

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672  
6160 HOUSE STATE AFFAIRS

584

Item 4

STATE OF ALASKA  
1990 LEGISLATIVE SESSION

Bill Version: CS SB 154 (Fin)(a)  
Publish Date: 4/19/90

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: Authorizing master lease-financing  
for state equipment  
Sponsor: Senate Labor & Commerce  
Requestor: Senate Labor & Commerce

Agency Affected: State Bond Committee  
BRU: \_\_\_\_\_  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
<b>OPERATING</b>						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LANDS & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	(2143.5)	136.4	98.5	479.3	1381.8	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING</b>	<b>(2143.5)</b>	<b>136.4</b>	<b>98.5</b>	<b>479.3</b>	<b>1381.8</b>	<b>0</b>
<b>CAPITAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>REVENUE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

FUNDING: (Thousands of Dollars)

GENERAL FUND	(2143.5)	136.4	98.5	479.3	1381.8	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

POSITIONS:

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

ANALYSIS: attach a separate page for analysis.  
Fiscal effect for FY 90 is zero.

Prepared By: Milt Barker *MB*  
Division: Treasury

Phone: 465-2350  
Date: March 15, 1990

Approved by Commissioner: *Milton B. Barker for*  
Agency: Department of Revenue

Date: 3-15-90

Distribution (by preparer):

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

Changes in CSSB 154 (Fin)  
have no fiscal impact.  
This fiscal note is  
appropriate. 4/19/90

## Fiscal Note Analysis

The projected annual savings on refinancing State equipment leases are estimated in the table below. This estimate is from a detailed analysis of State equipment leases prepared in June 1987 by Shearson Lehman Brothers.

The savings from a master lease refinancing of State equipment leases would accrue to individual agency budgets. As presently envisioned, the State Bond Committee would make the lease payments on the master lease, but these payments would be funded by Reimbursable Services Agreements (RSA's) from the agencies that purchased the equipment. Information developed from implementation of the program should permit identification of specific lease costs and savings in specific agencies which could be deleted and replaced with a single appropriation to the State Bond Committee.

The present value of the savings shown in the table from a master lease refinancing of State equipment leases is \$424,000 or 6.3 percent of the amount of the refinancing. Please see the attached letter of January 27, 1989 from John Andrews for more information on the master lease program.

### Lease-Financing Costs (Savings)

<u>Fiscal Year</u>	<u>Equipment Lease Refinancing</u>
1991	\$(2,143,460)
1992	136,406
1993	98,534
1994	479,273
1995	<u>1,381,766</u>
Total	\$ (47,480)

FISCAL NOTE

REQUEST:

Revision Date: 3/16/90 Agency Affected: Department of Administration  
 Title: An Act relating to State equipment, including equipment lease-financing . . . BRU: General Services  
 Sponsor: Rules Components: Purchasing  
 Requestor: Senate Labor & Commerce

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	41.8	43.1	44.0	44.9	45.8	46.7
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	5.0	2.0	2.0	2.0	2.0	2.0
SUPPLIES	1.5	1.6	1.7	1.8	1.9	2.0
EQUIPMENT	0	7.0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS (PHONE)	.6	.6	.7	.7	.8	.8
TOTAL OPERATING	55.9	47.3	48.4	49.4	50.5	51.5
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	55.9	47.3	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	48.4	49.4	50.5	51.5
TOTAL	55.9	47.3	48.4	49.4	50.5	51.5

POSITIONS:

FULL-TIME	1	1	1	1	1	1
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

There would be no fiscal impact to the FY 90 budget. Potential financial savings should be reflected in the Department of Revenue fiscal note. We project a General Fund increase in year one and two in administrative expense due to the requirement to coordinate several hundred accounts in order to make one payment under the third party equipment lease plan to Alaska State Housing Authority, and to compile the required reports to the legislature. See attached for analysis. The requirement for General Fund would be replaced year three onward with I/A receipts to be transferred from the affected agencies.

Prepared by: Robert J. Link, Director Phone: 465-2250  
 Division: General Services and Supply Date: 03/16/90

Approved by Commissioner: Frank S. Baxter Date: 3/16/90  
 Agency: Department of Administration

Distribution (by preparer):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

Changes in CSSB 154 (Fin) have no fiscal impact. This fiscal note is appropriate. 4/19/90

CONTINUATION of FISCAL NOTE ANALYSIS

For CSSB 154 (L&C)

FISCAL NOTE ANALYSIS

Operating costs are based on the following assumptions:

Personal Services cost: One permanent, full-time Accounting Technician II, Range 14, Step B through J based on current contract.

Contractual: Estimated cost of \$5,000.00 for Professional Services contract for computer programming in FY 91, \$2,000.00 for support each year thereafter.

Supplies: Estimated cost of paper, desk supplies, etc., minimal increases each fiscal year in anticipation of inflated costs.

Equipment: Reflects purchase of personal computer. Costs needed to connect to mainframe (Alaska Statewide Accounting System [AKSAS]), printer and basic software. Costs are based on current State contract.

Miscellaneous: Estimated cost of long-distance telephone service. Escalated in third and fifth fiscal years to cover anticipated inflation.



1

Position Title <b>Accounting Technician II</b>		No. of Positions <b>1</b>	Range/Step <b>14B</b>	Barg. Unit <b>GGU</b>
Time Status <b>FT</b>	Staff Months <b>12</b>	Location <b>Juneau</b>		Election District
Justification				
<p>There is currently no staff available to perform the duties mandated by this legislation. The required job duties and responsibilities are most associated to the class specifications of an Accounting Technician II. One full-time staff person would be responsible for reviewing several hundred accounts, determining which accounts would be refinanced, calculating account expenses, transferring funds and making one payment to the Alaska State Housing Authority. A report to the legislature would be compiled annually indicating the amount of interest to be saved by each agency during the next fiscal year as a result of participating in the master lease program.</p>				
Type of Expenditure		Amount		
1	2	3		
Salary	29.2			
Benefits	12.6			
Premium Pay				
Other				
Total Personal Services		41.8		
Travel				
Contractual		5.6		
Commodities		1.5		
Equipment		7.0		
Other				
Total Cost		55.9		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	55.9		
I-A Receipts	1006			
CIP Receipts	1061			
Other				

4/11B1/060602-9

Administration

**Request For  
New Position**

Agency \_\_\_\_\_  
 BRU \_\_\_\_\_  
 Component \_\_\_\_\_

Administration  
 General Services and Supply  
 Purchasing

**FY 91**

Page 3 of 3  
 Revised Date

3. 46

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_ Agency Affected: Commerce & Econ. Dev.  
 Title: Master lease financing of equipment BRU: Ak. State Bldg. Auth.  
 Sponsor: Rules Committee Components: \_\_\_\_\_  
 Requestor: Governor

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL						
CONTRACTUAL						
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING						
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

Changes in CSSB 154 (Fin) have no fiscal impact. This fiscal note is appropriate. 4/19/90 cmw  
 No fiscal impact is projected through 1996.

Prepared by: Commissioner's Office Phone: 465-2500  
 Division: Dept. of Commerce & Economic Development Date: 12/27/1988  
 Approved by Commissioner: Larry Mercuri, Commissioner Date: 12/27/1988  
 Agency: Dept. of Commerce & Economic Development

**Distribution (by preparer):**

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

) Changes in CSSB 154 (LAC) have no fiscal impact. This fiscal note is appropriate. Projections of no fiscal impact would continue through 1996.

page 1 of 1

### FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_  
Title: Master Lease Financing

Agency Affected: Alaska State Building Auth.  
BRU: \_\_\_\_\_

Sponsor: Rules Committee  
Requestor: Governor

Components: \_\_\_\_\_

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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**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)

Changes in CSSB 154 (Fin) have no fiscal impact. This fiscal note is appropriate. 4/19/90 ww  
No fiscal impact is projected through 1996.

Prepared by: Lynn Wegener *Lynn A Wegener*  
Division: Finance Department

Phone: 562-2813  
Date: 12/27/88

Approved by Commissioner: *[Signature]*  
Agency: Alaska State Building Authority

Date: 12/27/88

**Distribution (by preparer):**

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

) Changes in CSSB 154(L+C) have no fiscal impact. This fiscal note is appropriate.  
: Projections of no fiscal impact would continue through 1996.

Items

STEVE COWPER, GOVERNOR

DEPARTMENT OF REVENUE

TREASURY DIVISION

ELEVENTH FLOOR  
STATE OFFICE BUILDING  
P O BOX 59  
JUNEAU, ALASKA 99811-0100

April 20, 1990

The Honorable Steve Frank  
Senate Finance Committee  
Alaska State Legislature  
P. O. Box V  
Juneau, Alaska 99811

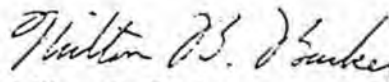
Dear Senator Frank:

CS SB 154 (Finance), "an Act relating to state equipment, including equipment lease-financing, and authorizing a master equipment lease-financing project" authorizes the Alaska State Housing Authority to provide lease-financing for State equipment purchases, subject to approval by law. Enactment of this legislation will not affect the amounts appropriated to State agency budgets. Budget appropriations determine what amounts, if any, an agency may spend on equipment acquisition, through lease-financing or otherwise. This legislation merely provides a lower (tax-exempt) interest rate when agencies decide to use the "credit card" approach to equipment purchases. A 1987 Shearson Lehman analysis of existing State equipment leases indicated the tax-exempt approach could save \$424,000 in present value terms by refinancing outstanding vendor leases.

As a result of Legislative desire to be able to consolidate and marshal these savings for other fiscal priorities, the State Affairs committee substitute provides in section 12 for the identification and reporting of the amounts saved by each agency. In order to gain experience and assure satisfaction with the workings of the program, the Labor & Commerce committee substitute limits the initial approvals by law in sections 13 and 15 to lease-financing only for the purpose of refinancing outstanding equipment leases.

In order to maximize the savings and develop previously unavailable information on the extent of State equipment leasing, the Finance CS makes use of the master lease program mandatory for State agencies in section 12. The Finance CS also expands the \$40 million authorization in sections 13 and 15 to include equipment replacement as well as refinancing, in order to further increase savings without stimulating a net increase in State equipment.

Yours truly,



Milton B. Barker  
Deputy Commissioner

MBB/ph

90-95

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Various State Agencies  
 Title: Authorizing Master Lease  
Financing for State Equipment  
 BRU: \_\_\_\_\_  
 Sponsor: Senate Finance  
 Components: \_\_\_\_\_  
 Requestor: Senate Finance

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
<b>OPERATING</b>						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LANDS & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	(1,812.0)	(1,812.0)	(1,812.0)	(1,812.0)	(1,812.0)
<b>TOTAL OPERATING</b>	0	(1,812.0)	(1,812.0)	(1,812.0)	(1,812.0)	(1,812.0)
<b>CAPITAL</b>	0	0	0	0	0	0
<b>REVENUE</b>	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	(1,812.0)	(1,812.0)	(1,812.0)	(1,812.0)	(1,812.0)
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
<b>TOTAL</b>	0	(1,812.0)	(1,812.0)	(1,812.0)	(1,812.0)	(1,812.0)

POSITIONS:

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

**ANALYSIS:** FY 1990 effect is zero. Amounts are the difference in equipment lease rental payments on \$40 million financed over 5 years at 6.55 percent under master lease financing (current tax-exempt rate for A rated 5 year maturity) vs. 13.28 percent vendor financing. The 6.73 percent spread of vendor rates over tax-exempt rates was the actual spread on State equipment leases found in a June 16, 1987 Shearson Lehman Brother analysis.

Prepared By: Milt Barker MB  
 Division: Treasury

Phone: 465-2350  
 Date: April 30, 1990

Approved by Commissioner: Winston B. Barker for  
 Agency: Department of Revenue

Date: 4-30-90

Distribution (by preparer):

Legislative Finance  
 Legislative Sponsor  
 Requestor

Office of Management and Budget  
 Impacted Agency(ies)

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**S B**

**170**

HOUSE COMMITTEE ON STATE AFFAIRS

RECAP OF  
CSSB 170 (Fin)

Procurement Code Amendments

Received April 26, 1989  
by The Finance Committee

Heard May 2, 1989  
Heard May 3, 1989  
Heard May 4, 1989

Committee Substitute adopted May 4, 1989

Passed Out of Committee May 4, 1989  
4 Do Pass  
3 Amend

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- Item 1: CSSB 170 by The Finance Committee  
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- Item 4: Governor's Transmittal Letter
- Item 5: Memorandum from Rep. Boucher, May 3, 1989
- Item 6: Letter from Associated General Contractors of  
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# HOUSE COMMITTEE REPORT

(7)

Date Referred: April 26, 1989

FURTHER REFERRALS:

Date of Committee Action: \_\_\_\_\_

The STATE AFFAIRS Committee considered: CSSB 170 (FINANCE) am

CS FOR SENATE BILL NO. 170 (Finance) am  
[PROCUREMENT CODE AMENDMENTS]

"An Act relating to state procurement."

**RECOMMENDATIONS:**

- be replaced with HCS CSSB 170 (SA)  the same title
- have attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

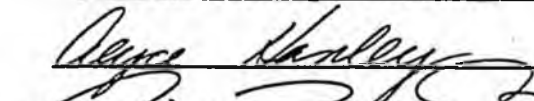

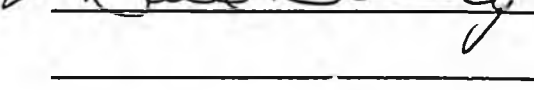
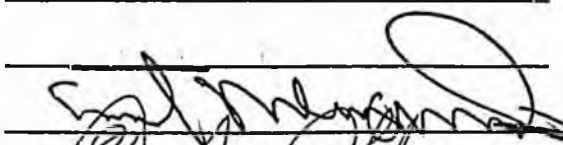
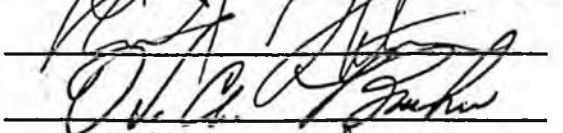
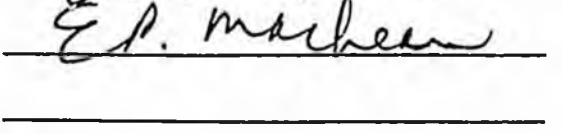
ADCPTS: Senate letter of intent

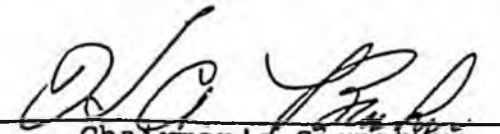
ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Date/Dept)

- fiscal impact \_\_\_\_\_  fiscal note(s) \_\_\_\_\_
- zero fiscal note \_\_\_\_\_  zero fiscal note(s) \_\_\_\_\_
- zero with analysis \_\_\_\_\_  zero fn/analysis 4/19/89 DDA

SIGNING DO PASS:

SIGNING: (Check approp. column)

				X	
				X	
				X	
					
					
					

  
Chairman's Signature

*John H. Hema, Sr.  
Vice  
Stenographer  
Randy*

4/25/89

LETTER OF INTENT  
FOR  
CS FOR SENATE BILL NO. 170 (Fin)

IT IS THE INTENT OF THE LEGISLATURE THAT THE DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES EVALUATE THE STAFFING LEVEL AND FUNCTIONS PERFORMED BY THE HEADQUARTERS STATE EQUIPMENT FLEET OFFICE FOR FLEET EQUIPMENT PROCUREMENT. THIS EVALUATION SHOULD DETERMINE THE MOST APPROPRIATE MEANS OF PROVIDING IMPROVED SERVICE FOR FLEET EQUIPMENT PROCUREMENT TO ALL AREAS OF ALASKA. THE DEPARTMENT SHALL REPORT ITS FINDINGS TO THE LEGISLATURE BY JANUARY 15, 1990.

*Senate adopted 4/25*

FISCAL NOTE

REQUEST:

Revision Date: April 14, 1989 Agency Affected: Department of Administration  
 Title: An Act Relating to State BRU: General Services  
 Procurement  
 Sponsor: Rules Components: Purchasing  
 Requestor: Senate, Finance

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS (PHONE)	0	0	0	0	0	0
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	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Implementation costs will be minimal. Efficiencies gained will be reflected in improved service delivery.

Prepared By: Robert J. Link, Director *Robert J. Link* Phone: 465-2250  
 Division: General Services & Supply Date: 4/18/89

Approved by Commissioner: John M. Andrews *John M. Andrews* Date: 4/18/89  
 Agency: Department of Administration

Distribution (by preparer):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

(b)

STATE OF ALASKA  
1989 LEGISLATIVE SESSION

BILL VERSION: CS SB 170 (Finance)  
PUBLISH DATE: 4/18/89

REQUEST: FISCAL NOTE

Revision Date: 3/16/89  
Title: An Act Relating to State Procurement

Agency Affected: DOT&PF  
BRU: Design & Construction  
Maintenance & Operations  
State Equipment Fleet

Sponsor: Governor

Requestor:

Components:

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTURAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (THOUSANDS OF DOLLARS)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Although the fiscal note and impact of this bill is shown as zero there will be some positive effects. The cost savings will be in the form of increased efficiencies in the procurement process.

Prepared by: Loren Rasmussen *Loren Rasmussen*  
Division: Engineering & Operations Standards

Phone: 465-2960  
Date: 03/20/89

Approved by Commissioner: Mark S. Hickey *MSH*  
Agency: Department of Transportation and Public Facilities

Date: 03/20/89

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

RECEIVED  
MAR 21 1989

Changes in the CS (Fin) have no fiscal effect.  
SFC: 4/18/89 *new*

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_  
 Title: "An Act Relating to State Procurement."  
 Sponsor: Rules  
 Requestor: Governor

Agency Affected: University of Alaska  
 BRU: All  
 Components: \_\_\_\_\_

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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**FUNDING:** (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-	-0-
<b>TOTAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

**POSITIONS:**

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

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

Although the fiscal note and impact of this bill is shown as zero there will be some positive effects. The cost savings will be in the form of increased efficiencies in the procurement process.

Prepared by: Marsha Hubbard, Director Phone: 474-7593  
 Division: Statewide Budget Office Date: 3/8/89

Approved by Commissioner: Brian Peters, Director Finance Date: 3/8/89  
 Agency: University of Alaska

Distribution (by preparer):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

**RECEIVED**  
MAR 10 1989

Changes in the CS (Fin) have no fiscal effect. This fiscal note is appropriate. SFC: 4/18/89  
 Page 1 of 1

STEVE COWPER  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

Item 4  
178

February 13, 1989

The Honorable Tim Kelly  
President of the Senate  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to state procurement.

After working with the new state procurement code for the past year, state agencies have identified a number of provisions that need clarification or change to address the practical realities of administering the code.

Sections 1, 6, and 7 of the bill clarify and make consistent the requirements that a bidder or proposer have, and provide evidence of having, a valid Alaska business license. Under these sections, bidders and proposers must possess the license at the time of bid or proposal opening, and must provide proof of the license in accordance with regulations adopted by the commissioner of administration.

Section 2 of the bill permits the commissioner of transportation and public facilities to make the state's estimate of the costs of construction confidential until after bid opening, upon a written finding that confidentiality is in the state's best interest.

Section 3 of the bill clarifies that a listed subcontractor may be replaced if the subcontractor, rather than the bidder, is determined by the procurement officer not to be responsible.

Section 4 of the bill establishes a uniform requirement that the bid security that is required for competitive sealed bids for certain construction contracts and that may be required for competitive sealed bids for other construction contracts and for contracts for supplies, services, or professional services, must be equal to at least five percent of the amount of the bid. This replaces more complicated security requirements, which the

Department of Transportation and Public Facilities found resulted in rejection of several major bids.

Section 5, besides making some technical corrections in AS 36.30.170(b)(4), recognizes the need in some situations to provide the Alaska Bidder preference to partnerships in which not all partners are Alaska residents.

Section 6 of the bill also requires the list of subcontractors provided by the offeror of the proposal determined to be most advantageous to the state to include a list of the work to be performed by each subcontractor.

Sections 8 and 9 of the bill provide more specific requirements for consideration of proposers' Alaska bidder status in evaluating competitive sealed proposals. In evaluating the cost factors of a proposal, an agency must consider the proposed costs of an offeror who qualifies as an Alaska bidder to be reduced by five percent. In establishing evaluation factors, an agency must allocate at least 10 percent of the value of the rating system to the proposers' Alaska bidder status. These provisions place in statute the requirements of interpretive regulations adopted by the commissioner of administration.

Section 10 of the bill adds a new provision that permits multi-step sealed proposals, similar to AS 36.30.190 which provides for multi-step competitive sealed bidding.

Sections 11 and 12 of the bill permit delegation of the authority to make written determinations necessary for a sole source or limited competition procurement of supplies, services, or construction if the amount of the procurement does not exceed the amount for small procurements under AS 36.30.320(a). That amount is currently \$5,000.

Section 13 of the bill amends the provisions for determination of responsibility of a bidder or offeror, to require the procurement officer to make a written determination only if the bidder or offeror is found to be not responsible, rather than if he or she is found to be responsible.

Section 14 of the bill amends the requirement that the procurement officer issue a written explanation of award of a contract to an out-of-state bidder, to provide that such an explanation is not required if the award is made under competitive sealed bidding. The reason for this change is that awards under competitive sealed bidding involve no exercise of discretion.

Section 15 of the bill removes the prohibition against use of cost-plus-a-percentage-of-cost contracts, and allows use of that type of contract under regulations to be adopted by

the commissioner of administration and commissioner of transportation and public facilities in their respective areas of responsibility.

Section 16 of the bill repeals and reenacts the provision for stay of award of a contract when an appeal is filed. Currently, even if an appeal is filed, the contracting agency may proceed with the award unless the agency determines that the protest will probably be sustained or that a stay of the award is not contrary to the best interests of the state. As reenacted, AS 36.30.575 requires a stay of the award unless there is a written finding that there is a reasonable probability that the protest will be denied or that the delay is found to be contrary to the state's best interests. In other words, essentially, the provision is reversed.

Section 17 of the bill amends AS 36.30.850(b) to provide for additional exemptions from the procurement code, including exemptions of

- contracts for day care assistance (AS 44.47.250);
- contracts for purchase of standardized licensure examinations;
- disposals of supplies acquired in agricultural loan foreclosures;
- purchases of certain services connected to art and historical objects;
- acquisition of confidential seismic information for pre-sale oil and gas lease analyses;
- contracts for village public safety officers;
- expenditures for expenses for travel to meetings by persons who provide personal care and sign language interpretation for members of the Governor's Council for the Handicapped and Gifted;
- contracts for home health care services and adult residential and foster care services; and
- contracts for services and supplies for research projects that are funded with federal or private grant money.

Language is also deleted from AS 36.30.850(b)'s lead-in, and the same language is instead included in a new definition of "state money" (sec. 19 of the bill).

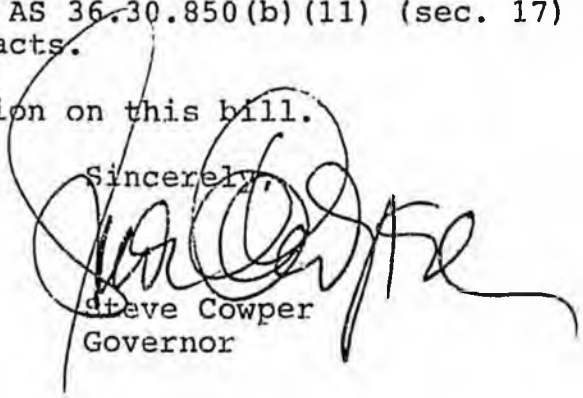
Section 18 adds a new section that allows for use of alternate procurement methods, rather than those provided in the procurement code, in specified situations in which agencies have found application of the procurement code to be impractical or disadvantageous to the state.

Section 19 adds a new definition of "state money," to clarify that only expenditure of money appropriated to an agency or spent under an appropriation (including money spent under AS 37.07.080(h)) is subject to the procurement code. Not subject to the procurement code under this definition is expenditure of money such as that of companies for which, or of individuals for whom, the state acts as the trustee, receiver, or conservator (for example, money of a bank that the state has taken possession of under AS 06.05.470, or a client's money held in trust by the Office of Public Advocacy).

Section 20 repeals AS 36.30.100(b)(1) -- (4), which are currently exemptions from competitive bidding requirements and which are relocated by the bill to proposed AS 36.30.855 (sec. 18); AS 36.30.540(4) -- (5), to delete the reporting requirements for out-of-state and state source procurements; AS 36.30.605, to delete the protest report requirement; and AS 44.47.250(c), to conform AS 44.47.250 to the exemption added to AS 36.30.850(b)(11) (sec. 17) for day care assistance contracts.

I urge your favorable action on this bill.

Sincerely,



Steve Cowper  
Governor



**ASSOCIATED GENERAL CONTRACTORS of ALASKA**

404 B STREET • ANCHORAGE, ALASKA 99503  
PO BOX 240609 • ANCHORAGE, ALASKA 99524-0609  
TELEPHONE (907) 561-5354 • FAX (907) 562-6118

**TO:** House State Affairs Committee

**FROM:** Resa Jerrel, Director *R.J.*  
Governmental Relations

**DATE:** 5/4/89

**RE:** Proposed Amendment to CSSB 170 (Finance) am

The following are a few comments on a proposed amendment to CSSB 170 (Finance) am, by Representative Donley dated 5/3/89, number go0509sJb.

AS 30.36.115(a) states:

"Within five working days after the identification of the apparent low bidder, the apparent low bidder shall submit a list of the subcontractors the bidder proposed to use in the performance of the contract. The list must include the name and location of the place of business for each subcontractor and evidence of the subcontractor's valid Alaska business license. A bidder for a construction contract shall also submit evidence of each subcontractor's registration under AS 08.18."

The proposed amendment would eliminate the language that the apparent low bidder has five working days to submit a list of subcontractors and replaces it with language that all bidder at the time of bid would have to submit a list of subcontractors the bidder proposes to use in the performance of the contract.

A.G.C. of Alaska totally opposes this proposed amendment. We believe that the inclusion of such a provision will lead to a dramatic increase in bid protests, increased costs, and increased litigation

The proposed amendment would seriously interfere with a prime contractor's ability to:

- \* submit timely bids.
- \* comply with contractually imposed MBE/DBE requirements.

- \* determine a subcontractors bonding capabilities,
- \* compare the scope of work bid by one subcontractor to other subcontractors bid.

Naming subcontractors at bid sounds simple; however anyone familiar with the bidding process can attest to the difficulty in listing all successful subcontractors at bid submittal time. Bid day, particularly the final few hours prior to submittal, is a very busy time for a prime contractor. In the "final hour" the prime contractor literally receives hundreds of telephone calls from subcontractors submitting bids on many different phases of work. Often times a prime contractor is not familiar with the subcontractors submitting bids. Prior to the selection of any subcontractor the prime contractor must evaluate the bid and the scope of the work quoted by the subcontractor. The prime contractor must then check on the subcontractor's insurance, bonding capability and qualifications. Finally the prime contractor must insure that the labor policy of the subcontractor is compatible with any labor agreements to which the prime contractor may be signator. All of this takes time. All this cannot be accomplished in the few hours between receiving a subcontractors quote and the time for submitting a bid.

When the existing language was introduced by the Governor his April 15, 1987 letter of transmittal stated in part:

"AS 36.30.115(a) is amended. . . . These amendments are necessary to provide appropriate flexibility in the handling of bids and subcontractor lists. . . . These amendments will be more cost-effective for both the state and the contractors."

In conclusion, A.G.C. of Alaska believes the proposed amendment will severely interfere with a prime contractors ability to submit responsive bids, dramatically increase bid protests, increase litigation and increase costs. Further, requiring the information at bid time is an unnecessary and cumbersome task for the unsuccessful bidder; and contracting agency personnel will be inundated with information which is irrelevant to the determination of the lowest responsive and responsible bidder.

The existing statute was carefully scrutinized through numerous hearings in the previous legislature. A.G.C. of Alaska believes that it adequately addresses the concerns of those that have supported the naming of subcontractors while preserving a functional bidding process.

A M E N D M E N T

OFFERED IN THE HOUSE

BY DONLEY

TO: CSSB 170 (Finance) am

Page 3, line 16, through page 4, line 5:

Delete all material.

Insert new bill sections to read:

"\* Sec. 7. AS 36.30.115(a) is repealed and reenacted to read:

(a) A bidder shall submit as part of the bid a list of the subcontractors the bidder proposes to use in the performance of the contract. The list must include the name and location of the place of business for each subcontractor, evidence of the subcontractor's current Alaska business license, and, for a construction contract, evidence of each subcontractor's current registration under AS 08.18. If a bid does not comply with this subsection, the purchasing officer shall reject the bid as not responsive.

\* Sec. 8. AS 36.30.115(b) is amended to read:

(b) A bidder may not replace a listed subcontractor, unless after the bidder is awarded the contract [IF] the subcontractor

- (1) fails to comply with AS 08.18;
- (2) files for bankruptcy or becomes insolvent;
- (3) fails to execute a contract with the bidder involving performance of the work for which the subcontractor was listed and the bidder acted in good faith;
- (4) fails to maintain [OBTAIN] bonding;

(5) fails to maintain [OBTAIN] insurance acceptable to the state;

(6) fails to perform the contract with the bidder involving work for which the subcontractor was listed;

(7) must be substituted in order for the prime contractor to satisfy required state and federal affirmative action requirements;

(8) fails [REFUSES] to [AGREE OR] abide by [WITH] the bidder's labor agreement; or

(9) is determined by the procurement officer not to be a responsible subcontractor [BIDDER]."

Renumber the following bill sections accordingly.

**Sec. 36.30.100. General policy.** (a) Except as otherwise provided in this chapter, or unless specifically exempted by law, an agency contract shall be awarded by competitive sealed bidding.

(b) Competitive sealed bidding is not required

(1) when the commissioner determines in writing that food, clothing, or medical supplies, or materials for use in laboratory or medical studies may be purchased otherwise to the best advantage of the state;

(2) when rates are fixed by law or ordinance;

(3) for the purchase of products or services manufactured or provided by an employment program;

(4) for the purchase of products or services provided by the correctional industries program established under AS 33.32;

(5) for professional services; or

(6) for concessions operated on state property.

(c) In this section "employment program" means a nonprofit program to increase employment opportunities for individuals with physical or mental disabilities that constitute substantial handicaps to employment. (§ 2 ch 106 SLA 1986)

**Collateral references.** — Requirement of competitive bidding as applicable to contract that public contract be awarded on competitive bidding for public utility. 81 ALR3d 979.

**Sec. 36.30.110. Invitation to bid.** (a) When competitive sealed bidding is used, the procurement officer shall issue an invitation to bid. It must include a time, place and date by which the bid must be received, purchase description, and a description of all contractual terms and conditions applicable to the procurement.

(b) When responding to the invitation to bid, the bidder shall supply evidence of the bidder's valid Alaska business license. A bidder for a construction contract shall also submit evidence of the bidder's registration under AS 08.18. (§ 2 ch 106 SLA 1986)

**Sec. 36.30.115. Subcontractors.** (a) Within five working days after the identification of the apparent low bidder, the apparent low bidder shall submit a list of the subcontractors the bidder proposes to use in the performance of the contract. The list must include the name and location of the place of business for each subcontractor and evidence of the subcontractor's valid Alaska business license. A bidder for a construction contract shall also submit evidence of each subcontractor's registration under AS 08.18.

(b) A bidder may replace a listed subcontractor if the subcontractor

(1) fails to comply with AS 08.18;

(2) files for bankruptcy or becomes insolvent;

(3) fails to execute a contract with the bidder involving performance of the work for which the subcontractor was listed and the bidder acted in good faith;

(4) fails to obtain bonding;

(5) fails to obtain insurance acceptable to the state;

(6) fails to perform the contract with the bidder involving work for which the subcontractor was listed;

(7) must be substituted in order for the prime contractor to satisfy required state and federal affirmative action requirements;

(8) refuses to agree or abide with the bidder's labor agreement; or

(9) is determined by the procurement officer not to be a responsible bidder.

(c) If a bidder fails to list a subcontractor or lists more than one subcontractor for the same portion of work and the value of that work is in excess of half of one percent of the total bid, the bidder shall be considered to have agreed to perform that portion of work without the use of a subcontractor and to have represented the bidder to be qualified to perform that work.

(d) A bidder who attempts to circumvent the requirements of this section by listing as a subcontractor another contractor who, in turn, sublets the majority of the work required under the contract violates this section.

(e) If a contract is awarded to a bidder who violates this section, the purchasing officer may

(1) cancel the contract; or

(2) after notice and a hearing, assess a penalty on the bidder in an amount that does not exceed 10 percent of the value of the subcontract at issue. (§ 2 ch 106 SLA 1986; am §§ 4, 5 ch 65 SLA 1987)

**Effect of amendments.** — The 1987 amendment, effective January 1, 1988, in subsection (a) in the first sentence substituted "five working days" for "24 hours," "the identification of the apparent low bidder" for "opening of bids," "apparent low bidder" for "two apparent low bid-

ders," and "bidder proposes" for "bidders propose," and in the second sentence substituted "must" for "shall"; and in subsection (b) added "and the bidder acted in good faith" at the end of paragraph (3) and inserted "state and" in paragraph (7).

**Sec. 36.30.120. Bid security.** (a) Bid security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the procurement officer to exceed an amount established by regulation of the commissioner. Bid security on construction contracts under the amount set by the commissioner may be required when the circumstances warrant. Bid security may be required for competitive sealed bidding for contracts for supplies, services, or professional services in accordance with regulations of the commissioner when need for the protection of the state.

(b) Bid security must be a bond provided by a surety company authorized to do business in the state or otherwise supplied in a form



# Alaska State Legislature

## HOUSE OF REPRESENTATIVES

Official Business

P.O. Box V  
State Capitol  
Juneau, Alaska 99811

### M E M O R A N D U M

TO: House State Affairs Committee

FROM: Representative H.A. "Red" Boucher, Chair  
House State Affairs

DATE: May 3, 1989

RE: Proposed changes to CSSB 170 (Finance) am

The attached shows the changes to CSSB 170 (Finance) am as recommended by committee members during today's hearing. I cannot provide a "draft" of the proposed changes at this time - Legal Services indicated they were extremely busy and could not provide a draft until late this evening.

Please also note the attached amendments by Representative Dave Donley (dated 5/3/89). I have not included these amendments in this discussion since they were not part of the deliberations today. However, they will be brought before the committee tomorrow.

The proposed HCS for CSSB 170 (SA) would accomplish the following:

1. Sections 1, 26 and 27(17) were deleted: Representative Donley raised the question of whether amending the computation of time in the General Provisions was necessary or logical simply to increase the number of days a vendor had to respond. He suggested amending the procurement statutes to remedy the problem.
2. The draft will add a new section which amends AS 36.30.590. This section will address the issue raised

3CC.20

PAGE 9

above (1.). Vendors appealing a protest now have 10 days [5] to file an appeal after a decision is received. You should note that increasing the number of days to 10 also makes this section consistent with AS 36.30.565 which allows 10 days for filing a protest (attached).

3. Sections 2 and 3 were deleted: Sections 2 and 3 were added by the senate. The Alaska Railroad Corporation felt the provisions of the procurement impinged on their ability to act as a semi-private operation.

As noted by Bob Link the procurement code requirements apply to all general government. The "competitive principals" provision, however, applies only to the legislature and the court system. The railroad would like be treated under the "competitive principals" provision.

As Representative Donley pointed out, allowing the Alaska Railroad Corporation the latitude to operate outside of the procurement code would result in considerable controversy - note the problem encountered with the purchase of railroad ties in the lower 48. [There are also questions as to how local hire and bidder preference would apply if these sections remained in the bill.]

PAGE 4  
LINES  
10-12

4. Section 9, page 5, lines 1 through 3: Representative Finkelstein offered language which would require that 50 percent of the partners of a partnership be residents of the state.

UNDELETED / TUNNEL

**Sec. 36.30.590. Appeal on a protest.** (a) An appeal from a decision of a procurement officer on a protest may be filed by the protester with the commissioner of administration, or for protests involving construction or procurements for the state equipment fleet, the commissioner of transportation and public facilities. An appeal shall be filed within five days after the decision is received by the protester. The protester shall file a copy of the appeal with the procurement officer.

(b) An appeal must contain the information required under AS 36.30.560. In addition, the appeal must include

- (1) a copy of the decision being appealed; and
- (2) identification of the factual or legal errors in the decision that form the basis for the appeal. (§ 2 ch 106 SLA 1986)

**Sec. 36.30.595. Notice of a protest appeal.** (a) The procurement officer shall immediately give notice of an appeal filed under AS 36.30.590 to the contractor if a contract has been awarded or, if no award has been made, to all interested parties.

(b) The commissioner of administration or the commissioner of transportation and public facilities, as appropriate, shall, on request, furnish a copy of the appeal to a person notified under (a) of this section, except that confidential material shall be deleted from the copy. (§ 2 ch 106 SLA 1986)

**Sec. 36.30.600. Stay of award during protest appeal.** If a protest appeal is filed before a contract is awarded and the award was stayed under AS 36.30.575, the filing of the appeal automatically continues the stay until the commissioner of administration or the commissioner of transportation and public facilities, as appropriate, makes a written determination that the award of the contract without further delay is necessary to protect substantial interests of the state. (§ 2 ch 106 SLA 1986)

**Sec. 36.30.605. Protest report.** (a) The procurement officer of the contracting agency shall file a complete report on the protest and decision with the commissioner of administration or the commissioner of transportation and public facilities, as appropriate, within seven days after a protest appeal is filed. The procurement officer shall furnish a copy of the report to the protester and to interested parties that have requested a copy of the appeal under AS 36.30.595(b).

(b) The procurement officer may request an extension of time to prepare the protest report. The request must be in writing listing the reasons for the request. The commissioner of administration or the commissioner of transportation and public facilities, as appropriate, shall respond to the request in writing. If an extension is granted, the commissioner shall list the reasons for granting the extension and

Title 36  
Public Contracts

Title 35  
Public Buildings, Work  
and Improvements

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does not apply to procurements made under AS 36.30.320. (§ 2 ch 106 SLA 1986)

**Article 8. Legal and Contractual Remedies.**

Section	Section
560. Filing of a protest	640. Causes for debarment or suspension
565. Time for filing a protest	645. Written determinations
570. Notice of a protest	650. Hearing on a suspension
575. Stay of award	655. List of persons debarred or suspended
580. Decision by the procurement officer	660. Reinstatement
585. Protest remedies	665. Limited participation
590. Appeal on a protest	670. Hearing procedures
595. Notice of a protest appeal	675. Recommendation by the hearing officer
600. Stay of award during protest appeal	680. Final decision by the commissioner
605. Protest report	685. Judicial appeal
610. Decision without hearing	687. Misrepresentations and fraudulent claims
615. Hearing on protest appeal	690. Exclusive remedy
620. Contract controversies	695. Other rules of procedure
625. Appeal on a contract controversy	699. Definition
630. Hearing on a contract controversy	
632. Delegation	
635. Authority to debar or suspend	

Effective date of article. — Section § 27, ch. 65, SLA 1987, provides that this article takes effect January 1, 1988.

**Sec. 36.30.560. Filing of a protest.** An interested party may protest the award of a contract, the proposed award of a contract, or a solicitation for supplies, services, professional services, or construction by an agency. The protest shall be filed with the procurement officer of the contracting agency in writing and include the following information:

- (1) the name, address, and telephone number of the protester;
- (2) the signature of the protester or the protester's representative;
- (3) identification of the contracting agency and the solicitation or contract at issue;
- (4) a detailed statement of the legal and factual grounds of the protest, including copies of relevant documents; and
- (5) the form of relief requested. (§ 2 ch 106 SLA 1986)

**Sec. 36.30.565. Time for filing a protest.** (a) A protest based upon alleged improprieties in an award of a contract or a proposed award of a contract must be filed within 10 days after a notice of intent to award the contract is issued by the procurement officer.

(b) If the protester shows good cause, the procurement officer of the contracting agency may consider a filed protest that is not timely. (§ 2 ch 106 SLA 1986; am § 19 ch 65 SLA 1987)

Title 36  
Public Contracts

Title 33  
Public Buildings, Work  
and Improvements

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSSB 170 (Finance) am

*Bid stopping Act  
if done - delay  
1981 for other  
jurisdiction* BY DONLEY

Page 3, line 16, through page 4, line 5:

Delete all material.

Insert new bill sections to read:

"\* Sec. 7. AS 36.30.115(a) is repealed and reenacted to read:

(a) A bidder shall submit as part of the bid a list of the subcontractors the bidder proposes to use in the performance of the contract. The list must include the name and location of the place of business for each subcontractor, evidence of the subcontractor's current Alaska business license, and, for a construction contract, evidence of each subcontractor's current registration under AS 08.18. If a bid does not comply with this subsection, the purchasing officer shall reject the bid as not responsive.

\* Sec. 8. AS 36.30.115(b) is amended to read:

(b) A bidder may not replace a listed subcontractor, unless after the bidder is awarded the contract [IF] the subcontractor

- (1) fails to comply with AS 08.18;
- (2) files for bankruptcy or becomes insolvent;
- (3) fails to execute a contract with the bidder involving performance of the work for which the subcontractor was listed and the bidder acted in good faith;
- (4) fails to maintain [OBTAIN] bonding;

(5) fails to maintain [OBTAIN] insurance acceptable to the state;

(6) fails to perform the contract with the bidder involving work for which the subcontractor was listed;

(7) must be substituted in order for the prime contractor to satisfy required state and federal affirmative action requirements;

(8) fails [REFUSES] to [AGREE OR] abide by [WITH] the bidder's labor agreement; or

(9) is determined by the procurement officer not to be a responsible subcontractor [BIDDER]."

§ 170

Renumber the following bill sections accordingly.

Original sponsor: Rules/Governor

1 IN THE SENATE BY THE FINANCE COMMITTEE  
2 CS FOR SENATE BILL NO. 170 (Finance) am  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 SIXTEENTH LEGISLATURE - FIRST SESSION  
5 A BILL

6 For an Act entitled: "An Act relating to state procurement."

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

8 \* Section 1. AS 01.10.080 is amended to read:

9 Sec. 01.10.080. COMPUTATION OF TIME. The time in which an act  
10 provided by law is required to be done is computed by excluding the  
11 first day and including the last, unless the last day is a holiday,  
12 and then it is also excluded. This section does not apply to AS 36.-

13 30.

14 \* Sec. 2. AS 36.30.015(e) is amended to read:

15 (e) The board [BOARDS] of directors of the [ALASKA RAILROAD  
16 CORPORATION AND THE] Alaska State Building Authority shall adopt  
17 procedures to govern the procurement of supplies, services, profes-  
18 sional services, and construction by the authority [CORPORATION]. The  
19 procedures must be substantially equivalent to the procedures pre-  
20 scribed in this chapter and in regulations adopted under this chapter.

21 \* Sec. 3. AS 36.30.015 is amended by adding a new subsection to read:

22 (f) The board of directors of the Alaska Railroad Corporation  
23 shall adopt and publish procedures to govern the procurement of sup-  
24 plies, services, professional services, and construction by the corpo-  
25 ration. The procedures must be based on the competitive principles  
26 consistent with this chapter and must be adapted to the special needs  
27 of the corporation as determined by the board of directors.

28 \* Sec. 4. AS 36.30.040(b) is amended to read:

29 (b) The commissioner shall adopt regulations pertaining to the

1 following:

2 (1) suspension, debarment, and reinstatement of prospective  
3 bidders and contractors;

4 (2) bid protests;

5 (3) conditions and procedures for the procurement of per-  
6 ishables and items for resale;

7 (4) conditions and procedures for the use of source selec-  
8 tion methods authorized by this chapter, including sole source pro-  
9 curements, emergency procurements, and small procurements;

10 (5) the opening or rejection of bids and offers, and waiver  
11 of informalities in bids and offers;

12 (6) confidentiality of technical data and trade secrets  
13 submitted by actual or prospective bidders or offerors;

14 (7) partial, progressive, and multiple awards;

15 (8) storerooms and inventories, including determination of  
16 appropriate stock levels and the management of agency supplies;

17 (9) transfer, sale or other disposal of supplies;

18 (10) definitions and classes of contractual services and  
19 procedures for acquiring them;

20 (11) providing for conducting price analysis;

21 (12) use of payment and performance bonds in connection with  
22 contracts for supplies, services, and construction;

23 (13) guidelines for use of cost principles in negotiations,  
24 adjustments, and settlements;

25 (14) conditions under which an agency may use the services  
26 of an employment program [AS DEFINED UNDER AS 36.30.100(c)];

27 (15) a bidder's or offeror's duties under AS 36.30.115 and  
28 36.30.210; and

29 (16) the elimination and prevention of discrimination in

1 state contracting because of race, religion, color, national origin,  
2 sex, age, marital status, pregnancy, parenthood, handicap, or politi-  
3 cal affiliation.

4 \* Sec. 5. AS 36.30.110(b) is amended to read:

5 (b) The bidder must have a valid Alaska business license at the  
6 time designated in the invitation to bid for bid opening. [WHEN  
7 RESPONDING TO THE INVITATION TO BID, THE BIDDER SHALL SUPPLY EVIDENCE  
8 OF THE BIDDER'S VALID ALASKA BUSINESS LICENSE.] A bidder for a con-  
9 struction contract shall also submit evidence of the bidder's regis-  
10 tration under AS 08.18.

11 \* Sec. 6. AS 36.30.110 is amended by adding a new subsection to read:

12 (c) If the commissioner of transportation and public facilities  
13 makes a written finding that confidentiality is in the state's best  
14 interest, the estimated cost of a construction contract is confiden-  
15 tial information and may not be released to the public before bid  
16 opening.

17 \* Sec. 7. AS 36.30.115(b) is amended to read:

18 (b) A bidder may replace a listed subcontractor if the subcon-  
19 tractor

20 (1) fails to comply with AS 08.18;

21 (2) files for bankruptcy or becomes insolvent;

22 (3) fails to execute a contract with the bidder involving  
23 performance of the work for which the subcontractor was listed and the  
24 bidder acted in good faith;

25 (4) fails to obtain bonding;

26 (5) fails to obtain insurance acceptable to the state;

27 (6) fails to perform the contract with the bidder involving  
28 work for which the subcontractor was listed;

29 (7) must be substituted in order for the prime contractor

1 to satisfy required state and federal affirmative action requirements;  
2 (8) refuses to agree or abide with the bidder's labor  
3 agreement; or

4 (9) is determined by the procurement officer not to be a  
5 responsible subcontractor [BIDDER].

6 \* Sec. 8. AS 36.30.120(b) is amended to read:

7 (b) Bid security must be a bond provided by a surety company  
8 authorized to do business in the state or otherwise supplied in a form  
9 satisfactory to the commissioner. Bid security must be in an amount  
10 equal to at least five percent of the amount of the bid

11 [(1) 10 PERCENT OF THE AMOUNT OF THE BID IF THE BID DOES NOT  
12 EXCEED \$100,000; OR

13 (2) 10 PERCENT OF THE FIRST \$100,000 AND FIVE PERCENT OF  
14 THE AMOUNT OF THE BID OVER \$100,000 IF THE BID EXCEEDS \$100,000 UP TO  
15 A MAXIMUM OF \$200,000 IN SECURITY].

16 \* Sec. 9. AS 36.30.170(b) is amended to read:

17 (b) The procurement officer shall award a contract based on  
18 solicited bids to the lowest responsive and responsible bidder after  
19 an Alaska bidder preference of five percent and an Alaska products  
20 preference as described in AS 36.30.322 - 36.30.338 have been applied.  
21 In this subsection, "Alaska bidder" means a person who

22 (1) holds a current Alaska business license;

23 (2) submits a bid for goods, services, or construction  
24 under the name as appearing on the person's current Alaska business  
25 license;

26 (3) has maintained a place of business within the state  
27 staffed by the bidder or an employee of the bidder for a period of six  
28 months immediately preceding the date of the bid;

29 (4) is incorporated or qualified to do business under the

1 laws of the state, is a sole proprietorship [,] and the proprietor is  
2 a resident of the state, or is a partnership [,] and one or more of <sup>AT LEAST 50 PERCENT</sup>  
3 the general [ALL] partners ~~is a~~ <sup>ARE</sup> residents [ARE RESIDENTS] of the state;  
4 and

5 (5) if a joint venture, is composed entirely of venturers  
6 [VENTURES] that qualify under (1) - (4) of this subsection.

7 \* Sec. 10. AS 36.30.170(c) is amended to read:

8 (c) If a bidder qualifies under (b) of this section as an Alaska  
9 bidder, is offering services through an employment program [AS DEFINED  
10 UNDER AS 36.30.100(c)], and is the lowest responsible and responsive  
11 bidder with a bid that is not more than 10 percent higher than the  
12 lowest bid of a nonresident, the procurement officer shall award the  
13 contract to that bidder.

14 \* Sec. 11. AS 36.30.210(a) is amended to read:

15 (a) A request for competitive sealed proposals must contain the  
16 date, time, and place for delivering proposals, a specific description  
17 of the supplies, construction, services, or professional services to  
18 be provided under the contract, and the terms under which the sup-  
19 plies, construction, services, or professional services are to be  
20 provided. The request must [SHALL] require the offeror [TO SUBMIT  
21 EVIDENCE OF THE OFFEROR'S VALID ALASKA BUSINESS LICENSE AND], no later  
22 than five working days after the [IDENTIFYING WHICH] proposal that is  
23 the most advantageous to the state is identified, to list subcontractors  
24 the offeror proposes to use in the performance of the contract.  
25 The list must [SHALL] include the name and location of the place of  
26 business for each subcontractor, the work to be subcontracted to each  
27 subcontractor, and evidence of the subcontractor's valid Alaska busi-  
28 ness license. An offeror for a construction contract shall also  
29 submit evidence of the offeror's registration under AS 08.18 and

1 evidence of registration for each listed subcontractor.

2 \* Sec. 12. 36.30.210 is amended by adding a new subsection to read:

3 (e) The offeror must have a valid Alaska business license at the  
4 time designated, in the request for proposals, for opening of the pro-  
5 posals.

6 \* Sec. 13. AS 36.30.250(b) is amended to read:

7 (b) In determining whether a proposal is advantageous to the  
8 state, the procurement officer shall take into account, in accordance  
9 with regulations of the commissioner, whether the offeror [QUALIFIES  
10 AS AN ALASKA BIDDER UNDER AS 36.30.170(b) OR] is offering the services  
11 of an employment program [AS DEFINED IN AS 36.30.100(c)].

12 \* Sec. 14. AS 36.30.250 is amended by adding new subsections to read:

13 (c) For the purpose of evaluating cost factors, the proposed  
14 costs of an offeror who qualifies as an Alaska bidder under AS 36.30.-  
15 170(b) shall be reduced by five percent.

16 (d) The request for proposals must include an Alaska bidder  
17 evaluation factor that takes into consideration whether an offeror  
18 qualifies as an Alaska bidder under AS 36.30.170(b). At least 10  
19 percent of the value of the rating system or weighting value used  
20 shall be assigned to the Alaska bidder evaluation factor.

21 \* Sec. 15. AS 36.30 is amended by adding a new section to read:

22 Sec. 36.30.265. MULTI-STEP SEALED PROPOSALS. When it is con-  
23 sidered impractical to initially prepare a definitive purchase de-  
24 scription to support an award based on listed selection criteria, the  
25 procurement officer may issue an expression of interest requesting the  
26 submission of unpriced technical offers, and then later issue a re-  
27 quest for proposals limited to the offerors whose offers are deter-  
28 mined to be technically qualified under the criteria set out in the  
29 expression of interest.

1 \* Sec. 16. AS 36.30.300(a) is amended to read:

2 (a) A contract may be awarded for supplies, services, profes-  
3 sional services, or construction without competitive sealed bidding,  
4 competitive sealed proposals, or other competition in accordance with  
5 regulations adopted by the commissioner [OF ADMINISTRATION]. A con-  
6 tract may be awarded under this section only when the chief procure-  
7 ment officer or, for construction contracts or procurements for the  
8 state equipment fleet, the commissioner of transportation and public  
9 facilities determines in writing that there is only one source for the  
10 required procurement or construction. A sole source procurement may  
11 not be awarded if a reasonable alternative source exists. The written  
12 determination must include findings of fact that support by clear and  
13 convincing evidence the determination that only one source exists.  
14 Except for procurements of supplies, services, or construction that do  
15 not exceed the amount for small procurements under AS 36.30.320(a),  
16 the [THE] authority to make the determination required by this subsec-  
17 tion may not be delegated.

18 \* Sec. 17. AS 36.30.305(a) is amended to read:

19 (a) A contract for supplies, services, professional services, or  
20 a construction contract under \$100,000, may be awarded without compet-  
21 itive sealed bidding or competitive sealed proposals, in accordance  
22 with regulations adopted by the commissioner [OF ADMINISTRATION]. A  
23 contract may be awarded under this section only when the commissioner  
24 [OF ADMINISTRATION], or, for construction contracts under \$100,000 or  
25 procurements for the state equipment fleet, the commissioner of trans-  
26 portation and public facilities, determines in writing that a situa-  
27 tion exists that makes competitive sealed bidding or competitive  
28 sealed proposals impractical or contrary to the public interest.  
29 Procurements under this section shall be made with competition that is

1           practicable under the circumstance. Except for procurements of sup-  
2           plies, services, or construction that do not exceed the amount for  
3           small procurements under AS 36.30.320(a), the [THE] authority to make  
4           a determination required by this section may not be delegated.

5       \* Sec. 18. AS 36.30.320(a) is amended to read:

6           (a) A procurement for supplies, services, or construction that  
7           does not exceed an aggregate dollar amount of \$10,000 [\$5,000] may be  
8           made in accordance with regulations adopted by the commissioner for  
9           small procurements.

10       \* Sec. 19. AS 36.30.360(a) is amended to read:

11           (a) A written determination of nonresponsibility [RESPONSIBIL-  
12           ITY] of a bidder or offeror shall be made by the procurement officer  
13           in accordance with regulations adopted by the commissioner. The  
14           unreasonable failure of a bidder or offeror to promptly supply infor-  
15           mation in connection with an inquiry with respect to responsibility is  
16           grounds for a determination of nonresponsibility with respect to the  
17           bidder or offeror.

18       \* Sec. 20. AS 36.30.362 is amended to read:

19           Sec. 36.30.362. DETERMINATION TO AWARD A CONTRACT TO A NONRESI-  
20           DENT. Except for awards made under AS 36.30.170, if [IF] the procure-  
21           ment officer awards a contract to a person who does not reside or  
22           maintain a place of business in the state and if the supplies, ser-  
23           vices, professional services, or construction that is the subject of  
24           the contract could have been obtained from sources in the state, the  
25           procurement officer shall issue a written statement explaining the  
26           basis of the award. The statement required under this section shall  
27           be kept in the contract file.

28       \* Sec. 21. AS 36.30.370 is amended to read:

29           Sec. 36.30.370. TYPES OF CONTRACTS. Subject to limitations of

1 this section, any type of contract that will promote the best inter-  
2 ests of the state may be used, except that the use of a cost-plus-a-  
3 percentage-of-cost contract may only be used when permitted by regula-  
4 tions adopted by the commissioner, or, for construction contracts, by  
5 the commissioner of transportation and public facilities [IS PROHIB-  
6 ITED]. A cost-reimbursement contract may be used only when a deter-  
7 mination is made in writing by the procurement officer that a cost-  
8 reimbursement contract is likely to be less costly to the state than  
9 any other type or that it is impracticable to obtain the supplies,  
10 services, professional services, or construction required except under  
11 a cost-reimbursement contract.

12 \* Sec. 22. AS 36.30.575 is repealed and reenacted to read:

13 Sec. 36.30.575. STAY OF AWARD. If a protest is filed within the  
14 time set out in AS 36.30.565 and before an award is made, award of the  
15 contract shall be stayed until a decision is made on the protest,  
16 unless the chief procurement officer, the commissioner, or, for con-  
17 struction contracts or procurements for the state equipment fleet, the  
18 commissioner of transportation and public facilities, makes a written  
19 determination that

20 (1) a reasonable probability exists that the protest will  
21 be denied; or

22 (2) delay of award of the contract is contrary to the  
23 state's best interests.

24 \* Sec. 23. AS 36.30.850(b) is amended to read:

25 (b) This chapter applies to every expenditure of state money  
26 [FUNDS, IRRESPECTIVE OF THEIR SOURCES, INCLUDING FEDERAL ASSISTANCE  
27 EXCEPT AS OTHERWISE SPECIFIED IN AS 36.30.890,] by the state, acting  
28 through an agency, under a contract, except that this chapter does not  
29 apply to

- 1 (1) grants;
- 2 (2) contracts for professional witnesses to provide for  
3 professional services or testimony relating to existing or probable  
4 lawsuits in which the state is or may become a party;
- 5 (3) contracts of the University of Alaska where the work is  
6 to be performed substantially by students enrolled in the university;
- 7 (4) contracts for medical doctors and dentists;
- 8 (5) acquisitions or disposals of real property or interest  
9 in real property, except as provided in AS 36.30.080;
- 10 (6) disposals under AS 38.05;
- 11 (7) contracts for the preparation of ballots under AS 15.-  
12 15.030;
- 13 (8) acquisitions or disposals of property and other con-  
14 tracts relating to airports under AS 02.15.070, 02.15.090, and 02.15.-  
15 091;
- 16 (9) disposals of obsolete property under AS 19.05.060;
- 17 (10) disposals of obsolete material or equipment under  
18 AS 35.20.060;
- 19 (11) agreements with providers of services under AS 44.47.-  
20 250; AS 47.07; AS 47.08; AS 47.10; AS 47.17; AS 47.24; AS 47.25.195,  
21 and 47.25.310;
- 22 (12) contracts of the Department of Fish and Game for  
23 flights that involve specialized flying and piloting skills and are  
24 not point-to-point;
- 25 (13) purchases of income-producing assets for the state  
26 treasury or a public corporation of the state; [.]
- 27 (14) operation of the state boarding school established  
28 under AS 14.16, if the State Board of Education or the commissioner of  
29 education adopts regulations for use by the state boarding school in

1 procurement and contracting;

2 (15) a contract that is a delegation, in whole or in part,  
3 of investment powers held by the commissioner of revenue under AS 14.-  
4 25.180, AS 14.40.400, AS 14.42.200, 14.42.210, AS 18.56.095, AS 22.-  
5 25.048, AS 26.05.228, AS 37.10.070, 37.10.071, AS 37.14, or AS 39.35.-  
6 080;

7 (16) a contract that is a delegation, in whole or in part,  
8 of investment powers of the Board of Trustees of the Alaska Permanent  
9 Fund Corporation under AS 37.13; [OR]

10 (17) the purchase of books, book binding services, newspa-  
11 pers, periodicals, audio-visual materials, network information ser-  
12 vices access, approval plans, professional memberships, archival  
13 materials, objects of art, and items for museum or archival acquisi-  
14 tion having cultural, historical, or archaeological significance; in  
15 this paragraph

16 (A) "approval plans" means book selection services in  
17 which current book titles meeting an agency's customized specifi-  
18 cations are provided to the agency subject to the right of the  
19 agency to return those books that do not meet with the agency's  
20 approval;

21 (B) "audio-visual materials" means nonbook prerecorded  
22 materials, including records, tapes, slides, transparencies,  
23 films, filmstrips, cassettes, videos, compact discs, laser discs,  
24 and items that require the use of equipment to render them us-  
25 able;

26 (C) "archival materials" means the noncurrent records  
27 of an agency that are preserved after appraisal because of their  
28 value;

29 (D) "network information services" means a group of

1 resources from which cataloging information, holdings records,  
2 inter-library loans, acquisitions information, and other refer-  
3 ence resources can be obtained;

4 (18) contracts for the purchase of standardized examinations  
5 for licensure under AS 08;

6 (19) disposals of supplies acquired through foreclosure of  
7 loans issued under AS 03.10;

8 (20) purchases of curatorial and conservation services to  
9 maintain, preserve, and interpret

10 (A) objects of art; and

11 (B) items having cultural, historical, or archaeologi-  
12 cal significance to the state;

13 (21) acquisition of confidential seismic survey data neces-  
14 sary for pre-sale oil and gas lease analyses under AS 38.05.180;

15 (22) contracts for village public safety officers;

16 (23) expenditures to pay travel expenses of personal care  
17 attendants and sign language interpreters needed to accompany develop-  
18 mentally disabled members of the Governor's Council for the Handi-  
19 capped and Gifted to meetings for which reimbursement of members'  
20 expenses is authorized under AS 47.80.060;

21 (24) contracts for home health care and adult residential  
22 and foster care services provided under regulations adopted by the  
23 Department of Health and Social Services;

24 (25) contracts for supplies or services for research pro-  
25 jects funded by money received from the federal government or private  
26 grants; or

27 (26) guest speakers or performers for an educational or  
28 cultural activity.

29 \* Sec. 24. AS 36.30.850(e) is amended to read:

1 (e) AS 36.30.170 applies to all insurance contracts involving  
2 state money. In this subsection, "state money" includes [ , INCLUDING]  
3 state grants and reimbursement to municipalities, school districts,  
4 and other entities.

5 \* Sec. 25. AS 36.30 is amended by adding a new section to read:

6 Sec. 36.30.855. ALTERNATE PROCUREMENT METHODS. (a) In place of  
7 the methods provided by AS 36.30.100 - 36.30.320, an alternate pro-  
8 curement method may be used in the following situations, in accordance  
9 with regulations adopted by the commissioner:

10 (1) if the commissioner determines in writing that food,  
11 clothing, medical supplies, or materials for use in laboratory or  
12 medical studies can be purchased otherwise to the best advantage of  
13 the state;

14 (2) if rates are fixed by law or ordinance;

15 (3) to purchase products or services manufactured or pro-  
16 vided by an employment program;

17 (4) to purchase products or services provided by the cor-  
18 rectional industries program established under AS 33.32.

19 (b) An alternate procurement method to the methods provided by  
20 AS 36.30.100 - 36.30.320 may be used for purchases of supplies and  
21 services to support operations of the division of Alaska state troop-  
22 ers or the division of fish and wildlife protection if the procurement  
23 officer for the Department of Public Safety makes a written determina-  
24 tion that publicity of the purchases would jeopardize the safety of  
25 personnel or the success of the operation.

26 \* Sec. 26. AS 36.30 is amended by adding a new section to read:

27 Sec. 36.30.960. COMPUTATION OF TIME. The time in which an act  
28 under this chapter is required to be done is computed by excluding the  
29 first day and including the last.

1 \* Sec. 27. AS 36.30.990 is amended by adding new paragraphs to read:

2 (17) "day" or "working day" means a state working day;

3 (18) "employment program" means a nonprofit program to  
4 increase employment opportunities for individuals with physical or  
5 mental disabilities that constitute substantial handicaps to employ-  
6 ment;

7 (19) "state money" means any money appropriated to an agency  
8 or spent by an agency irrespective of its source, including federal  
9 assistance except as otherwise specified in AS 36.30.890, but does not  
10 include money held in trust by an agency for a person.

11 \* Sec. 28. AS 36.30.100(b)(1), 36.30.100(b)(2), 36.30.100(b)(3), 36.-  
12 30.100(b)(4), 36.30.100(c), 36.30.540(4), 36.30.540(5), 36.30.605, and  
13 AS 44.47.250(c) are repealed.

STATE OF ALASKA  
THE LEGISLATURE

PO BOX 11000  
JUNEAU ALASKA 99801  
907 465 8000

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 3, 1989

SUBJECT:           Constitutionality of offeror preference  
                    (draft HCS CSSB 170(SA))

TO:                 Representative H.A. "Red" Boucher  
                    Chair, House State Affairs Committee

FROM:             Theresa L. Bannister *TB*  
                    Legislative Counsel

This memo accompanies the committee substitute that you requested for the above-referenced bill. Although your changes addressed different issues, please be aware that the bill contains new bidder preference provisions that could be challenged under the commerce clause and the privileges and immunities clause of the federal constitution. Section 11 gives offerors who are Alaska bidders two preferences in the evaluation of offers. I have not examined the issues sufficiently yet to express an opinion on whether the challenge would be successful. If you wish a fuller examination of this issue, please advise.

TLB:kb  
wkk4/079

Enclosure

STATE OF ALASKA  
THE LEGISLATURE

BOUCHER STATE CAPITOL  
JUNEAU, ALASKA 99801  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

May 4, 1989

SUBJECT: Equal protection consideration  
for HCS CSSB 170 (State Affairs)

TO: Representative H.A. "Red" Boucher  
Chair, House State Affairs Committee

FROM: Theresa L. Bannister *TB*  
Legislative Counsel

This memo accompanies the above-referenced bill that you requested. Please be aware that the \$500,000 amount of work that is used as a criterion in the description of an Alaska bidder may violate the federal or state equal protection provision, unless sufficient rationale exists for establishing that specific figure to keep the figure from being arbitrary. The basic question is why a business with more than \$500,000 worth of work in the state qualifies when a person with \$499,000 worth of work does not? How is the figure set? In light of the recent constitutional amendment relating to resident preference, the fact of the preference would not fall under the state's more stringent equal protection criteria, but the discrimination between persons vying for that preference may. In addition, the new provisions added to the bill may create a problem under the privilege and immunities clause of the U.S. Constitution because they discriminate against nonresidents.

If I may be of further assistance, please advise.

TLB:gc  
WkG10/054

Enclosure



WILDER CONSTRUCTION CO., INC.

May 4, 1989

Representative Dave Donley  
Alaska House of Representatives  
Juneau, Alaska

Re: CSSB 170 (Finance)

Dear Dave,

I was surprised at the amendment you have offered to this legislation relating to naming subcontractors at bid.

It is my suggestion that more information should be gathered before such a bill should be considered.

In the past, not to you, I have suggested that legislators should visit a major Building Contractor's office during a bid preparation so they could appreciate what takes place in the hour prior to the bid time. Quotes and scope letters pour in, and are taken by phone and FAX, from subcontractors and suppliers. Many of whom the prime contractor has never heard of.

I personally would like to help you gather this information.

With reference to your proposed amendment, I offer the following comments.

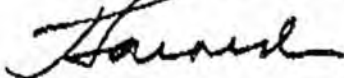
- 1) More bid protests will occur since it does not allow for minor irregularities.
- 2) The Prime contractor provides a bid bond to the State but a subcontractor can change his mind with impunity.
- 3) Subcontractors may say they are bondable but are unable to obtain a performance and payment bond
- 4) The decision to require a subcontractor to furnish a performance and payment bond is in the prime contractor's discretion not the State's.
- 5) The State's insurance requirements are a minimum and may not be as required by the prime contractor.
- 6) It will encourage prime contractors not to have labor agreements.

May 4, 1989  
Donley Letter re CSSB 170  
Page 2

7) It places a very heavy administrative burden on the State to determine responsiveness.

I ask you to reconsider offering the proposed amendment until you obtain additional input and evaluation of the true impact of this provision.

Sincerely,  
WILDER CONSTRUCTION CO., INC.



Harold Kerslake  
Alaska Division Manager

go0509sD  
Bannister  
5/3/89

CORV  
Bid No. 10  
81 August 10 AK  
20 of 170 10 AK

Original sponsor: Rules/Governor

1 IN THE SENATE BY THE STATE AFFAIRS COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 170 (State Affairs)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to state procurement."

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

8 \* Section 1. AS 36.30.040(b) is amended to read:

9 (b) The commissioner shall adopt regulations pertaining to the  
10 following:

11 (1) suspension, debarment, and reinstatement of prospective  
12 bidders and contractors;

13 (2) bid protests;

14 (3) conditions and procedures for the procurement of per-  
15 ishables and items for resale;

16 (4) conditions and procedures for the use of source selec-  
17 tion methods authorized by this chapter, including sole source pro-  
18 curements, emergency procurements, and small procurements;

19 (5) the opening or rejection of bids and offers, and waiver  
20 of informalities in bids and offers;

21 (6) confidentiality of technical data and trade secrets  
22 submitted by actual or prospective bidders or offerors;

23 (7) partial, progressive, and multiple awards;

24 (8) storerooms and inventories, including determination of  
25 appropriate stock levels and the management of agency supplies;

26 (9) transfer, sale or other disposal of supplies;

27 (10) definitions and classes of contractual services and  
28 procedures for acquiring them;

29 (11) providing for conducting price analysis;

1 (12) use of payment and performance bonds in connection with  
2 contracts for supplies, services, and construction;

3 (13) guidelines for use of cost principles in negotiations,  
4 adjustments, and settlements;

5 (14) conditions under which an agency may use the services  
6 of an employment program [AS DEFINED UNDER AS 36.30.100(c)];

7 (15) a bidder's or offeror's duties under AS 36.30.115 and  
8 36.30.210; and

9 (16) the elimination and prevention of discrimination in  
10 state contracting because of race, religion, color, national origin,  
11 sex, age, marital status, pregnancy, parenthood, handicap, or politi-  
12 cal affiliation.

13 \* Sec. 2. AS 36.30.110(b) is amended to read:

14 (b) The bidder must have a valid Alaska business license at the  
15 time designated in the invitation to bid for bid opening. [WHEN  
16 RESPONDING TO THE INVITATION TO BID, THE BIDDER SHALL SUPPLY EVIDENCE  
17 OF THE BIDDER'S VALID ALASKA BUSINESS LICENSE.] A bidder for a con-  
18 struction contract shall also submit evidence of the bidder's regis-  
19 tration under AS 08.18.

20 \* Sec. 3. AS 36.30.110 is amended by adding a new subsection to read:

21 (c) If the commissioner of transportation and public facilities  
22 makes a written finding that confidentiality is in the state's best  
23 interest, the estimated cost of a construction contract is confiden-  
24 tial information and may not be released to the public before bid  
25 opening.

26 \* Sec. 4. AS 36.30.115(b) is amended to read:

27 (b) A bidder may replace a listed subcontractor if the subcon-  
28 tractor

29 (1) fails to comply with AS 08.18;

1 (2) files for bankruptcy or becomes insolvent;

2 (3) fails to execute a contract with the bidder involving  
3 performance of the work for which the subcontractor was listed and the  
4 bidder acted in good faith;

5 (4) fails to obtain bonding;

6 (5) fails to obtain insurance acceptable to the state;

7 (6) fails to perform the contract with the bidder involving  
8 work for which the subcontractor was listed;

9 (7) must be substituted in order for the prime contractor  
10 to satisfy required state and federal affirmative action requirements;

11 (8) refuses to agree or abide with the bidder's labor  
12 agreement; or

13 (9) is determined by the procurement officer not to be a  
14 responsible subcontractor [BIDDER].

15 \* Sec. 5. AS 36.30.120(b) is amended to read:

16 (b) Bid security must be a bond provided by a surety company  
17 authorized to do business in the state or otherwise supplied in a form  
18 satisfactory to the commissioner. Bid security must be in an amount  
19 equal to at least five percent of the amount of the bid

20 [(1) 10 PERCENT OF THE AMOUNT OF THE BID IF THE BID DOES NOT  
21 EXCEED \$100,000; OR

22 (2) 10 PERCENT OF THE FIRST \$100,000 AND FIVE PERCENT OF  
23 THE AMOUNT OF THE BID OVER \$100,000 IF THE BID EXCEEDS \$100,000 UP TO  
24 A MAXIMUM OF \$200,000 IN SECURITY].

25 \* Sec. 6. AS 36.30.170(b) is amended to read:

26 (b) The procurement officer shall award a contract based on  
27 solicited bids to the lowest responsive and responsible bidder after  
28 an Alaska bidder preference of five percent and an Alaska products  
29 preference as described in AS 36.30.322 - 36.30.338 have been applied.

*Propose Add Part 170 other AK 9970*

*44,100 lbs - 100 lbs - 100 lbs*

*of FIRM*

*→ 3070 of B, 3*

*4500, 4500 - 100000, 4500*

In this subsection, "Alaska bidder" means a person who *FOR WORK ON ALASKA*

- (1) holds a current Alaska business license; *1st business license, credit card*
- (2) submits a bid for goods, services, or construction under the name as appearing on the person's current Alaska business license; *of Alaska products*
- (3) has maintained a place of business within the state staffed by the bidder or an employee of the bidder for a period of six months immediately preceding the date of the bid; *→ (wholly owned AK 70)*

*Dont get bidder preference preference to this*

- (4) is incorporated or qualified to do business under the laws of the state, is a sole proprietorship [,] and the proprietor is a resident of the state, or is a partnership [,] and at least 50 percent of the [ALL] partners are residents of the state; and *ship interest in a firm is held by*

- (5) if a joint venture, is composed entirely of venturers [VENTURES] that qualify under (1) - (4) of this subsection.

\* Sec. 7. AS 36.30.170(c) is amended to read:

(c) If a bidder qualifies under (b) of this section as an Alaska bidder, is offering services through an employment program [AS DEFINED UNDER AS 36.30.100(c)], and is the lowest responsible and responsive bidder with a bid that is not more than 10 percent higher than the lowest bid of a nonresident, the procurement officer shall award the contract to that bidder.

\* Sec. 8. AS 36.30.210(a) is amended to read:

(a) A request for competitive sealed proposals must contain the date, time, and place for delivering proposals, a specific description of the supplies, construction, services, or professional services to be provided under the contract, and the terms under which the supplies, construction, services, or professional services are to be provided. The request must [SHALL] require the offeror [TO SUBMIT EVIDENCE OF THE OFFEROR'S VALID ALASKA BUSINESS LICENSE AND], no later

1 than five working days after the [IDENTIFYING WHICH] proposal that is  
2 the most advantageous to the state is identified, to list subcontractors  
3 the offeror proposes to use in the performance of the contract.  
4 The list must [SHALL] include the name and location of the place of  
5 business for each subcontractor, the work to be subcontracted to each  
6 subcontractor, and evidence of the subcontractor's valid Alaska business  
7 license. An offeror for a construction contract shall also  
8 submit evidence of the offeror's registration under AS 08.18 and  
9 evidence of registration for each listed subcontractor.

10 \* Sec. 9. AS 36.30.210 is amended by adding a new subsection to read:

11 (e) The offeror must have a valid Alaska business license at the  
12 time designated, in the request for proposals, for opening of the pro-  
13 posals.

14 \* Sec. 10. AS 36.30.250(b) is amended to read:

15 (b) In determining whether a proposal is advantageous to the  
16 state, the procurement officer shall take into account, in accordance  
17 with regulations of the commissioner, whether the offeror [QUALIFIES  
18 AS AN ALASKA BIDDER UNDER AS 36.30.170(b) OR] is offering the services  
19 of an employment program [AS DEFINED IN AS 36.30.100(c)].

20 \* Sec. 11. AS 36.30.250 is amended by adding new subsections to read:

21 (c) For the purpose of evaluating cost factors, the proposed  
22 costs of an offeror who qualifies as an Alaska bidder under AS 36.30.-  
23 170(b) shall be reduced by five percent.

24 (d) The request for proposals must include an Alaska bidder  
25 evaluation factor that takes into consideration whether an offeror  
26 qualifies as an Alaska bidder under AS 36.30.170(b). At least 10  
27 percent of the value of the rating system or weighting value used  
28 shall be assigned to the Alaska bidder evaluation factor.

29 \* Sec. 12. AS 36.30 is amended by adding a new section to read:

1           Sec. 36.30.265. MULTI-STEP SEALED PROPOSALS. When it is con-  
2 sidered impractical to initially prepare a definitive purchase de-  
3 scription to support an award based on listed selection criteria, the  
4 procurement officer may issue an expression of interest requesting the  
5 submission of unpriced technical offers, and then later issue a re-  
6 quest for proposals limited to the offerors whose offers are deter-  
7 mined to be technically qualified under the criteria set out in the  
8 expression of interest.

9 \* Sec. 13. AS 36.30.300(a) is amended to read:

10           (a) A contract may be awarded for supplies, services, profes-  
11 sional services, or construction without competitive sealed bidding,  
12 competitive sealed proposals, or other competition in accordance with  
13 regulations adopted by the commissioner [OF ADMINISTRATION]. A con-  
14 tract may be awarded under this section only when the chief procure-  
15 ment officer or, for construction contracts or procurements for the  
16 state equipment fleet, the commissioner of transportation and public  
17 facilities determines in writing that there is only one source for the  
18 required procurement or construction. A sole source procurement may  
19 not be awarded if a reasonable alternative source exists. The written  
20 determination must include findings of fact that support by clear and  
21 convincing evidence the determination that only one source exists.  
22 Except for procurements of supplies, services, or construction that do  
23 not exceed the amount for small procurements under AS 36.30.320(a),  
24 the [THE] authority to make the determination required by this subsec-  
25 tion may not be delegated.

26 \* Sec. 14. AS 36.30.305(a) is amended to read:

27           (a) A contract for supplies, services, professional services, or  
28 a construction contract under \$100,000, may be awarded without compet-  
29 itive sealed bidding or competitive sealed proposals, in accordance

1 with regulations adopted by the commissioner [OF ADMINISTRATION]. A  
2 contract may be awarded under this section only when the commissioner  
3 [OF ADMINISTRATION], or, for construction contracts under \$100,000 or  
4 procurements for the state equipment fleet, the commissioner of trans-  
5 portation and public facilities, determines in writing that a situa-  
6 tion exists that makes competitive sealed bidding or competitive  
7 sealed proposals impractical or contrary to the public interest.  
8 Procurements under this section shall be made with competition that is  
9 practicable under the circumstance. Except for procurements of sup-  
10 plies, services, or construction that do not exceed the amount for  
11 small procurements under AS 36.30.320(a), the [THE] authority to make  
12 a determination required by this section may not be delegated.

13 \* Sec. 15. AS 36.30.320(a) is amended to read:

14 (a) A procurement for supplies, services, or construction that  
15 does not exceed an aggregate dollar amount of \$10,000 [\$5,000] may be  
16 made in accordance with regulations adopted by the commissioner for  
17 small procurements.

18 \* Sec. 16. AS 36.30.360(a) is amended to read:

19 (a) A written determination of nonresponsibility [RESPONSIBIL-  
20 ITY] of a bidder or offeror shall be made by the procurement officer  
21 in accordance with regulations adopted by the commissioner. The  
22 unreasonable failure of a bidder or offeror to promptly supply infor-  
23 mation in connection with an inquiry with respect to responsibility is  
24 grounds for a determination of nonresponsibility with respect to the  
25 bidder or offeror.

26 \* Sec. 17. AS 36.30.362 is amended to read:

27 Sec. 36.30.362. DETERMINATION TO AWARD A CONTRACT TO A NONRESIDE  
28 Except for awards made under AS 36.30.170, if [IF] the procurement  
29 officer awards a contract to a person who does not reside or maintain

1 a place of business in the state and if the supplies, services, pro-  
2 fessional services, or construction that is the subject of the con-  
3 tract could have been obtained from sources in the state, the procure-  
4 ment officer shall issue a written statement explaining the basis of  
5 the award. The statement required under this section shall be kept in  
6 the contract file.

7 \* Sec. 18. AS 36.30.370 is amended to read:

8 Sec. 36.30.370. TYPES OF CONTRACTS. Subject to limitations of  
9 this section, any type of contract that will promote the best inter-  
10 ests of the state may be used, except that the use of a cost-plus-a-  
11 percentage-of-cost contract may only be used when permitted by regula-  
12 tions adopted by the commissioner, or, for construction contracts, by  
13 the commissioner of transportation and public facilities [IS PROHIB-  
14 ITED]. A cost-reimbursement contract may be used only when a deter-  
15 mination is made in writing by the procurement officer that a cost-  
16 reimbursement contract is likely to be less costly to the state than  
17 any other type or that it is impracticable to obtain the supplies,  
18 services, professional services, or construction required except under  
19 a cost-reimbursement contract.

20 \* Sec. 19. AS 36.30.575 is repealed and reenacted to read:

21 Sec. 36.30.575. STAY OF AWARD. If a protest is filed within the  
22 time set out in AS 36.30.565 and before an award is made, award of the  
23 contract shall be stayed until a decision is made on the protest,  
24 unless the chief procurement officer, the commissioner, or, for con-  
25 struction contracts or procurements for the state equipment fleet, the  
26 commissioner of transportation and public facilities, makes a written  
27 determination that

28 (1) a reasonable probability exists that the protest will  
29 be denied; or

1 (2) delay of award of the contract is contrary to the  
2 state's best interests.

3 \* \* Sec. 20. AS 36.30.590(a) is amended to read:

4 (a) An appeal from a decision of a procurement officer on a  
5 protest may be filed by the protester with the commissioner of admin-  
6 istration, or for protests involving construction or procurements for  
7 the state equipment fleet, the commissioner of transportation and  
8 public facilities. An appeal shall be filed within 10 [FIVE] days  
9 after the decision is received by the protester. The protester shall  
10 file a copy of the appeal with the procurement officer.

11 \* Sec. 21. AS 36.30.850(b) is amended to read:

12 (b) This chapter applies to every expenditure of state money  
13 [FUNDS, IRRESPECTIVE OF THEIR SOURCES, INCLUDING FEDERAL ASSISTANCE  
14 EXCEPT AS OTHERWISE SPECIFIED IN AS 36.30.890,] by the state, acting  
15 through an agency, under a contract, except that this chapter does not  
16 apply to

17 (1) grants;

18 (2) contracts for professional witnesses to provide for  
19 professional services or testimony relating to existing or probable  
20 lawsuits in which the state is or may become a party;

21 (3) contracts of the University of Alaska where the work is  
22 to be performed substantially by students enrolled in the university;

23 (4) contracts for medical doctors and dentists;

24 (5) acquisitions or disposals of real property or interest  
25 in real property, except as provided in AS 36.30.080;

26 (6) disposals under AS 38.05;

27 (7) contracts for the preparation of ballots under AS 15.-  
28 15.030;

29 (8) acquisitions or disposals of property and other

1 contracts relating to airports under AS 02.15.070, 02.15.090, and  
2 02.15.091;

3 (9) disposals of obsolete property under AS 19.05.060;

4 (10) disposals of obsolete material or equipment under  
5 AS 35.20.060;

6 (11) agreements with providers of services under AS 44.47.-  
7 250; AS 47.07; AS 47.08; AS 47.10; AS 47.17; AS 47.24; AS 47.25.195,  
8 and 47.25.310;

9 (12) contracts of the Department of Fish and Game for  
10 flights that involve specialized flying and piloting skills and are  
11 not point-to-point;

12 (13) purchases of income-producing assets for the state  
13 treasury or a public corporation of the state; [.]

14 (14) operation of the state boarding school established  
15 under AS 14.16, if the State Board of Education or the commissioner of  
16 education adopts regulations for use by the state boarding school in  
17 procurement and contracting;

18 (15) a contract that is a delegation, in whole or in part,  
19 of investment powers held by the commissioner of revenue under AS 14.-  
20 25.180, AS 14.40.400, AS 14.42.200, 14.42.210, AS 18.56.095, AS 22.-  
21 25.048, AS 26.05.228, AS 37.10.070, 37.10.071, AS 37.14, or AS 39.35.-  
22 080;

23 (16) a contract that is a delegation, in whole or in part,  
24 of investment powers of the Board of Trustees of the Alaska Permanent  
25 Fund Corporation under AS 37.13; [OR]

26 (17) the purchase of books, book binding services, newspa-  
27 pers, periodicals, audio-visual materials, network information ser-  
28 vices access, approval plans, professional memberships, archival  
29 materials, objects of art, and items for museum or archival

1 acquisition having cultural, historical, or archaeological signifi-  
2 cance; in this paragraph

3 (A) "approval plans" means book selection services in  
4 which current book titles meeting an agency's customized specifi-  
5 cations are provided to the agency subject to the right of the  
6 agency to return those books that do not meet with the agency's  
7 approval;

8 (B) "audio-visual materials" means nonbook prerecorded  
9 materials, including records, tapes, slides, transparencies,  
10 films, filmstrips, cassettes, videos, compact discs, laser discs,  
11 and items that require the use of equipment to render them us-  
12 able;

13 (C) "archival materials" means the noncurrent records  
14 of an agency that are preserved after appraisal because of their  
15 value;

16 (D) "network information services" means a group of  
17 resources from which cataloging information, holdings records,  
18 inter-library loans, acquisitions information, and other refer-  
19 ence resources can be obtained;

20 (18) contracts for the purchase of standardized examinations  
21 for licensure under AS 08;

22 (19) disposals of supplies acquired through foreclosure of  
23 loans issued under AS 03.10;

24 (20) purchases of curatorial and conservation services to  
25 maintain, preserve, and interpret

26 (A) objects of art; and

27 (B) items having cultural, historical, or archaeologi-  
28 cal significance to the state;

29 (21) acquisition of confidential seismic survey data

1 necessary for pre-sale oil and gas lease analyses under AS 38.05.180;

2 (22) contracts for village public safety officers;

3 (23) expenditures to pay travel expenses of personal care  
4 attendants and sign language interpreters needed to accompany develop-  
5 mentally disabled members of the Governor's Council for the Handi-  
6 capped and Gifted to meetings for which reimbursement of members'  
7 expenses is authorized under AS 47.80.060;

8 (24) contracts for home health care and adult residential  
9 and foster care services provided under regulations adopted by the  
10 Department of Health and Social Services;

11 (25) contracts for supplies or services for research pro-  
12 jects funded by money received from the federal government or private  
13 grants; or

14 (26) guest speakers or performers for an educational or  
15 cultural activity.

16 \* Sec. 22. AS 36.30.850(e) is amended to read:

17 (e) AS 36.30.170 applies to all insurance contracts involving  
18 state money. In this subsection, "state money" includes [, INCLUDING]  
19 state grants and reimbursement to municipalities, school districts,  
20 and other entities.

21 \* Sec. 23. AS 36.30 is amended by adding a new section to read:

22 Sec. 36.30.855. ALTERNATE PROCUREMENT METHODS. (a) In place of  
23 the methods provided by AS 36.30.100 - 36.30.320, an alternate pro-  
24 curement method may be used in the following situations, in accordance  
25 with regulations adopted by the commissioner:

26 (1) if the commissioner determines in writing that food,  
27 clothing, medical supplies, or materials for use in laboratory or  
28 medical studies can be purchased otherwise to the best advantage of  
29 the state;

1 (2) if rates are fixed by law or ordinance;

2 (3) to purchase products or services manufactured or pro-  
3 vided by an employment program;

4 (4) to purchase products or services provided by the cor-  
5 rectional industries program established under AS 33.32.

6 (b) An alternate procurement method to the methods provided by  
7 AS 36.30.100 - 36.30.320 may be used for purchases of supplies and  
8 services to support operations of the division of Alaska state troop-  
9 ers or the division of fish and wildlife protection if the procurement  
10 officer for the Department of Public Safety makes a written determina-  
11 tion that publicity of the purchases would jeopardize the safety of  
12 personnel or the success of the operation.

13 \* Sec. 24. AS 36.30.990 is amended by adding new paragraphs to read:

14 (17) "employment program" means a nonprofit program to  
15 increase employment opportunities for individuals with physical or  
16 mental disabilities that constitute substantial handicaps to employ-  
17 ment;

18 (18) "state money" means any money appropriated to an agency  
19 or spent by an agency irrespective of its source, including federal  
20 assistance except as otherwise specified in AS 36.30.890, but does not  
21 include money held in trust by an agency for a person.

22 \* Sec. 25. AS 36.30.100(b)(1), 36.30.100(b)(2), 36.30.100(b)(3), 36.-  
23 30.100(b)(4), 36.30.100(c), 36.30.540(4), 36.30.540(5), 36.30.605, and  
24 AS 44.47.250(c) are repealed.

bidder's and the contract is \$500,000 or more;

(2) 10 percent higher than the lowest nonresident bidder's and the contract is more than \$100,000 and less than \$500,000;

(3) 15 percent higher than the lowest nonresident bidder's and the contract is more than \$25,000 and \$100,000 or less; or

(4) 20 percent higher than the lowest nonresident bidder's and the contract is \$25,000 or less.

\* Sec. 5. AS 36.30.170(c) is amended to read:

(c) Notwithstanding (b)(1) of this section, if [IF] a bidder qualifies under (d) [(b)] of this section as an Alaska bidder, is offering services through an employment program as defined under AS 36.30.100(c), [AND] is the lowest responsible and responsive bidder with a bid that is not more than 10 percent higher than the lowest bid of a nonresident, and the contract is \$500,000 or more, the procurement officer shall award the contract to that bidder. If the contract is less than \$500,000, the provisions of (b)(2) - (4) of this section apply to the contract.

\* Sec. 6. AS 36.30.170 is amended by adding a new subsection to read:

(d) In this section, "Alaska bidder" means a person who

(1) holds a current Alaska business license;

(2) does more than <sup>500,000</sup>~~\$1,000,000~~ worth of annual business in the state or performs more than 50 percent of the person's annual business in the state, whichever is less;

(3) has maintained a permanent place of business in the state for a period of six months immediately preceding the date of the bid; and

(4) submits a bid for goods or services under the name that appears on the person's current Alaska business license.

\* Sec. 4. This Act takes effect July 1, 1987.

MEMO STATE JUSTICE - NRP  
500,000  
500,000

Vendor is bidder who is appealing. The present law allows them 5 days to appeal and the original change to computation change was in response to complaints that there was not sufficient time on appeal particularly when the 5 days included calendaring over holidays. To change this, we simply changed the 5 to 10 rather than change the entire General Provisions statute. This change makes the appeal process consistent with the protest period which is presently 10 days.

1) Problem 1

Donely wants to see a majority interest if at all possible. For example 51 percent being Alaskan control. As it now stands, you don't get any preference if you have outside partners. This is for bidder preference. The question is where do you draw the line? You have one partner up here who is a member of 3 partner, they bid and they get AK preference - he disagrees with that. He also wants to deal with the corporation issue too. A corp. has a business license in AK qualifies for bidder preference. They have to have some tie to AK.

In the bidder pref code, its at least done so much business.

Have to dichotomize between partners. Not all partners are equal partners. One may hold 1% and the rest outside 99%. He wants a majority interest in the firm to be Alaskans. He wanted 51% of the control of the firm.

Proposes adopt same language as in bidder pref law for corps.

If you get bidder pref as a corp, you had to do certain things and this relates to the language added.

2) Problem 2

Subcontractors

3) At least 51 percent of the partnership interest in a firm is held by residents in the state of AK.

Addresses these concerns:

- couldn't have token partners
- controlling interest was held by Alaskans located here and easier to work with

# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**

1 (2) if rates are fixed by law or ordinance;

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COURT LA REZ. ALL

page 1

11-12

controlling 20  
W Ak

August 1

+ AT least 51% of <sup>the</sup> interests of the firm is held by

Res. of the state

- > AT least 50%
- > 51%
- > on control

Res. under 5%  
No. of

#1 Full AND AT least 51% OF a person's share  
interests OF the firm is held by  
Residents OF the state

AK CORP - Bidder. Prefs.  
- QUANT. FOR Prefs -

- Court has to see 100% IN AK
- NO 50% of 100% IN AK
- \$ 500,000
- 1) bus lic.
- 2) OFFICER
- 3) STATE
- 4) 50% of bus / amount

bidder's and the contract is \$500,000 or more;

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Essentially Donely thinks it should be based on the controlling interest and not on 1 partner because..... The controlling interest is in AK hands for bidder preference.

They talked about three different possibilities:

1. Liberal approach - to receive bidder preference see senate language.
2. CS draft - middle ground 50%
3. Donely - tightest 51%

Tightest however is current which requires all partners to be AK. All steps down

Donely Point: The language in the draft, would exclude those times where had an Alaskan who held 60 percent interest but had two other partners outside. They would be no longer qualified because because 50 percent of the partners weren't AK. Under his proposal that co. would qualify even though they had two outside partners because they only held 40% of the business.

Next: offers language for corp. as amended

Wholly owned AK business would no longer have to prove itself-wouldnt have to go through problem of building up past history

Amendment requires the bidders be listed in the bid document as well a sub-contractors. Current law says they have to be listed within 5 days after it is open. Goal is to prevent bid shopping - after bids submitted, contractors will go shop around. Failure to specify in the bid while it is open difficult for the state to assess the accuracy of the bid. Difficult to enforce wage and hour laws.

What the state does is try to keep the process as clean - to look at those contract documents and require only the specific things so we can get a response price from the contractors - e.g. require the contractors and subcontractors licenses be given at time of award. Have to have in possession. At the bid opening we want to have those there to determine price - met all of the qualifications there:

- 1) bid bond
- 2) sign proposal
- 3) bid schedule
- 4)

bid opening and bid award: that is variable , bid opening, letter of intent, receive documents then award. 40 days

Language now in corp. gives an AK the opportunity to be the controlling interest, be 50% within Ak and have multiple partners outside

**Sec. 36.30.015. Executive branch agencies.** (a) The commissioner of transportation and public facilities may delegate to another agency the authority to contract for construction. Before delegating authority to an agency under this subsection, the commissioner of transportation and public facilities shall make a written determination that the agency is capable of implementing the delegated authority. Notwithstanding delegation of authority under this subsection, contracts for construction are governed by this chapter and regulations adopted by the commissioner of administration under this chapter.

(b) The commissioner of administration may delegate to an agency the authority to contract for and manage services, professional services, and supplies. Notwithstanding delegation of authority under this subsection, an agency's exercise of the authority is governed by this chapter and regulations adopted by the commissioner under this chapter. Before delegating authority to an agency under this subsection, the commissioner shall make a written determination that the agency is capable of implementing the delegated authority.

(c) The commissioner of administration may not delegate the authority to dispose of supplies or the authority to adopt regulations under this chapter.

(d) An agency may not contract for the services of legal counsel without the approval of the attorney general.

(e) The boards of directors of the Alaska Railroad Corporation and the Alaska State Building Authority shall adopt procedures to govern the procurement of supplies, services, professional services, and construction by the corporation. The procedures must be substantially equivalent to the procedures prescribed in this chapter and in regulations adopted under this chapter. (§ 2 ch 106 SLA 1986)

**Sec. 36.30.020. Legislature.** The Legislative Council shall adopt and publish procedures to govern the procurement of supplies, services, professional services, and construction by the legislative branch. The procedures must be based on the competitive principles consistent with this chapter and must be adapted to the special needs of the legislative branch as determined by the Legislative Council. (§ 2 ch 106 SLA 1986)

**Sec. 36.30.030. Court system.** The administrative director of courts shall adopt and publish procedures to govern the procurement of supplies, services, professional services, and construction by the judicial branch. The procedures must be based on the competitive principles consistent with this chapter and must be adapted to the special needs of the judicial branch as determined by the administrator of courts. (§ 2 ch 106 SLA 1986)

**S B**

**206**

HOUSE COMMITTEE ON STATE AFFAIRS

RECAP OF  
CSSB 206 (SA)

*Interchange Telecommunications Services*

Received May 5, 1990  
by Sen. Frank, Sturgulewski, Fischer

Heard May 6, 1990

Passed Out of Committee May 6, 1990  
4 Do Pass

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# HOUSE COMMITTEE REPORT

(7)

Date Referred: May 5, 1990

FURTHER REFERRALS:

Date of Committee Action: \_\_\_\_\_

The STATE AFFAIRS Committee considered:

CSSB 206(SA)

CS SB NO. 206 (SA)

INTEREXCHANGE TELECOMMUNICATIONS SERVICES

"An Act relating to intrastate long distance telephone competition; permitting deregulation of a class of utilities or a utility service by the Alaska Public Utilities Commission; and providing for an effective date."

RECOMMENDATIONS:

- [ ] be replaced with \_\_\_\_\_ [ ] the same title  
[ ] have attached amendment(s) [ ] a new title  
[X] do pass  
[ ] do not pass  
[ ] no recommendation  
[ ] individual recommendations  
[ ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(S):  
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- [ ] fiscal impact \_\_\_\_\_ [ ] fiscal note(s) \_\_\_\_\_  
[ ] zero fiscal note \_\_\_\_\_ *sen* [X] zero fiscal note(s) *5/3/90. APUC/DC*  
[ ] zero with analysis \_\_\_\_\_ [ ] zero fn/analysis \_\_\_\_\_

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not  
Pass  
No Rec  
Amend

*W. Donley Donley*  
*W. Hanley*  
*E. Finkelstein*  
*D. Boucher*

	Do Not Pass	No Rec	Amend
_____			
_____			
_____			
_____			
_____			
_____			
_____			
_____			
_____			
_____			

*D. Boucher*  
Chairman's Signature

Original sponsor(s): SEN. FRANK, Sturgulewski, Fischer

1 IN THE SENATE BY THE STATE AFFAIRS COMMITTEE  
2 CS FOR SENATE BILL NO. 206 (State Affairs)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 SIXTEENTH LEGISLATURE - SECOND SESSION  
5 A BILL

6 For an Act entitled: "An Act relating to intrastate long distance tele-  
7 phone competition; permitting deregulation of a class  
8 of utilities or a utility service by the Alaska  
9 Public Utilities Commission; and providing for an  
10 effective date."

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

12 \* Section 1. INTENT. (a) This Act is substantially similar to both  
13 initiatives that have been filed with the lieutenant governor concerning  
14 competition in long distance telephone service in the state, thereby re-  
15 quiring removal of the initiatives from the general election ballot under  
16 art. XI, sec. 4, of the Constitution of the State of Alaska. The legisla-  
17 ture intends this Act to be a comprehensive treatment of the issue of  
18 competition in intrastate long distance telephone service and to provide  
19 for competition in a responsible and timely manner.

20 (b) The legislature does not intend the enactment of AS 42.05.850,  
21 enacted by sec. 2 of this Act, to affect pending litigation regarding the  
22 applicability of AS 44.62.310 - 44.62.312 to an association of exchange  
23 carriers required by the commission.

24 \* Sec. 2. AS 42.05 is amended by adding new sections to read:

25 ARTICLE 11. COMPETITIVE INTRASTATE LONG DISTANCE  
26 TELEPHONE SERVICE.

27 Sec. 42.05.800. FINDINGS. The legislature finds that

28 (1) modern, affordable, efficient, and universally avail-  
29 able local and long distance telephone service is essential to the

*All CO's - Access charge pool -  
GCI want to cut forced meetings.  
privately owned CO's want Reliquish + user  
right.*

1 people of the state;

2 (2) facilities based, long distance telephone service  
3 should be provided competitively whenever possible;

4 (3) technological advances, reduced costs, and increased  
5 consumer choices for long distance telephone service, resulting from  
6 the adoption of an appropriate competitive market structure, will  
7 enhance the state's economic development;

8 (4) the benefits of competition in long distance telephone  
9 service should be shared by consumers throughout the state;

10 (5) the commission should oversee competition in long  
11 distance telephone service to ensure that the competition is fair to  
12 consumers and competitors;

13 (6) the commission should provide for competition in a  
14 timely manner and should adopt regulations that eliminate inappropri-  
15 ate impediments to entry for long distance carriers fit, willing, and  
16 able to provide service.

17 Sec. 42.05.810. COMPETITION. (a) By February 14, 1991, the  
18 commission shall adopt regulations that authorize and establish con-  
19 ditions governing competition in long distance telephone service.

20 (b) Beginning February 15, 1991, the commission shall accept  
21 applications to provide competitive long distance telephone service  
22 and shall approve or reject applications within 90 days after the  
23 filing of a complete application. The commission shall approve an  
24 application upon a finding that the applicant is fit, willing, and  
25 able. The authority granted to a fit, willing, and able applicant  
26 shall include the authority to provide intrastate long distance tele-  
27 phone service using any facilities that the applicant owned and oper-  
28 ated on May 1, 1990, to provide interstate long distance message  
29 telephone service to the public.

1 (c) Except as provided in (b) of this section, the commission  
2 may prohibit installation of facilities for origination or termination  
3 of long distance service in a given location only if it determines  
4 that installation of the facilities in that location is not in the  
5 public interest.

6 Sec. 42.05.820. NO MUNICIPAL REGULATION. A long distance tele-  
7 phone company that is exempted in whole or in part from complying with  
8 all or a portion of this chapter may not be regulated by a municipal-  
9 ity under AS 29.35.060 and 29.35.070.

10 Sec. 42.05.830. EXCHANGE ACCESS CHARGES. In providing for  
11 competition under AS 42.05.800 - 42.05.995, the commission shall  
12 establish a system of access charges to be paid by long distance  
13 carriers to compensate local exchange carriers for the cost of origi-  
14 nating and terminating long distance services.

15 Sec. 42.05.840. UNIVERSAL SERVICE FUND. The commission may  
16 establish a universal service fund or other mechanism to be used to  
17 ensure the provision of long distance telephone service at reasonable  
18 rates throughout the state and to otherwise preserve universal ser-  
19 vice.

20 Sec. 42.05.850. EXCHANGE CARRIER ASSOCIATION. The commission  
21 may require the local exchange carriers to form an association to  
22 assist in administering the system of access charges and may require  
23 the association to file tariffs and to engage in pooling of exchange  
24 access costs and revenue if necessary to achieve the purposes of  
25 AS 42.05.800 - 42.05.995.

26 Sec. 42.05.860. RESTRICTIONS ON RESALE OF TELECOMMUNICATIONS  
27 SERVICES PROHIBITED. A telephone company may not prohibit or restrict  
28 the resale of telecommunications service. If an interexchange tele-  
29 communications service is resold, the reseller shall receive credit in

ECT

1 an appropriate amount for an applicable exchange access charge if the  
2 credit is necessary to prevent double payment of the access charges.

3 Sec. 42.05.995. DEFINITIONS. In AS 42.05.800 - 42.05.995,

4 (1) "local exchange carrier" means any carrier certificated  
5 to provide local telephone services;

6 (2) "long distance carrier" or "long distance telephone  
7 company" means any carrier certificated to provide long distance tele-  
8 phone services;

9 (3) "long distance telephone service" or "long distance  
10 service" means intrastate, interexchange telephone service.

11 \* Sec. 3. AS 29.35.070(a) is amended to read:

12 (a) The assembly acting for the area outside all cities in the  
13 borough and the council acting for the area in a city may regulate,  
14 fix, establish, and change the rates and charges imposed for a utility  
15 service provided to the municipality or its inhabitants by a utility  
16 that is not subject to regulation under AS 42.05 unless that utility  
17 is exempted from regulation under AS 42.05.711(a) or (d) - (k) or is  
18 exempted under regulations adopted under AS 42.05.810 from complying  
19 with all or part of AS 42.05.010 - 42.05.721.

20 \* Sec. 4. AS 29.35.070(a) is repealed and reenacted to read:

21 (a) The assembly acting for the area outside all cities in the  
22 borough and the council acting for the area in a city may regulate,  
23 fix, establish, and change the rates and charges imposed for a utility  
24 service provided to the municipality or its inhabitants by a utility  
25 that is not subject to regulation under AS 42.05 unless that utility  
26 is exempted from regulation under AS 42.05.711(a) or (d) - (k).

27 \* Sec. 5. AS 42.05.711(d) is repealed and reenacted to read:

28 (d) The commission may exempt a utility, a class of utilities,  
29 or a utility service from all or a portion of this chapter if the

1 commission finds that the exemption is in the public interest.

2 \* Sec. 6. AS 45.50.572(d) is amended to read:

3 (d) AS 45.50.562 - 45.50.596 apply to long distance telecommu-  
4 nications services provided by public utilities. AS 45.50.562 -  
5 45.50.596 do not apply to other services provided by public utilities  
6 that [WHICH] have been issued a certificate of public convenience and  
7 necessity under AS 42.05.

8 \* Sec. 7. AS 45.50.572(d) is repealed and reenacted to read:

9 (d) AS 45.50.562 - 45.50.596 do not apply to public utilities  
10 that have been issued a certificate of public convenience and neces-  
11 sity under AS 42.05.

12 \* Sec. 8. AS 42.05.800, 42.05.810, 42.05.820, 42.05.830, 42.05.840,  
13 42.05.850, 42.05.860, and 42.05.995 are repealed.

14 \* Sec. 9. LEGISLATIVE INTENT FOR SECTIONS 10 - 12. The legislature  
15 intends that if, by administrative or judicial order, this Act is deter-  
16 mined on or before September 4, 1990, to be substantially similar to only  
17 one of the initiatives, 89-ALAS or 89-TELE, or to neither of those initia-  
18 tives, the provisions in this Act providing for competition in the pro-  
19 vision of long distance telephone service shall be repealed, so that both  
20 initiatives shall appear on the ballot for the voters to consider.

21 \* Sec. 10. NOTIFICATION. The lieutenant governor shall notify the  
22 revisor of statutes immediately after September 4, 1990, of the determina-  
23 tions taken concerning the initiatives, and of the existence and status of  
24 litigation concerning the placement of the initiatives on the ballot.

25 \* Sec. 11. Sections 1 - 3, 5, 6, 9, and 10 of this Act take effect  
26 immediately under AS 01.10.070(c).

27 \* Sec. 12. Sections 4, 7, and 8 of this Act take effect November 4,  
28 1990, only if on September 4, 1990, there is a judicial or administrative  
29 determination in force under art. XI, sec. 4 of the Constitution of the

1 State of Alaska that this Act is substantially similar to (1) one, but not  
2 to both, of the initiatives on file with the lieutenant governor relating  
3 to competition in long distance telephone service, Initiative 89-ALAS and  
4 Initiative 89-TELE, or (2) neither of those initiatives. For purposes of  
5 this section, a "determination in force" includes either an administrative  
6 decision that is not subject to judicial appeal, a final judicial resolu-  
7 tion, or an interim judicial order under which the lieutenant governor is  
8 directed to print the general election ballots in accordance with a ruling  
9 that this Act is substantially similar to only one of the initiatives or to  
10 neither of the initiatives.

ECI  
ECR → post subcom.  
OF COMMISSION  
RD  
Against  
COURT RUL  
ASQ Amendm.

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_  
 Title: An act relating to intrastate telecommunications competition  
 Sponsor: Steve Frank  
 Requestor: Senate State Affairs Comm.

Agency Affected: Commerce & Economic Dev.  
 BRU: Alaska Public Utilities Commission

Components: \_\_\_\_\_

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

<b>CAPITAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
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<b>REVENUE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
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**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**POSITIONS:**

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

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

Although enactment of CS for SB206 will generate an incremental workload increase, it is the Commission's intent to reorder its programs and priorities to accommodate these new demands within existing staff limitations.

Prepared by: Peter Sokolov, Chairman *PS* Phone: (907) 276-6223  
 Division: Alaska Public Utilities Commission Date: 5/3/90

Approved by Commissioner: Larry Marculieff Date: \_\_\_\_\_  
 Agency: Department of Commerce & Economic Development

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