

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

4170 SLAB SB 90 - SB 111 1050



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11/24/89
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Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

SB 90: Sectional Analysis

Section 1) Amends AS 44.33.020 (Duties of the Department of Commerce and Economic Development) to provide for the administration of grants to community and regional governments, non profit organizations, or grants for the benefit of unorganized regions in the state.

Section 2) July 1, 1985 effective date.

BILL SHEFFIELD
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

sh 90

January 23, 1985

The Honorable Don Bennett
President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Bennett:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that confers on the Department of Commerce and Economic Development the power to make grants of state money for purposes authorized by law. The department has been advised by the attorney general that its authority over, and administration of, grants could be improved if specific statutory authority for those purposes is enacted. This authorization would confer the power to implement the grants by administrative regulation. Too often grants are awarded without specific standards in place to assure performance of the grant agreement or fairness to persons seeking to obtain state financial assistance.

I hope that the legislature will view this bill favorably. It is time that a concerted effort is made to account for each dollar that is given out to achieve public purposes. Unless we provide for more formality in these transactions, it will be difficult to assure that the intent of the legislature is met.

Sincerely,

A handwritten signature in cursive script that reads "Bill Sheffield".

Bill Sheffield
Governor

Chairman's Information:

- 1) SB 90: "An act relating to the power of the Department of Commerce and Economic Development to administer appropriations for grants; and providing for an effective date."
 - a) Introduced: Governor
 - b) Co-Sponsors:
- 2) INTENT: This legislation was introduced by the governor to confer statutory authority for DCED to impliment grants by administrative regulation.

Question: What standards and procedures would the Department envision adopting for the implimentation of grants?

FISCAL NOTES: 0

NOTE: In conversation with Jeff Smith, DCRA, he indicated no problem with the bill.

- 3) COMMITTEE COMMENTS:
- 4) PUBLIC HEARINGS:
 - a) Sponsor
 - b) Public witnesses:
- 5) BILL ACTION:
 - a) Hold in committee?
 - b) Assign to sub committe for further review?
 - c) Move from Committee?
 - d) close public hearings?
- 6) COMMITTEE ACTION:
 - a) amendments?
 - b) CS adoption?



Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

SB 90: "AN ACT RELATING TO THE POWER OF THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT TO ADMINISTER APPROPRIATIONS FOR GRANTS; AND PROVIDING FOR AN EFFECTIVE DATE"

THIS LEGISLATION, INTRODUCED BY THE GOVERNOR, EXPANDS THE DUTIES OF THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT BY CONFERRING STATUTORY AUTHORITY FOR THE IMPLEMENTATION OF GRANTS BY ADMINISTRATIVE REGULATION.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 90
 Title: Relating to power of Dept.
of Commerce & Econ. Dev. grants
 Sponsor: Rules/Governor
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.
 Program Category Affected: _____
Economic Development
 BRU, Program or Subprogram(s) Affected: _____
departmentwide

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

This bill does not require an appropriation. It provides the authority for the department to administer grants when such funds are appropriated.

Prepared By: Catherine Wallen Phone: 465-2504
 Division: Administrative Services Date: 12/14/84
 Approved by Commissioner: Richard A. Lvon Date: 12/11/84
 Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):

Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

Fiscal Note

0953W10984

STATUTES RELATED TO SB 90

AS44.33.020

CHAPTER = 44.33
SECTION = 44.33.020
TITLE = 44

HEADINGS TITLE 44.
State Government.
CHAPTER 33.
Department of Commerce and Economic Development.
ARTICLE 1.
Organization.

CITATION Sec. 44.33.020.

CATCH LINE

DUTIES OF DEPARTMENT.

TEXT The Department of Commerce and Economic Development shall

- (1) administer the state programs relating to commerce, enforce the laws relating to these programs, and adopt regulations under these laws;
- (2) register corporations;
- (3) collect corporation franchise taxes;
- (4) enforce state laws regulating public utilities and other public service enterprises, banking and securities, insurance, and other businesses and enterprises touched with a public interest;
- (5) make veterans' loans;
- (6) inspect weights and measures;
- (7) promote and develop civil aviation;
- (8) furnish the budgeting, clerical and administrative services for regulatory agencies and professional and occupational licensing boards not otherwise provided for;
- (9) Repealed, E.O. No. 39 sec. 13 (1977).
- (10) Repealed, E.O. No. 33 (1968).
- (11) Before the commencement of each calendar quarter, furnish lending institutions, title insurance companies, mortgage companies and clerks of the respective superior courts with the 12th Federal Reserve District discount rate that is to be used during that calendar quarter for computing the maximum rate of interest under AS 45.45.010(b);
- (12) conduct studies, enter into contracts and agreements, and make surveys relating to the economic development of the state and, when appropriate, assemble, analyze, and disseminate the findings obtained;

AS44.33.020 (cont.)

(13) provide factual information and technical assistance for potential industrial and commercial investors;

(14) receive gifts, grants, and other aid that facilitate the powers and duties of the department from agencies and instrumentalities of the United States or other public or private sources;

(15) establish and activate programs to achieve balanced economic development in the state and advise the governor on economic development policy matters;

(16) formulate a continuing program for basic economic development and for the necessary promotion, planning and research that will advance the economic development of the state;

(17) cooperate with private, governmental and other public institutions and agencies in the execution of economic development programs;

(18) review the programs and annual reports of other departments and agencies as they are related to economic development and prepare an annual report on the economic growth of the state;

(19) administer the economic development programs of the state;

(20) perform all other duties and powers necessary or proper in relation to economic development and planning for the state;

(21) request tourism-related businesses in the state to provide data regarding occupancy levels, traffic flow and gross receipts and to participate in visitor surveys conducted by the department; data collected under this paragraph which discloses the particulars of an individual business is not a matter of public record and shall be kept confidential; however, this restriction does not prevent the department from using the data to formulate tourism economic impact information including expenditure patterns, tax receipts and fees, employment and income attributable to tourism, and other information considered relevant to the planning, evaluation and policy direction of tourism in the state.

(22) Repealed, E.O. No. 47, sec. 6 (1980).

(23) administer the program of state assistance for the construction and development of cultural facilities in accordance with AS 44.33.401 44.33.417;

(24) provide administrative and budgetary services to the Real Estate Commission (AS 08.88) as requested by the commission;

(25) operate motor vehicle weighing stations, issue special written permits authorizing the operation of overweight and oversize vehicles, establish fees for the overweight and oversize vehicle special permits, enforce the size, weight, and load limitations adopted by the Department of Transportation and Public Facilities under AS 19.10.060, and establish regulations relating to pilot car services and

AS44.33.020 (cont.)

the enforcement of the size, weight, and load limitations adopted under AS 19.10.060;

(26) administer the Alaska Foreign Offices established by AS 44.33.530.

HISTORY (Sec. 14 ch 64 SLA 1959; am sec. 6 ch 186 SLA 1960; am sec. 2 ch 1 SLA 1961; am sec. 2 ch 55 SLA 1963; am sec. 2 ch 70 SLA 1965; am E.O. No. 33 (1968); am sec. 4 ch 94 SLA 1969; am sec. 6 ch 207 SLA 1975; am sec. 1 ch 116 SLA 1976; am sec. 96 ch 218 SLA 1976; am E.O. No. 39, sec. 13 (1977); am E.O. No. 40, sec. 2 (1979); am sec. 4 ch 62 SLA 1979; am E.O. No. 47, sec. 6 (1980); am sec. 33 ch 167 SLA 1980; am sec. 1 ch 77 SLA 1982; am E.O. No. 57, sec. 2 (1984); am sec. 1 ch 120 SLA 1984)

AS45.45.010

CHAPTER = 45.45
SECTION = 45.45.010
TITLE = 45

HEADINGS TITLE 45.
Trade and Commerce.
CHAPTER 45.
Trade Practices.
ARTICLE 1.
Interest.

CITATION Sec. 45.45.010.

CATCH LINE LEGAL RATE OF INTEREST.

TEXT (a) The rate of interest in the state is 10.5 percent a year and no more on money after it is due except as provided in (b) of this section.

(b) No interest may be charged by express agreement of the parties in a contract or loan commitment which is more than five percentage points above the annual rate charged member banks for advances by the 12th Federal Reserve District on the day on which the contract or loan commitment is made. A contract or loan commitment in which the principal amount exceeds \$25,000 is exempt from the limitation of this subsection.

(c) Repealed, sec. 3 ch 84 SLA 1973.

(d) Repealed, sec. 2 ch 94 SLA 1981.

(e) Repealed, sec. 4 ch 146 SLA 1974.

(f) No bank, credit union, savings and loan institution, pension fund, insurance company or mortgage company may require or accept any percent of ownership or profits above its interest rate. This subsection does not apply to a loan if the principal amount of the loan is \$1,000,000 or more and the term of the loan is five years or more.

(g) Loan contracts and commitments covering one to four-family dwellings may be prepaid without penalty, except federally insured loans that require a prepayment penalty.

AS45.45.010 (cont.)

(h) If the limitations on interest rates provided for in this section are inconsistent with the provisions of any other statute covering maximum interest, service charges or discount rates then the provisions of the other statute prevail.

HISTORY (Sec. 25-1-1 ACLA 1949; am sec. 20 ch 143 SLA 1968; am sec. 2 ch 69 SLA 1969; am secs. 1, 2 ch 94 SLA 1969; am secs. 1, 2 ch 239 SLA 1970; am secs. 1 - 3 ch 84 SLA 1973; am secs. 1 4 ch 146 SLA 1974; am sec. 1 ch 110 SLA 1976; am sec. 1 ch 159 SLA 1976; am sec. 2 ch 107 SLA 1980; am secs. 1, 2 ch 94 SLA 1981; am sec. 1 ch 56 SLA 1982)

AS44.33.401

CHAPTER = 44.33
SECTION = 44.33.401
TITLE = 44

HEADINGS TITLE 44.
State Government.
CHAPTER 33.
Department of Commerce and Economic Development.
ARTICLE 6.
Cultural Facilities Grants.

CITATION Sec. 44.33.401.

CATCH LINE

CULTURAL FACILITIES DEVELOPMENT FUND AND GRANTS.

TEXT

(a) There is established within the Department of Commerce and Economic Development a cultural facilities development fund for the purpose of providing state assistance in the construction and development of cultural facilities within those municipalities which actively provide support to the arts. Within the limits of direct appropriations for the purpose or through the appropriation of the proceeds of a general obligation bond issue, the department shall make grants to municipalities for construction and development of cultural facilities.

(b) Grants for only one site may be awarded to a municipality under this section.

(c) Application for a grant shall be made in the form required by the commissioner.

HISTORY

(Sec. 1 ch 62 SLA 1979)

AS44.33.403

CHAPTER = 44.33
SECTION = 44.33.403
TITLE = 44
HEADINGS TITLE 44.

State Government.
CHAPTER 33.
Department of Commerce and Economic Development.
ARTICLE 6.
Cultural Facilities Grants.

CITATION Sec. 44.33.403.
CATCH LINE

REQUIREMENTS.

TEXT An application for a grant may not be considered for approval by the commissioner and funds may not be paid under AS 44.33.401 - 44.33.417 unless

(1) the project is endorsed by resolution of the governing body of the sponsoring municipality on its own behalf or on behalf of the officially recognized arts planning organization of the municipality;

(2) the commissioner is satisfied that the sponsoring municipality

(A) has the authority under AS 29.41 or AS 29.48 to provide and maintain a cultural facility;

(B) is able to provide the local share of total project costs; and

(C) will be financially able to maintain and operate the facility upon completion;

(3) the municipality provides all information which the department may require by regulation to enable the commissioner to verify estimates of total project costs;

(4) the complete application has been submitted

(A) to the state assessor for a determination and verification that the fair market value of any real property claimed as a credit under AS 44.33.409(b)(4) is accurate; and

(B) to the Department of Transportation and Public Facilities, for review in accordance with the provisions of AS 35.10.190;

(C) to the Advisory Council on Cultural Facilities (AS 44.33.420 - 44.33.430) for its review; and

(5) after providing voters with a description of the funding sources for construction of a proposed facility and a summary of the estimated annual maintenance, operating and occupancy costs of the cultural facility, the municipality has secured the approval of the residents for construction of the facility; the approval of the residents may be given by

(A) authorization of a general obligation bond to provide the contribution of the municipality to the project;

(B) voter approval of the dedication of the proceeds of a general tax increase to provide the contribution of the municipality to the project; or

AS44.33.403 (cont.)

(C) an affirmative vote of the majority of the voters casting votes on a proposition at a regular or special election called for the purpose.

HISTORY (Sec. 1 ch 62 SLA 1979)

AS44.33.405

CHAPTER = 44.33
SECTION = 44.33.405
TITLE = 44
HEADINGS TITLE 44.
State Government.
CHAPTER 33.
Department of Commerce and Economic Development.
ARTICLE 6.
Cultural Facilities Grants.
CITATION Sec. 44.33.405.
CATCH LINE
RENUMBERED.
TEXT Renumbered as AS 44.33.425.

AS44.33.407

CHAPTER = 44.33
SECTION = 44.33.407
TITLE = 44
HEADINGS TITLE 44.
State Government.
CHAPTER 33.
Department of Commerce and Economic Development.
ARTICLE 6.
Cultural Facilities Grants.
CITATION Sec. 44.33.407.
CATCH LINE
TERMS OF AGREEMENT.
TEXT The grant to a municipality shall be disbursed in accordance with the terms of an agreement between the commissioner, on behalf of the state, and the governing body of the municipality receiving the grant. The agreement may include any provision agreed upon by the parties, but shall include in substance the following provisions:
(1) the municipality shall secure, retain and protect title to the site or location on which the facility is to be constructed or developed; for purposes of this paragraph it is sufficient that title is obtained in fee or by lease by the terms of which the municipality enjoys exclusive use of the land and any improvements for the estimated project life of the facility or the period of maturity of any state

AS44.33.405 (cont.)

general obligation bond a portion of the proceeds of which are used to provide financial assistance for the construction or development of the facility;

(2) the municipality agrees to provide the local contribution to total project cost required by AS 44.33.409, and to return to the state any excess contribution by the state as required by AS 44.33.413;

(3) the municipality agrees to proceed with and complete the proposed project expeditiously in accordance with plans originally submitted;

(4) the municipality will not materially alter or modify plans for the facility or undertake construction in a manner which materially departs from the approved design and plan for construction or development of the facility without first securing the written recommendation of the officially recognized arts planning organization of the municipality;

(5) the municipality agrees to assume responsibility for the maintenance and operation of the facility, directly or by delegation of responsibility to an entity organized by ordinance of the municipality or to a nonprofit corporation dedicated to the arts and recognized by the municipality; the feasibility of the discharge of this obligation shall be demonstrated to the satisfaction of the commissioner before the payment of any state funds; and

(6) the parties agree that if property constructed or developed with financial assistance provided under this section is designed or used for purposes other than for principal use as a cultural facility, the state may require the municipality to reimburse the state for that portion of the total project cost which the state's investment in the project bears to the total of investment from all sources made in the project.

HISTORY (Sec. 1 ch 62 SLA 1979)

AS44.33.409

CHAPTER = 44.33

SECTION = 44.33.409

TITLE = 44

HEADINGS TITLE 44.

State Government.

CHAPTER 33.

Department of Commerce and Economic Development.

ARTICLE 6.

Cultural Facilities Grants.

CITATION Sec. 44.33.409.

CATCH LINE

CONTRIBUTION BY MUNICIPALITY.

TEXT

(a) A municipality receiving a grant under AS 44.33.401 - 44.33.417 shall contribute to the total cost of the project. The amount of the municipality's contribution is determined by the

AS44.33.409 (cont.)

application of the formula

(average per capita full and true value of all property in the municipality/average per capita full and true value of all property in the state) x contribution percentage to the estimated total project cost as determined by the commissioner at the time of approval of a grant application.

(b) For purposes of this section

(1) the contribution percentage for

(A) a municipality having a population of 5,000 or less is 10 per cent of the total project cost;

(B) a municipality having a population of 5,001 to 10,000 is 20 per cent of the total project cost; and

(C) a municipality having a population of more than 10,000 is 30 per cent of the total project cost;

(2) if an application is submitted for a municipality for which no average per capita full and true property value determination has been made, the commissioner shall request the state assessor to compute the average per capita full and true property value of that municipality and report it to the commissioner;

(3) the actual contribution rate of the municipality may not exceed the contribution percentage established in (1) of this section;

(4) there shall be allowed as a credit against the municipality's contribution computed under this section,

(A) for a project involving construction of a new facility, the fair market value of land acquired by the municipality as the site or location for the facility;

(B) for a project involving development of an existing structure or facility, the fair market value of the land and improvements that are acquired by the municipality and committed for use as a cultural facility;

(5) the grant awarded by the state may not exceed the estimated total project cost as determined by the commissioner under AS 44.33.403(3) less the contribution by the municipality determined in accordance with this section.

HISTORY (Sec. 1 ch 62 SLA 1979)

AS44.33.410

CHAPTER = 44.33
SECTION = 44.33.410
TITLE = 44
HEADINGS TITLE 44.
State Government.
CHAPTER 33.
Department of Commerce and Economic Development.
ARTICLE 6.
Cultural Facilities Grants.
CITATION Sec. 44.33.410.
CATCH LINE
RENUMBERED.
TEXT Renumbered as AS 44.33.430.

AS44.33.411

CHAPTER = 44.33
SECTION = 44.33.411
TITLE = 44
HEADINGS TITLE 44.
State Government.
CHAPTER 33.
Department of Commerce and Economic Development.
ARTICLE 6.
Cultural Facilities Grants.
CITATION Sec. 44.33.411.
CATCH LINE
ALLOCATION OF AVAILABLE FUNDS.
TEXT If funds appropriated or provided by bond issue for grants under AS 44.33.401 - 44.33.417 are not adequate to satisfy amounts required by approved grant applications, funds shall be allocated by the commissioner on the basis of priority recommended by the Advisory Council on Cultural Facilities.
HISTORY (Sec. 1 ch 62 SLA 1979)

AS44.33.413

CHAPTER = 44.33
SECTION = 44.33.413
TITLE = 44
HEADINGS TITLE 44.
State Government.
CHAPTER 33.
Department of Commerce and Economic Development.
ARTICLE 6.
Cultural Facilities Grants.
CITATION Sec. 44.33.413.
CATCH LINE
REPAYMENT OF EXCESS CONTRIBUTION.
TEXT If, upon completion of the facility, it appears that actual total project costs varied substantially from estimated total project costs determined by the commissioner under AS 44.33.403(3) and if the actual contribution of the state exceeds the percentage of total project costs payable by the state determined under AS 44.33.409(5), the commissioner shall require the municipality to pay an amount to the state sufficient to reduce the state contribution to the percentage of state contribution required by AS 44.33.409(5). If the actual total project costs exceed estimates, the commissioner may not provide additional financial assistance to the municipality.
HISTORY (Sec. 1 ch 62 SLA 1979)

AS44.33.415

CHAPTER = 44.33
SECTION = 44.33.415
TITLE = 44
HEADINGS TITLE 44.
State Government.
CHAPTER 33.
Department of Commerce and Economic Development.
ARTICLE 6.
Cultural Facilities Grants.

CITATION Sec. 44.33.415.

CATCH LINE

REPORT AND REGULATIONS.

TEXT The commissioner shall

(1) provide an annual report to the legislature with respect to grants made under AS 44.33.401 - 44.33.417;

(2) adopt regulations to carry out the provisions of AS 44.33.401 - 44.33.417, including, but not limited to, regulations describing information about the proposed facility to be provided by the municipality which submits an application for a grant under AS 44.33.401 - 44.33.417.

HISTORY (Sec. 1 ch 62 SLA 1979)

AS44.33.417

CHAPTER = 44.33
SECTION = 44.33.417
TITLE = 44
HEADINGS TITLE 44.
State Government.
CHAPTER 33.
Department of Commerce and Economic Development.
ARTICLE 6.
Cultural Facilities Grants.

CITATION Sec. 44.33.417.

CATCH LINE

DEFINITIONS.

TEXT In AS 44.33.401 - 44.33.417,

(1) "commissioner" means the commissioner of commerce and economic development;

(2) "construction" means site preparation, erection of a structure, and acquisition and installation of fixtures and necessary fixed equipment, but does not include completion of feasibility studies, site acquisition or facility design;

(3) "cultural facility" means a structure or complex the principal purpose of which is to serve the visual and performing arts, including but not limited to a theatre, concert hall or gallery, or to serve as the repository of the historical or contemporary heritage of the community and its people, and which also may be used for compatible activities,

AS44.33.417 (cont.)

including but not limited to, activities relating to education, community meetings, tourism, and visitor information;

(4) "department" means the Department of Commerce and Economic Development;

(5) "development" means the acquisition and preservation, remodeling or redevelopment of an existing structure or facility, together with the acquisition and installation of fixtures and necessary fixed equipment, for use as a cultural facility;

(6) "municipality" means a home rule or general law city or borough, and includes municipalities unified under AS 29.68.240 - 29.68.440;

(7) "total project costs" means, in addition to costs directly related to the project, the total of all costs of financing and carrying out the project including, but not limited to,

(A) the costs of all necessary studies (except feasibility studies), surveys, plans and specifications, architectural, engineering or other special services, acquisition of real property, site preparation and development, purchase, construction, reconstruction and improvement of real property and the acquisition of machinery and equipment necessary in connection with the project;

(B) an allocable portion of the administrative and operating expenses of the municipality;

(C) the cost of financing the project, including interest on bonds issued to finance the project; and

(D) the cost of other items, including indemnity and surety bonds and premiums on insurance, legal fees, fees and expenses of trustees, depositaries, financial advisors, and costs of paying agents for the bonds issued.

HISTORY (Sec. 1 ch 62 SLA 1979)

AS19.10.060

CHAPTER = 19.10
SECTION = 19.10.060
TITLE = 19
HEADINGS TITLE 19.
Highways and Ferries.
CHAPTER 10.
State Highway System.
ARTICLE 1.
Designation, Marking and Use.
CITATION Sec. 19.10.060.
CATCH LINE

REGULATION OF WEIGHT AND LOAD OF VEHICLES AND USE OF HIGHWAYS
DURING CERTAIN SEASONS.

AS19.10.060 (cont.)

TEXT The department, with respect to highways under its jurisdiction, may

- (1) establish limitations on weight, size, and load of vehicles;
- (2) Repealed, sec. 25 ch 144 SLA 1977.
- (3) prohibit the operation or impose restrictions on vehicular use of highways during certain seasons of the year.

HISTORY (Sec. 5 art III title II ch 152 SLA 1957; am sec. 1 ch 55 SLA 1963; am sec. 25 ch 144 SLA 1977; am sec. 2 ch 77 SLA 1982)

AS44.33.530

CHAPTER = 44.33
SECTION = 44.33.530
TITLE = 44
HEADINGS TITLE 44.
 State Government.
 CHAPTER 33.
 Department of Commerce and Economic Development.
 ARTICLE 8.
 Alaska Foreign Offices.
CITATION Sec. 44.33.530.
CATCH LINE
 ALASKA FOREIGN OFFICES ESTABLISHED.
TEXT There are established in the Department of Commerce and Economic Development two Alaska Foreign Offices. The offices are to be located in Tokyo, Japan, and Seoul, Republic of Korea. The offices shall serve as outlets for information related to economic development, resources, and trade, and as contact points for government and private industry of Alaska and the Pacific Rim nations of Asia to promote and maintain trade between the state and those countries.
HISTORY (E.O. No. 57, sec. 3 (1984); am sec. 2 ch 120 SLA 1984)

S B

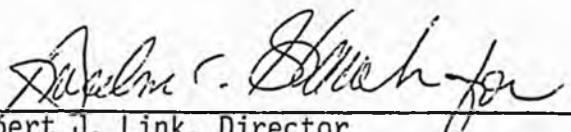
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Position Paper
SB 106

The bill affects the Alaska Bidders Preference as it applies to joint ventures. Currently Alaska bidders may enter into joint ventures with non-resident bidders. The joint venture then would qualify for the Alaska Bidders Preference. This bill would change that. This bill would require that all parties involved in a joint venture be Alaskan bidders in order to qualify for the Bidders Preference. This creates the potential of reducing competition and hence raising prices the State must pay.

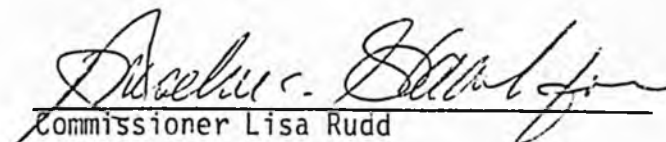
As a practical matter, an Alaskan business may be unable to bid on a contract by itself and may be unable to find another Alaskan business with which to associate on the bid. The Alaskan business may thus be compelled to associate with a nonresident bidder. The bill, as written, would not permit an Alaskan business involved in a joint venture with a nonresident bidder to enjoy the benefit of the Bidders Preference.

The Department is neutral on this bill.



Robert J. Link, Director
Division of General Services & Supply

2-11-85
Date



Commissioner Lisa Rudd
Department of Administration

2-14-85
Date

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

MEMORANDUM

January 25, 1985

SUBJECT: Bidder Preference Amendment
(Work Order No. 14-0406)

TO: Senator Dick Eliason

FROM: Theresa L. Bannister *TB*
Legislative Counsel

Enclosed is a bill draft which would resubmit the former SCSHB 106 (SA) am S from the Thirteenth Legislature to deal with certain aspects of Alaska bidder preference.

During the last legislative session, you were advised by this division in a memo dated 02/08/84 of the possible constitutional problems with the Alaska bidder preference law. The situation discussed in that memo does not appear to have been clarified by the courts since that date. However, the strong statement of purpose in the draft should help the statute withstand constitutional attack.

If you need any further assistance, please advise.

TLB:mkr
J11/025

Background Materials

COPY

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 8, 1984

SUBJECT: Constitutionality of bidder preference
 (HB 106)

TO: Senator Dick Eliason
 Chairman, Labor and Commerce
 Attn: Sheila Peterson

FROM: Richard C. Folta
 Legislative Counsel

You have asked for our opinion on HB 106.

To date there has not been a definitive decision by the U.S. Supreme Court on the constitutionality of state bidder preference statutes under equal protection or privileges and immunities provisions. However, in the February, 1983, White v. Massachusetts Council of Construction Employees case, the Court held that the City of Boston's resident work force preference (consisting of at least 50 percent of bona fide residents of Boston) did not violate the commerce clause of the U.S. Constitution.

The only Alaska Supreme Court case to date on the question is Irby-Northface v. Commonwealth Electric Co., et. al., (April 1983). Only the dissent by Justices Rabinowitz and Burke, address the constitutionality of AS 37.05.230. They reason that under Lynden Transport, Inc. v. State, 532 P.2d 700 (Alaska 1975), the bidder preference is clearly unconstitutional, under the Alaska Constitution, since the purpose of the preference is to discriminate economically between residents and nonresidents. So, at the present time, two of the five Alaska justices are on record against the bidder preference on equal protection grounds.

The bidder preference statute does not impinge upon a fundamental right and is not based on a suspect criteria so as to bring into play the compelling state interest standard.

Senator Dick Eliason
Page 2
February 8, 1984

Instead of strict scrutiny, the Alaska court would apply the less strict rational basis standard utilized in testing economic legislation under the equal protection clause. Lynden Transport Inc. v. State, supra; State v. Erickson, 574 P.2d 1 (Alaska 1978).

First, the Court would look at the purpose of the statute, viewing the legislation as a whole and the circumstances surrounding it. The purpose must be legitimate, falling within the state police powers. Second, the means chosen must substantially further the goal of the enactment. The Court would examine means used to accomplish legislative objectives and reasons advanced. Third, the state interest in the means chosen must be balanced against the nature of the constitutional right involved.

The Alaska bidder preference statute was enacted in 1955 and has remained at five percent since that time. The legislature has not stated a purpose for the statute, however very likely the resident Alaska construction and supply firms were thought to need some competitive edge against the larger more experienced outside companies and that resident firms would hire more residents, pay more taxes and stimulate the Territorial economy. In Galesburg Construction Company v. Board of Trustees of Memorial Hospital, 641 P.2d 745 (Wyoming 1982), the Wyoming Supreme Court stated that a five percent bidder preference favoring resident firms was constitutional under equal protection because the purpose of the statute of encouraging local industry, was a legitimate state interest.

Considering a chronic high state unemployment, high costs and the condition of the construction and supply companies in Alaska the bidder preference could be seen as substantially furthering the objectives of the legislature, assuming it to be encouraging the local industry.

Determining whether the preference statute is "rational" will necessarily require balancing the legitimate interests which the state seeks to achieve against the statute's impact upon the class of nonresident businesses affected. If an overtly discriminatory motive is shown, i.e., economic protection of Alaska construction and supply firms, for instance, the burden would likely shift to the state to prove the legitimacy and rationality of the bidder preference practice.

Senator Dick Eliason
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February 8, 1984

Legislative judgments about disputed economic issues are entitled to deference by the judiciary, if the purposes are expressed, however, in the ALaska bidder preference statutes, those purposes are not expressed at the present time. The Alaska court would take a very close look at the rationale for the statute and without a suitable purpose clause, AS 37.05.230(1)(B) would likely be held to violate the state's equal protection provision.

For a bidder preference clause to survive judicial scrutiny, the bidder preference purpose clause would have to clearly show more than "giving Alaska's businesses a competitive edge with nonresident businesses in award of state contracts."

RCF:ojb
J3/070



OFFICIAL BUSINESS

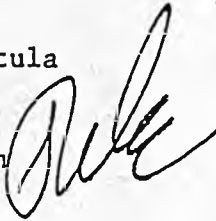
ALASKA STATE LEGISLATURE - SENATE
COMMITTEE ON LABOR AND COMMERCE

SENATOR RICHARD I. ELIASON
CHAIRMAN

POUCH V • JUNEAU, ALASKA 99811
(907) 465-3844

M E M O R A N D U M

TO: Senator Jalmar Kerttula
Senate President

FROM: Senator Dick Eliason 

DATE: March 25, 1983

RE: Alaska Power Authority Anchorage-Fairbanks Intertie Contract
Award

The Labor and Commerce Committee has been advised from numerous sources that the Alaska Power Authority has let the contract for the Anchorage/Fairbanks Intertie in apparent violation of AS 37.05.230. That statute provides that bids should be awarded to an Alaskan bidder if the bid submitted is within five percent of the lowest bid. An Alaska bidder is defined as a person who holds a business license and has maintained a place of business within the state "for a period of six months immediately preceding the date of his bid..."

The bid on the Intertie was awarded to a joint venture made up of an out of state corporation which did not have an Alaska business license for six months prior to the bid and a local corporation which did have such a license for six months preceding the bid. The joint venture had not been in existence for six months prior to the bid. The Power Authority concluded that for a joint venture all that is required is that one of the partners hold an Alaska business license for six months before the bid. This interpretation results in a situation where large outside corporations can gain the benefit of the Alaska bidders preference simply by linking themselves at the last moment before the bid with an Alaskan organization which would qualify for the preference.

If the Power Authority's interpretation is correct, the Committee believes that legislative action may be required to change the law to more accurately state legislative interest. However, before taking action, we would like to obtain an opinion of private counsel to advise

the Committee as to whether the Power Authority is correct in its interpretation and to advise the Committee whether or not amendments to the law are required.

We plan to retain the firm of Gross and Burke to give the Committee an opinion early next week. We are advised that the cost would be less than \$2500, and we ask your authorization to expend those funds to gain the legal assistance necessary.



Official Business

Alaska State Legislature

Senate

Pouch V
State Capitol
Juneau, Alaska 99811

March 28, 1983

The Honorable Jalmar M. Kerttula
President
Alaska State Senate
Juneau, Alaska 99811

Dear Senator Kerttula:

The Special Committee on the Anchorage-Fairbanks Intertie has recently reviewed the decision of the APA to award the bid on the Anchorage-Fairbanks Intertie contract. In making the award, the Authority granted an Alaska bidder's preference to a joint venture, one of whose members has not been doing business in the state for six months. AS 37.05.230(5), however, requires that a bidder who claims the five percent preference has been in business in Alaska for six months preceding the date of the bid. It is the theory of the Power Authority that a bidder's preference may be awarded to a joint venture even if one individual member of the venture would not qualify for the preference so long as another member of the joint venture is entitled to receive the preference.

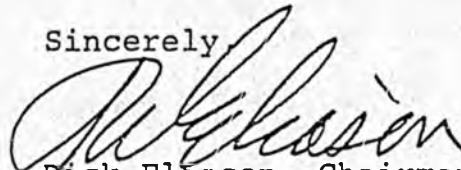
It is our belief that this interpretation is contrary to the clearly expressed intent of the legislature in AS 37.05.230(5) and would reduce the bidder's preference to a meaningless benefit. The purpose of our hearings was to determine whether it was necessary to introduce amendments to the law to clarify legislative intent. Prior to doing so, we retained the firm of Gross & Burke to review the status of the controversy and to advise us whether the interpretation placed on the law by the Power Authority was correct. If the interpretation of the Authority was valid, we asked the firm to assist us in drafting legislation to make it crystal clear that an unqualified party could not obtain an Alaska bidder's preference simply through the means of linking itself with a party that was qualified.

The firm has furnished us with the attached opinion. They are convinced, as is the Committee, that the language and intent of the law is clear and that it requires no amendments at this time. We believe the court presently reviewing this case will hold that the APA violated the terms of AS

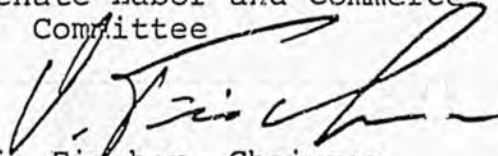
37.05.230(5) when it awarded an Alaska bidder preference to a joint venture, one of whose members was clearly unqualified to receive it.

If for any reason the court concludes that nonqualified bidders can achieve a bidder's preference simply by forming a joint venture with a qualified Alaska corporation, the Committee will immediately submit amendments to the law to make it even clearer that such a practice is not in accord with the intent of the Legislature. It appears at the preset time, however, pending a court decision, that no such amendments are necessary and that the statute sufficiently expresses legislative intent.

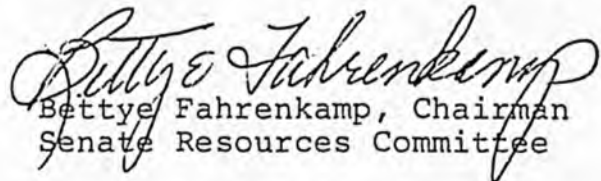
Sincerely,



Dick Eliason, Chairman
Senate Labor and Commerce
Committee



Vic Fischer, Chairman
Senate State Affairs Committee



Bettye Fahrenkamp, Chairman
Senate Resources Committee

Attachment

LAW OFFICES
GROSS & BURKE
A PROFESSIONAL CORPORATION
424 NORTH FRANKLIN STREET
JUNEAU, ALASKA 99801

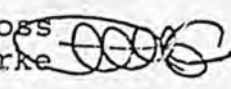
AVRUM M. GROSS
SUSAN A. BURKE

(907) 586-2777

March 28, 1983

MEMORANDUM

TO: Richard I. Eliason
Chairman, Special Committee on the Anchorage-Fairbanks
Intertie Contract

FROM: Avrum M. Gross
Susan A. Burke 

RE: AS 37.05.230(5) - Alaska Bidders Preference

One March 3, 1983, the Alaska Power Authority issued a notice of intent to award the bid on the Anchorage/Fairbanks Intertie to a joint venture composed of Irby Construction Company and Northface Construction, Inc. One of the joint venturers (Northface) had maintained a place of business in the state for more than six months prior to the bid. Irby Construction Company had not maintained a place of business here for six months prior to the bid. The joint venture was apparently created for the purpose of submitting the bid and as a joint venture it has not done any prior business in Alaska. APA awarded the joint venture an Alaska bid preference of five percent under the theory that since one of the joint venturers (Northface) qualified, the joint venture of which Northface was a member also qualified.

The Special Committee has expressed concern that through granting a bidder's preference to a joint venture, one of whose members is clearly unqualified to receive the preference, the APA has violated the terms of AS 37.05.230(5). You have asked our opinion on the validity of APA's grant of the bidder's preference and our advice as to whether the bidder's preference statute requires amendment to insure that only qualified Alaskan companies, in whatever legal form they choose to bid, receive the preference.

It is our opinion that the grant of an Alaska bid preference by the Power Authority to Irby-Northface was contrary to the terms of the bidder's preference statute; that only qualified Alaskan bidders are entitled to the preference; and that if bidders choose to submit a bid as a joint venture, all members of the joint venture must qualify for the preference in order for the joint venture to receive the preference. We believe the terms of the statute are clear, and no amendment of those terms is presently required.

In reaching this conclusion, we have reviewed all of the briefs in the litigation presently pending before Judge Johnstone in Anchorage and have independently researched the legislative history of relevant statutes. We will not in this opinion, however, cite extensive legal authority. Suffice it to say that what we say here has been adequately researched and can be supported if necessary.

I. The Wording of AS 37.05.230(5) - The Bidders Preference Statute

AS 37.05.230(5) defines an Alaska bidder as

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...

The words of the statute are clear. They require that a bidder hold an Alaska business license, that the bid be submitted in the name on that license, and finally, that the bidder have maintained a place of business within the state for a period of six months. In the case of an individual bidder, there is no problem whatsoever in determining whether the requirements have been met. In the case of a joint venture, the situation is slightly more complex but still, we believe, obvious. There can be three possible alternatives. The first is that a joint venture itself has been in business for six months prior to the submission of a bid. Such a joint venture would clearly qualify as would all of its component parts since through the mechanism of the joint venture, all parties to it would have been doing business in the state for more than six months. The second alternative is a

joint venture formed less than six months before a bid but made up of parties who were all doing business in the state for more than six months prior to the bid. As the APA mentions in its brief to the court, many joint ventures are formed solely for the purpose of bidding on specific jobs, so the situation presented in this second alternative is not unusual. We believe this type of joint venture would also qualify for the preference. If both firms to a joint venture meet all the requirements of the statute, the fact that they combine into a particular legal organization for the purpose of one job should not in any way affect their status. The whole, in short, is the sum of its parts; and if two firms which would qualify for a bidder's preference set up a legal entity in which they are the only members, that entity should also receive the preference.

The third situation is that found in the Anchorage-Fairbanks Intertie case. The joint venture that was awarded the bid has been in existence for less than six months. One party to the joint venture qualifies for the preference -- the other party does not. In essence, we have a situation where one party seeks to obtain a bidder preference to which it would otherwise not be entitled solely by selecting a particular form of business organization with which to submit its bid.

If the purpose of the bidders preference statute was to encourage the creation of joint ventures, the action of APA in granting a bidder's preference to this particular joint venture might make some sense. But the intent behind the statute has nothing to do with encouraging one particular legal structure as opposed to another. The obvious intent underlying the statute is to insure that Alaska businesses, which have furnished employment to Alaskans but whose costs of doing business here are much higher than elsewhere in the nation, will be able to compete fairly with outside firms who can frequently offer lower bids than Alaska firms. That purpose is only served by granting the preference to Alaska businesses which have been in past operation. As previously noted, the whole is comprised of its parts, and since a part of the joint venture at issue here cannot qualify for the preference, the joint venture itself cannot qualify.

The only conceivable ambiguity in AS 37.05.230(5) is over the question of whether joint ventures, which themselves have not been in existence for six months but both of whose members have been doing business in Alaska for at least six months, qualify for a bidder preference. The ambiguity stems from the fact that a literal reading of AS 37.05.230(5) suggests that if a joint venture has not been in operation for six months, it could not receive a preference no matter how long the members of the venture had done business in the state. As previously noted, we believe that such a literal reading would be contrary to the purpose of the act and that

a joint venture whose individual members would qualify would itself qualify for the preference. But no matter how that question is resolved, we believe there is no ambiguity as to the question of whether nonqualified bidders can gain the benefits of the statute simply by linking themselves in legal organization with a bidder who could so qualify. A contrary interpretation would render the bidder's preference a sham. Large outside corporations could link up with tiny Alaskan firms who by themselves could not even consider bidding on such jobs as the Intertie solely for the purpose of gaining a bidder's preference. The result would be that qualified Alaskan firms which had previously rendered employment opportunities to Alaskans and been subject to the higher costs of doing business in Alaska would not receive the benefits of a statute specifically aimed at affording them those benefits. That was clearly not the legislature's intent when they passed the act, and we are sure it is not the intent today.

II. The Interpretation of the APA

The Power Authority has attempted to justify its interpretation of the act on two primary grounds. First, APA argues that since under AS 08.18.011 (registration of contractors) a joint venture is considered to be registered if only one party to the joint venture is registered, the same theory would allow APA to extend a bidder's preference to a joint venture in which only one party is entitled to the preference. Second, APA argues that whatever the statutes may appear to mean, an administrative agency is

permitted to make reasonable interpretations of the law, and its past interpretations have extended the bidders preference to joint ventures which included only one party which by itself would qualify. APA then argues that the past practice of administrative agencies are given great weight by the courts in interpreting the terms of a statute and should be given similar weight here.

Neither of these arguments has any real merit. The contractors registration statute, for instance, has no logical or legal relation to the bidders preference statute -- they are entirely different statutory provisions with entirely different purposes, and the interpretation of one has no bearing on the interpretation of the other. AS 08.18.011 requires the registration of contractors for the purpose of insuring fiscal responsibility. It is no surprise, therefore, that only one member of a joint venture need be registered for the joint venture itself to be registered. All members of a joint venture bear responsibility for the debts of the venture, and if one registered party can insure the financial security of those with whom the venture deals, it is not important whether other members of the venture would also be able to post the necessary proof of financial ability. The bidders preference statute, however, is a special benefit awarded because of past activities within the state, and it makes a great deal of difference whether all parties in the venture are entitled to that benefit. If one party could

simply qualify by joint venturing with a qualified bidder, the otherwise unqualified party would receive a legislatively conferred benefit that they have not earned and to which they are not entitled.

There is another basic flaw in APA's attempting to link the contractors' registration statute with the bidders preference statute. The Alaska bidders preference law covers all bidders for state contractor purchases. If the Authority is correct in applying the interpretation of AS 08.18.011 to the bid preference statute, then an out of state contractor who has never done business in Alaska can obtain the preference simply through linking itself with a qualified Alaska bidder. But what of bidders who are not contractors and are not required to register under AS 08.18.011? Suppose for instance the state seeks a bid for providing office equipment for all state buildings, and an outside office supply firm seeks to form a joint venture with an Alaskan office supply firm which by itself would qualify for a bidder's preference. Since office supply firms are not required to post financial security, there is no comparable provision to AS 08.18.011 for office supply firms, and, therefore, no justification for arguing by analogy that a joint venture made up of qualifying and nonqualifying firms qualifies for a preference. This would mean (at least according to the Power Authority's theory) that outside contractors can achieve an Alaska bidders preference through

means denied to every other outside firm that seeks to bid on state contracts. That makes no sense and it makes no sense because the contractors registration statute has nothing to do with the Alaska bidders preference act. The purposes of the two acts are different, and arguments made by analogy from one to the other inevitably lead to illogical conclusions.

The second argument of APA based on its past interpretations of the bidder's preference statute is also without merit. It is true that a settled administrative interpretation of the terms of an act made by an agency particularly entrusted with its enforcement is given weight by the courts in interpreting the act. That rule has no application if the statute is clear on its face and the agency's interpretation is clearly erroneous as it is in this case. But even if the statute were ambiguous, this is not a situation where agency interpretation would be given any weight at all. The "settled interpretation" of the agency appears to consist of two decisions made roughly six years ago under unknown circumstances by one official in the Department of Administration. There has been no attempt to establish that interpretation as a settled agency interpretation by reducing it to written form or adopting it as a regulation. What we have here is one state employee stating that he interpreted the act this way six years ago as justification for a present judicial interpretation of the act. When one reviews the cases in which

agency interpretations have been given some weight by the court, it becomes clear that this is not remotely like the situation envisioned by those cases.

One further point bears some mention in this analysis because it is raised in the arguments of all the parties to the Intertie litigation. On September 25, 1981 the Superior Court in Anchorage in an unrelated case, concluded that the Power Authority did not violate the law when it awarded a contract to a joint venture, one of whose members apparently did not qualify for the preference at the time the bid was submitted (Pacific Ventures and Dillingham Corporation v. APA et al. and Southeast-Harrison Western, case #3AM-81-6291). The case, however, is entitled to very little weight for two reasons. First, no real analysis of the issue involved here was made by the court. Second, the case is completely confusing on just why the court reached its conclusion. The court held that one of the parties qualified for the preference prior to the submission of the bid and that at the time of the actual award of the contract, the joint venture qualified through having been in existence for more than six months. It is not clear what the court would have done if the joint venture had been in existence for less than six months at the time of the award, nor is it clear why this point was given any significance whatsoever,

since AS 37.05.230(5) requires that a party seeking a preference have been doing business for six months prior to the date of the bid. We do not believe under these circumstances that the decision will be given any real weight by a court resolving the present controversy.

It is, therefore, our view that the statute is clear on its face and that no legislative action at this time is required to clarify its meaning. We are confident that the courts will hold that a joint venture, one of whose members do not qualify for the preference, is not in itself a bidder entitled to the preference.

AMG:yw



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

May 28, 1984

The Honorable Joe Hayes
Speaker of the House
Alaska House of Representatives
Pouch V
Juneau, AK 99811

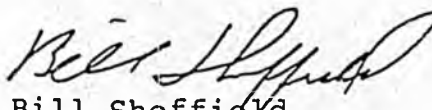
Re: Senate Committee
Substitute for House Bill
106 (SA) am S (An Act
relating to Alaska bidder
preference.)

Dear Representative Hayes:

Today I have vetoed SCSHB 106(SA) am S. This decision was very difficult for me to make because I believe that the existing interpretation of the Alaska bidders' preference is often abused. At first reading, this bill appears to rectify that problem and one would want to be in favor of it. However, upon further consideration, I have determined that, if this bill is enacted into law, there will be no incentive for outside firms to join with local firms in beneficial relationships. Without this incentive, outside firms may be in a position to bid without local involvement, thus defeating the very purpose expressed in sec. 1 of this bill.

I would support the enactment of a bill that requires significant local participation in joint ventures before a bid preference is accorded to a joint venture. By "significant local participation," I mean that, before a bid preference is awarded, the joint venturers must certify that a minimum percentage of the work, specified by law, will be performed by the resident venturer. I hope we can work together to achieve this worthwhile result.

Sincerely,


Bill Sheffield
Governor

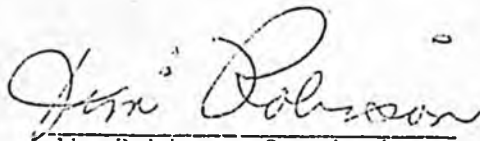
Bill No. Senate Bill No. 106
Title "An Act relating to Alaska bidder preference."

Date March 1, 1985
Contact: Bob Landau
465-2700

The Department of Labor supports the passage of Senate Bill 106. This legislation would amend the Alaska bidder's preference law, AS 37.05.230(5), to require that each member of a joint venture must separately qualify as an Alaska bidder in order for the joint venture itself to qualify for the bidder preference.

The Department believes that this legislature is necessary to protect against out-of-state firms joining with a nominal Alaska partner in order to gain preferential bidder status on public contracts. In Irby-Northface vs. Commonwealth Electric Co., 664 p. 2d 557 (Alaska 1983), the Alaska Supreme court interpreted existing law to permit a joint venture to qualify for the bidder's preference even though the primary partner in the venture was a large out-of-state construction firm. Because of the higher cost of doing business for Alaska firms, as well as the high rate of unemployment among Alaskans, an amendment to the law is necessary to ensure that the benefits of a bidder's preference flow only to those persons or businesses that have established a bona fide presence in Alaska.

APPROVED:


Jim Robison, Commissioner
Department of Labor

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 106
 Title: "relating to Alaska bidder preference"
 Sponsor: Eliason & Fahrenkamp
 Requestor: Senate Labor & Commerce
 Date of Request: 03/01/85

FISCAL DETAIL

Agency Affected: Labor
 Program Category Affected: Social Services
 BRU, Program or Subprogram(s) Affected: Administrative Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
500 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

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

REVENUE						
----------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: 28 Judy Knight Judy Knight, Director Phone: 465-2720
 Division: Administrative Services Date: 3/1/85
 Approved by Commissioner: 3 Jim Eliason Jim Eliason Date: 3/1/85
 Agency: Labor

- Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

2 SENATE BILL NO. 106

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to Alaska bidder preference."

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

8 * Section 1. AS 37.05 is amended by adding a new section to read:

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

17 * Sec. 2. AS 37.05.230(5) is amended to read:

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

20 (A) holds a current Alaska business license; [,]

21 (B) submits a bid for goods or services under the name
22 as appearing on the person's current Alaska business license; [,]

23 (C) has maintained a place of business within the
24 state for a period of six months immediately preceding the date
25 of the bid; and

26 (D) if a joint venture, is composed entirely of ven-
27 turers that qualify under this paragraph;

STATUTES RELATED TO SB 106

AS 37.05.230

CHAPTER = 37.05

SECTION = 37.05.230

TITLE = 37

HEADINGS TITLE 37.

Public Finance.

CHAPTER 05.

Fiscal Procedures Act.

ARTICLE 3.

Uniform Purchasing.

CITATION Sec. 37.05.230.

CATCH LINE

COMPETITIVE BIDS.

TEXT In the manner provided in this chapter 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) a bid shall be awarded to an Alaska bidder if the bid is not more than five per cent higher than the lowest nonresident bidder's; and (B) 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

AS 37.05.240 (cont.)

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 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

AS 37.05.230 (cont.)

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) (A) 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 the person's 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 the 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 the operator 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 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 the Department of Transportation and Public Facilities which are authorized under AS 35.15 or AS 19.10;

(8) the provisions of this section relative to competitive bids do not apply to the purchase of products or services manufactured or provided by a sheltered workshop;

(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;

AS 37.05.230 (cont.)

(10) requests for and acceptance of bids or other proposals for professional services shall comply with AS 24.23 or AS 36.98;

(11) the provisions of this section concerning competitive bids do not apply to the purchase of residential child care services under AS 47.40.

HISTORY (Sec. 3 art IV ch 82 SLA 1955; am secs. 8 - 10, 23 ch 186 SLA 1957; am sec. 1 ch 77 SLA 1959; am sec. 1 ch 158 SLA 1962; am sec. i ch 82 SLA 1964; am secs. 1, 2 ch 92 SLA 1967; am sec. 1 ch 61 SLA 1970; am sec. 1 ch 92 SLA 1975; am secs. 1, 2 ch 194 SLA 1975; am E.O. No. 39, sec. 11 (1977); am sec. 5 ch 53 SLA 1982; am secs. 6 - 8 ch 144 SLA 1982; am sec. 1 ch 119 SLA 1984)

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

Page 1 of 1

REQUEST

Bill/Resolution No.: SB 106
 Title: An act relating to the Alaska Bidder Preference
 Sponsor: Eliason and Fahrenkamp
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Administration
 Program Category Affected: General Services & Supply
 BRU, Program or Subprogram(s) Affected: Purchasing and Leasing

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

N/A

Prepared By: Robert J. Link *Robert J. Link* **A** Phone: 465-2250
 Division: General Services & Supply Date: 2-11-85

Approved by Commissioner: Lisa Rudd *Lisa Rudd* Date: 2-14-85
 Agency: Department of Administration

Distribution (by Agency preparing fiscal note):

Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

Fiscal Note



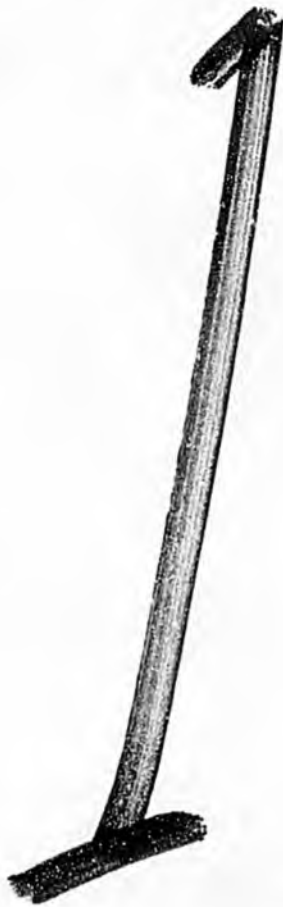
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James O. Smith
Signature of Camera Operator

11/24/89
Date

S B



SB 111 Background Information

Section 1 - 08.88.101(12)

The commission is currently reviewing the renewal process with the intent of making it more efficient.

The commission currently renews all 6,000 licenses on February 1 of each even numbered year. This causes a major clerical backlog which delays issuance of licenses which generates calls to the offices about licenses which further backlogs the clerical staff. It also produces biennial surges in revenues and makes budgetting more complex. The overall result can best be described as chaotic.

If the commission is provided access to a computer prior to the next renewal it proposes to adopt, ASAP a "birthdate" renewal plan. Under this plan, each individual's license will be due for renewal on the last day of the month of their birthdate every two years following initial license issuance. This will spread the biennial "hump" over 24 months and equalize the workload, work flow.

The statutory requirement that renewals be sent on December 1 is inflexible and would do a disservice to many licensees who would receive notices almost a year before renewal is due. The 60 day notice is fair and reasonable.

Section 2 - AS 08.88.221(a)

- (4) The license year has always been a biennium. In a previous revision of fees, the word "biennium" was deleted by a reviewer who apparently did not realize that doing so left the term of the license out of the statute entirely. Reinserting the word biennium is simply correcting this oversight.
- (5) Inactive licensure is an administrative burden and cost to the commission and produces no measurable benefit to the general public. The "preservation" of the license when a person is not practicing real estate is seen as a value by some licensees. The degradation of skills when a person is not practicing is seen by others as a negative impact on the public.

Eliminating the category "inactive license" would mean that to preserve a license it would have to be renewed "active" and the full cost of administering the license would be paid. A licensee who does not renew a license and permits it to lapse for more than two years would have to be reexamined before being issued a new license. A licensee who does not renew could remain "not active" for two years without losing the license.

This would eliminate an administrative/clerical burden on the commission and it would maintain a higher level of currency among licensees. In the case of licensees who do not actively sell real estate but who wish to maintain an active license, they would pay a full share in the administrative costs of the commission by paying full fees.

The current inactive license costs \$50 and no surety fee is paid. An active license is \$100 with an \$80 surety fee.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: ///
 Title: Relating to real estate
licenses
 Sponsor: Rules/Governor
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.
 Program Category Affected: _____
Consumer Protection
 BRU, Program or Subprogram(s) Affected: _____
Real Estate Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE GF	-0-	10.0	-0-	10.0	-0-	10.0
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Revenue to Surety Fund -0- 320.0 80.0 360.0 96.0 360.0

FUNDING: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

See attached.

Prepared By: James L. Magowan
 Division: Real Estate Commission

Phone: 563-2169
 Date: _____

Approved by Commissioner: Richard A. Lyon
 Agency: Commerce and Economic Development

Date: 12/11/84

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

REAL ESTATE LICENSES
FISCAL NOTE ANALYSIS

I. Revenue to Surety Fund

The bill increases the surety fund balance limit from \$500,000 to \$850,000. The change in the limit will affect accumulation and stability of the fund but will not increase expenditures. The Commission has proposed that a regulation be adopted to set the surety fund fee at \$80.00 per licensee beginning with the 1986-87 license year. This is not a fee increase that will cause the fund to reach its maximum limit. This fee would increase revenues by \$320.

II. Revenue to General Fund

Approximately 400 people renew as inactive. The inactive renewal fee is \$50.00. This represents revenues of \$20,000. It is estimated that 75% of the inactives would choose to renew as "active" if the inactive status were deleted. The net result would be an increase of \$10,000 each two-year renewal period.

Increased revenues is not the reason for the change. Even a zero net revenue would represent an administrative saving or efficiency increase.

BILL SHEFFIELD
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 30, 1985

The Honorable Don Bennett
President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Bennett:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to real estate brokers and salesmen. The two most important amendments are in secs. 3 and 4.

Section 3 raises the current limit of \$500,000 on the real estate surety fund to \$850,000. The amount of money in the fund now exceeds the \$500,000 limitation because of the increased number of licensees and the fact that licenses are renewed biennially. The current balance, after renewal of more than 4,000 licenses, is over \$650,000. The increased limit will enable the commission to institute a more comprehensive educational program. Expenditures for educational purposes are currently provided for in AS 08.88.091 and 08.88.450.

Section 4 of the bill eliminates inactive licenses. Current law allows a licensee to go on inactive status for up to three years and resume active status with no examination or other requirement, with the exception of payment of the fee for an active license. This provides little protection for the public, and creates an administrative burden for the commission as well.

In addition, the bill makes other, minor changes. Section 2 establishes a statutory license term of two years and sec. 1 amends the renewal notice requirement to reflect that term. Section 2 also amends AS 08.88.221(a) to reflect repeal of the inactive license.

Sincerely,

A handwritten signature in cursive script that reads "Bill Sheffield".
Bill Sheffield
Governor