

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984

3091 • SSA HB 89 - HB 106 • 8672 3091

TO: SEN STATE AFFAIRS CMTE (SENS V.FISCHER, RAY, STURGULEWSKI, RODEY, KELLY)

FROM: GARY NEWMAN, SR BOX 51233, FBX. 99701 5488-2001

RE: HB89, TAX CREDIT/POLIT CONTRIB.

LS

HSC: AM OPPOSED TO THIS BILL. OF ALL THE MONEY WE SPEND ON MULTITUOUS PROJECTS AND PROGRAMS, THIS IS ONE OF THE FEW THAT IS EQUAL FOR ALL AND ENCOURAGES CITIZEN PARTICIPATION IN THE POLITICAL PROCESS. I HOPE ALL MEMBERS WILL RECOMMEND "DO NOT PASS" SHOULD IT PASS OUT OF COMMITTEE.

---EOM

HB89  
FORM

MSG 83-00022322 PRY 1 06/02/83 10:21:23 ORIG: LA05 IN= 0002 OUT= 0020  
FROM: SHIRLEE ANC LIO TO: FOMS JUNEAU INFO  
TARGET: LJHL SUBJ: POM

---

TO: ~~ALL MEMBERS, ALASKA SENATE~~

NS

FROM: BOB DITTRICK, 1081 17TH AVENUE, ANCHORAGE 99501  
H 272-0090 W 264-2159

PLEASE OPPOSE THE EFFORTS TO REPEAL THE CAMPAIGN CONTRIBUTION  
FUND (HB 89). THIS PROGRAM HAS ALLOWED THE PEOPLE TO BECOME  
A PART OF THE POLITICAL PROCESS WITH SAY OVER WHERE OUR MONEY  
GOES. IT GIVES THOSE OF US IN LOWER INCOME BRACKETS THE CHANCE  
TO MAKE A DIFFERENCE--A GREAT FEELING.

MSG 83-00019436 PRTY 1 05/20/83 15 39 23 0015 LA05 IN= 0110 OUT= 0007  
FROM SHIRLEE AND LIO TO POMP BUREAU INFO  
TARGET: LJHL SUBJ: FOR

TO: SENATORS V. FISCHER, RAY, KELLY, RIEDEY AND STURGOULENSKI  
FROM: DONNIE BOEDIKER, 1542 AIRPORT HEIGHTS DRIVE, APOH 99504  
R 337-6158 W 265-9365

I SUPPORT THE CURRENT STATE LAWS WHICH ALLOW POLITICAL CONTRIBUTION  
REFUND. THE REFUND ENCOURAGES CITIZENS TO PARTICIPATE IN THE  
POLITICAL PROCESS. IT HAS ALLOWED CITIZEN INTEREST GROUPS TO  
COMPETE WITH BUSINESS INTERESTS FOR LEGISLATIVE ATTENTION. I  
URGE YOU TO VOTE AGAINST HOUSE BILL 99 (REPEAL TAX CREDIT/POLITICAL  
CONTRIBUTIONS; E.D)

LS  
Response  
P/C  
5/25

MSG 93-00020281 PRTY 1 05/24/83 17:07:47 ORIG: LA01 IN= 0015 OUT= 0184  
FROM: NINA, ANC LIO TO: JNU LIO  
TARGET: LJHL SUBJ: POW

LS

TO: SNEATERS: V. FISHER, KERRY, RAY, ROSEY, WISNIEWSKI  
FROM: JOHNNY ELLIS 1414 KARLUK APO, AK 99501 4633 UKL 275-1353

A NUMBER OF PEOPLE AT THE ANCHORAGE TELECONFERENCE SITE NOT ABLE TO  
TESTIFY IN OPPOSITION TO HB89 DUE TO TIME CONSTRAINT. I STRONGLY URGE YOU  
TO DEFEAT THIS MEASURE.  
THANK YOU.

*wrote P/C  
5/24*

HB 89

6/1/83, SHIRLEE ANC LIO, 22193

TO: SENATORS FAHRENKAMP, FERGUSON, V. FISCHER, JOSEPHSON,  
KERTTULA, NOSS, RAY, RODEY AND ZIEGLER

FROM: SARA JUDAY, 1208 DENALI, NO. 1, ANCHORAGE 99501 !

APOC RECORDS SHOW THAT THE CAMPAIGN CONTRIBUTION PROGRAM IS  
IMPORTANT TO DEMOCRATS. OF 1982 DONATIONS, THOSE OF \$100 OR LESS  
COMPRISED:

64%--DEMOCRATIC PARTY	90%--WOMEN'S PACE
47%--DEMOCRATIC LEGISLATIVE COMMITTEE	83%--ENVIRONMENTAL PAC
78%--FISHPAC	
17%--REPUBLICAN PARTY	16%--ALASKA CONSERVATIVE PAC
99%--PUBLIC EMPLOYEES' ASSOCIATION	

PLEASE DEFEAT HOUSE BILL 89! RETAIN THE REFUND PROGRAM.

\*\*\*\*\*

VF/LS  
GB  
May 26th, 1983

Senator Vic Fischer  
Chairman, Senate Committee on State Affairs

Dear Senator Fischer:

Although I am not usually involved with political actions, I am strongly in favor of the repeal of the Political Contributions Act. I feel that the act appeals to the baser emotions of greed and avarice that tempt the most upright of politicians, and serve to enrich the media with state funds. I do not believe it is right to finance political contributions with state money.

The political contributions act gives \$100 of state money to citizens for the purpose of political contributions. The politicians who receive the funds then spend it mostly on newspaper, radio and television commercials during their campaigns. As a result, both politicians and the media receive benefits. But I don't like so many commercials during campaign season; in fact, I can't listen to the radio or watch TV during that time because the commercials are so numerous as to be repulsive and therefore ineffective. As a result, the state money is not serving its intended purpose.

We all know that campaigns are getting very expensive, as illustrated by Governor Sheffield's latest effort. But I don't think that it is appropriate to fuel the fire with State money. The campaign spending has exceeded the limits of a state with our population, and I believe that the availability of the money has tempted the politicians to provide for themselves over the needs of some other programs in the state. State money should be used for the public benefit, not for the benefit of those we have entrusted to protect the public treasury, nor for the benefit of those we entrust to provide unbiased public information.

Campaign contributions (which already receive preferential U.S. Income Tax treatment) should be a private matter, and I don't agree that the Political Contributions Act gives poor people a voice in the government. You have to have the money to spend before you can qualify for the reimbursement, and it's the middle class who will send in the money and then fill out a form for the reimbursement. Has there been a study on the income classification, or even the residential area (city residents are generally more affluent than Alaska bush residents), of the people who have file for reimbursement? Voting is the voice of the people, not campaign contributions. And I vote for repeal of the Campaign Contributions Act.

*Joseph E Seale*

Joseph E. Seale  
5959 North Douglas Highway  
Juneau, Alaska 99801

# NEWSLETTER CONTRIBUTOR'S CLUB

\* \* \* \* \* THE BIRDS ARE SINGING--INDEED, IT'S SPRING/SUMMER (JUST DON'T BLINK!) BRIGHT DAYS SEEM TO BRING OUT THE BEST IN PEOPLE.

THIS MONTH, LET US THANK THESE FINE PEOPLE: JEAN DUCHANAN (WHO DOES A FINE JOB ON THE SCHOOL BOARD), BRUCE DUNN, MARGIE GIBSON, MAURCEEN KENNEDY, GENE SAINT-AMAND (NEW TO DISTRICT #13), ROBIN TAYLOR-BURT (NOW AT THE AK VISITORS AND CONVENTION BUREAU), CARRIE WALDEN, AND DOLORES AND CHUCK WEILER. AND THIS MONTH'S AWARD FOR INGENUITY HAS TO GO TO BEA ROSE, WHO WAS SMART TO USE THE NEWSLETTER PAGE AS AN ENVELOPE TO SEND IN HER CONTRIBUTION!

A NUMBER OF FOLKS HAVE BEEN INVOLVED WITH THIS NEWSLETTER. WHEN YOU SEE HER, PLEASE THANK JULIA GARRIGUES, WHO GIVES CONTINUED ASSISTANCE WITH DISTRIBUTION. THANKS TO YOU ALL!

\$ % \$ % \$ % \$ % \$ % \$ % \$ % \$ % \$ % \$ % \$ % \$ % \$ % \$ % \$ % \$ % \$ % \$ %

## STATE CENTRAL COMMITTEE MEETS

MUCH WAS ACCOMPLISHED AT THE STATE CENTRAL COMMITTEE MEETING IN FAIRBANKS ON MAY 15TH.

DURING THE MORNING A WORK SESSION WAS HELD ON THE DELEGATE SELECTION PLAN. ALASKA, BASED ON ITS DEMOCRATIC VOTING STRENGTH IN THE 1980 PRESIDENTIAL ELECTION, WILL HAVE 14 DELEGATES AND 5 ALTERNATES. TO THAT END, DATES IN 1984 WERE SELECTED FOR PRECINCT CAUCUSES--MARCH 14TH, THE HOUSE DISTRICT CONVENTIONS --APRIL 7TH, AND THE STATE CONVENTION IN SITKA--MAY 5-6.

THERE ARE NEW CLASSIFICATIONS INTO WHICH DELEGATES MUST FALL, AND THERE WILL BE NO FRACTIONAL DELEGATES, AS AGREED BY THE DEMOCRATIC NATIONAL COMMITTEE WITH THE ADOPTION OF THE HUNT COMMISSION REPORT. EMERGENCY CHANGES TO THE PARTY PLAN WERE ADOPTED FOR THE PURPOSE OF ALLOWING THIS PROCESS TO PROCEED AND ENSURE DELEGATE SEATING AT THE CONVENTION.

SCC ALSO HELD A TELECONFERENCE WITH THE HOUSE MINORITY DEMOS WHO REQUESTED A SEAT ON THE SCC EXECUTIVE COMMITTEE. THE DLC MEMBERS WILL SELECT A NON-VOTING MEMBER TO THIS BODY. IN ADDITION, THE EXEC. COMMITTEE WAS EXPANDED TO INCLUDE THE FIVE REGIONAL VICE-CHAIRS.

STAFFING OF A STATEWIDE OFFICE WAS AUTHORIZED, SO LONG AS IT DOES NOT RESULT IN DEBT TO THE PARTY.

A NUMBER OF RESOLUTIONS WERE BROUGHT BEFORE THE SCC WHICH ACTED ON THEM BEFORE ADJOURNING TO THE STEVE COWPER FUNDRAISER AT THE PLUNDERS AND STEAMITERS HALL.

- 5/24 TELECONFERENCE 1 PM HEARING ON THE REPEAL OF THE TAX CREDIT FOR POLITICAL CONTRIBUTIONS, 1024 WEST 6TH.
- 5/26 BARTLETT CLUB, NOON, FRANK'S BAR-B-QUE, 13TH AND HYDER. WILLIE HENSLEY, DEMOCRATIC NATIONAL COMMITTEEMAN, ON URBAN/RURAL RELATIONS.
- 6/2 BARTLETT CLUB, NOON, FRANK'S BAR-B-QUE, 13TH AND HYDER. DEBATE: SHOULD ALASKA REGULATE PRIVATE SCHOOLS?
- 6/4 ALASKA DEMOCRATIC PARTY, POLITICAL SKILLS SEMINAR ON ISSUES INCLUDING LABOR, SOCIAL CONSCIENCE, AND NATURAL RESOURCES. REGISTRATION AT NOON, BEGINS AT 1 PM, SHERATON HOTEL, \$15 FEE.
- 6/7 H.D. #12 MEETING, 7:30 PM AT THE FAIRVIEW COMMUNITY CENTER, 10TH & KARLUK, CALL CAL WILLIAMS FOR INFO, 276-8698.
- 6/8 HOUSE DISTRICT #13 MEETING, 7:30 PM, AT MT. VIEW LIBRARY, CALL ED CHATMAN, 337-3556, FOR MORE INFORMATION.
- 6/9 BARTLETT CLUB, NOON, FRANK'S BAR-B-QUE, 13TH AND HYDER. DON MITCHELL, VP FOR AFN, SUBSISTENCE: THE TRUTH!
- 6/14 HOUSE DISTRICT #11 MEETING, 7:30 PM, CALL RICK HEITZ AT 248-2512, FOR MORE INFORMATION.
- 6/15 AADC MEETING, 7:30 PM AT THE NEA BUILDING, 1411 W. 33RD. CALL GORDON SMITH, 344-4491, FOR MORE INFORMATION.
- 6/16 BARTLETT CLUB, NOON, FRANK'S BAR-B-QUE, 13TH AND HYDER. JUNETEENTH PROGRAM AND SENATORIAL STRAW POLL VOTE.
- 6/20 BARTLETT CLUB TRUSTEES MEETING, 5:30 PM AT THE NEA BLDG.
- 6/23 BARTLETT CLUB, NOON, FRANK'S BAR-B-QUE, 13TH AND HYDER. TOPIC: THE ALASKA GAS LINE???
- 6/30 BARTLETT CLUB, NOON, FRANK'S BAR-B-QUE, 13TH AND HYDER. RED BOUCHER, TELEPOLITICAL PROCESSING.

\* \* \* \* \* FUTURE BARTLETT LUNCH PROGRAMS INCLUDE LEGISLATORS RETURNING FROM THE SESSION, THE GOVERNOR AND COMMISSIONERS, THE ASIAN-AMERICAN COMMUNITY, VARIOUS CONSULATES IN ANCHORAGE, NATIVE SOVEREIGNTY, AGRICULTURE, AND LABOR. LET'S THANK JOHNNY ELLIS FOR HIS EXCELLENT EFFORTS PREPARING THESE WEEKLY PROGRAMS. IF YOU HAVE ADDITIONAL SUGGESTIONS, GIVE HIM A CALL.

AT THE RECENT AADC MEETING, GORDON SMITH HOSTED A TELECONFERENCE WITH GOVERNOR BILL SHEFFIELD, WHO SPOKE TO US FOR ABOUT 30 MINUTES, FOLLOWED BY QUESTIONS AND ANSWERS.

THE GOVERNOR MENTIONED THE IMPORTANCE OF HAVING GOALS AND ALWAYS KEEPING THEM IN MIND. HE SEES THE CURRENT LEGISLATIVE SESSION AS ROCKY AND LACKING IN COMMON SENSE. HE HAS NOTICED AN UNWILLINGNESS BY THE VARIOUS BODIES TO SIT DOWN FOR DISCUSSION TO WORK OUT DIFFERENCES AND MAKE COMPROMISES. THERE SEEMS TO BE A LACK OF LEADERSHIP IN THE HOUSE. THERE IS A GREAT DEAL OF LEGISLATION YET TO BE COVERED. ALL OF THESE CHALLENGES MAKE IT DIFFICULT TO GET ON WITH THE BUSINESS OF RUNNING THE STATE.

GOVERNOR SHEFFIELD SAID REGARDING BOARDS AND COMMISSIONS THAT HE HAS DONE A FAIR JOB OF GAINING WIDE GEOGRAPHICAL REPRESENTATION. HE HAS NAMED 6 DEMOS PER EACH REPUB. HE ADDED THAT MANY OF THESE DEMOS ARE REGISTERED AS INDEPENDENTS, BUT THAT THEY ARE DEDICATED TO FOLLOWING HIS DEMOCRATIC PROGRAMS. HE SAID ARRANGEMENTS ARE BEING MADE WITH PEOPLE IN EACH GEOGRAPHIC AREA SO THE PARTY HAS MORE INPUT. THE GOVERNOR ENCOURAGES PEOPLE WITH QUESTIONS ABOUT RUMORS THEY HAVE HEARD TO CALL HIS OFFICE BEFORE LEAPING OFF INTO CERTAIN AREAS.

THE GOVERNOR SAID HE RECOGNIZES THE NEED FOR A DEMOCRATICALLY CONTROLLED HOUSE AND SENATE--WITH HELP BEING NEEDED MOST IN ANCHORAGE. HE SAID HE WOULD HELP BUILD THE PARTY AND MADE OTHER VALUABLE SUGGESTIONS FOR GETTING TO THE HARD WORK AHEAD TO GET INTO POSITION TO ELECT DEMOS IN 1984. HE SAID WE NEED TO ELECT PEOPLE WHO ARE FOR GOOD GOVERNMENT AND LESS FORK BARREL.

IN EVALUATING THE TRANSITION PERIOD, THE GOVERNOR SAID THEY GOT OFF TO A ROUGH START. THERE WERE MANY PEOPLE LAYING FOR THEM. NOW HE SEES THAT THE PRIVATE SECTOR WANTS TO GET MORE INVOLVED---ESPECIALLY WITH LARGE SCALE PROJECTS.

THE GOVERNOR SAID AT THIS TIME HE FAVORS THE TAX CREDIT FOR POLITICAL CONTRIBUTIONS AND FEELS HE WOULD VETO THE REPEAL EFFORT (HB89). AN ADDITIONAL PIECE OF LEGISLATION WHICH WOULD RECEIVE A VETO IS THE SENATE DECISION NOT TO INVEST THE OWED \$400 MILLION TO THE PERMANENT FUND. THE GOVERNOR FEELS AN OBLIGATION EXISTS FOR THIS FUNDING.

QUESTIONS ASKED RELATED TO THE LONGEVITY BONUS, WHICH THE GOVERNOR FEELS SHOULD STAY ALIVE, YOUTH UNEMPLOYMENT, FOR WHICH THE GOVERNOR HAD INCLUDED FUNDS IN THE BUDGET. ANOTHER QUESTION WAS ON HB246, WHICH REMOVES THE CEILING ON INTEREST RATES (THIS HAS ALREADY PASSED THE HOUSE). ANOTHER QUESTION WAS WHY THE STATE HUMAN RIGHTS COMMISSION WAS UNDERFUNDED AND WHY THERE WAS NO LONGER AN ANCHORAGE OFFICE.

IN HIS CONCLUDING REMARKS, THE GOVERNOR NOTED THAT THE MAIL WAS RUNNING VERY HEAVY AGAINST REPEAL OF THE PERMANENT FUND DIVIDEND PROGRAM. AGAIN HE ENCOURAGES DEMOCRATS TO KEEP IN TOUCH AND KEEP UP THE COMMUNICATIONS.

THE NOSE TAKES IT IN THE NOSE AGAIN BY A CARTOON--AT LEAST IT'S NOT THE SACCHARINE 2X4 IN THE O.P. WHICH ADVOCATES GAME-PLAYING IN RELATIONSHIPS. YOU KNOW--THE TRADITIONAL FAMILY VALUES.

SPEAKING OF SAME, IS ANYTHING AS ANNOYING AS GETTING HOME FROM WORK TO FIND (CONSISTANTLY) THE PAPER SCATTERED ALL OVER? IT'S TIRING TO BE ALWAYS ON A FIRST NAME BASIS WITH CIRCULATION.

AND MORE ON THE SAME: GREAT HEADLINES: POLL SHOWS SUPPORT FOR REAGAN. THE ARTICLE IS SOME SURPRISE!

THAT SAME WELL KNOWN REPUB POLLSTER OFFERED A QUESTION FOR SALE IN THE RECENT KAMN AUCTION. IT WAS PURCHASED BY OUR OWN DOUG ELLIOTT AND DONATED TO AADC--WE EAGERLY AWAIT RESULTS.

AH YES, CLIPPED--NO MORE TV COVERAGE OF THE HOUSE (JOE DOESN'T WANT US TO SEE HIM GRAY ON THE SCREEN), THE TELECONFERENCE BUDGET HAS BEEN REDUCED--LESS ACCESS ANY WAY YOU LOOK AT IT. AND JUST TRY TO FIND THE HEARING ON A PET BILL. IF IT'S THERE AT ALL, IT'S PROBABLY ALREADY BEEN HELD. THE END RESULT--LIKELY THE WISH OF THE REPUBLICAN LEADERSHIP (AND OF COURSE BECAUSE CONSTITUENTS ARE CRYING LACK OF ACCESS) IS TO MOVE THE CAPITAL--ALL AT VOTER DEMANDS. JUNEAU MIGHT WELL NOTE.

AND YOU NOTED, I'M SURE THE LENGTH OF TIME IT TOOK TO GET THE FLOOD INQUIRY MOVING. AT LEAST JOE IS A GOOD DISCIPLINARIAN--NO DUE PROCESS ALLOWED. THE ACCUSED IS DUMPED, AT BEST DISENFRANCHISING HIS CONSTITUENTS--TO JOE'S BENEFIT. LOVE THAT CONFLICT OF INTEREST!

AND FINALLY, WE ALL WISH ELLIS WELL ON HIS CALIFORNIA ADVENTURE. WILL CALIF. POLITICS BE MORE EXCITING BECAUSE THERE ARE MORE PEOPLE INVOLVED? IN ANY EVENT, THAT WAS THE BEST FRONT PAGE I'VE SEEN IN A GOOD WHILE!



A M E N D M E N T

#2

Offered in the SENATE

By V.Fischer

TO: CSHB 89(Fin)

Page 1, line 7, following "contributions":

Insert "to groups"

Page 1, line 8, following "contributions":

Insert "to groups"

Page 1, line 11:

Delete all material and insert the following:

\*\* Section 1. AS 43.20.013(a) is amended to read:

(a) A resident individual is entitled to a tax credit not to exceed \$100 for

{(1)} a contribution made in a calendar year to a person or organization for use exclusively

[(A)] for a political campaign for a candidate for

(1) [(i)] President or Vice President of the United States, whether or not the candidate will be voted on in a primary election in Alaska;

(2) [(ii)] United States senator from Alaska;

(3) [(iii)] United States representative from Alaska;

(4) [(iv)] governor or lieutenant governor of Alaska;

(5) [(v)] the Alaska legislature;

(6) [(vi)] delegate to an Alaska constitutional convention;  
(7) [(vii)] electoral confirmation as a judge or justice of  
a court in Alaska; or

(8) [(viii)] municipal office in Alaska [; OR

(B) BY A GROUP SEEKING TO INFLUENCE THE OUTCOME OF A  
BALLOT PROPOSITION OR QUESTION IN ALASKA: AND

(2) DUES PAID IN A CALENDAR YEAR TO A NONPROFIT ORGANIZA-  
TION ORGANIZED PRIMARILY FOR THE PURPOSE OF INFLUENCING ELECTIONS IN  
ALASKA]."

Page 1, line 13, following "AS 43.20.013(a)"

Insert "(1)(B) and (2)"

Page 1, line 15, following "AS 43.20.013(a)"

Insert "(1)(B) and (2), repealed by sec. 1 of this Act,"

SENATE ROLL CALL

1983

	YEAS	NAYS	EX	AB
✓ Bennett	✓			
Eliason		✓		
Fahrenkamp		✓		
Faiks	✓			
Ferguson		- ✓ -		
✓ Fischer, Paul	<del>✓</del> ?			
Fischer, Vic		✓		
- - ✓ Gilman	✓			
- ✓ Halford	✓			
Josephson		✓		
✓ Kelly	<del>✓</del>	<del>✓</del>		
Moss		✓		
Mulcahy	✓			
Pettyjohn	✓			
✓ Ray	✓			
Rodey		✓		~
Sackett	✓			
Sturgulewski		✓		
- - ✓ Ziegler	<del>✓</del> ?			
✓ Kerttula**	<del>✓</del> ?			
	YEAS	NAYS	EX	AB
TOTAL SENATE				
TOTAL HOUSE				
TOTAL BOTH				

POSSIBLE CONTACTS ON POLITICAL TAX CREDIT

HOLLI PLOOG *Bob* ANC, NATIONAL WOMEN'S POLITICAL CAUCUS 561-1158

GORDON SMITH ANC, ANCHORAGE AREA DEMOCRATS 276-8161

BLANCHE BRUNK FBX, WAS ACTIVE IN COWPER CAMPAIGN 456-2866

DAVID ALLISON FBX, ENVIRONMENTAL LOBBY 586-1445

MARION ESTELLE PETERSBERG,  
(she is a Republican, but can mobilize people,  
business and professional women. Suggest  
using argument that it will be difficult to  
get women to run if they can't raise money) 772-3334

MAURINE KENNEDY ANC, AK *Pire* *Eileen Sackett - ANC - Bob* 278-3661  
*Call Peg Kellner*

SUSAN & JIM CLARK JNU. *Tom Berger - TVOM* *Stacy Carlson Bob* 586-6952

DAVE WALSH ANC *Diane Anderson Party Chair Bob* *Carrie King Bob* 248-4525

DELORES WEILER ANC *Bob* 344-7673

SALLY KABISCH ANC SIERRA CLUB BUT WORKING ON THIS ISSUE AS AN INDIVIDUAL *Bob* 276-4048

DAVID FINKLESTEIN SAME SITUATION AS SALLY KABISCH 272-9317

APEA *Bob* *as too vic call - chair stelly*

NEA *Ashley Reed - vic or vic TO all*

LEAGUE OF WOMEN VOTERS *Paula Neppel*

LABOR UNIONS - *Bob*

*ANCE & FLY ANTI CAPITAL MOVE Bob Miller ANC BRIAN R FBX*

*Cowper. BRIAN R Harle*

*Bhairs in to Ginger Terry Miller D3*

*DLC - Denise Zachary in m. Miller Kevin Wendy*

*vic names - vic Rosie But Campbell Key*

*Geanie LEADERS Key Thelma Hallett. Jane? Carol Reefers*

Anch. - Holli Ploog - 561-1158 wk.  
Nat Womens Political Caucus

Anch Gordon Smith - 276-8161 wk.  
Anch Area Democrats

Fbks. Blanche Brunk 456-2866 wk.  
was active in Cowper's campaign

Fun. David Allison 586-1445 wk  
Environmental Lobby

Petersberg] Marian Estelle 772-3334  
(She's an R - but she can  
mobilize people) Business & Prof. Women  
~~use the line~~ use the line  
on ~~about~~ hard to get women to  
run bec. they can't raise \$)

Anch - AK Pig  
278-3661

Fun. Susan & Jim Clark 586-6952 km.

Anch Dave Walsh 248-4525

Anch Delores Weiler 344-17673

Sally Kibisch -  
called 5/25

Will cover on reb -

~~AS~~ ~~XXXXXX~~  
Harris survey  
citizen press has done well  
in AK -

Women's Political Groups -  
ALASKA EW -

Michelle  
Kibisch

DAVE ----- IF POSSIBLE, LET'S HAVE TELECONFERENCE ON  
HB 89 REPEAL OF POLIT CONTRIB CREDIT (DON'T USE "TAX" IN TITLE  
OF HEARING)

IF CAN, NOTIFY BOB MANNERS, APEA, LABOR UNIONS, DEMO PARTY  
LLEAGUE OF WOMEN VOTERS -- BRIEF STATEMENTS ONLY, MAX. 3 MIN'S

VIC

5-11

~~\_\_\_\_\_~~  
Hans May 19

# ALASKA STATE LEGISLATURE

SENATE STATE AFFAIRS COMMITTEE

SENATOR VIC FISCHER, CHAIRMAN

POUCH V, JUNEAU 99811

(907) 465-4954



May 19, 1983

## PUBLIC SERVICE ANNOUNCEMENT

The Senate State Affairs Committee announces that it will be holding a teleconference public hearing on HB 89 on Tuesday, May 24, at 3.00 pm, P.S.T. All Legislative Information Office sites will be connected.

This bill would repeal Alaska's \$100 tax credit for political contributions. The bill would have substantial effects on the funding of state political campaigns, and the committee is actively soliciting public comment on the issue.

SPONSOR: Jim. S.A.A.  
 leg non-leg pub hear. work sess inv hear  
 SUBJECT: H B 89 - Repeal Tax Credit/politic  
 MAILING ADDRESS: \_\_\_\_\_

DATE TAKEN/BY 5/18/83  
 T/C DATE/DAY 5/24/83  
 TIME: 3-5 PACIFIC

\_\_\_\_\_  
 YUKON  
 \_\_\_\_\_  
 ALASKA  
 \_\_\_\_\_  
 BERING

PHONE 4955 CONTACT Lewis Schn.

SITES PARTICIPATING:

- |  |  |  |   |  |
|--|--|--|---|--|
| <u>North Slope</u><br>Anaktuvuk Pass<br>* Barrow<br>Kaktovik<br>Point Hope<br>Wainwright<br><br>ALL ALASKA<br>ALL LIO's<br>WASH., D.C. | <u>NANA</u><br>Ambler<br>* Kotzebue<br>Noorvik<br>Selawik<br><br><u>Norton Sound</u><br>Gambell<br>Hooper Bay<br>* Nome<br>Savoonga<br>Shishmaref<br>** Unalakleet | <u>Bristol Bay</u><br><u>Aleutians</u><br>* Bethel<br>* Dillingham<br>St. Paul<br>Sand Point<br>** Unalaska<br><br><u>Interior</u><br>* Delta Junction<br>* Fairbanks<br>** Fort Yukon<br>Galena | <u>South Central</u><br>* Anchorage<br>Homer<br>* Kenai (Sol)<br>* Kodiak<br>* Mat-Su<br>Seward<br>* Valdez | <u>Southeast</u><br>Cordova<br>Haines<br>Hoonah<br>* Juneau<br>* Ketchikan<br>* Petersburg<br>* Sitka<br>Wrangell<br>Yakutat |
|--|--|--|---|--|

Chairing Site/Person V. F. Schur Special Offnet \_\_\_\_\_  
 Location/Phone# \_\_\_\_\_  
 \_\_\_\_\_  
 Signature of Sponsor/Contact Person 5/18/83 Date \_\_\_\_\_

-----TELECONFERENCE OFFICE USE ONLY-----

Butro. Rm.

2-Wire \_\_\_\_\_ 4-Wire X  
 Bridges: #1 (206)447-8620  
 #2 (206)447-1554  
 #3 (206)447-5627  
 #4 (206)447-9479  
 Bridge operator (800)426-3232  
 JNU trouble #'s 586-1062  
 465-3836

Publicity:  
 \_\_\_\_\_ Local calls/list attached  
 \_\_\_\_\_ Media/P.S.A. attached  
 Can expect:  
 \_\_\_\_\_ Lengthy back-up  
 \_\_\_\_\_ Bill summary  
 \_\_\_\_\_ Partic.pants list

POST TELECONFERENCE NOTES

Site/Date: \_\_\_\_\_  
 Local Moderator \_\_\_\_\_  
 T/C Started: \_\_\_\_\_ T/C Ended \_\_\_\_\_  
 T/C Recorded: \_\_\_\_\_  
 Testified/Participated: \_\_\_\_\_  
 Unable to Testify: \_\_\_\_\_  
 Observers: \_\_\_\_\_  
 Total Number: \_\_\_\_\_

# ALASKA STATE LEGISLATURE

SENATE STATE AFFAIRS COMMITTEE

SENATOR VIC FISCHER, CHAIRMAN

POUCH V, JUNEAU 99811

(907) 465-4954



May 16, 1983

Mr. Emil Notti  
Legislative Assistant  
Office of the Governor  
Pouch A  
Juneau, AK 99811

RE: HB 89

Dear Emil:

As you know, this bill is scheduled to be heard before the Senate State Affairs Committee on Tuesday, May 24 at 3.00 pm. This meeting will be on the statewide teleconference network.

I would like to request that the administration send a representative to testify on its position. I understand that Commissioner Heath has done work on this topic, and he would make an excellent witness.

Sincerely,

A handwritten signature in dark ink, appearing to read "Vic", written over the word "Sincerely,".

Senator Vic Fischer

5.13.83

Dear Sen. Fischer,

We discussed HB165 at our League State Convention last weekend. We would like to comment on it and it looks like it is before your committee on Monday afternoon.

I will be in Anchorage Monday on business. I will telecopy our testimony from Lid there at 8am, if one of your staff wouldn't mind picking it up.

Thanks

Peggy Mullen, LWV

CAMPAIGN CONTRIBUTION TAX CREDIT AND PUBLIC FINANCING OF ELECTIONS

DRAFT REPORT for Senator Vic Fischer,  
Chairman, Senate State Affairs Committee

by Ira Winograd

April 22, 1982

## SUMMARY

The Alaska electorate has expressed its support for campaign finance reform. Public finance is a key element in campaign finance reform.

Public finance is a product of our national history of agitation for election reform. Public finance can help: protect free speech for candidates, insure equalization of political power among voters, and encourage citizen participation in the election process.

Although there is some sentiment that too much money is expended on campaigns, there is evidence that not enough is being spent.

Alaska elections are vulnerable to undue manipulation by well financed special interests. It appears that only wealthy candidates can afford to run for high public office and there appears to be a fair degree of voter cynicism.

The campaign contribution credit has a significant beneficial impact on the quality of government. The average credit claim is filed by a small contributor and credits tend to equalize the distribution of financial resources in Alaska elections. The program has very low administrative costs.

Repeal of tax credits would increase the negative impacts which concentrated financial interests have on the quality of government,

openess of elections and voter turnout. The public might be further burdened by having to bear an increase in indirect campaign costs.

Public finance reform alternatives can be compared by their ability to: help overcome unequal distribution of financial resources; provide funds enabling serious, well qualified candidates to carry on vigorous campaigns regardless of personal wealth; to encourage public participation in the election process; and operate cost effectively.

There are four election public finance reform alternatives:

1. 'Checkoffs' do not provide adequate funds to overcome unequal distribution of financial resources for a variety of campaign races. It is not feasible to institute a checkoff without an income tax. Checkoffs have many similarities to direct appropriations.

2. 'Direct appropriations' are used by most western nations to help strengthen the political party system. Direct appropriations do not directly increase public participation in the election process and they do not insure that a variety of serious, well qualified candidates will be able to carry on vigorous campaigns regardless of personal wealth.

3. 'Campaign contribution credits' are not dependent on income taxation. Credits encourage public participation in the election process and help overcome unequal distribution of financial

resources. Sliding scale credits increase the cost effectiveness of campaign contribution credits.

4. 'Vouchers' offer the best potential for equalizing the distribution of financial resources, and enabling serious, well qualified candidates to carry on vigorous campaigns regardless of personal wealth. Vouchers might also be used to encourage public participation in the election process. Since vouchers are not commonly used, it is difficult to know how cost effective the system might be in practice. A trial voucher system might be a useful way to gain experience and evaluate the operation of vouchers.

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DRAFT REPORT

CAMPAIGN CONTRIBUTION TAX CREDIT AND PUBLIC FINANCING OF ELECTIONS

This paper reviews the Alaska campaign contribution tax credit, election finance reform goals and election finance alternatives.

Alaska voters expressed their support of election reform and the 1974 legislature responded by creating the Alaska Public Officers Commission and the campaign contribution tax credit.

Legislation has been introduced during the 1982 session to reduce APOC funding and eliminate the tax credit. The sponsors of tax credit repeal have not presented any findings, except that they feel it is inappropriate to have a tax credit without an income tax. However, credits have very little connection to taxation; they are more akin to grants which are financed by general fund revenues. The state does not finance credits by directly increasing the tax liability of an income tax/payer who receives a credit. There is no direct financial relationship between campaign contribution credits and income taxation.

One might assume that those who are opposed to the campaign contribution credit are also interested in reducing public expenditures, reducing red tape or they might be opposed to election public financing in principle. The campaign contribution credit does not create red tape or significant State expenditures. Therefore, it is appropriate to discuss the broader

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issues pertaining to public finance of elections. Legislation repealing election reform measures should only be acted upon after thorough discussion of: campaign public finance goals as expressed by the Alaska electorate and national heritage, Alaska elections and public financing in practice, and comparison of alternative election finance reform measures.

#### CAMPAIGN PUBLIC FINANCE GOALS

##### ELECTORATE

In 1973, Initiative Petition No. 3, supporting campaign reforms, was signed by more than 10 percent of those who voted in the previous years general election, and the signatures came from more than two-thirds of State election districts. The Initiative backers had planned to introduce the Initiative on the 1974 ballot but they were preempted by the 1974 Legislature which endorsed the initiative by adopting it into law. The Supreme Court ruled that legislative adoption voided the Initiative from ballot consideration and the proposition was removed from the general election ballot.

The Initiative found, "that private wealth should not be decisive in a democracy, either in selecting an official or in influencing public policy", and the Initiative stated its purpose to, "prevent the outcome of elections from being unduly influenced by the financial resources available to a candidate or to the advocates of a particular position on a ballot proposition... and to encourage the financing of election

campaigns through small individual contributions..." Chapter 76 of the 1974 Session Laws codified all recommendations contained in the initiative plus the campaign contribution tax credit, which was not contained in the Initiative.<sup>1</sup> HCS CSSB 388, 1974

The campaign contribution tax credit was adopted as a means to respond to the 'findings' and accomplish the 'purposes' of the election reform Initiative. The popularity and success of the Initiative is a strong indication that campaign reform goals have the overwhelming support of the electorate. Approximately 11,500 voters signed the initiative petition.

There is no evidence that public support has diminished. Between 1974 and 1980 six municipalities, with populations over 5,000, have voted on the question of supporting campaign disclosure or opting out of the requirements. All six municipalities voted to retain the disclosure requirements.<sup>2</sup> 1980 APOC Annual Report, p.107.

Since 1974 there have been 97 municipal elections on the question of whether to opt out of state conflict of interest requirements. The combined vote of 48,440 ballots shows 61 percent voting in favor of retention of conflict of interest filing requirements, 39 percent opposed. Four municipalities; Anchorage, North Slope Borough, Barrow and Bethel, have never voted on the possibility of opting out of disclosure requirements.<sup>3</sup> 1980 APOC Annual Report, p.116. Only one community over 5,000 population, Valdez, has ever chosen to exempt itself from the law.

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There is a continuing trend in support of election reform and the trend is strongest in the largest communities. As urban municipal population increases, one can expect increased support for election reform.

#### NATIONAL HERITAGE

Public financing of political campaigns was suggested as early as 1907 by President Theodore Roosevelt, although it took more than a half century before public financing was enacted. At the turn of the century, the election reform movement was spurred by revelations of the Hanna scandals and corporate manipulation of government. These revelations fueled the populist political movement. Among the reforms which were enacted were the prohibition of large corporate contributions, disclosure of political funds, direct election of senators, primary elections, and referendum and initiatives - the latter was used to insure enactment of contemporary campaign reform measures in many states.<sup>4</sup> The Annals of the American Academy of Political and Social Science, Herbert Alexander, vol. 425, May 1976 p.14.

The current revival in campaign reform was spurred by public outrage over President Nixon's abuse of the election process. Public finance is a response to traditional public sentiment that special interests should not have a disproportionate influence on the democratic process.

The United States Supreme Court considered election reform measures in Buckley versus Valeo, 1976. The court ruled that free speech in politics means the 'right' to speak effectively. The Supreme Court

agreed that campaign spending is necessary in order for a politician to exercise the right to free and effective speech. The Court recognized that, to be effectively heard in a society of mass communication, speech needs to be amplified by means of purchased air time, purchased print space or through other ways of formulation and dissemination which involve monetary expenditures. The Courts' reasoning provides a logical justification for the use of tax dollars for campaign purposes, enabling candidates to reach the public effectively.<sup>5</sup> Ibid, Herbert Alexander, Rethinking Election Reform. In general, the goal of campaign public finance is the application of traditional democratic principals to elections in our age of 'media is the message' politics dominated by dollar politics.

The American system of government is rooted in the egalitarian assumption of, 'one citizen, one vote', but like all democracies it is confronted with an unequal distribution of economic resources having a bearing on elections. The attempt to reconcile inequalities lies at the base of the problems created by money in politics. It has long been regarded that property, or in more modern times, economic power, is the fundamental element in political power. In a sense, broadly based political power, as effected through progressive reforms creating universal suffrage, (elimination of property ownership voter requirements and poll taxes, extending suffrage to racial minorities and women) was conceived and has been used to help equalize economic resources. These reforms are compromised if special interests get undue preferment from candidates forced to depend on them because alternative sources of adequate funds are not available; this is another important

reason why government funds are desirable alternative sources of economic power.

In addition to reducing the dominance of big money and providing the right to free speech for candidates, additional goals of public finance include: improving political dialogue, attracting a more attentive and well informed electorate, encouraging citizens to participate in the political process as workers; contributors, and voters. To the extent that the electoral system diminishes favoritism, it counters public cynicism about the political process and encourages the accomplishment of campaign reform goals.

Public financing can help counteract concentrated privilege, and encourage citizen participation in the electoral process, and accomplish a broad range of campaign reform goals. Public financing aides candidates in their efforts to raise campaign contributions in ways which do not compromise their integrity and which diminish their dependence on large contributors. The additional public money facilitates communication between a wider variety of candidates and the electorate. Improved communication is a prerequisite to greater public participation and involvement in the election process.

Public financing creates a floor level of expenditures available to candidates. Sentiment is often expressed that public financing should also be used to reduce overall spending on elections; to create a ceiling on total expenditures. If we spend too much on elections the question is too much compared to what? A recent study compared campaign

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spending with corporate advertising.<sup>6</sup> State Financing of Election Campaigns, University of Kentucky, May 16, 1980, p.16. The total campaign spending in 1976 for all races, from president to local offices, was \$540 million. The figure for spending in all campaigns was less than what the two corporations with the largest advertising budgets spent on advertising of all kinds in 1976.

One might also ask whether enough is being spent to reach people, to inform them about candidates and issues. <sup>Previously,</sup> The more that is spent on campaigns, the more people will know about candidates and policies. Our low voter turnout may be interpreted, at least in part, as a reflection of lack of voter information. Another indication that campaign spending may be inadequate is the substantial number of election districts in which there is no competition or only /token opposition the incumbent.

#### ALASKA ELECTIONS:

For the purpose of evaluating elections, data is available on campaign contributions, personal expenditures of candidates and voter turnout.

#### CAMPAIGN CONTRIBUTIONS

The distribution of campaign contributions indicates the potential quality of government or the degree to which government represents the public interest. When large campaign contributions are concentrated there is increased opportunity for special interests to have undue

influence on government. There is a danger that corruption may result from the necessity of candidates having to raise money from oil and other special interests. Such interests command great financial resources and are able to make comparatively large campaign contributions. Even when no specific quid pro quo is demanded, the candidate can be placed in an ambiguous position. In a worse case, successful candidates may take their oath of office with strings attached, or the candidates might be company puppets.

Competition among candidates should be determined as largely as possible on the basis of their qualities and views without distortion caused by inequality of opportunity to communicate with voters as a result of financial manipulation. In the 1980 elections, 235 contributors contributed \$1,000 or more each. These large contributions amounted to \$608,000. Just sixteen contributors contributed over one third of this total, \$209,500. Approximately \$150,000 is directly traced to oil companies.

Large contributors are even more concentrated than APOC figures suggest. For example, the 1980 APOC Report lists three large contributions from Los Angeles, California: Chartwell Communications (\$10,000), Tandem Productions (\$10,000), TAT Communications (\$10,000). However, all three checks were dated March 17, 1980 and originated from the same hotel suite.

Alaska has a strong chief executive and proportional attention is focused on the gubernatorial race. In the 1978 primaries, out-of-state

interests played a significant role. The official results are:<sup>7</sup> 1978  
APOC Annual Report p. 49.

Candidate	Hammond	Hickel	Croft	Kertulla	Mardes	Fink
Total Primary Contributions	392000	551000	250000	232000	229000	225000
Primary Contributions Over \$100 from Alaska	136000	273000	67000	87000	61000	73000
<u>Primary Contributions Over \$100 from Outside</u>	103000	94000	33000	11000	4050	1650
General Election Final Vote	49580	33555	25656			

Most outside money came from: Washington, \$142,000, Texas \$85,000, California \$57,000, New York \$37,000, and Wash. D.C. \$27,000. It appears that these carefully timed contributions can influence our elections. The influence of outside campaign contributions indicates that elected officials might have a conflict of interest between external interests and the public interest. This raises the question of whether enough money is being spent on state elections by Alaskans.

An analysis of Ballot Proposition #5, the Bottle Bill, indicates a possible corruption of the Alaska public interest. Groups within Alaska spent only \$5,736 supporting the proposition. Groups opposed spent \$150,993 under the misnomer of, "Alaskans for Litter Control and

Recycling", previously known as the, "Industry Environmental Council of Alaska". This group was a front for: Anheuser Busch (St. Louis) \$5,675, Can Manufacturers Institute (Wash. D.C.) \$25,000, Coca Cola (Atlanta) \$6,200, Miller (Milwaukee) \$4,000, Pabst (Milwaukee) \$7,825, Pepsi \$6,250, Safeway (Bellevue) \$8,000, Schlitz (Milwaukee) \$7,250, Seven Up (ST. Louis) \$2,000, Shasta (Haywood) \$2,500, among others. The proposition still received 40 percent of the vote. These results show that in the absence of countervailing power, financial interests can manipulate the public interest.

The small Alaska electorate is conducive to a situation where elections can be manipulated by concentrated financial interests. Unless the average voter has sufficient funds available for political campaign contributions, public votes can be swamped by private money and the public might not be able to maintain quality government which fairly represents its interests.

#### PERSONAL EXPENDITURES

Personal wealth of candidates indicates the openness of the campaign process. Since the ultimate goal of an election is to select the best qualified person to hold a particular office, it is desirable for the voters to have as wide a field of candidates to choose from as possible. Open campaigns can occur when the electoral process is available to a broad cross-section of candidates regardless of personal wealth. Lack of personal wealth can prevent qualified people from running for office. Women and minorities are at a disadvantage under the present system

because they are less likely than white males to be wealthy, or part of the corporate world.

An incumbent generally has easier access to fund raising activities, so personal wealth can be particularly important to a challenger. In 1976, each serious challenger to governor Hammond spent between \$50,000 and \$133,000 of his own personal funds in the primary election alone! The expenditures were as follows: Kertulla \$73,000, Hickel \$75,000 (plus an additional \$130,000 in personal funds for the general election), Merdes \$133,000, Fink \$118,000, Croft \$52,000. It appears that gubernatorial elections are closed to candidates lacking personal wealth.

#### VOTER TURNOUT

Among the factors influencing voter turnout and selection of a field of candidates are public cynicism and the influence of a small number of large contributors. The public is encouraged to participate in the political process when there is a contested election and the public has confidence that they can influence the election process. The influence of a small number of large contributors can contribute to voter cynicism and discouragement of potential candidates from running against opponents backed by special financial interests.

In the last general election, twenty two house seats were open, of which six, 27 percent, were uncontested. There were ten senate elections and four, 40 percent, were uncontested.<sup>8</sup> 1980 APOC p. 30. This unenviable

record indicates that potential candidates might be discouraged from running for office.

Between 1976 and 1980, voter turnout in state-wide elections has been between 50 percent and 60 percent of eligible voters. The national turnout in the 1980 presidential election was 54 percent. Alaskan voters appear to have their fair share of cynicism, apathy and or frustration with the current election system.

The available data on the distribution of campaign contributions, personal expenditures by candidates, and voter and candidate turnout indicates that our election process is enervated by an inequitable distribution of financial resources. As a result, we suffer from: a lower quality of government as evidenced by the influence of special interests, restricted elections as evidenced by the personal wealth of candidates for high office, and public cynicism as evidenced by poor voter turnout and a large proportion of uncontested races. These problems would be ameliorated by a more equitable distribution of campaign financial resources.

#### PUBLIC FINANCE IN ALASKA

The Alaska campaign contribution tax credit provides up to \$100 reimbursement, on a dollar for dollar matching basis, to any resident contributing to a candidate or nonprofit organization organized for the purpose of influencing elections. The credit is designed to encourage

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individuals to make financial contributions to the candidate or political interest of their choice.

In 1980, 15,563 individuals filed credit claims, representing 9.6 percent of all voters, for \$692,000 of credit. Total 1980 campaign expenditures by senate candidates, house candidates, political action committees, labor unions, political parties, liberterian and independent interests, municipal candidates, municipal groups, ballot groups and municipal candidates was \$3,129,948. The campaign contribution credit subsidized twenty two percent of total campaign expenditures.

The average credit claim was for \$45 which is less than the maximum allowable \$100 credit per individual.\* (In prior years the maximum credit had been \$50.) Thus, the average claim was filed by small contributors. This indicates that the credit tends to equalize the distribution of economic resources in politics.

The internal operating cost for the program is \$12,000, or \$.77 per claim. For every \$58 credited the state incurred \$1 in administrative costs. The cost covers printing and distribution of the 1981, Alaska claim for refund of payable credits, form which replaces the income tax forms used in prior years.

The total program costs, of approximately \$700,000, can be viewed as a public subsidy for political advertising. By comparison to other forms of public subsidies for private sector advertising, the campaign

contribution credit is inexpensive. For example, the Department of Commerce and Economic Development, Division of Tourism had a 1981 operating budget of \$11,254,100, which is sixteen times larger than the campaign contribution credit budget.

#### ELECTION FINANCE ALTERNATIVES

The common theme of election reform is that public political finance should be structured to overcome unequal distribution of financial resources in the political arena, to encourage public participation, and provide funds enabling serious, well qualified candidates to carry on vigorous campaigns regardless of personal wealth. The various public finance alternatives are compared by their ability to accomplish these goals, and to operate cost effectively.

Most states, the federal government, and most western nations use some form of public financing. The federal government and seventeen states encourage public financing via income tax checkoffs. Connecticut and Florida have explored ways to use tax checkoffs independent of income taxation. Alaska, Washington D.C., Minnesota, Oregon, Rhode Island and the federal government use a campaign contribution credit. Campaigns can also be publicly financed by direct appropriations as in New Jersey, Puerto Rico and most western countries. Another alternative is a voucher system as proposed by Senator Metcalf.

REPEAL

Among the alternatives available to Alaska is repeal of public financing of elections. Aside from increasing the negative impacts which concentrated financial interests have on the quality of government, openness of elections and voter turnout, elimination of the tax credit could result in increased indirect campaign costs. Unlike the average citizen, special interest contributors are often in a position to pass the expense of their campaign contributions on to the public in the form of higher prices, and costlier contracts. These costs will continue unabated as long as special interests find it profitable to make large campaign contributions.<sup>P</sup> Government has its own well known ways to hide campaign expenditures, including: higher wage contracts, pork barrel, and other forms of inadequate returns on the expenditure of public funds. Legislators have admitted that they spend the peoples money to buy votes but the situation is now out of control.<sup>9</sup> Speech by Senator Stimson to Bartlett Democratic Club, 1982. Public financing provides countervailing financial power for reform candidates and opposition groups which lack access to the public budget. Elimination of public financing of elections can contribute to making a bad situation worse.

#### CHECKOFFS

The checkoff provides taxpayers an option to designate a small portion of their tax liability for a political contribution. Most checkoff states finance the taxpayers checkoff without directly increasing the taxpayers liability. The state collects the full amount of income tax, and an amount equal to the tax checkoff is budgeted from general revenues to finance checkoff expenditures. Thus, the discretionary

revenue collected from income tax is reduced by the amount of the checkoffs. This reduction must be financed by additional tax intake from income taxes or other taxes. The checkoff system spreads the cost of each claimants checkoff to the general tax base.

A few states: Maine, Maryland, Massachusetts, and Montana have created a checkoff surcharge. The checkoff is financed by an increase in the claimants tax liability. This eliminates the indirect financing of the standard checkoff systems.

The surcharge system has not been effective in attracting public participation or raising funds. The participation rate is under one percent in Maine and under three percent in the other surcharge states.

On the average, only two of every ten taxpayers will volunteer a dollar of their tax liability to a credit checkoff system, but only two out of every 100 taxpayers will oblige a one or two dollar surcharge checkoff.<sup>10</sup> American Political Science Review, 9/81 p.686 by Noragon. If two out of every ten Alaska voters participated in a \$1 checkoff, total contributions would equal \$32,500. A \$2 checkoff would yield \$65,000 or about one tenth of the yield from the campaign contribution credit.

There are several options for distribution of revenues generated by a checkoff. Eight state programs are similar to the federal checkoff in that taxpayers are presented with a single general campaign fund option on their tax returns. Six other states provide a choice among qualified

political parties, and in three states the choice is between political parties and a campaign fund. The option between political parties allows taxpayers some discretion in the allocation of their checkoffs.

When funds are placed into a campaign fund, taxpayers have no discretion in the allocation of their contributions. The campaign fund is allocated by a legislated formula which distributes the money in block grants to candidates who demonstrate their viability by raising a threshold amount of donations, or the proceeds are distributed by a matching system which provides checkoff funds to candidates in proportion to the amount of money which each candidate raises from private contributors.

The formula checkoff alternatives are very similar to direct allocations. In both cases contributions are financed from the general tax base and distributed by government directives. The only differences are that with the checkoff there is a false illusion that taxpayers claiming the checkoff are financing the contribution from their own income tax payments, and the total amount contributed by a checkoff is determined by the sum total of the actions of individual taxpayers while with a direct appropriation the contribution is a budgeted item.

Experience with checkoffs shows that within limits they can help equalize the distribution of financial resources among candidates. New Jersey and Michigan are the only two states which raise significant public funds via income tax checkoffs. They are the only states which raise more than one million dollars per year. In both states, checkoffs

go into a campaign fund which is appropriated by formula only to gubernatorial candidates. In order to be eligible for funding, a candidate must receive a threshold amount of contributions from other sources during the primaries. In Michigan, funds are distributed in equal grant amounts to each candidate, and in New Jersey candidates private contributions are matched by public funds at a 2:1 ratio. Both states have expenditure ceilings on gubernatorial elections.

Checkoffs have not raised adequate funds to finance senate, house, local elections, or bond propositions in addition to gubernatorial elections. Thus, checkoffs do not meet our second criteria of enabling a variety of serious well qualified candidates to carry on vigorous campaigns regardless of personal wealth.

Connecticut and Florida have both drafted legislation to institute a campaign checkoff against motor vehicle registration fees. Neither state has a state income tax. The legislation has not passed either state legislature because <sup>legislators agree that</sup> a motor vehicle checkoff discriminates against people without motor vehicles. The major obstacle is that no other tax has as broad a base as an income tax.

Alaska might conceivably tie a tax checkoff into an annual permanent fund distribution program. However, under current circumstances there is no efficient way to create a checkoff providing equal participation to all voters. It is not cost effective to mail a separate one or two dollar checkoff form to each taxpayer, especially given the relatively low participation rate for checkoffs.

## DIRECT APPROPRIATION

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Direct appropriations have the advantage that the subsidy is open to public budgetary review and not hidden as it is with tax checkoffs. Whereas a checkoff can be designed to give the voter limited discretion in the distribution of subsidized contributions, direct appropriations eliminate voter discretion over the distribution of public funds.

Legislation creating a direct appropriation for campaign financing passed the U.S. Senate in 1967. No state actually uses direct appropriations for campaign financing except as a temporary backup system when the checkoff does not produce adequate funds. New Jersey used direct appropriations in 1976 to help supply funds for its first publicly subsidized elections.

Direct appropriations can take many forms: in Australia political communication expenses are subsidized, Austria (parties and communication subsidies), Canada (candidate and communication subsidies), Costa Rica (parties), Denmark (parties and communication), Finland (parties and communication), France (parties and communication), W. Germany (parties), England (communication), Israel (parties), Italy (parties), Japan (candidates and communication), Holland (communication), Norway (parties), Puerto Rico (parties and communication), and Sweden (parties).

In most countries, political parties receive a subsidy and are thereby strengthened. The parties usually have broad discretion on how the

funds are spent. This produces a tendency for the parties to target the funds to specific races which are closely contested and has the effect of intensifying races which are already competitive. This system might not be particularly effective in providing funds to enable a variety of serious, well qualified candidates to carry on vigorous campaigns regardless of personal wealth. When funds are available to a wide variety of candidates running for a variety of political offices there is a greater chance to produce competition in races where there would otherwise be none.

#### TAX CREDIT

Experience with the campaign contribution credit in Alaska shows that it helps overcome unequal distribution of financial resources. In 1980, credit claims totaled \$692,000 and large contributors, contributing over \$1,000 each, accounted for \$607,677 in contributions. Thus, credits play a significant role in election financing. There were 235 large contributors, and if each one claimed a \$100 refund the amount of credits going to large contributors would only be \$23,500. To the extent that credit reimbursements stimulate small scale contributions they tend to overcome unequal distribution of financial resources.

Campaign credits encourage public participation in the election process. The no-strings-attached cash reimbursement encourages individuals to directly participate in the financing of the candidate or issue of their choice. Since any voter, with a small amount of cash on hand, can be eligible for a contribution credit, the base of potential campaign

contributors is enlarged and there is increased incentive for political groups to solicit funds from a broad cross-section of the public.

An additional benefit is that cynicism is less likely to occur when people have greater direct involvement and influence in the electoral process. The potential benefits of decreased cynicism include higher voter turnout, a wider slate of candidates and more vigorous campaigns. The state does not compile data on the allocation of credits to candidates so it is difficult to determine the degree to which credits enable less wealthy candidates to seek office.

A disadvantage of the credit is that the refund goes to contributors who would have contributed even if credits were not available. The portion of credits going to regular contributors has minimal impact on election financing.

The Canadian campaign contribution credit incorporates a progressive structure which increases its ability to encourage a large number of small contributions. In Canada, tax credits, not exceeding \$500, are given for contributions to candidates and parties on a sliding scale according to the size of the contribution. Proportionally larger credits are given for smaller contributions. For example, a \$100 contribution entitles the contributor to a \$75 credit. This system encourages contributions from those who would otherwise be less likely to contribute, and has the effect of increasing participation more effectively than fixed contribution credits.

Alaska is in the unique position of administering a campaign contribution tax credit which is independent of state income tax forms. Last year, 1981, was the first year in which claims for refund of payable credits were filed on a separate form independent of individual income tax forms, or claim for refund of individual income tax forms. An Alaska claim for refund of payable credits form has been mailed to all persons who filed for a campaign contribution tax credit refund in 1980. The mailing list could easily be expanded to include all registered voters, thereby giving the campaign contribution credit as wide a distribution as was obtained through distribution via income tax forms.

There is no fiscal incongruity in having a credit without an income tax. The credit was not financed by income tax. A credit recipients tax was not raised to cover the credit and income tax rates were not raised when the credit was instituted. Credit refunds were, and continue to be, financed by direct budgetary appropriations from general fund revenues.

#### VOUCHER

A voucher system provides a form of scrip to a designated class of citizens, such as all registered voters. Each recipient of a voucher is able to send the voucher to any candidate or political organization, who would in turn be able to receive public funds in exchange for the vouchers. The voucher has cash value upon redemption.

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A voucher system was first proposed for use in federal elections by Senator Metcalf in 1967. His proposal preceded the revival of interest in campaign finance reform and it was not adopted by congress. The voucher system has not been adopted by any state.

The Metcalf plan would have mailed vouchers to voters who checked the appropriate voucher box on their income tax returns. Upon receipt of the voucher, the taxpayer could designate the candidate to whom he or she wished the funds to go and then transfer the voucher to that candidate. The candidate would in turn certify the voucher to the appropriate government agency in order to receive their cash value.

In order to implement a voucher system it is necessary to determine the value to be assigned to the vouchers. A fixed value such as \$5 per voucher might be assigned. There were 162,653 voters in the 1980 general elections. If 50 percent of vouchers were turned in, and each voucher was worth \$5, the cost to the state would be approximately \$400,000.

An alternative, which would avoid the problem of estimating the ~~number~~ <sup>total value</sup> of vouchers to be refunded, would be to fix the dollar amount to be appropriated for voucher refunds. Each refunded voucher would be worth an equal percentage of the appropriation. For example, if \$500,000 were allocated, and 100,000 vouchers were turned in, each one would be worth \$5. The total value of vouchers might be fixed to balance the total value of large contributions in the last general election.

If a goal of campaign public finance is to increase participation in the election process, then the voucher should be made available to those who have expressed interest in the electoral system by registering to vote. The voucher system might even encourage voter registration. If the government provides a postage prepaid envelope with each voucher, it would be very easy and convenient for people to use the vouchers and a large number of vouchers would be refunded. Participation might be further enhanced by including a provision to register a 'no preference' on the voucher. The voucher would then be returned to the state and the funds would be designated for general voter education purposes such as televised debates between candidates.

Under both the voucher and the credit system, the role of government in the allocation of subsidized funds is minimal. With a matching or grants system, such as are commonly used with checkoffs or direct appropriations there are elaborate requirements governing the distribution of funds, and still new and minor parties are often at a disadvantage because their entitlements are based on prior year showings. The voucher system has the potential to overcome these problems and provide a more equitable and responsive distribution of financial resources.

A voucher system of election public finance can help assure equity to the candidates by providing a current measure of support almost automatically translating public support into financial support. Equity would also be assured to voters by weighing all voucher participant donors equally. It would be as effective in poor districts as in rich

ones, with the amount of subsidy a candidate receives depending solely on the willingness of citizens to register their support. Since the registration of financial support would not necessitate the donor to risk personal funds in order to support a new candidate, challengers should have an easier time raising seed money and running vigorous campaigns. As a result, challengers might be less dependent on their own personal wealth to launch a campaign.

A voucher system would occasion little disruption of existing election practices because parties, committees, and all other political organizations could receive vouchers the way they currently receive cash contributions. ~~the system~~ Vouchers have the potential to involve a large number of citizens in the campaign process because they create an incentive for candidates to solicit all citizens; urban and rural, rich and poor.

The administrative costs of a voucher system might be substantial. The greater the value of each voucher, and the larger the number of vouchers, the greater becomes the margin within which an illegal purchase of vouchers could be profitably conducted. This tendency could be countered by monitorization and enforcement procedures which raise the administrative cost of the program. A possible solution is to provide a low cash value for each voucher. However, if the value is too low the system will not be capable of providing a more equitable distribution of campaign funds.

Another criticism of vouchers is the possibility of improper influence in the collection of vouchers. Organizations such as labor unions and religious groups might exercise undue influence over their memberships with the result that the candidates might find themselves even more subjected to special interests. However, this problem is similar to that posed from those same groups pressuring their memberships into voting or contributing to particular candidates. At least, the vouchers would provide countervailing financial power to unorganized voters.

There is no empirical data on which a voucher system can be evaluated. Perhaps the only way to determine if vouchers are subject to abuse would be to try a voucher system on a trial basis. A trial system might be designed to apply to a limited number of election districts or to a limited number of elections, and the data gained from these experiments could be used to determine the desirability of a voucher system.

I. REQUEST

Bill/Resolution No.: CS HB 89 (FIN)  
Title: Repeal political contributions. tax cre  
Sponsor: Bettisworth  
Requestor: House Finance

II. FISCAL DETAIL

Agency Affected: Revenue  
Program Category Affected: Rev. Coll & Mot  
BRU, Program of Subprogram(s) Affected: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING						
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		(250 0)	(2,500 0)			
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Mary Relief  
Division: Commissioner's Office  
Approved by Commissioner: Joseph D. ...  
Department: Revenue

Phone: 465-2300  
Date: 3/16/83  
Date: 3/15/83

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor

HB

106

(d) Votes required to be conducted under (c) of this section may be conducted by teleconference. (§ 1 ch 170 SLA 1980)

**Cross references.** — For the 1980 special appropriation to the reserve for emergency operating expenses account, see Chapter 171, SLA 1980, in the Temporary and Special Acts binder.

#### Article 4. Uniform Purchasing.

##### Section

230. Competitive bids

240. Award of contracts and purchases

**Sec. 37.05.230. Competitive bids.** In the manner provided in AS 37.05.010 — 37.05.330 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 non-resident bidder's; and (C) competitive bids need not be required (i) 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 \$5,000, 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 limit the solicitation of bids or 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 \$5,000 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 AS 37.05.240; small purchases of less than \$500 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 14.09.010; 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,

(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 35.15.010 — 35.15.120, or the Department of Highways, which are authorized under AS 19.10.010 — 19.10.280;

(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;

(9) the provisions of this section relative to competitive bids do not apply to the purchase of products or services provided by the correctional industries program established under AS 33.32;

(10) requests for and acceptance of bids or other proposals for professional services shall comply with AS 24.23 or AS 36.98. (§ 3 art IV ch

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2 ch 194 S  
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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; am Executive Order No. 39, § 11 (1977); am § 5 ch 53 SLA 1982; am §§ 6 — 8 ch 144 SLA 1982)

**Revisor's notes.** — The reference to AS 14.09.010 in paragraph (4) was originally a reference to AS 14.10.070. Chapter 98, SLA 1966 revised Title 14 and the substance of AS 14.10.070 became AS 14.09.010.

**Effect of amendments.** — The first 1982 amendment, effective July 1, 1982, added paragraph (9).

The second 1982 amendment, effective July 22, 1982, in paragraph (2), substituted "\$5,000" for "\$2,500" near the

beginning and inserted "limit the solicitation of bids or" near the end. The amendment also substituted "\$5,000" for "\$2,500" and "\$500" for "\$300" in paragraph (3) and added paragraph (10).

**Editor's notes.** — As enacted, paragraph (9) contained a reference to AS 33.30.463 — 33.30.490. These provisions, however, were renumbered by the revisor of statutes pursuant to AS 01.05.031 and the reference in paragraph (9) was changed accordingly.

#### NOTES TO DECISIONS

**Notice requirements.** — This section makes no requirement for notice by special delivery, registered or certified mail. State ex rel. Department of Administration v. Bowers Office Prods., Inc., Sup. Ct. Op. No. 2244 (File No. 4792), 621 P.2d 11 (1980).

**Amendments to bid invitations.** — Using regular mail to send an amendment to an invitation for bids is a proper procedure for notifying known bidders. State ex rel. Department of Administration v. Bowers Office Prods., Inc., Sup. Ct. Op. No. 2244 (File No. 4792), 621 P.2d 11 (1980).

**Judicial review of agency actions of rejecting a bid for failing to return an**

amendment should extend only to whether there was a reasonable basis for the agency to decide that the bid in question was nonresponsive. State ex rel. Department of Administration v. Bowers Office Prods., Inc., Sup. Ct. Op. No. 2244 (File No. 4792), 621 P.2d 11 (1980).

The department had a reasonable basis to determine that a defect in a bid was material and that the bid was nonresponsive when the bidder failed to acknowledge receipt of amendments. State ex rel. Department of Administration v. Bowers Office Prods., Inc., Sup. Ct. Op. No. 2244 (File No. 4792), 621 P.2d 11 (1980).

**Sec. 37.05.240. Award of contracts and purchases.** (a) Except as otherwise provided in AS 37.05.230, 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. The department shall determine the responsibility of the bidder based upon the bidder's (1) adherence to the bid specifications, (2) proposed terms of delivery, (3) compliance with state laws, (4) performance record, (5) financial capability, and (6) compliance with conditions imposed in the solicitation for bids. The purchasing agent may cancel the solicitation for bids before the award upon a written finding which specifies the relevant facts that it is in the state's best interest. However, if the purchasing agent makes the contract or purchase after the solicitation for bids is cancelled, the purchase or contract shall be made in accordance with AS 37.05.230(2). 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

# ALASKA STATE LEGISLATURE

SENATE STATE AFFAIRS COMMITTEE

SENATOR VIC FISCHER, CHAIRMAN

POUCH V, JUNEAU 99811

(907) 465-4954



## MEMORANDUM

TO: Committee Members  
FROM: Senator Vic Fischer *Vic*  
DATE: May 20, 1983  
SUBJ: HB 106--Alaska bidder's preference

As you will recall, last Thursday the committee passed out a committee substitute for HB 106, relating to the Alaska bidder's preference. The committee substitute dealt with the problem of joint ventures resulting from the Irby case but deleted all of the original bill language dealing with a change in the percentage of preference for qualified Alaska bidders. It was the consensus of the committee that the latter issue would be better dealt with in a separate State Affairs bill.

I would appreciate it if you could be thinking about the best legislative approach to this problem. For your convenience, I have attached an early draft of the committee substitute for HB 106 which reflects my most recent thinking on the issue; i.e. increased protection and encouragement of small and minority businesses in particular. I have also attached a list of potential options and a copy of the current statute.

Please feel free to contact me or David Dye of my staff on this matter. David is also available to work with your staff.

Attachments

## Sectional Analysis SCSHB 106 (SA)

### Section 1

Adds a purpose section to the Alaska bidder's preference law. Legal counsel has advised that this will help to shield this law from constitutional attack based on equal protection (see legal opinion of Richard Folta, Legislative Counsel).

### Section 2

Amends AS.37.05.230(1)(B) to give qualified Alaska bidders a 15% preference on contract bids of less than \$100,000. Contract bids over \$100,000 have a 5% preference.

### Section 3

Requires that all members of a joint venture qualify individually under the state if the joint venture is to receive the bidder's preference.

### Section 4

Under current law, contracts of DOT/PF over \$5,000 are exempt from the bidder's preference. This section amends the law to exempt all DOT/PF contracts over \$100,000 from the bidder's preference but applies the 15% preference to contracts under \$100,000 unless such a preference would result in the loss of federal funds.

SCSHB 106

Winner:

<u>Non Resident Bid</u>	<u>Alaskan Bid</u>	<u>15%-\$100,000 Bid 5% Thereafter</u>	<u>15%-100,000 Contract 5% Thereafter</u>
\$50,000.00	\$57,500.00	Alaskan	Alaskan
\$86,956.52	\$100,00.00	Alaskan	Alaskan
\$90,000.00	\$100,000.00	Alaskan	Alaskan
\$90,000.00	\$101,000.00	Alaskan	Non Resident
\$100,000.00	\$115,000.00	Alaskan	Non Resident
\$100,001.00	\$105,100.00	Non Resident	Non Resident

RLS/dlr  
6/0516-02/6GSS2

SENATE AMENDMENT #1

~~ST~~ (51)

By SENATOR VIC FISCHER

To: \_\_\_\_\_ SENATE BILL No. SENATE CS HB 106 (State Aff.)

To: \_\_\_\_\_ HOUSE BILL No. SCS HB 106 (State Affairs)

PAGE: 1 LINE: 14

after "participant" strike "using state funds"

Sec. 37.05.225. PURPOSE. The legislature finds that there exists in the state continuing high unemployment, underutilization of resident construction and supply firms, and high costs unfavorable to the welfare of Alaskans and to the economic health of the state. The purpose of bidder preference for resident firms when the state acts as a market participant ( using state funds ) is to encourage local industry, strengthen and stabilize the economy, decrease unemployment, and enhance the tax and revenue base of the state.

*VF offered this + it passed - maybe this should go in committee file?*

STATE OF ALASKA  
FISCAL NOTE

Revision Date: \_\_\_\_\_, 198

I. REQUEST

Bill/Resolution No.: SCS HB 106  
 Title: An Act Relating to Bidder Proced.  
 Sponsor: Ward et al  
 Requestor: Senate State Affairs

II. FISCAL DETAIL

Agency Affected: Administration  
 Program Category Affected: Gen Admin Svcs  
 BRU, Program of Subprogram(s) Affected:  
General Services & Supply

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES	0					
200 TRAVEL	0					
300 CONTRACTUAL	0					
400 COMMODITIES	0					
500 EQUIPMENT	0					
600 LAND & STRUCTURES	0					
700 GRANTS, CLAIMS, ETC	0					
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

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

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Bob Link  
 Division: General Services & Supply

Phone: 465-2250  
 Date: May 24, 1983

Approved by Commissioner: Lisa Rudd  
 Department: ADMINISTRATION

Date: May 24, 1983

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3/8/83

ALASKA BIDDER'S PREFERENCE OPTIONS

(pick one from each column)

% Preference

- 1) 5%
- 2) 10%
- 3) 15%
- 4) (or any other figure)

Applied to:

- 1) contracts of any amount
- 2) only contracts under a certain amount (e.g. \$100,000)
- 3) only to contracts over a certain amount
- 4) combination of 2 and 3 above with different percentage preferences

Agency exemption:

- 1) exemption for DOT/PF contracts
- 2) exemption for APA contracts
- 3) exemption for only construction contracts of DOT/PF
- 4) exemption for only construction contracts of APA
- 5) combination of 1 & 2 or 3 & 4 above
- 6) no exemption for any agency

# Alaska Bidders Preference Options

## % Preference

5%

10%

15%

(or any ~~other~~ figure)



SKILL  
RESPONSIBILITY  
INTEGRITY

THE ALASKA CHAPTER  
**ASSOCIATED GENERAL CONTRACTORS  
OF AMERICA, INC.**

BOX 4-2500 • ANCHORAGE, ALASKA 98509  
TELEPHONE (907) 276-5354  
TELEX 25-394



3201 SPENARD ROAD  
ANCHORAGE  
RICHARD M. PITTENGER  
MANAGER

SENATE STATE AFFAIRS COMMITTEE

May 17, 1983

HB 106

Thank you Mr. Chairman. My name is Resa King and I represent the Alaska Chapter of the Associated General Contractors of America. Our Chapter consists of approximately 850 construction and construction related firms engaged in Alaska construction. On behalf of this membership, I have been instructed to inform you that the Chapter opposes HB 106 which proposes raising the "local preference" percentage, contained in AS 37.05.230, from 5% to 15%. Primarily AGC opposes any local preference for the construction industry including the existing 5% preference. AGC's opposition is founded on both practical and philosophical considerations.

From a practical perspective, a preference for local contractors:

- increases the uncertainty in the bidding process
- increases the cost to the owner
- increases construction bidding requirements
- increases the potential for litigation
- and delays the awarding of projects

Further, there is a strong likelihood that such a scheme is unconstitutional.

From a philosophical perspective AGC opposes the increasing regulation by government of the construction industry; consistency

requires AGC not to seek special regulatory favor. Further, a "local preference" does not appear to be consistent with the competitive free market system.

The existing statute does not apply to the Department of Transportation, the statute does apply to the Alaska Power Authority and the University of Alaska projects. Both of these state agencies have experienced law suits, and some have had to go all the way to the Supreme Court before the bid could be let. Since these projects have been fraught with litigation and uncertainty neither the contractor nor the public wins.

Thank you for your time. I will attempt to answer any questions that you or the Committee members may have.

STATE OF ALASKA  
FISCAL NOTE

Revision Date: \_\_\_\_\_, 1983

I. REQUEST

Bill/Resolution No.: SCS HB 106  
 Title: An Act Relating to Bidder Proced.  
 Sponsor: Ward et al  
 Requestor: Senate State Affairs

II. FISCAL DETAIL

Agency Affected: Administration  
 Program Category Affected: Gen Admin Svcs  
 BRU, Program of Subprogram(s) Affected: General Services & Supply

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES	0					
200 TRAVEL	0					
300 CONTRACTUAL	0					
400 COMMODITIES	0	25	25	25	25	25
500 EQUIPMENT	0	25	25	25	25	25
600 LAND & STRUCTURES	0					
700 GRANTS, CLAIMS, ETC	0					
TOTAL OPERATING	0	50	50	50	50	50
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		50	50	50	50	50
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

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

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Bob Link  
 Division: General Services & Supply

Phone: 465-2250  
 Date: May 16, 1983

Approved by Commissioner: Lisa Rudd  
 Department: ADMINISTRATION

Date: May 16, 1983

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3/8/83

IV. ANALYSIS:

Senate Bill SCS HB 106  
Date: May 16, 1983

The only quantifiable costs associated with this bill are the impact on agency operating budgets for commodities and non-professional services, which would have occurred if the bill passed last year. The larger and more unquantifiable costs would be due to reduced competition as out-of-state firms are driven out of the Alaskan market.

This cost estimate does not include effects on contracts for travel or professional services which are not effected by this Act. No estimate has been made of effects on the Alaska Power Authority or the Department of Transportation and Public Facilities.

The State already spends a majority of its commodity and non-professional dollars with Alaskan vendors.



ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY

Pouch Y, State Capitol  
Juneau, Alaska 99811  
(907) 465-3991

May 5, 1983

MEMORANDUM

TO: Representative Barbara Lacher  
Attention: Sarah Robinson

FROM: David Teal *Teal*  
Research Staff

RE: Alaska Bidders' Preference  
Research Request 83-130

You asked for information on the bidding process used by the Alaska Power Authority (APA) for the Anchorage-Fairbanks electrical intertie. Sarah Robinson, of your staff, called to modify the request after the Alaska Superior Court ruled that a bid submitted by a joint venture was not entitled to Alaska's five percent resident bidders preference unless all the parties to the joint venture individually qualify for preferential treatment. Sarah limited the scope of the research to an exploration of the potential effects of legislation designed to put the Superior Court decision into law. This memorandum discusses several points related to the bidders preference statute.<sup>1</sup>

Clarity of the Law

Current statutory language concerning eligibility for the resident bidders preference is clear except in the case of joint ventures. The APA has interpreted the language in a way that grants the preference to joint ventures as long as at least one of the partners is eligible for the preference. As you know, the Superior Court ruled on April 1 that this interpretation was incorrect and the Alaska Supreme Court reversed the decision of the Superior Court on April 29. Given the latest legal ruling, your interest in implementing the ruling of the Superior Court can be accomplished only by revising the law to clarify this intent.

---

<sup>1</sup>The relevant language is found in AS 37.05.230.

Representative Lacher  
May 5, 1983  
Page 2

### Practical Application of the Law

Executive-branch contracts for professional services and for procurement of materials go through the Department of Administration. The Division of General Services and Supply handles the bidding process for all contracts which go to bid. Vince Isturis, from that Division, said that joint ventures are rare and that Alaska firms are very competitive even without the five percent preference. He supplied the attached statistical report which shows that the bidders preference altered the outcome of the bidding process in only 2.97 percent of the bid awards in FY 1982.

Contracts for construction of most State facilities are handled by the Department of Transportation and Public Facilities (DOT/PF). According to AS 37.05.230(7), the bidders preference rules do not apply to DOT/PF contracts which are estimated to exceed \$5,000. Assistant Attorney General Don McClintock ascribes the exemption to 1) use of federal funds in many projects and 2) former Governor Keith Miller's opinion that local construction firms already enjoy a natural competitive advantage because of their closer proximity to the job.

I spoke with representatives of the University of Alaska, the Legislature, the Court system and the Alaska Power Authority to determine if other state-level public entities apply the resident bidders preference. The University and the APA apply the bidders preference to all contracts, and the court system applies the preference to procurement contracts.

According to Gerald Dubie, manager of materiel operations for the court system, the Judicial branch has used standard forms obtained from DOT/PF for Court system construction contracts. As mentioned above, DOT/PF is exempt from the bidders preference on major construction contracts. The result of using DOT/PF forms is that language related to bidders preference has been omitted from bid requests issued by the Court system.

Myrt Charney, Executive Director of the Legislative Affairs Agency, said that the agency does not necessarily accept the low bid and that no preference is given to Alaska firms. He added that most, if not all, construction projects have been awarded to Alaska firms despite the lack of bidders preference.

### Supreme Court Interpretation of the Law

The Supreme Court's interpretation of the bidders preference statute is the broadest possible reading of the law. Page 11 of the Court's ruling points out that the only means by which the legislative purpose of

Representative Lacher  
May 5, 1983  
Page 3

giving a preference to an Alaska business can be fulfilled when an eligible Alaska business enters a joint venture with an ineligible firm is to grant the preference to the joint venture. The Supreme Court did not rule on whether or not granting preference to Alaska businesses is a constitutional purpose or whether or not the statute is reasonably related to that purpose. However, Justice Rabinowitz and Chief Justice Burke joined in a concurring opinion which stated that the bidders preference is clearly unconstitutional as written.

### Constitutional Challenge

The constitutional challenge to the bidders preference legislation is serious. The obvious intent of the legislation is to provide favorable treatment on the basis of residency; under Alaska's constitution, that purpose may not be legitimate. According to Assistant Attorney General Don McClintock, a constitutional challenge has been set up and awaits only a firm willing to litigate.

### Ways to Reduce Vulnerability to Legal Challenge

Assistant Attorney General Don McClintock suggested several means of reducing the probability that the bidders preference statute would be challenged in court. He said that the sentiment expressed in the concurring opinion which accompanied the recent Supreme Court ruling might be softened somewhat if a preamble which specified intended results were inserted into statute. Mr. McClintock said that favorable treatment based on place of residence is not a legitimate purpose of legislation, but goals such as impact on employment, standard of living, or the general health of the state economy are consistent with the current statutory language and may be less vulnerable to legal challenge.

Mr. McClintock added that demonstrating a need for the bidders preference and providing evidence that the legislation accomplishes its intent might also reduce the probability of legal challenge and may increase the probability that the bidders preference statute could withstand a legal challenge. Ms. Astrid de Parry, legal counsel for

Representative Lacher

May 5, 1983

Page 4

the University of Alaska, suggested that laws or regulations which define actions necessary to establish a "place of business" in Alaska might also help avoid legal challenges.<sup>2</sup>

#### Actions that may Increase Vulnerability to Legal Challenge

Dave Eberle, project manager for the APA, and Assistant Attorney General Don McClintock concur that increasing the bidders preference to 15 percent will intensify an already controversial situation. A 15 percent preference might so severely offset profit margins that firms would be forced to set up "shell" offices in Alaska if they expect to win contract awards. Legal disputes over the "place of business" requirement could be expected, and the larger preference could also increase the probability of a challenge on constitutional grounds due to the increased chance that the preference statute would affect the outcome of contract awards.

Mr. Eberle also noted that larger contracts might also increase the legal vulnerability of the bidders preference statute. Larger contracts not only increase the chances that firms will respond as joint ventures, they also increase the probability that a contract award would be worth the expense of a legal challenge. The APA is particularly concerned about contract size because they anticipate putting several multi-million dollar contracts to bid in the next decade.

Revising the law to comply with the more restrictive interpretation of the Superior Court might also increase the vulnerability of the bidders preference to a challenge on constitutional grounds. As Don McClintock points out, more restrictive language would increase the chances that the preference would influence the outcome of contract awards. Justices Rabinowitz and Burke of the Supreme Court have warned that even the liberal interpretation by that court is open to constitutional challenge.

---

<sup>2</sup>The University of Alaska is currently involved in a dispute over eligibility for the five percent bidders preference. The apparent low bidder on a construction project did not meet the "normal" requirements for establishing a place of business in Alaska yet claimed to be eligible for the bidders preference. I can provide more details on this subject if you wish, but you may wish to speak directly with Astrid de Parry. Her phone number is 474-7259.

### Cost of the Bidders Preference Statute

It may appear that the cost to the State of the bidders preference is directly related to the amount of the bidders preference. That is, it may seem that a five percent bidders preference costs the State five percent on all contracts and that increasing the preference to 15 percent would triple the cost of preference legislation. The intertie contracts awarded by the APA can be used to demonstrate two points: 1) not all contracts are affected by the bidders preference and 2) even those contracts which are affected by the bidders preference do not cost the State the full five percent which is allowed by law.

There have been 9 procurement contracts awarded for the intertie project. For 6 of the contracts, Alaska firms submitted the low bid so that no bidders preference was involved. One contract went to an out-of-state firm even after application of the bidders preference, and the two remaining contracts were awarded to Alaska firms that beat the manufacturers' bids by virtue of the 5 percent preference. In these cases, the State received the identical product but paid a fee to Alaska firms which then obtained the products from the manufacturer.

In making a contract award for a conductor, the APA paid an additional \$60,000 because the low bidder did not qualify for Alaska's five percent bidders preference. According to Joe Perkins, of the APA, the contract award for the conductor was \$4.56 million. The \$60,000 "premium" paid to the Alaska supplier represents less than .5 percent of the value of the contract. A full 5 percent would have cost the State \$225,000.

Through April of 1983, the total value of procurement contract awards for the intertie was \$19,461,808. The portion of these awards attributable to the bidders preference is \$76,208, or .4 percent of the total contract awards. The Tye project shows similar results; procurement contract awards total \$10,282,600, of which \$40,271 (.4 percent) is attributable to the bidders preference. Bidders preference did not affect any construction awards for either project.

The attached statistical report of the Division of General Services and Supplies shows similar results. As mentioned earlier in this memorandum, the statistical report shows that the bidders preference affected the outcome of contract awards in less than three percent of contracts awarded in FY 1982. The amount attributable to bidders preference was \$22,754, or .5 percent of the \$4.88 million value of contracts awarded in FY 1982.

Representative Lacher

May 5, 1983

Page 6

### Potential Impact of the Bidders Preference

You asked what questions might be raised in analyzing a revision of the preference legislation so that it would comply with the Superior Court's interpretation of existing statutes. Although the following questions haven't been fully explored, you may wish to consider them in your deliberation of this issue.

Would a more restrictive interpretation than that of the Supreme Court encourage the growth of small Alaska firms or would it eliminate them from the bidding process because of their inability to handle large contracts? Do joint ventures with larger out-of-state firms provide an opportunity for growth of the smaller Alaska firms or do they simply give the larger firms a cost advantage in the bidding process? Would out-of-state firms cut profit margins in order to obtain work in Alaska and to establish bidders preference on future contracts? Would out-of-state firms establish "shell" offices in Alaska in order to qualify for the bidders preference? What is the best definition of an Alaska firm? Do the benefits of preference legislation outweigh the costs? Are there better ways of accomplishing the desired result?

The questions are especially relevant because of the large-scale projects planned for Alaska and the simultaneous world-wide recession. Alaska has become an attractive market for both manufacturers and construction companies. The APA pointed out that Kanematso-Gosho and other Japanese and Korean trading companies will qualify for the Alaska bidders preference on future contracts. They foresee the day that Alcoa or some other American company which does not qualify for the Alaska bidders preference (but otherwise has the low bid) will lose a contract to a foreign company which qualifies for the preference by virtue of an agent acting in its behalf.

### Additional Information

The attached article from the Colorado Law Review discusses preference laws enacted by various states. Although the tone of the article is negative, I believe the information will be useful to you. I have also attached portions of legal briefs for preference legislation which has been upheld by State Courts in Wyoming and Arizona. The Washington statutes have also been upheld by State Courts, but I was unable to obtain a copy of the brief for attachment to this memorandum.

I was also unable to find any reference to the U.S. Supreme Court and its treatment of bidders preference legislation in New Mexico. The Department of Law performed a thorough search of decisions and is fairly

Representative Lacher

May 5, 1983

Page 7

certain that the U.S. Supreme Court has not ruled on any state bidders preference legislation. Don McClintock also pointed out that court decisions on other states' statutes do not have a direct impact on Alaska's ruling because Alaska has a relatively stringent equal protection clause and because the statutory language varies from state to state.

\* \* \*

I hope you find this information useful. If you have additional questions or would like additional material, please contact the agency.

DT

Attachments

# MEMORANDUM

# State of Alaska

TO: George Elgee  
 Director  
 Division of General Services & Supply  
 Department of Administration

DATE: August 5, 1982

FILE NO:

TELEPHONE NO: 465-2250

THRU: Bob Link  
 FROM:

SUBJECT:

Robert L. Schofield  
 Purchasing and Facility Manager  
 Division of General Services & Supply  
 Department of Administration

FY 82 Purchasing  
 Action

The following is a statistical report of business transacted by your Purchasing Section in Juneau and Anchorage. It is more comprehensive and covers fiscal year 1982, July 1, 1981 to June 30, 1982.

## PURCHASE REQUISITIONS RECEIVED DURING FY 82

	<u>TOTAL P.R.'s</u>	<u>TOTAL LINE ITEMS</u>
01 Governor	58	96
02 Administration	185	486
03 Law	46	74
04 Revenue	25	56
05 Education	102	1,835
06 Health and Social Services	548	10,569
07 Labor	95	151
08 Commerce and Economic Development	53	92
09 Military Affairs	35	46
10 Natural Resources	187	459
11 Fish and Game	351	1,197
12 Public Safety	177	387
18 Environmental Conservation	59	137
21 Community and Regional Affairs	27	38
25 DOT/PF	447	1,004
30 Ombudsman	0	0
31 Legislative Council	1	1
33 Legislative Audit	1	1
41 Alaska Court System	15	15
TOTALS -	2,412	16,644

As a result of the above, the following bids (formal and informal) and negotiation were accomplished.

BIDS PUBLISHED FY 82

	FORMAL	INFORMAL	NEG
JULY	22	1	27
AUGUST	22	0	50
SEPTEMBER	26	0	54
OCTOBER	26	0	63
NOVEMBER	35	16	31
DECEMBER	34	13	19
JANUARY	39	0	30
FEBRUARY	27	0	24
MARCH	38	0	75
APRIL	35	0	72
MAY	29	0	35
JUNE	33	0	66
TOTALS -	366	30	546

TOTAL ANCHORAGE AND JUNEAU - 942

Subsequent to the above, purchase orders were issued as follows:

- (1) Total number of PURCHASE ORDERS issued to IN-STATE vendors -  
TOTAL - 1002
- (2) Total DOLLAR VALUE of PURCHASE ORDERS issued to IN-STATE vendors -  
TOTAL - \$ 24,372,083.25
- (3) Total number of PURCHASE ORDERS issued to OUT-OF-STATE vendors -  
TOTAL - 406
- (4) Total DOLLAR VALUE of PURCHASE ORDERS issued to OUT-OF-STATE vendors -  
TOTAL - \$ 9,993,085.68
- (5) Total COST of AWARDS made as a direct result of 5% BIDDERS PREFERENCE LAW-  
TOTAL - \$ 22,753.79

This amount is the result of 28 separate awards of which 4 awards were responsible for \$ 17,946.35. Balance of \$ 4,807.44 resulted from the remaining 24 awards, 24 of which were for less than \$ 1,000. The awards based on the 5% bid preference generated \$ 4,789,672.91 in in-state business.

The 5% preference made the difference in only 2.97% of the bid awards for FY 82, again emphasizing the highly competitive nature of the Alaskan vendor.

PURCHASE ORDERS ISSUED TO MAJOR STATE METROPOLITAN AREAS - FY 82

Anchorage	-	782 PO's	=	\$ 18,569,441.81
Fairbanks	-	32 PO's	=	\$ 317,594.53
Juneau	-	<u>127 PO's</u>	=	<u>\$ 4,732,420.19</u>
SUB-TOTAL	-	941 PO's		\$ 23,619,456.53
Other Areas	-	<u>61 PO's</u>	=	<u>\$ 752,626.72</u>
TOTAL	-	1,002 PO's		\$ 24,372,083.25

The Purchasing Section issued the following term contract awards, many of which have estimated values.

CONTRACT AWARDS ISSUED DURING FY 82NO. OF CONTRACT AWARDSDOLLAR VALUE

TOTAL - 658

TOTAL - \$ 65,241,064.46

Of 658 contract awards, 485 were issued to Alaskan firms for a total dollar volume of \$ 42,936,690.70.

As an overview, \$ 94,411,900.58 or 75% of the \$ 125,098,474.00 spent during FY 82 was spent with Alaskan vendors.

JM/je  
5/0805-05/GSS1

FIVE PERCENT BID PREFERENCE ANALYSIS  
FISCAL 82

\$ 212.00	July	Anchorage	0	\$ 123.00	January	Anchorage	0
		Juneau	1			Juneau	1
\$ 1,396.50	August	Anchorage	1	\$ 2,735.00	February	Anchorage	1
		Juneau	2			Juneau	0
\$ 87.80	September	Anchorage	0	\$ 335.42	March	Anchorage	1
		Juneau	2			Juneau	3
\$ 1,067.94	October	Anchorage	2	\$13,007.35	April	Anchorage	1
		Juneau	2			Juneau	2
\$ 541.50	November	Anchorage	1		May	Anchorage	0
		Juneau	3			Juneau	0
\$ 2,539.00	December	Anchorage	1	\$ 708.28	June	Anchorage	1
		Juneau	1			Juneau	2

Awarded Alaskan Bidders: TOTAL - \$ 4,789,672.91

5% Bid Preference: TOTAL - \$ 22,753.79

GRAND TOTAL DOLLAR VOLUME - \$ 4,883,543.22

JM/je  
5/0805-04/GSS1

IN-STATE AND OUT-OF-STATE PURCHASES  
MADE FOR DEPARTMENTS

	<u>Non-Alaska Vendors</u>		<u>Alaska Vendors</u>		<u>Total</u>	
	<u>No. POs</u>	<u>Amount</u>	<u>No. POs</u>	<u>Amount</u>	<u>No. POs</u>	<u>Amount</u>
01 Governor	5	\$ 80,659.00	21	\$ 132,884.25	26	\$ 213,543.25
02 Administration	55	990,176.19	57	1,278,795.93	112	2,268,972.12
03 Law	0	0	9	100,227.32	9	100,227.32
04 Revenue	6	51,927.00	5	28,608.58	11	80,535.58
05 Education	27	254,491.71	76	423,534.98	103	678,026.69
06 Health & Social Services	93	368,353.14	464	1,629,278.39	557	1,997,631.53
07 Labor	6	104,212.80	48	228,919.87	54	333,132.67
08 Commerce & Econ. Develop.	4	144,383.15	15	43,203.34	19	187,586.49
09 Military Affairs	1	29,500.00	4	65,875.00	5	95,375.00
10 Natural Resources	30	1,456,718.38	43	563,935.52	73	2,020,653.90
11 Fish and Game	74	1,139,170.38	83	568,253.72	157	1,707,424.10
12 Public Safety	23	932,043.70	51	978,450.92	74	1,910,494.62
18 Environmental Conserv.	7	94,645.50	6	31,930.29	13	126,575.79
21 Community & Reg'l Affairs	0	0	7	18,645.37	7	18,645.37
25 Transportation	74	4,234,034.18	150	17,561,245.72	224	21,795,279.90
31 Legislative Affairs	<u>0</u>	<u>0</u>	<u>2</u>	<u>1,875.75</u>	<u>1</u>	<u>1,875.75</u>
Total -	405	9,880,315.13	1,041	23,655,664.94	1,445	33,535,980.00

FY'82

BREAKDOWN OF \$ AMOUNT OF PO'S:

	<u>How many PO's</u>	<u>\$ Amount</u>
0 - \$2,500	461	\$ 435,938.89
2,501 - 5,000	314	1,147,920.43
5,001 - 10,000	270	1,931,161.80
10,001 - 25,000	200	3,214,251.55
25,001 - 50,000	88	3,083,589.41
50,001 - 100,000	46	4,107,297.75
over \$100,000	55	20,445,009.10
	<u>1,434</u>	<u>\$34,365,168.93</u>

SUMMARY CHART - FISCAL YEAR 81 vs FISCAL YEAR 82

PURCHASING SECTION ACTIVITY

<u>DOCUMENTS PROCESSED</u>	<u>NUMBER RECEIVED &amp; ISSUED</u>		<u>AVERAGE TRANSACTION TIME</u>		<u>AVERAGE - P.A. PER MONTH</u>	
	<u>FY-81 TOTAL</u>	<u>FY-82 TOTAL</u>	<u>FY-81 TOTAL</u>	<u>FY-82 TOTAL</u>	<u>FY-81 TOTAL</u>	<u>FY-82 TOTAL</u>
PURCHASE REQUISITION	2,445	2,412	21.83			
INVITATION TO BID	1,212	942	10.82			
PURCHASE ORDER	1,879	1,434	16.78		255,954.29	
CONTRACT AWARD	515	658	4.60		319,911.38	
LEASE	19	100	1.06		24,483.19	

CONTRACT AWARDS

	<u>NO. ISSUED</u>		<u>TOTAL VALUE</u>	
	<u>FY-81 TOTAL</u>	<u>FY-82 TOTAL</u>	<u>FY-81 TOTAL</u>	<u>FY-82 TOTAL</u>
ISSUED TO ALASKAN FIRMS	428	485	\$27,133,849.97	\$44,547,576.71
ISSUED TO OUT-OF-STATE FIRMS	37	173	8,696,224.65	20,693,487.75
TOTAL	<u>515</u>	<u>658</u>	<u>\$35,830,074.62</u>	<u>\$65,241,064.46</u>

PURCHASE ORDERS

	<u>NO. ISSUED</u>		<u>TOTAL VALUE</u>	
	<u>FY-81 TOTAL</u>	<u>FY-82 TOTAL</u>	<u>FY-81 TOTAL</u>	<u>FY-82 TOTAL</u>
ISSUED TO ALASKAN FIRMS	1,272	1,002	\$17,875,744.67	\$24,372,083.25
ISSUED TO OUT-OF-STATE FIRMS	607	406	10,791,135.26	9,993,085.68
TOTAL	<u>1,879</u>	<u>1,408</u>	<u>\$28,666,879.93</u>	<u>\$34,365,168.93</u>

LEASES

	<u>FY-82 TOTAL</u>	<u>TOTAL VALUE</u>	<u>FY-82 TOTAL</u>
NO. LEASES ISSUED:	100		\$25,492,240.62

	<u>FISCAL 1981</u>	<u>FISCAL 1982</u>
GRAND TOTAL DOLLAR AMOUNT:	\$67,239,071.77	\$125,098,174.00

JM/dlr

COMMENT

IN-STATE PREFERENCES IN PUBLIC CONTRACTING: STATES' RIGHTS VERSUS ECONOMIC SECTIONALISM

Every state, either by statute or by administrative practice, extends some type of special preference to businesses operating within the state when awarding public contracts. The advantage may extend to those who build roads as well as to those who sell pencils to public schools. Although the type of preference granted varies among the states, there are several types which have been widely adopted. It may at first seem reasonable that a state would want to keep tax dollars inside the state by buying from local businesses, but preference laws may have a substantial adverse impact on businesses located in other states. Close analysis also suggest that even states which have in-state preference practices are not actually benefited. ?

In this effort to analyze and evaluate the validity and desirability of in-state preference laws, their scope and application will be examined first. An assessment then will be made of their overall effects, both on interstate commerce and on the economy of an individual state. In light of those findings, the constitutional validity of preference laws will be discussed in terms of the commerce clause, the fourteenth amendment, and the privileges and immunities clause. Finally, it will be determined whether congressional action could or should directly preempt such laws.

INTERSTATE VARIATIONS IN PREFERENCE LAWS

*Basic Classifications*

In-state preference laws can be divided into five general categories.<sup>1</sup> Perhaps the most controversial type of preference is known as a "percentage" preference. Under such a system, in-state bidders are given a specified advantage over those from other states in the award of public contracts. If, for example, the percentage preference were five percent, a business from out-of-state would have to bid at least five percent lower than any resident before it would be awarded

percent

1. The wide variety of preference laws could be categorized more narrowly or more broadly. For example, statutes which may impose burdens on non-resident contractors other than in bid evaluations, such as additional bonding or prequalification requirements, are not discussed in this Comment. See *Garden State Dairies of Vineland, Inc. v. Sills*, 46 N.J. 349, 217 A.2d 126 (1966), on remand, 98 N.J. Super. 109, 236 A.2d 176 (1967), *rev'd*, 53 N.J. 71, 248 A.2d 427 (1968).

the contract. At least twelve states,<sup>2</sup> Guam,<sup>3</sup> Puerto Rico,<sup>4</sup> and the Virgin Islands<sup>5</sup> have statutes providing for such preferences, and percentages range from two<sup>6</sup> to nineteen percent.<sup>7</sup> At present Hawaii has the most elaborate statute,<sup>8</sup> but a recently enacted New York law has the potential for even greater administrative complexity.<sup>9</sup>

*tie bid*

A second group of preference laws are known as "tie bid" preferences. Provided for by statute or administrative practice in at least twenty-eight states,<sup>10</sup> the "tie bid" is the most common type of preference. An in-state bidder is preferred only when its bid is the same as that of a non-resident. Statutes typically provide that quality also must be equal; but, for standardized products, meeting the minimum specifications is all that is normally required of the lowest bidder.

A third general type of in-state preference laws consists of those which are general preferences, with the size of the preference uncer-

2. ALA. CODE tit. 55, § 506 (Supp. 1973); ALASKA STAT. § 37.05.230 (1) (1976); ARIZ. REV. STAT. §§ 34-241, 242, 243 (1974); ARK. STAT. ANN. §§ 14-119, 14-6142 (Supp. 1977); HAW. REV. STAT. §§ 103-41 to 103-45, 103-53.5 (1968); IDAHO CODE § 60-103(b) (Supp. 1977); LA. REV. STAT. ANN. §§ 38:2251, 38:5255 (West 1968); MONT. REV. CODES ANN. §§ 82-1137 (1966), 82-1924 (Supp. 1975); N.M. STAT. ANN. §§ 6-5-32-A, B, and C (1974); N.Y. STATE FIN. LAW §§ 163-174 (McKinney Supp. 1977-78); W. VA. CODE § 5A-3-44 (Supp. 1977); WYO. STAT. §§ 9-664, 9-667, 9-669 (1957).

3. See COUNCIL OF STATE GOVERNMENTS, STATE AND LOCAL PURCHASING, Appendix A at 8 (1975).

4. P. R. LAWS ANN. tit. 3, § 918b (1965).

5. V. I. CODE ANN. tit. 31, § 236a(b) (1976).

6. E.g., W. VA. CODE § 5A-3-44 (Supp. 1977).

7. HAW. REV. STAT. §§ 103-41 to 43 (1976). Although the maximum preference under these sections is ten percent, Section 103-51 (1976) provides a fifteen percent preference for public printing. Finally, Section 103-53.5 requires that an extra four percent be added to the bids of all non-residents. The four percent addition is justified as an adjustment for a retail excise tax, but such a tax is not assessed in sales to the state. Thus, it appears that the total preference would be nineteen percent for printing, and fourteen percent for many other goods and services.

8. HAW. REV. STAT. §§ 103-41 to 48 (1976) award a preference of three to ten percent, depending on the proportion of manufacturing or production cost that was incurred in Hawaii. A state agency is required to compile a list of Hawaiian products fitting into the various categories, and it is distributed to all public procurement officials in the state.

9. N.Y. STATE FIN. LAW §§ 163-74 (McKinney Supp. 1976-77) provide that the New York State Job Retention Board shall examine "preferential bidding" forms to ensure that "a bidder has substantial economic ties with New York State and/or contributes heavily to the state's economy so that an informed determination can be made as to whether the award of a state contract to the lowest bidder is in the best interest of the state." *Id.* § 163-a. The forms require detailed information about items such as where the products are manufactured, employment of New York residents, and the amount of taxes paid in New York.

10. ALA. CODE tit. 55, §§ 502, 514 (Supp. 1973); ALASKA STAT. § 36.20.010 (1973); ARK. STAT. ANN. § 14-221 (1968); CAL. GOV'T CODE § 4331 (West 1966); COLO. REV. STAT. § 24-30-404(1) (1973); FLA. STAT. ANN. § 287.052 (West 1975); GA. CODE ANN. §§ 40-1903, 1920 (1975), 40-1954 (Supp. 1977); IDAHO CODE § 67-5718 (Supp. 1977); IOWA CODE ANN. § 73.2 (West 1973).

tain.<sup>11</sup> Depending on specific language and administrative interpretations, the preference could range from a tie bid preference to a relatively large percentage preference. Terms such as "comparable,"<sup>12</sup> "in the best interests of the state,"<sup>13</sup> and "as far as may be practicable"<sup>14</sup> are often used in these statutes.

A fourth category includes states with an "absolute" preference. Under these laws, certain classes of goods or services must be procured from within the state, sometimes with an exception in very narrow circumstances. Seven states require that some or all public printing be done within the state,<sup>15</sup> and at least thirteen insist that certain categories of public contractors' employees be in-state residents.<sup>16</sup>

*general*

*absolute*

KAN. STAT. § 75-3740 (1969); LA. REV. STAT. ANN. § 38:2184 (West 1968); ME. REV. STAT. tit. 5, § 1816.S (1964); MICH. STAT. ANN. § 3.395 (1977); MISS. CODE ANN. § 31-7-15 (1972); MO. ANN. STAT. §§ 34.070 (Vernon 1969), 71.140 (Vernon 1949); N.Y. STATE FIN. LAW § 168 (McKinney 1974); N.C. GEN. STAT. § 143-59 (Supp. 1975); N.D. CENT. CODE § 61-21-25 (Supp. 1977); OKLA. STAT. ANN. tit. 61, § 6 and 9 (West 1963); OR. REV. STAT. § 279.021 (1975); S.C. CODE § 1-25 (Supp. 1975); TEX. CIV. CODE ANN. tit. 604-2, § 1 (Vernon 1964); UTAH CODE ANN. § 63-2-50 (1968). Five states, Connecticut, Illinois, Indiana, Nebraska, and New Hampshire, reported that they had tie bid preferences in COUNCIL OF STATE GOVERNMENTS, STATE AND LOCAL PURCHASING Appendix A at A.1 to A.9 (1975). Even without statutory authority, such preferences could be created by administrative regulation or informal practices.

11. IOWA CODE ANN. §§ 18.6 (West Supp. 1977-78), 384.99 (1976); KY. REV. STAT. § 57.285 (Baldwin 1975); LA. REV. STAT. ANN. § 39.173 (West 1968); MASS. ANN. LAWS ch. 7, § 22(17) (Michie/Law Co-od 1973); MINN. STAT. ANN. § 16.34 (West 1977); MISS. CODE ANN. § 19-13-107 (1972); MO. ANN. STAT. § 8.280 (Vernon 1969); MONT. REV. CODES ANN. § 82-1920 (Supp. 1977); NEV. REV. STAT. § 333.160-2 (1973); N.J. STAT. ANN. § 52:25-23 (West Cum. Supp. 1977-78); N.Y. STATE FIN. LAW § 164.9 (McKinney Supp. 1976-77); N.D. CENT. CODE §§ 46-02-10 to 10.2 (1960); OKLA. STAT. ANN. tit. 74, § 85.5(7) (West 1965), tit. 74, § 85.3 (West Cum. Supp. 1977-78); S.C. CODE §§ 1-21, 22 (1962); S.D. COMPILED LAWS ANN. § 5-19-1 (1974); TENN. CODE ANN. §§ 12-348, 349 (Supp. 1977), 12.501 (1973); VT. STAT. ANN. tit. 29, § 903(a) (1970); VA. CODE § 2.1-284 (1973); WIS. STAT. ANN. § 16.75(1)(a) (West Cum. Supp. 1977-78); WYO. STAT. § 7-606 (1957); see also P.R. LAWS ANN. tit. 3, § 918a (1), (1965).

12. E.g., IOWA CODE ANN. § 18.6 (West Supp. 1977-78); MONT. REV. CODES ANN. § 82-1920 (1947).

13. E.g., IOWA CODE ANN. § 384.99 (West 1976); VT. STAT. ANN. tit. 29, § 903(a) (1970); see also N.Y. STATE FIN. LAW § 163-a (McKinney Supp. 1977-78) where such language was the justification for an addition to the statute which authorized as much as a 10% preference.

14. E.g., KY. REV. STAT. § 57.285 (Baldwin 1975); LA. REV. STAT. ANN. § 39.173 (West 1968); NEV. REV. STAT. § 333.160-2 (1973); VA. CODE § 2.1-292 (1973).

15. FLA. STAT. ANN. §§ 283.03, 287.102 (West 1975); IND. CODE ANN. § 4-13-4-8 (Burd 1974); MONT. REV. CODE ANN. § 16-1230 (1947); NEV. REV. STAT. § 268.070 (1975); N.J. STAT. ANN. § 52:30-3 (West 1955); OHIO REV. CODE ANN. § 125.56 (Page 1978); OR. REV. STAT. § 282.210(1) (1975).

16. ALASKA STAT. § 36.10.010 (1973); ARK. STAT. ANN. § 14-607 (1968); COLO. REV. STAT. § 43-2-208 (1973); CONN. GEN. STAT. ANN. §§ 31-52(a), 52a (1958); DEL. CODE tit. 29, § 6913 (1974); IOWA CODE ANN. § 73.3 (West Supp. 1977-78); LA. REV. STAT. ANN. § 38:2185 (West 1968); MISS. CODE ANN. §

Four states have absolute requirements that certain goods be procured from within the state.<sup>17</sup>

Finally, fourteen states have "reciprocal" in-state preference laws.<sup>18</sup> Clearly enacted in retaliation to preference practices in other states, these statutes only prefer residents against those from states with preference laws. As might be expected, the size of the preference is determined by that preference imposed against an out-of-state bidder in the non-resident's home state. For example, for a number of years Pennsylvania has had a statute which forbids *any* procurement from residents of states with "absolute" preference laws.<sup>19</sup> Its strict enforcement in the middle sixties is credited with the repeal of preference laws in several eastern states.<sup>20</sup>

*reciprocal*  
*interesting*  
*Foreign??*

### *Diversity in Application*

Even within each of the five basic categories discussed above there are broad variations in the scope and method of administration of in-state preference laws. While most preferences are mandatory,<sup>21</sup> a few may be invoked or disregarded at the option of the purchasing

31-5-17 (1972); N.D. CENT. CODE § 43-07-20 (Supp. 1977); S.D. COMPILED LAWS ANN. § 5-19-6 (1974); TEX. REV. CIV. STAT. ANN. art. 6674p, §1 (Vernon 1977); VT. STAT. ANN. tit. 19, § 27 (1968); WYO. STAT. § 9-680-3 (Supp. 1975).

17. ALASKA STAT. § 36.15.010 (1973) (timber and lumber products used in state-financed projects must be grown or produced in Alaska); N.M. STAT. ANN. § 6-6-5 (1953) (public works contractors must use materials from New Mexico unless there is evidence of price fixing); R.I. GEN. LAWS § 37-2-5 (1956) (food products grown in Rhode Island must be purchased for state institutions at prevailing market prices); S.D. COMPILED LAWS ANN. § 5-23-2 (1974) (all state purchasing or leases of motor vehicles must be from dealers licensed in the state).

18. ILL. ANN. STAT. ch. 127, § 132.0e (Smith-Hurd Supp. 1977); KAN. STAT. § 75-3740a (Supp. 1976); LA. REV. STAT. ANN. § 38:2221A (West Cum. Supp. 1977); MINN. STAT. ANN. § 16.365-1 (West 1977); MISS. CODE ANN. § 31-7-47 (1972); NEB. REV. STAT. § 73-101.01 (1943); N.D. CENT. CODE § 44-08-01 (Supp. 1977); OKLA. STAT. ANN. tit. 61, § 14 (West Cum. Supp. 1977-78), tit. 74, § 85.17 (West 1965); PA. STAT. ANN. tit. 71, § 203 (Purdon 1962); S.D. COMPILED LAWS ANN. § 5-19-3 (1974); VA. CODE § 11-20-1 (1973); WASH. REV. CODE ANN. § 39-16-005 (Supp. 1976); WIS. STAT. ANN. § 35-012 (West Supp. 1977-78); WYO. STAT. § 9-667 (1957).

19. PA. STAT. ANN. tit. 71 § 203 (Purdon 1962). It is ironic that a provision intended to discourage preference laws in other states might itself be challenged as unconstitutional. Although the constitutional issues are not directly under attack, the application of § 203 is being challenged in *Lutz Appellate Printers, Inc. v. Commonwealth of Pa. Dept. of Property and Supplies*, 370 A.2d 1210 (Pa. 1977) (affirming the denial of New Jersey printer's request for a preliminary injunction).

20. See COMMITTEE ON COMPETITION IN GOVERNMENTAL PURCHASING, REPORT TO THE NATIONAL ASSOCIATION OF STATE PURCHASING OFFICIALS: "The In-State Preference Story" (September 1966).

21. E.g., COLO. REV. STAT. § 24-30-404(1) (1973); NEB. REV. STAT. § 73-101.01 (1943).

or contracting official.<sup>22</sup> Others require that the residents request a preference before the bids are opened.<sup>23</sup>

Many preferences are extended to businesses which are residents of the state,<sup>24</sup> but an almost equal number apply only to products manufactured or produced, or services performed in the state.<sup>25</sup> Some extend to either or both. Definitions of residency and domestic production vary widely, and often reflect an effort to curb the ingenuity of those who seek to evade such laws.<sup>27</sup>

*resident vs. product*

Another important variable in the application of preference statutes involves the types of contracts or purchases subject to the in-state preference. Most laws apply only to contracts made through a state procurement official.<sup>28</sup> Many preference statutes, however, apply to all public contracts entered into by all levels of government.<sup>29</sup> A few statutes, on the other hand, apply only to very narrow categories of public procurement.<sup>30</sup>

#### THE EFFECT OF IN-STATE PREFERENCES

Assessment of the impact of in-state preference laws on interstate commerce and on the economies of individual states is a necessary prerequisite to the evaluation of their constitutionality and desirability. The task is complicated by the lack of data on the impact of such laws, as well as by the difficulty of determining the preference practices of local governments.

#### *Burden on Interstate Commerce*

Each time a contract is awarded to a resident because of an in-state preference, what otherwise would have been interstate com-

22. E.g., MD. ANN. CODE art. 41, § 31-1 (1957); N.Y. STATE FIN. LAW § 163-a (McKinney Supp. 1977-78).

23. E.g., ALA. STAT. ANN. § 14-119 (1968); N.Y. STATE FIN. LAW § 163-a (McKinney Supp. 1977-78).

24. E.g., COLO. REV. STAT. § 24-30-104(1) (1973); KAN. STAT. §§ 75-3740 (1969), 3740a (Supp. 1976); WYO. STAT. §§ 9-664 to 667 (1957).

25. E.g., FLA. STAT. ANN. § 287.082 (West 1975); WYO. STAT. § 9-669 (1957). For simplicity, the term "resident" will be used to refer to both types of preferences.

26. E.g., MONT. REV. CODES ANN. § 82-1920 (Supp. 1977); NEV. REV. STAT. § 331.300 (1975); N.Y. STATE FIN. LAW § 163-a (McKinney Supp. 1977-78).

27. E.g., MONT. REV. CODES ANN. § 82-1925 (Supp. 1977) provides that a business will be prima facie eligible for a preference after one year in the state, but it may be disqualified if the public procurement official finds that the business is a wholly owned subsidiary of a foreign corporation, or if it was formed for the purpose of circumventing the residency requirement.

28. E.g., COLO. REV. STAT. § 24-30-104(1) (1973); ME. REV. STAT. tit. 5, § 1816 (1961).

29. E.g., CAL. GOV'T CODE § 4331 (West 1966); KAN. STAT. § 75-3740 (1969).

30. E.g., IOWA CODE ANN. § 73.1 (West 1973) (coal produced in Iowa must be used by state government); VT. STAT. ANN. tit. 19, § 27 (1963) (trucks owned in Vermont must be used in highway construction).