and it would enable them to enlarge their business and eventually be able to do alot of things that now outside businesses do that Alaskan businesses can't do. (Ref: 3/9/79 correspondence from Av Gross, page 1, subparagraph 2 and three.) I know it would be more of a problem probably for the purchasing agency, but it would be quite an advantage to Alaskans and to the economy and the state as a whole. I notice that you also say in your fiscal note that the National Association of Purchasing Officials has estimated nationally that an increase in the bidders preference would raise the cost of doing business proportionately with the increase of the preference. I differ there too. The NAPO is made up of members like yourself and bueaucrats like all of us, and it is the private enterprise individuals that are suffering so I think it's only natural that they should be a protective association, but the Buy Alaska Committee, which is growing rapidly got hundreds of members in Anchorage and Fairbanks, they wouldn't agree with that organization.

The Deputy Commissioner of your Department says, "This act would give preference to Alaskan bidders over non-Alaska bidders. The act would impact the state to the extent that monies ordinarily leaving the state would remain within the state if Alaska bidders exist for the particular service needed. A negative effect may be felt since Alaskan costs are customarily estimated 25% higher than those of the lower 48." "If there's only one Alaskan bidder, bids may be solicited outside." It seems that he agrees with us. The Department of Commerce & Economic Development supports the concept of preference to Alaskan bidders. This would spark local economies by providing employment within rather than outside the state. If there is only one Alaskan bidder, bids may be solicited from outside the state . . . etc.

Richard Bradley: I want to restate that we see the need to assist the local vendor. We have no problem with that. We are only discussing the vehicle by which it is being done. As I said earlier, with the spread of the business now, which seems to fit in with other states that I have talked with that they have about the same spread, somewhere around 70/30 as far as in-state and out-of-state business and we're running pretty close to the other states, even the ones that do have some kind of a vendors preference. Our point is, is there another vehicle, rather than through the competitive process, in other words, spread this volume out. The state is small potatoes as far as my division is concerned. \$27 million if we were to award every contract to an in-state bidder or bidders, it's not going to make or break anybody. The point is, if we can spread that business out so that you and I as private individuals are going to patronize these vendors more, if we can, in some form, encourage local vendors to be competitive with their price, to expand their

goods and services that they carry, so that we can all take advantage of it, that's my point. We are just adding an extra percentage figure onto what the state's cost of doing business is right now, and yet it's not going to stimulate the economy as much as if we were to spread this around because we're still not discouraging the storefront operation. These very same people, and I'm sure that people in Anchorage will admit to the fact that they will be awarded contracts and turn around and have the work done outside. This is not unusual. So what we end up with is a pass through or we have a broker situation and that is not stimulating the local economy. You're bringing some of those dollars back in the form of taxes but by the same token whatever they would have done in-state is going to be reduced by whatever it costs to have it done out-of-state and then there's the multiplier effect. We're working with CED and Revenue to determine exactly what is the multiplier effect as something that hasn't been addressed as the local merchant puts these pieces of equipment and I also assume that he's also going to be depreciating them and things like this so what is the true multiplier effect? And the degree or amount of taxes that are coming back into the state.

Senator Bradley: In that regard, yes they do farm out some of their work, but they still keep some of that profit here and they still pay tax on the full amount, so we still gain. And, too, we gain employment and they pay taxes.

(Senator Bradley) can't

We need to give as many of these contracts as we can to Alaskans. If we just let some of our business start sometime. This is why the Buy Alaska Committee is growing so rapidly. . .

I really do think that it won't hurt competition, it'll just be less from the outside and more from the inside. And if we don't have the product and the service in the state of course that can be waived and you can go outside anyway. Do any members of the committee have any questions?

Senator Kelly: Do you have any idea of the governor's position on these bills?

Bradley: He is sympathetic to the concept, in other words the concept is stimulating business in the state. There's a question again of whether or not this is the correct vehicle. What should be done is to look at this with CED, Dept. of Revenue, the Division of General Services and also get into some of the public works contracts as well.

Senator Kelly: I am just wondering that if we don't come up with a bill that is sensible to the Governor, whether he veto the major that we came up that it was unacceptable.

Bradley: I can't answer that.

Senator Bradley: Senator Kelly, I can partially answer that in that I know that as of last year, he was agreeable to 10% but they didn't want to go any higher as also former Commissioner Allen was agreeable to 10%. I know we've got some bills in the House that go up to 15%.

Senator Bradley (con't): I don't believe anybody has done as much research on it as the Commerce Committee did last year. We sent out a flood of letters and got a flood back. Quite a deluge of mail. Most of them liked from 10 to 15% so we thought maybe 12.5%. I had Commissioner agree to 12.5% as a compromise last year so I don't know if the governor would compromise with the 12.5%, maybe raise it another 2.5% or not, I have not conferred with him on that. Most of the house bills have 15%.

Bradley: One thing, I think, that should be realized is the fact that it will cost the state more to do business and it could dramatically affect many of the state agencies budgets. For example, we were talking about Dept. of Highways, if we did use this 10% figure, which is something I just pulled out of the air, to be honest, and at 10%, we were theorizing the amount of purchases of vehicles that they have programmed for next year could mean the loss of about 30 vehicles, those being used by public health aides and social workers, and whoever. It could have dramatic effects on these peoples programs, of course, the other alternative is to keep the vehicles they have now, which are becoming high maintenance factors which means that they are going to have to put more work in to keep the things running so there will be additional cost to the state.

Senator Bradley: In that regard, I sincerely believe that what would cost more would be countered by what we would gain. In fact, it would more than even out because the economy of Alaska would grow in much more rapid porportion than it already is and another thing is that the state buys alot of vehicles and units from outside that don't service what they sell. They have salesman up here, they don't pay taxes, all the money goes outside and it amounts to alot of money. Alot of that doesn't even go through you, isn't that correct?

Bradley: We do bid the vehicles, but they do either make arrangements to have the vehicles serviced up here as if any one of us had bought a car outside, but we've also set up in alot of our bids purposely

Bradley (Con't): a requirement that service be provided locally as far as the printing for example, we have an unwritten policy distributed as soon as we know that the competition is here. We circulate the bids to just in-state vendors, but when the competition isn't there, or there isn't adequate competition we will circulate the bids outside. We try to favor local vendors. The amount of business we are doing . . . with the amount of business that a particular vendor does, he could gear up, he could do more business, if he was insured that he would get all of our business and there are a few vendors that are capable of providing the service that we need, maybe only one vendor in some cases. We don't have the competition all the time. But, in-state vendors can compete and those that would be competing would be sending the work outside.

Senator Bradley: Yes, maybe initially, but maybe eventually they could compete. Everybody has to grow. I think, frankly, that we've got to try this. Maybe next year we'll see what the bugs are in the system and perhaps do away with them or come up with a tax credit situation that you mentioned. So many other states have similar type bills. We are trying to educate ourselves with their experiences. This is what the Buy Alaska Committee wants and maybe if they think they know what they want, we'll find out if it's right after we've tried it.

Bradley: It could be done . . . there's one area that should be passed and that I think should be included and I have a concern about the federal participation in these state programs and that is where this legislation is discriminatory and it's very possible that the federal government might decline to put their money into these programs because they do consider the legislation discriminatory. Say we're halfway down the line, and this legislation passes and sometime during the year the federal government comes in and says "no, you can't do that" there's nothing then to allow us to do anything differently.

Senator Bradley: Yes, we found out that we had that problem and if we do, we'll amend the law and change it. But if other states can now have 3 and 5 and 10, considering the fact that we are not contiguous to the rest of the continental U.S., and the higher transportation costs, the higher wages, the higher cost of living I think anybody would agree that we deserve the 12.5% and that shouldn't be considered discriminatory if it's been to the court and 5% or 10% isn't discriminatory in some other states then I don't think 12.5% would be in this instance.

Bradley: I have a little case law here that was submitted through the American Bar Association that they are trying to get all states to adopt. They have some case law here that is contrary to what I've been hearing. . . . upholding the fact that in-state preference is discriminatory. I would be happy to make a copy of this for the committee. It hasn't been tested on the federal level these have been state laws.

Senator Bradley: I've put a lot of research in this for the last three years, and I'd like to cover just one more comment and on your notes at the bottom of the fiscal note it says ". . . added to this additional overall cost of doing business must be added extra expense of administering procurement activities such as determining residency, beneficial ownership, and so on, therefore we anticipate adding one full-time clerical position in both the Anchorage and Juneau offices." It might be worth it to do that and I think it is worth it to Alaska Businessmen to do that and I think that if we had two people, although the trend is not to add people, but these two people would be for the good of economy and good business.

Kelly: Between the two sponsor substitutes, do you see one being anymore preferential than the other?

Bradley: Well, apparently Senator Dankworth has amended his and I haven't seen it, I've only seen the original bill seemed as though it would be easier from our side to administer, it was more right

down the line. Your amended version would be easier to administer than the initial one.

Senator Bradley: Dick, we tightened ours up in a few places that we might later amend out in that we wanted to do all we could for the businessmen and we wanted them to approve. Now, they may be agreeable to watering it down a little bit at a later date. There's a lot of emphasis on this and I feel that one of them has got to go through this year, the problem is that we coordinated this one closely with the Buy Alaska Committee, because I didn't feel it was good business to go off on a tangent and dream up one that wasn't agreeable to them so that's the reason we are pushing this one. But, I think that we might later, in Finance and since Dankworth and I have discussed this, might integrate parts of his there, but at this time we don't know that and are still discussing it. The Buy Alaska Committee doesn't know those details yet and plus we want to add an amendment today about this identification seal that we mentioned briefly. They haven't been advised of that in any detail.

Senator Stimson: Mr. Bradley, I would just like to ask that you take a look at all of the various substitutes here that have been substituted and maybe you can come back to us at a later time with your recommendations.

Senator Kelly: I keep hearing reference to the Buy Alaska Committee, who is that?

Senator Bradley: Tim, the Buy Alaska Committee is an organization formed of the business organizations in Anchorage, and it is spreading all over the state and they hope to expand down in this area. It began initially with primarily printers, and public relations and advertising agencies and they are going from that to include all other small businesses.

Jensen: The association appreciated the interest that you have taken in this subject. As you know, there are three or four bills on this subject and I have testified on one of them already. I checked with the Commerce Department yesterday and I was surprised to find out that for this year which is from June to June that there are about 4,000 registered licensed contractors in Alaska. About 50% of those are what they call "specialty contractors" and the other 50% would probably fall into what they call a "general contractor". Along with that, the license fee for a "specialty contractor" is \$50 for a "general contractor" is \$100 but on top of that, the state requires that the contractor put up a surety bond. And the surety bond for the "special contractor" is \$2,000 and the surety bond for the "general contractor" is \$5,000. Written into that surety bond is a priority list, 1) that all taxes to the state will be paid, 2) that all labor costs will be paid. That was interesting to me. To get this license on the law today, you have to be an Alaska resident for at least 6 months and have your operation identified as in Alaska and doing most or all of your business in Alaska. In talking about any preferential treatment in bidding . . . out of these 4,000 or 2,000 contractors, the number in the Associated General Contractors is just a little over 400. Those are the people that I am representing. Within that group the bidding has been so competitive on most contracts, that the Alaska bidder himself has enjoyed getting the bid, so when we are talking about preferential treatment in a bill like this, the best figure I can come up with is that you are saving the bid for Alaska about 20% to 25% of the time. That's a very important factor as far as people surviving here and raising their families here and having all their investments here. So it is a good bill. In analyzing all the bills and just getting a feel of it for myself the administration all the way down, I'll just conclude my testimony with one sentence, and that is that I think that great portion of the problems of the number of Alaska bids falls into the category below \$200,000 of all the different types of specialty

people and like I say just having testified in some of the other committees and having a feel for what is possible and what isn't possible, I would recommend that one word be changed in HB 273 and it just might fly. I just changed the 5% over a hundred thousand to 8%. I appreciate the 12.5% effort and all I'm saying that for is that the feel I've gotten from all the different testimony and the attitude of all the different people.

Senator Bradley: That's the problem right now, the 5% just doesn't help the people we are trying to help right now . . .

Jensen: This is over a hundred thousand, you got the breakdown on all these other types of bids. . . you could even maybe change the hundred thousand to two hundred thousand.

Senator Bradley: To raise that a little bit to 10% or 12.5% would probably help everybody a little bit, it wouldn't hurt the general contractors.

Jensen: Let me say this again just for the general contractors. Any increase above 5% is appreciated but instead of losing everything we would be happy to get if we were lucky enough to get . . .

Senator Bradley: . . . get 3% more than you already have.

Senator Stimson: Mark, I'd like to ask a couple of questions. You slipped over some figures rather quickly and I didn't get them. The difference of cost for the licenses for special and general contractors is what?

Jensen: 58.00 for the specialty and 100.00 for the general.

Stimson: Okay, and the surety bond?

Jensen: 2,000 for the specialty and 5,000.00 for the general.

Stimson: Thankyou. You've had a chance to review the various bills and you're supporting the House Bill by Miles?

Jensen: I support SB 114 all the way through because I think that its really going out. My only point is that after touching base with a few different types of people that are going to have quite an influence on this bill just from a political standpoint, I back way up . . . they were very concerned with percentages on the lower contracts, which of course, we have nothing to do with. And, I think that listening to testimony that that is a problem up to 100,000 or 200,000. I think there is alot of consideration in this bill in the breakdown.

Senator Bradley: The only problem that I can see in that is that it is not helping the people that have been pushing the most on this. The only difference is that we have coordinated this bill and we have coordinated it with this organization. Whereas, you have your own organization, Associated General Contractors and you are being realistic in saying "we're getting 3% more" and I understand that but we want to help the little guy too. Eventually what might happen right now they want this one to pass, but before it gets out and all the testimony has been listened to, and we will get this transcribed and get it down to the organization, and we've got to work on this very fast because there are going to be some changes. Senator Dankworth and I have been working on this very closely together and he went one way and I went another way and in addition he's been working on Manufacturers in Alaska seal and we're going to put all this together but we don't have time to do it today.

Senator Kelly: Do you think that the House Bill you refer to will fly?

Jensen: We're endorsing SB 114 from the standpoint of taking care of the Alaska problem.

Senator Bradley: Well, then maybe a good compromise might be 10%. I don't know if the small businessmen and PR and advertising and printers will think that would be enough of an advantage . . .

Jensen: . . . . they start in with 20% and breaks it down. . .

Senator Bradley: 20% I think is too high and I think when you get down to the lower part of that that . . . .

Jensen: . . . . it didn't change the bottom line, but the 20% only involves \$10,000.00.

(Teleconference Witnesses)

Mr. Bob Schenker: The bill I'm looking at here incorporates some of the requirements that we had proposed to you from the Buy Alaska Committee. I am testifying on behalf of the Buy Alaska Committee and I will make specific comments on CSSB 114. In regard to your CSSB 114 this is exactly the type of bill we would like to see enacted. It provides for preference to businesses in Alaska and allows the Department of Administration through its purchasing function, to do business with outside vendors when no competition exists within the State. It also takes away some of the latitudes and perogatives of the purchasing agent in regard to the terminology declared emergency. This is a definition that should be included in any legislation considered by your committee and by the legislature. The statute as it now exists is wide open for the purchasing agent to use his own discretion to purchase certain types of commodities as he sees fit. Without the terminology "a declared emergency". So essentially, your CSSB 114 is very satisfactory from the point of view of the BAC and the many businesses it represents.

Senator Bradley: As you are aware of and most committee members, there have been a lot of violations by the Department of Administration that is the General Services Division that does the purchasing. Many of the small businesses haven't had a chance to compete so we are also going to look into the enforcement bit of this once we get the bill passed. There's nothing in this bill that has to do with enforcement, but if they break the law, we'll ride herd on it and see that there is enforcement.

Schenker: If I understand this bill correctly, it repeals the 5% preference in its entirety, is that correct?

Senator Bradley: That is correct.

Schenker: In place of the percentage preference, it simply dictates to the Dept. of Administration, through the new statutes that bids will be advertised to Alaska bidders and to non-Alaska bidders when no competition exists? And the awards will be made to lowest responsible Alaska bidder if in fact goods and services are available?

Senator Bradley: That is correct.

Schenker: One thing that I should comment on CSSB 114 under section 1 it states that . . . it's adding words "to Alaska bidders or non-Alaska bidders when no competition between Alaska bidders exists" and then it goes on to sec. D where it says "an award may be made to a non-Alaskan bidder when no competition between Alaska bidders exists." The bill, under D, tends to repeat itself, is this for purposes of clarification so that there is no ambiguity or just what is the purpose?

Senator Bradley: Yes, you have subparagraph C and D and it is rather repetitious.

Schenker: Senator Bradley, you mentioned enforcement and of course the citizens of Alaska realize that the statutes are the law under which the executive branch should operate and that should be adequate, but we can agree that the administrative aspects of purchasing could be tightened up a little.

Senator Bradley: Question by Senator Kelly.

Senator Kelly: Are you in the printing business yourself?

Schenker: No I'm not.

Senator Kelly: Is somebody there that can tell me in regard to printing contracts, what general range they fall into? Are we talking usually 10-20 thousand dollars or 10-50 thousand dollars? If there's anybody that can answer that question, I'd like to know the answer.

Senator Bradley: Well, if it's the tax bulletin or the Alaska Campaign bulletin, that amounts to a large amount of money or the ballot.

Schenker: . . . tax pamphlet or your elections campaign information that runs in the area 85-100 thousand. They think the average bid for printing would probably fall between 5-6 thousand dollars.

Eugene T. Yonkin, Chemical & Geological Laboratories in Alaska:

I'd like to testify in support that by paying a little more initially you stimulate competition not slow it down. A couple of years ago, in our instance, the oil companies agreed to pay a little more to get simultaneous metal analysis. This allowed us buy instrumentation which cost over 100 thousand dollars and at this time we are ~~not~~ now competitive with outside markets. If it wouldn't have been for the oil companies giving us this, we'd still have to be doing them on a one time basis with a much higher figure.

E. T. Yonkin (Con't): That ends my testimony.

Jerry Bowers, Fairbanks:

I'd like to give testimony on the bill in front of me here, SB 114. (unclear) . . . to the individual sponsoring this bill, it's high time we start thinking of Alaska first. The situation is this: that it takes very little economic prowess to understand the effects of the multiplier effect. If we were spending 50 million dollars a year outside and stimulating the Seattle or somebody else's economy in the lower 48, (unclear) . . . we could convert that money into 150 million dollars a year, why don't we do the same here. A true understanding of the multiplier effect makes it obvious that the three (?) factor is minimal. We could be talking 6 or 9 so what does it do? What happens if we allow the money that we are currently shipping outside . . . it allows the Seattlites to build more houses and buildings, why don't we convert it into working for us in the state of Alaska. What we have here is simply a situation that a differential won't encourage the larger companies outside to want to either establish a business in Alaska, which is good, which means that they'll have to employ Alaskans or bring the people up with them, however, if they do it, it stimulates Alaska. And, if they don't do it then they're going to have to find a sponsor of their products in the state of Alaska to represent them and this in turn also creates more jobs and puts more of the younger generation to work in general. We have a cost of living factor here in Alaska in general that justifies us considering charging a differential. The support of a building, the support of the people here who normally make more to survive in our environment here in the state. I believe the state money is well spent even if it costs the state just a little more to start this snowball effect. The benefits derived from having this money roll around within the state are substantially greater than the amount of additional money expended. We would like to kick this off also by saying that yes the favorite. . . I don't really want to call it servitism, because we are serving ourselves or a

Bowers (con't): differential although that might be a better word for it but the federal government does recognize the differential. I heard one man testify just a little while ago that no the federal government hasn't contested it but they object to it a little bit. They call it discriminatory. I'd like to touch on a couple more areas here. The amount of the differential is between 10 and 15 percent bracket would be a good measure. I think it's very obvious that the cost of living is substantially higher than that in Fairbanks I think it's somewhere in the top ten. My thoughts on SB 114, I'd like to encourage the Commerce Committee to investigate the practices of our state government in vending or bidding procedures. Will you accept a little testimony on that or is that off the track too far?

Senator Bradley: Yes, please give us the benefit of that information, Mr. Bowers.

Bowers: I have been actively bidding in the state on contracts for the past three to three and a half years. Currently, I have a lawsuit against the state for failure of the state to give the contract to the lowest bidder. In that case, I happen to be the lowest bidder. It's interesting to note here that we have in some areas of the state very weak general services and supply division. The net result is that it causes the contractor to justify his position and it makes it very expensive. What happens is this; we should streamline the processes somewhat here to make it easier to correct the problems whether they are created by the contractor or by the state. The low contractor in the state is faced with the following: Should you want to slow things down enough you have to go in and file an injunction or a temporary restraining order. If you can't show irreparable harm which means that you can't show that you are going bankrupt, which I wasn't in this case, and I'm still not, you can't really stop the thing. They'll go ahead and they'll go ahead and award. When you are trying for a temporary restraining order,

Bowers (con't): and that won't work because you can't show irreparable harm so you end up suing the state. The net result is this: that the state appoints the judges, they pay the judges, the person is not allowed to be tried in front of his peers. It's a very closed hearing, and on top of that, the state controls the amount of time that is required to come up on before you ever receive your court trial. Some things just aren't right. Now, I believe that General Services and Supply Division should be investigated. I believe that my case should be considered. I feel in my mind, I think that the general procedures in this particular area, the bookkeeping work should be investigated. The . . . uh, these people should be controlled a little more. You have a problem where evidently they get stuffed into a slot where they've been there for a long period of time, they have established friends in other areas and favoritism creeps in on them. We should have people in these areas that are creative, that have the ability to create a bid that is fair to all people bidding on it. The net result is that it eliminates the reliance on one of the contractors as being the individual that knows all of everything. The full force of information on any particular contract. I'd be happy to turn over a copy of my case file that I have against the state if they are willing to peacefully resolve this problem. I would have done it a long time ago but it would be very expensive for me to go in as an individual to try to straighten the state out.

Senator Bradley: Thank you very much Mr. Bowers. If it's agreeable with you, I'd like to have some of the information that you have concerning your court case. I've got quite a file on that sort of thing and we're not here to (?) anyone's character but in that former Commissioner wasn't responsive enough to the people and that's what government is supposed to be and not harrass them alot of mistakes were made.

Mr. Daniel Hynish

Mr. Chairman, I would like to give you and the committee members some information on the Buy Alaska Committee and in doing so touch on some of the earlier testimony and comments. Buy Alaska is made up of Alaskan businessmen striving to get the healthy economy here in Alaska. To do this, we've got five points that we feel are imperative to not only the state but also for the Alaskan business. Number one is promotion of Alaskan products and services within the state with the encouragement of outside interest to "buy Alaska". In this regard, we would be 100% behind the "made in Alaska" or manufactured in Alaska stickers for the products that are made here. Our second point is education on state and federal programs relative to Alaskan businesses. This would include loans, low cost loans to Alaskan businessmen, problems with taxes, other areas that the state and federal government assist businessmen here in Alaska. Our third point is assistance with bidding and application problems encountered with the state and federal government agencies. We hope to encourage competition by getting more people on to the Alaska state bidding list and try to monitor some of the problems that they have in getting on these bidding lists. Our fourth point is cooperation with private interest and government agencies in the awarding and monitoring of tax dollars spent on services and products available within Alaska. We would like to ensure that, we will ensure, that bid waivers and other direct negotiated contracts are made available the information on those bid waivers, is made available to Alaskan businessmen through our fifth point which is an informative newsletter that will go to all the members of the Buy Alaska Committee. We hope that the cooperation that we can give to the state and the Alaskan businessman will make this healthy economy that we need here in Alaska grow. The Buy Alaska Committee is at the present time working with the U. S. Department of Commerce, the Small Business Administration the Chambers of Commerce of Anchorage, and Fairbanks and other groups to sponsor a business seminar in May and a lot of the problems that

Hynish (con't): we are having now should be corrected then and we hope to find alot of Alaskan businessmen who are not on your Alaskan bid list now so that the contract can be sent to all these businessmen that are interested.

Mr. Vernon Craig, Data Processing Management Association

I would like to thank you for your state of mind regarding our business interest. It seems that you do understand that we are asking for anything for free and we're not asking for any direct subsidies, but we are asking for a chance to reinvest our profit dollars in our own economy through the opportunity to compete for state business on a better footing with outside firms who don't reinvest their money in our state. Further, we're asking for an end to the mentality so prevalent in Alaska during the 50's and 60's that said "if you want the best price and the best product, you have to go outside". That is no longer true. We do have the expertise required to service the states needs right here in our own backyard. We do have the prices and supplies to satisfy the state's requirements. And we do ask you for the direct value on supporting your own economy will in turn, support you. I don't have to tell you that Alaska has one of the highest unemployment rates in the U. S. and we have some the hardest working citizens in the U. S. and they're looking to you to help us to beat that problem by keeping as many dollars flowing within the economy as possible. Now, I'd like to direct some comments directly to the comments made by Mr. Dick Bradley. Regarding competition, there are 40 companies within the state of Alaska that do supply the services, machinery, and supplies for the kinds of industry that I represent. I don't think that Mr. Bradley has had much opportunity to try and compete with these companies here in our local economy, it's very difficult. I am not a printer, but there are alot of printers here. The pass through item, I see no difference in sending a printing job to Seattle through one of our local vendors than it is by buying a copy machine. They buy it from outside, put a mark up on it and supply it to the state.

Craig (con't): We do have to assign a direct value to the multiplier effect and I think its extremely important. Regarding outside competition I note that the states of Oregon and California would no more consider me a competant bidder to supply them than the man in the moon. We already have one pipeline here supplying oil and I would like to see the pipeline supplying money to the lower 48. That ends my testimony unless there are any questions.

Senator Bradley: Thank you very much Mr. Craig, do any of the Committee members have any questions? No questions. Thank you.

Senator Bradley: I think that we are all aware of the time crunch, and if its not a perfect bill this time, I'm glad most of you concur with it and I've tried to keep it coordinated with you as close as possible and I know some others haven't been, and I think that's a mistake because you're the people we're trying to look after and if we don't give you what you want, if it's within reason, then we're not doing our job properly. We'll go on from here if there are no further questions. (No further questions)

Recess (then no more on tape)

LAND  
DESIGN  
NORTH

LANDSCAPE ARCHITECTURE  
RESOURCE/RECREATION PLANNING  
1709 S BRAGAW ST., SUITE J  
ANCHORAGE, ALASKA 99504  
(907) 277-7122

March 25, 1979

Senator W.E. Brad Bradley  
Alaska State Senate  
Pouch V  
Juneau, AK 99811

Re: CS Senate Bill 114  
Competitive Bidding

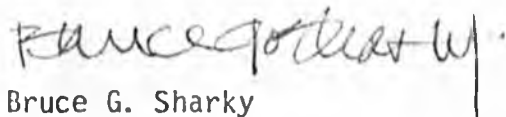
Senator Bradley:

By way of this letter we wish to express our support of CS Senate Bill 114 and urge you to support the bill by voting for its passage when it is heard on the Senate Floor.

The bill offers a fair solution to a fairly serious problem that now exists in the State. The bill is workable and provides a legitimate mechanism for increasing competition in the State in matters involving competitive bidding for goods and services. We believe the present situation leaves businesses operating in the State at an unfair disadvantage to firms bidding from other states.

Please support passage of CS Senate Bill 114 when it reaches the Senate Floor this session.

Very Sincerely,



Bruce G. Sharky  
Principal



Kenneth E. Pendleton  
Principal

THE LEGISLATURE OF THE STATE OF ALASKA  
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CSSB 114 (Chapter 67 only)  
 Title An act relating to competitive bidding under the Fiscal Procedures Act  
 Requested by Senator Bradley Date 3-30-79

II. FISCAL DETAIL

Agency Affected Department of Commerce and Economic Development  
 Program Category Affected Development  
 BRU, Program, or Subprogram(s) Affected Economic Enterprise  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
100 PERSONAL SERVICES	0	0	0	0	0	
200 TRAVEL	0	0	0	0	0	
300 CONTRACTUAL	0	50.0	25.0	15.0	10.0	
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS CLAIMS, ETC.						
<b>TOTAL</b>	<b>0</b>	<b>50.0</b>	<b>25.0</b>	<b>15.0</b>	<b>10.0</b>	

FUNDING (Thousands of Dollars)

GENERAL FUND		50.0	25.0	15.0	10.0	
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME	0	0	0	0	0	
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

The contractual costs include printing of articles and tags and required advertising to introduce Alaska manufacturers' seals and gain public recognition and approval. Future year fiscal requirements will decline as printing of materials will be the major expenditure. The Division of Economic Enterprise will charge manufacturers using large quantities of the seal for the cost of printing.

IV. DATE 3-30-79

PREPARED BY IM Deagen  
 AGENCY Economic Enterprise  
 PHONE 465-2021

Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (Dist. Legislator Name)

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF REVENUE

STATE OFFICE BUILDING

POUCH SA - JUNEAU 99811

April 10, 1979

The Honorable Charles H. Parr  
House of Representatives  
Chairman, House Judiciary Committee  
Pouch V  
Juneau, AK 99811

Dear Mr. Parr:

RE (S FOR SB 114 RULES) AM

While SB 114, as amended, does not affect the Department of Revenue directly, it is noted that there would be some problems with the amendment to AS 37.05.230 (5) in Section 3 of the bill (page 2, line 16). As amended, AS 37.05.230 (5) (d) reads "has no delinquent state taxes;..." This amendment is an addition of a qualification for a bidder for state contracts to be an "Alaska bidder."

There are two areas that appear to need clarification. First of all, what is the meaning of "delinquent state taxes?" I presume that the term includes all taxes levied by the Department of Revenue under Title 43 and by Department of Labor under Title 23. However, the term "delinquent" can have various meanings.

- a. Those taxes legally assessed, due and owing where there is no appeal or contest, either administrative or judicial, or where the time period for filing an appeal has not yet lapsed.
- b. All of the taxes under (a), but also including those items under appeal and those items where appeal still could be filed.
- c. All of the taxes under (b), but also including "potential taxes" where a return or report is past due but the taxpayer has not yet filed and the Department has not yet assessed the tax.
- d. Those taxes under (a) and those "potential taxes" under (c), but excluding those taxes under appeal under (b).

The second problem with the amendment deals with the confidential nature of the filings of taxes under Title 43 (and possibly Title 23) as outlined in AS 43.05.230. In the Department of Revenue testimony before your committee on another bill (HB 354), Mr. Jenkins and myself pointed out that AS 43.05.230 prohibits the Department from divulging any information regarding the filings of taxes under Title 43 to the public or any other

April 10, 1979

state agency, except as specifically provided for. As the bill is currently drafted and as AS 43.05.230 currently exists, I believe the Department of Revenue:

- a. could tell the Department of Administration whether a firm had a business license or not;
- b. could tell the Department of Administration whether any public tax liens had been filed on a firm;
- c. could not tell the Department of Administration whether all returns that should have been filed have in fact been filed;
- d. could not tell the Department of Administration of assessments of taxes where "hidden liens" exist, but no public liens have been filed.

There would seem two different approaches to this conflict could be taken:

- a. Require the firm seeking a status of "Alaska bidder" to state in writing, under the penalties of perjury, that no delinquent taxes are owing, advising it that copies of the affirmation would be turned over to the Departments of Revenue and Labor.
- b. Amend AS 43.05.230 to allow the Department of Revenue to provide such information to Department of Administration.

From the Department of Revenue's standpoint, (a) would be preferable. First of all, the review of the potential "Alaska bidders" would add workloads for a review of all tax years filing for all types of taxes. This is especially a problem for the peak workloads, such as filing season (January - May). Secondly, a prior review by the Department of Revenue could slow down, sometimes considerably, the process of placing a firm on "Alaska bidder" list.

If the purpose for the amendment is to ensure that "Alaska bidders" pay any required tax, the notification process would afford the Department the knowledge of the existence of potential contracts with the state. We believe that the enforcement provisions of Title 43 gives the Department of Revenue adequate authority to collect the taxes in question.

If you have any questions concerning this, please contact me.

Sincerely,



Michael S. McCormick  
Director  
Enforcement Division

cc Richard C. Bradley  
Director, Division of General  
Services and Supply  
Department of Administration

**Sec. 37.05.220. Purchasing agent.** The Department of Administration is the purchasing agent for the state. The department shall

(1) purchase, rent, or otherwise provide for the furnishing of supplies, materials, equipment, or contractual services for all state agencies;

(2) have power to authorize an agency to purchase directly certain specified supplies, materials, equipment, or contractual services under conditions and procedures prescribed in § 230 of this chapter;

(3) prescribe the manner in which supplies, materials, and equipment shall be purchased, delivered, stored, and distributed;

(4) prescribe the time, manner, authentication, and form of making requisitions for supplies, materials, equipment, and contractual services;

(5) fix standards of quality and quantity and develop standard specifications after consultation with the several state agencies, and approve or determine final specifications;

(6) have power to transfer to or between agencies or to sell or trade in supplies, materials, and equipment of agencies which are surplus, obsolete, or unused; and the department shall make proper adjustments in the accounts of the agencies concerned;

(7) prescribe the manner of inspecting deliveries of supplies, materials, and equipment and of making tests of samples submitted with bids and samples of deliveries to determine compliance with specifications;

(8) prescribe standard forms for bids and contracts for construction, purchases of supplies, and other purposes, which bids and contracts may contain provisions which the department considers necessary; but all contracts for construction shall require the filing of an acceptable performance bond and a penalty provision for failure to perform the contract according to its terms;

(9) provide for other matters which may be necessary to carry out the provisions of this chapter and the rules and regulations adopted under it. (§ 1 art IV ch 82 SLA 1955; am §§ 6, 7 ch 186 SLA 1957; am § 1 ch 55 SLA 1960)

*Am. Jur. and C.J.S. references. — 42*  
*Am. Jur. Public Funds, § 1 et seq.*  
*81 C.J.S. States §§ 168 to 176.*

**Sec. 37.05.230. Competitive bids.** In the manner provided in this chapter and rules and regulations established under it

(1) a contract for construction and repairs, or a purchase of and contract for supplies, materials, equipment, and contractual services must be based on competitive bids; an award shall be made to the lowest responsible bidder after advertising for bids, except that (A) Repealed by § 2 ch 92 SLA 1967; (B) a bid shall be awarded to an Alaska bidder if his bid is not more than five per cent higher than the lowest nonresident bidder's; and (C) competitive bids need not be required (i)

exclusive lease or franchise without the necessity of calling for bids. 1962 Op. Att'y Gen., No. 4.

As well as for extension thereof. — If an exclusive lease or franchise is in effect the state cannot extend the term thereof without calling for bids. 1962 Op. Att'y Gen., No. 4.

But not for nonexclusive lease or franchise. — The commissioner of public works has the authority to grant a nonexclusive lease or franchise without calling for competitive bids. 1962 Op. Att'y Gen., No. 4.

**Sec. 37.05.231. Estimation of flying hours required.** The state, when soliciting bids for air charter service, shall make available in writing to prospective bidders upon request an estimate of the flying hours required by each individual agency of the state which will take advantage of these services. (§ 1 ch 17 SLA 1967)

**Sec. 37.05.240. Award of contracts and purchases.** A contract or purchase made by or under the supervision of the department for which competitive bids are required shall be awarded to the lowest responsible bidder, taking into consideration conformity with the specifications, terms of delivery, and other conditions imposed in the call for bids. Bids may be rejected, and a bid shall be rejected if it contains a material alteration or erasure which is not initialed by the signer of the bid. The department may reject the bid of a bidder who is in arrears on taxes due the state or who failed to perform on a previous contract with the state. Where competitive bids are required and where all bids are rejected, new bids shall be called for as in the first instance. Before the awarding of a contract for a building or the making of repairs upon a building, the department shall see that the bids conform with plans and specifications approved by the Department of Transportation and Public Facilities. All bids with the names of the bidders and the amounts of the bids, together with all documents pertaining to the award of a contract, shall be made a part of a file or record and retained by the department for three years, unless reproduced by microfilming and these files or records are open to public inspection at all reasonable times. An aggrieved bidder may within five days after an award of contract appeal to the department for hearing, with notice to interested parties, for redetermination and final award in accordance with law. (§ 4 art IV ch 82 SLA 1955; am § 1 ch 64 SLA 1976)

Effect of amendment. — The 1976 amendment added "which is not initialed by the signer of the bid" to the end of the second sentence.

Editor's note. — Pursuant to Executive

Order No. 39 (1977), the reference to the Department of Transportation and Public Facilities has been substituted for a reference to the Department of Public Works near the middle of the section.

**Sec. 37.05.250. Delegation of duties.** The department may delegate the duties imposed by this chapter upon an employee of the state normally stationed in a town or location distant from the state capital. Agents so designated shall perform the duties as the department

requires department

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(C) has maintained a place of business within the state for a period of six months immediately preceding the date of his bid.

(6) the competitive bid requirements of this section do not apply to air taxi services used by state employees when no formal contract is executed; the department affected shall pay the air taxi operator the tariff rates as published by him with the Air Transportation Commission for the type of aircraft required; the tariffs need not be uniform throughout the state and may reflect the diverse conditions of various areas of the state; the air taxi service used in each case shall be selected by the state employee who is to fly in the aircraft, or if more than one state employee is flying in the aircraft by the employee in charge; in all cases the air taxi operator shall have complied with AS 02.05.010 — 02.05.260 and other prequalifying regulations established by the department.

(7) the provisions of this section relative to an "Alaska bidder" do not apply to contracts estimated to exceed \$5,000, of either the Department of Transportation and Public Facilities, which are authorized under AS 35.15, or the Department of Highways, which are authorized under AS 19.10.

(8) the provisions of this section relative to competitive bids do not apply to the purchase of products or services manufactured or provided by a sheltered workshop. (§ 3 art IV ch 82 SLA 1955; am §§ 8 — 10, 23 ch 186 SLA 1957; am § 1 ch 77 SLA 1959; am § 1 ch 158 SLA 1962; am § 1 ch 82 SLA 1964; am §§ 1, 2 ch 92 SLA 1967; am § 1 ch 61 SLA 1970; am § 1 ch 92 SLA 1975; am §§ 1, 2 ch 194 SLA 1975)

**Cross reference.** — As to preference of producers or dealers in Alaska in making purchases or awarding contracts for supplies, see AS 36.20.010.

**Effect of amendments.** — The first 1975 amendment added paragraph (8).

The second 1975 amendment substituted "\$2,500" for "\$1,000" near the beginning of paragraphs (2) and (3) and substituted "\$300" for "\$100" near the middle of paragraph (3).

**Editor's note.** — AS 14.10.070, referred to in paragraph (4), was repealed by § 59, ch. 95, SLA 1966.

Pursuant to Executive Order No. 39 (1977), the reference to the Department of Transportation and Public Facilities has been substituted for a reference to the Department of Public Works in paragraph (7).

**Legislative committee reports.** — For report on 1962 amendment, see 1962 House Journal, pages 591, 592. For report on ch. 194, SLA 1975 (SB 279 am), see 1975 House Journal, p. 1541.

The purpose of this chapter was not only to protect the state and the public purse

from uneconomic contracts let because of failure to request competitive bids and because of possible favoritism, but was also to insure that contractors would be insured a certain amount of "fair play" in dealing with the state government and in competing with one another for state contracts. 1959 Op. Att'y Gen., No. 27.

**Preparation of regulations as prerequisite for bidding.** — For an opinion of the attorney general as to the preparation of regulations to be submitted to the secretary of state pertaining to the prequalification of contractors as a prerequisite for bidding on construction projects, see 1959 Op. Att'y Gen., No. 27.

**And filing thereof.** — For an opinion of the attorney general as to filing regulations pertaining to the prequalification of contractors as a prerequisite for bidding on construction projects, see 1959 Op. Att'y Gen., No. 27.

**Publication of regulations concerning bidding and letting of contracts.** — See same catchline in note to AS 37.05.020.

**Bids required for exclusive lease or franchise.** — The state cannot grant an

for contractual services where no competition exists; (ii) for sales involving fair trade items; (iii) when, in the judgment of the purchasing agent, food, clothing, or medical supplies, or materials for use in laboratory and experimental studies may be purchased otherwise to the best advantage of the state; (iv) where rates are fixed by law or ordinance; (v) for items traded in on like items; or (vi) for professional services;

(2) if the amount of the contractual services, purchase, or sale is estimated to exceed \$2,500 sealed bids shall be solicited, when practicable, by publication in a newspaper calculated to reach prospective bidders and by posting notices in public places within the area where the work is to be performed or material furnished and in addition the department may also designate a trade journal for publication; the department shall also solicit bids by sending notices by mail to all active prospective bidders known to it and all bids shall be sealed when received, and shall be opened in public at the hour stated in the notice; the department may negotiate directly if it finds that it is in the best interests of the state;

(3) a contractual service, purchase or sale where the known requirements are estimated to be less than \$2,500 may be made either upon competitive bids in accordance with (2) of this section or in the open market, in the discretion of the department; but, so far as practicable, shall be based on at least three competitive bids and recorded as provided in § 240 of this chapter; small purchases of less than \$300 in the discretion of the department may be made on the open market, and may be by cash payment from petty cash accounts set aside for that purpose; the department shall determine the amount of the petty cash accounts needed by each state agency, and inspect the petty cash accounts at least once each year to determine that the total plus amounts of receipts for unreplenished disbursements is equal to the fixed sum of cash set aside; shortages in petty cash accounts are a personal liability of the responsible head of the agency to whom the account is set aside; the department shall make all necessary rules and regulations governing use and replenishment of petty cash funds;

(4) the provisions of this section relative to competitive bids do not apply to contracts for the operation of transportation systems for students to and from the schools within the state, as are authorized under AS 14.10.070; and these contracts may be awarded by bid or negotiation and, at the discretion of the Board of Education, may be awarded for periods of three years or less;

(5) an "Alaska bidder," for the purpose of bid awards under (1) (B) of this section, is a person who

(A) holds a current Alaska business license,

(B) submits a bid for goods or services under the name as appearing on his current Alaska business license,

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THE LEGISLATURE OF THE STATE OF ALASKA  
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. S. B. 114 Bradley  
 Title An Act Relating to Competitive Bidding Under the Fiscal Procedures Act  
 Requested by Jay Hogan - Legislative Finance Date February 9, 1979

II. FISCAL DETAIL

Agency Affected All  
 Program Category Affected All  
 BRU, Program, or Subprograms Affected All

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
100 PERSONAL SERVICES		34,000	36,040	38,202	40,494	42,924
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES		400	424	449	476	504
500 EQUIPMENT		2,200				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
* Additional Costs for Goods & Services		2,703,000	2,865,180	3,037,091	3,219,316	3,412,475
TOTAL		2,739,600	2,901,644	3,075,742	3,260,286	3,455,903

FUNDING (Thousands of Dollars)

GENERAL FUND		2,739,600	2,901,644	3,075,742	3,260,286	3,455,903
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME		2	2	2	2	2
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

The fiscal impact of this bill is difficult to analyze due to lack of data and not knowing exactly how vendors, both in and out of State, will react to preference.

- It is conceivable that out of State vendors will quit bidding on State business, therefore reducing bid competition. Reduction in vendor competition has the obvious effect of reducing price competition as well. However, to what degree is not known.

However, the National Association of Purchasing Officials has estimated nationally that an increase in a bidders preference would raise the cost of doing business proportionately with the increase in the preference. If their assumption is correct, then based on the FY 78 figures and using a conservative figure of 10% x \$27,026,589 = \$2,702,659.

IV. DATE \_\_\_\_\_

PREPARED BY Richard C. Bradley

AGENCY Administration

PHONE 465-2250

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

*Reference to  
Org. &  
Opinion*

SB

115

# COMMITTEE REPORT

## HOUSE

FURTHER:

March 29, 1979

Date: \_\_\_\_\_

Mr. Speaker:

The Committee on JUDICIARY has had CSSB 115 (Rules)

"An Act relating to the civil liability of lawful providers of alcoholic beverages."

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for \_\_\_\_\_  same title  
 new title
- and recommends \_\_\_\_\_
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

**MEMBERS SIGNING  
DO PASS**

[Signature]

[Signature]

[Signature]

[Signature]

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**MEMBERS HAVING  
OTHER RECOMMENDATIONS:**

[Signature]

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[Signature]

CHAIRMAN

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K-STATE CAPITOL  
JUNEAU, ALASKA 99811

April 11, 1979

The Honorable Bill Ray  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Re: Dram Shop Liability Question  
Our File J-66-569-79

Dear Senator Ray:

In a phone conversation earlier today, you indicated that our letter of April 2, 1979 did not completely answer your question regarding the effect of CSSB 115 (Rules) on third-person liability for injuries suffered as a result of that third person furnishing intoxicating liquor to another. You indicated that your question was whether enactment of CSSB 115 (Rules) would shield third persons from liability for injuries resulting from another's intoxication if the intoxicating liquor was furnished lawfully. For the reasons which follow, we believe it would provide such a shield.

Section 2 of CSSB 115 (Rules) would add a new section to the Alaska Statutes to read:

Section 09.65.097. LIMITATIONS ON THE CIVIL LIABILITY OF LAWFUL BEVERAGE PROVIDERS. A person who lawfully provides an alcoholic beverage to an individual may not be held civilly liable for injuries resulting from the intoxication of that individual.

This statute would codify the rule which seems to be rather universal: A third person who lawfully furnishes liquor is not liable for injuries resulting from the consumption of that liquor. This appears to be the rule even in states like California where a third person will be liable for such injuries if he unlawfully provides liquor.

We hope this answers your question. However, it is possible that it does not. It appears that there are two

April 11, 1979

possible sources for any confusion which remains: (1) Differences of opinion regarding the existing law of third-person liability in Alaska; and (?) differences of opinion regarding the effect of the language in CSSB 115 (Rules). We must point out that this is a developing area of law, and we cannot predict with absolute certainty what result our Court will reach under any given statutory enactment. However, we believe our Court would hold that the language of CSSB 115 (Rules), as it now appears, would shield third persons furnishing intoxicating liquor from liability for injuries suffered as a result of intoxication where the furnishing of that liquor was not in violation of existing law. We will work with you and/or other legislators in drafting appropriate language to accomplish whatever policy that the legislature determines is appropriate in this area if further amendment to SB 115 is desired.

In the meantime, we hope you find this of some assistance.

Sincerely,

AVRUM M. GROSS  
ATTORNEY GENERAL

By:

  
G. Thomas Koester  
Assistant Attorney General

GTK:dlm

cc: Senator Mike Colletta  
Senator Patrick Rodey

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K-STATE CAPITOL  
JUNEAU, ALASKA 99811

April 2, 1979

The Honorable Bill Ray  
The Honorable Mike Colletta  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99801

Re: Dram Shop Liability Question  
Our File #J-66-569-79

Dear Senators Ray and Colletta:

You requested our opinion whether removal of the word "lawfully" from CSSB 115 (Rules) would shield a tavern keeper from liability for injuries resulting from the tavern keeper serving liquor to an intoxicated adult or a minor in violation of AS 04.15.020(a). For the reasons which follow, we believe removing the word "lawfully" from that measure would have the effect of shielding a tavern keeper from civil liability for injuries resulting from the tavern keeper serving an intoxicated individual or a minor in violation of the statute.

Section 2 of CSSB 115 (Rules) would add a new section to the Alaska Statutes to read:

Section 09.65.097. LIMITATIONS ON THE CIVIL LIABILITY OF LAWFULL BEVERAGE PROVIDERS. A person who lawfully provides an alcoholic beverage to an individual may not be held

civilly liable for injuries resulting from the intoxication of that individual.

This Statute would codify the general common law rule:

[I]t is not a tort to either sell or give intoxicating liquor to ordinary able-bodied men, and it has been frequently held that in the absence of statute, there can be no cause of action against one furnishing liquor in favor of those injured by the intoxication of the person so furnished. The reason usually given for this rule is that the drinking of the liquor, not the furnishing of it, is the proximate cause of the injury. The rule is based on the obvious fact that one cannot become intoxicated by reason of liquor furnished if he does not drink it.

45 Am. Jr. 2d, INTOXICATING LIQUORS, §553 at pp. 852-853 (footnotes omitted).

However, some jurisdictions do afford a cause of action against a provider of liquor for injuries resulting from intoxication. This frequently is accomplished by legislative enactments known as "dram shop acts" which place statutory liability on the person selling or furnishing the liquor which caused the intoxication. 45 Am. Jur. 2d, INTOXICATING LIQUORS, §§561 et seq. Occasionally, liability has been found in the absence of a dram shop act "where the liquor was given or sold to a person who is in such a condition as to be deprived of his will-power or responsibility for his behavior, or to a habitual drunkard, or in violation of a prohibitory statute." 45 Am. Jr. 2d, INTOXICATING LIQUORS, §554 at page 853 (footnote omitted).

In Alaska, AS 04.15.020(a) prohibits furnishing intoxicating liquor to minors and to intoxicated persons. The Alaska Supreme Court has not ruled on the precise issue whether furnishing liquor to a minor or intoxicated person in violation of AS 04.15.020(a) gives a third person injured as a result of intoxication a cause of action against the person furnishing the liquor. However, there are strong indications that the court would hold that a violation of AS 04.15.020(a) gives an injured party such a cause of action against the provider of the liquor.

The Federal District Court for Alaska has held that under Alaska law, a violation of AS 04.15.020(a) is negligence per se, giving the injured party a cause of action against the tavern keeper. Vance v. United States, 355 F. Supp. 756 (D. Alaska 1973).\*/

In Barton v. Lund, 563 P. 2d 875, 377 n.6 (Alaska 1977), a three-justice Alaska Supreme Court expressly refused to reach the issue of liability resulting from a violation of AS 04.15.020(a) in holding that such a violation would not support a cause of action against a liquor licensee under AS 04.15.180 who had no control over the actual operation of the tavern. The majority noted that the

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\*/ The Court in Vance did not discuss the pre-statehood case of Cherbonnier v. Rafalovich, 88 F. Supp. 900 (D. Alaska 1950), which reached an opposite result under the Territorial predecessor to AS 04.15.020(a).

Federal District Court had found such liability under Alaska law in Vance, supra, and that the California Supreme Court found such liability based on a violation of a criminal statute similar to AS 04.15.020(a), Vesely v. Sager, 46 P. 2d 151 (California 1971), and based purely on the common law without reliance on the statute. Bernhard v. Harrah's Club, 546 P. 2d 719 (California), Cert. denied, 429 U.S. 859 (1976).\*/ The majority did cite Bachner v. Rich, 554 P. 2d 430 (Alaska 1976), and Farrell v. Baxter, 44 P. 2d 250 (Alaska 1971), cases not involving intoxicating liquor, in both of which the court held that a statute established a standard of care which, when violated, constituted negligence as a matter of law. Extending the holding of those cases to the intoxicating liquor situation would result in a finding of liability, the result reached by Federal District Court in Vance.

Justices Boochever and Rabinowitz, dissenting in Barton, not only appeared to approve the Federal District Court's holding in Vance but would have imposed vicarious

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\*/ In response to these cases, the California legislature amended Cal. Bus. & Prof. Code §25602 and Cal. Civ. Code §1714 to abrogate the results of those decisions in favor of the traditional common law rule holding that the consumption, not the furnishing, of intoxicating liquor is the proximate cause of injuries resulting from intoxication. Ch. 929, 1978 Cal. Adv. Legis. Serv. A copy of that enactment is attached for your information.

liability for violations of AS 04.15.020(a) on licensees under AS 04.15.180 who take no active part in the conduct of the tavern's business. They appeared to assume that a violation of AS 04.15.020(a) gives rise to a cause of action against the provider of liquor, the result reached in Vance.

Enactment of CSSB 115 (Rules), as it now reads, would not appear to change the law in Alaska (as it appears in the cited cases) one way or the other. It might raise a question regarding liability where liquor was furnished in a matter which was technically unlawful--e.g., liquor sold on election day in violation of AS 04.15.020(c) but lawfully sold in all other respects--but that question currently exists in the absence of such a statute. Enactment of CSSB 115 (Rules) with the word "lawfully" removed, however, would appear to absolve any provider of an alcoholic beverage from any liability for injuries resulting from the consumer's intoxication. This would be true regardless of whether the provider of the liquor violated AS 04.15.020(a) by furnishing the liquor to a minor or an intoxicated person or violated any other statute dealing with the furnishing of liquor. In other words, it would preclude the court from finding any provider of intoxicating liquor liable for injuries suffered as a result of intoxication, even when the liquor was fur-

Senators Ray & Colletta

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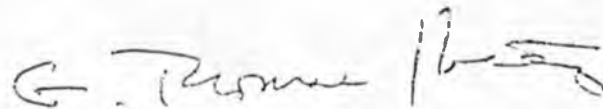
April 2, 1979

nished to an intoxicated person or a minor in violation of  
AS 04.15.020(a).

Sincerely,

AVRUM M. GROSS  
ATTORNEY GENERAL

By:



Thomas G. Koester  
Assistant Attorney General

TGK:bwb

Enclosure

An act to amend Section 25602 of the Business and Professions Code, and to amend Section 1714 of the Civil Code, relating to proximate cause.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1645, Ayala. Alcoholic beverage liability: proximate cause.

The California courts have recently interpreted existing law as imposing civil liability upon persons who sell, furnish, give or cause to be given alcoholic beverages to an intoxicated person when such person inflicts injury upon a third party.

This bill would specifically prohibit the imposition of civil liability in such instance.

This bill would also state a legislative declaration that prior judicial interpretation shall be reinstated so that such civil liability to a third party is incurred solely by the intoxicated person. The bill would also provide specifically that no social host who furnishes alcoholic beverages to any person shall be held legally accountable for damages suffered by such person, or for injury to the person or property of, or death of, any third person, resulting from the consumption of such beverages.

*The people of the State of California do enact as follows:*

SECTION 1, Section 25602, of the Business and Professions Code is amended to read:

25602. (a) Every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any habitual or common drunkard or to any obvious, intoxicated person is guilty of a misdemeanor.

(b) No person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage pursuant to subdivision (a) of this section shall be civilly liable to any injured person or the estate of such person for injuries inflicted on that person as a result of

intoxication by the consumer of such alcoholic beverage.

(c) The Legislature hereby declares that this section shall be interpreted so that the holdings in cases such as *Vesely v. Sager* (5 Cal. 3d 153), *Bernhard v. Harrah's Club* (16 Cal. 3d 313) and *Coulter v. Superior Court* (\_\_\_\_\_ Cal. 3d \_\_\_\_\_) be abrogated in favor of prior judicial interpretation, finding the consumption of alcoholic beverages rather than the serving of alcoholic beverages as the proximate cause of injuries inflicted upon another by an intoxicated person.

SEC. 2. Section 1714 of the Civil Code is amended to read:

1714. (a) Every one is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself. The extent of liability in such cases is defined by the Title on Compensatory Relief.

(b) It is the intent of the Legislature to abrogate the holdings in cases such as *Vesely v. Sager* (5 Cal. 3d 153), *Bernhard v. Harrah's Club* (16 Cal. 3d 313), and *Coulter v. Superior Court* (\_\_\_\_\_ Cal. 3d \_\_\_\_\_) and to reinstate the prior judicial interpretation of this section as it relates to proximate cause for injuries incurred as a result of furnishing alcoholic beverages to an intoxicated person, namely that the furnishing of alcoholic beverages is not the proximate cause of injuries resulting from intoxication, but rather the consumption of alcoholic beverages is the proximate cause of injuries inflicted upon another by an intoxicated person.

(c) No social host who furnishes alcoholic beverages to any person shall be held legally accountable for damages suffered by such person, or for injury to the person or property of, or death of, any third person resulting from the consumption of such beverages.

An act to amend Section 25602 of the Business and Professions Code, and to amend Section 1714 of the Civil Code, relating to proximate cause.

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(c) No social host who furnishes alcoholic beverages to any person shall be held legally accountable for damages suffered by such person, or for injury to the person or property of, or death of, any third person, resulting from the consumption of such beverages.

To: Committee  
From: Birch

BARTON v. LUND

Alaska 877

Cite as, Alaska, 563 P.2d 875

[1,2] We reach the same conclusion here. He hold that the responsibility which AS 04.10.180 casts upon liquor licensees is the responsibility to answer to the criminal sanctions imposed by AS 04.15.100 and to the administrative sanctions of the Alcoholic Beverage Control Board. The purpose of AS 04.10.180 is to prevent evasion of the liquor control statutes and regulations through the creation of hidden financial interests in liquor businesses unknown to the regulatory authorities or to the public. It helps insure that all persons with any financial interest in such businesses are answerable to the Alcoholic Beverage Control Board.<sup>5</sup>

[3] In *Robinson v. Walker*, 63 Ill.App.2d 204, 211 N.E.2d 488, 18 A.L.R.3d 1317 (1965), on facts similar to these an attempt was made to hold liable a trustee who held legal title to the land upon which the licensed premises stood, but had no other relation to the operation of the alcoholic beverage business within. Unlike the Alaska statutes, the Illinois statute was a "dram shop act" in the usual sense of that term, explicitly imposing civil liability upon "any person owning" licensed premises upon which liquor is served to a person who then in an intoxicated state injures person or property.<sup>6</sup> The court construed the word "owning" in light of the purposes of the dram shop statute, and held that those pur-

5. The dissenting opinion correctly points out, citing section 287 of the Restatement (Second) of Torts, that the statutory criminal and administrative penalty provisions have no effect on the decision whether to impose liability for negligence. Instead, we look to considerations of public policy.

6. AS 04.15.020(a), set out in footnote 3. *supra*, unlike a "dram shop" act does not give a civil cause of action against a liquor-dispensing establishment to a person injured by an intoxicated person. AS 04.15.020(b) specifies suspension or revocation of the liquor license as an administrative sanction for furnishing liquor to an intoxicated person, and AS 04.15.100 makes it a misdemeanor punishable by fine or imprisonment.

We note that the United States District Court for Alaska has held that under Alaska law, violation of AS 04.15.020(a) is negligence per se. *Vance v. United States*, 355 F.Supp. 756

poses would not be furthered by imposing civil liability on a party who had no control over the liquor business.<sup>7</sup>

We are similarly persuaded that as a matter of policy civil liability should not be imposed vicariously on persons who do not have power to control the conduct alleged to be tortious. This is the general common law rule for vicarious liability, as we have noted. The Legislature's desire to prevent the creation of hidden financial interests in alcoholic beverage businesses, reflected in the enactment of AS 04.10.180, does not persuade us that we should depart from the general rule concerning civil liability. Our decision leaves criminal and administrative sanctions available to enforce the policy embodied in AS 04.10.180, but also furthers the belief of the legal system that it is unfair to hold a person civilly liable for that over which he has no control, and which he therefore has no opportunity to prevent.

The situation here is distinguishable from that in *Vance v. Estate of Myers*, 494 P.2d 816 (Alaska 1972). There we held that the administrator of an estate who operated decedent's bar business could be held liable, in his representative capacity, for torts committed by a bartender. The difference is that in *Vance* the administrator actively managed the business enterprise as an incident of which the tortious conduct occurred. In the case at bar appellees had no control

(D. Alaska 1973); see *Bachner v. Rich*, 554 P.2d 430 (Alaska 1976), *Ferrell v. Baxter*, 484 P.2d 250 (Alaska 1971). The Supreme Court of California has found "dram shop" liability based on a criminal statute similar to AS 04.15.020(a) (*Vesely v. Sager*, 5 Cal.3d 153, 95 Cal.Rptr. 623, 486 P.2d 151 (1971)), and based purely on the common law without reliance on the statute (*Bernhard v. Harrah's Club*, 16 Cal.3d 313, 128 Cal.Rptr. 215, 546 P.2d 719, 726-27, cert. denied, 429 U.S. 859, 97 S.Ct. 159, 50 L.Ed.2d 136 (1976)). *Contra e.g.*, *Cherbonnier v. Rafalovich*, 88 F.Supp. 900, 12 Alaska 634 (1950) (Alaska law). See generally Annot., 75 A.L.R.2d 633 (1961 & Supp.1975).

In view of our disposition of this case, we express no opinion on this question. \*

7. Annot., 18 A.L.R.3d 1323 (1968), discusses a number of cases involving various factual circumstances from which this "control" rule can be generalized.

SB

118

# COMMITTEE REPORT

## HOUSE

FURTHER:

April 24, 1979

Date: \_\_\_\_\_

Mr. Speaker:

The Committee on JUDICIARY has had CSSB 118

"An Act relating to small loans."

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for \_\_\_\_\_  same title  
 new title
- and recommends \_\_\_\_\_
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

**MEMBERS SIGNING  
DO PASS**

\_\_\_\_\_

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**MEMBERS HAVING  
OTHER RECOMMENDATIONS:**

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CHAIRMAN

Schedule

SB 118 (wpd.)



BENEFICIAL FINANCE  
SYSTEM - SINCE 1914

(415) 837-3392

SB 118

DOUGLAS S. BISBEE  
REGIONAL PUBLIC RELATIONS DIRECTOR

BENEFICIAL MANAGEMENT CORPORATION OF AMERICA  
3025 ROUND HILL ROAD  
ALAMO, CA. 94507

TESTIMONY FOR CS SB 118  
D. S. Bisbee - April 25, 1979

Last year, the legislature updated the small loan statutes under which consumer finance companies are permitted to operate, responding to evidence that showed there was a need for modernization in order for the industry to survive. This bill offers an additional opportunity to further improve the operating environment for that industry and increase consumer benefits at the same time.

SB 118 will authorize "open end loans" which is known as revolving credit. This type of lending is presently used in Alaska by credit unions and banks. Additionally, 20 other states (list attached) have passed legislation permitting finance companies to lend in this manner.

The concept involves the establishment of a line of credit for the applicant, execution of a "loan agreement" instead of a traditional promissory note, which authorizes the lender to make cash advances under certain terms, and a monthly billing statement showing all debits, credits, interest charges and required payment.

The benefits to the borrower are:

- A. More convenient service (eliminates need for travel to office to obtain additional money)
- B. Reduction of state examination time
- C. Eliminates delay in getting necessary funds
- D. Reduced interest cost on this type of loan. (18% vs 25% average on closed end loans.)

The benefits to the lender are:

- A. Simplification of keeping records
- B. Reduction of paperwork
- C. Reduction of office costs.

We find that the benefits to the industry by use of this lending method to be great enough to allow us to pass on savings to the customer in the form of a lower interest rate, hence the provision in the bill for 1 1/2% per month compared with our average rate of 25% on closed end loans.

The need for a committee substitute was established by inclusion of 2 amendments found in Section 5 and Section <sup>16</sup>9. Section 5 was included at the request of the finance industry to allow a lender to recover costs of appraisals and title insurance when real property is used as security.

Section 9 was added at the request of the Division of Insurance to eliminate a conflict with existing law and to allow for continued regulations of loans below \$5000.00.

In summary, open end lending is an improved method of doing business which can be beneficial for the lender and the borrower. For the reasons stated I ask the committee for its "Do Pass" recommendation.