

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672  
6383 SENATE LABOR & COMMERCE

787

STATE OF ALASKA  
1989 LEGISLATIVE SESSION

BILL VERSION: CSSB 51 (HESS)

PUBLISH DATE: \_\_\_\_\_

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Labor  
 Title: "An Act extending the time period...  
 to become a...workers' compensation...specialist..." BRU: Workers' Compensation  
 Sponsor: Duncan & Kerttula Components: \_\_\_\_\_  
 Requestor: Senate HESS Workers' Compensation

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	0.0	0.0	0.0

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Jacquelyn McClintock Phone: 465-2790  
 Division: Workers' Compensation Date: 2/7/89  
 Approved by Commissioner: Jim Sampson Date: 2/7/89  
 Agency: Department of Labor

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

# Alaska State Legislature



SENATOR JIM DUNCAN

P. O. BOX V JUNEAU, ALASKA 99811-3100

(907) 465-4766

COMMITTEES:  
FINANCE  
VICE CHAIR —  
HEALTH EDUCATION  
& SOCIAL SERVICES  
BUDGET & AUDIT  
BANKING &  
ECONOMIC  
DEVELOPMENT

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

FEBRUARY 8, 1989

TO: SENATOR DICK ELIASON, CHAIR  
SENATE LABOR AND COMMERCE COMMITTEE

FROM: ~~SENATOR JIM DUNCAN~~

SUBJECT: CS SENATE BILL 51 (HESS), AN ACT EXTENDING THE TIME FOR A PERSON TO BECOME A CERTIFIED WORKERS' COMPENSATION REHABILITATION SPECIALIST, AND PROVIDING FOR AN EFFECTIVE DATE.

I REQUEST THAT YOU SCHEDULE CSSB 51 (HESS), EXTENDING THE TIME FOR A PERSON TO BECOME A CERTIFIED WORKERS' COMPENSATION REHABILITATION SPECIALIST FOR A HEARING AS SOON AS POSSIBLE.

A PROBLEM HAS ARISEN FOR A CONSTITUENT OF MINE AS THE RESULT OF THE RECENTLY REVISED WORKERS' COMPENSATION STATUTES. SECTION 47 OF CHAPTER 79, SLA 1988, ALLOWS A ONE YEAR GRACE PERIOD FOR PRACTICING REHABILITATION SPECIALISTS TO CONTINUE WITHOUT THE REQUIRED CERTIFICATION FROM JULY 1, 1988 TO JUNE 30, 1989. AFTER THAT PERIOD, CURRENTLY PRACTICING REHABILITATION SPECIALISTS WILL NOT BE ALLOWED TO CONTINUE IN THEIR WORK UNLESS THEY ARE CERTIFIED BY THE INSURANCE REHABILITATION SPECIALISTS COMMISSION.

IN PARTICULAR, A CONSTITUENT OF MINE OWNS A LOCAL REHABILITATION SERVICE AND HAS WORKED AS A VOCATIONAL REHABILITATION COUNSELOR SINCE JANUARY 1, 1984. TO MEET THE BACHELORS DEGREE REQUIREMENT FOR A CATEGORY TWO REHABILITATION SPECIALIST, SHE IS NOW TAKING 17 CREDIT HOURS IN ADDITION TO CONTINUING HER WORK AS A REHAB SPECIALIST. AT THE TIME OF ENACTMENT OF THE LEGISLATION, SHE STILL NEEDED TWO YEARS TO ATTAIN HER BACHELOR'S DEGREE. THIS MEANS THAT ON JUNE 30, 1989, SHE WILL BECOME INELIGIBLE TO CONTINUE HER WORK AS A REHABILITATION SPECIALIST IN SPITE OF THE FACT THAT SHE IS DOING AN EXCELLENT JOB AND HAS REFERENCES WHICH BEAR THIS OUT.

CS SB 51 (HESS) WILL EXTEND THE GRACE PERIOD TO ATTAIN CERTIFICATION UNTIL JUNE 30, 1992, BUT ONLY FOR INDIVIDUALS WHO WERE ACTIVELY EMPLOYED FOR AT LEAST ONE YEAR BEFORE JUNE 30, 1988 AS REHABILITATION SPECIALISTS.

SENATE BILL 51  
FEBRUARY 8, 1989  
PAGE 2

THE HESS COMMITTEE SUBSTITUTE MAKES TWO MAJOR CHANGES TO THE BILL. ONE, IT CHANGES THE TITLE SO THAT IT REFERS TO EXTENDING THE TIME PERIOD TO BECOME A CERTIFIED WORKERS COMPENSATION REHABILITATION SPECIALIST. SECOND, THE REQUIREMENTS CONTAINED IN THE ORIGINAL VERSION OF THE BILL ON LINES 18 THROUGH 21 ARE DELETED. THE WORKERS' COMPENSATION BOARD TESTIFIED THAT THEY ARE SATISFIED WITH THE COMPETENCY OF THE FOUR INDIVIDUALS AFFECTED BY THIS BILL, SO THE VERIFICATION THAT THEY ARE ACTIVELY PURSUING CERTIFICATION AS WORKERS' COMPENSATION SPECIALISTS AND THE LETTERS OF RECOMMENDATION BY OTHERS WILL NOT BE NECESSARY.

ATTACHMENTS

January 20, 1989

RECEIVED

FFB 3 1989

SENATOR TIM KELLY  
SENATE PRESIDENT

Senator Duncan  
Alaska State Legislature  
Room 119, Capital  
P.O. Box V  
Juneau, AK 99811

Dear Senator:

We received your request for the labor-management Workers' Compensation task force to review your proposed legislation. We apologize for taking so long to reply but holidays, vacations, sickness and having to contact everyone individually by phone because we couldn't establish a convenient meeting date, has caused a lengthier process than anticipated.

As you know developing legislation took the labor-management committee eighteen months. We had several major goals but our main concern was to benefit the injured worker, providing a fast, speedy remedy that had been lost over the years. We were especially interested in ensuring that the dollars paid by employers went to benefit the workers and not service providers.

Vocational rehabilitation was a key area of concern; with both labor and management complaining the system was not working. It was our intent to create a system that utilized skilled professional people to assist our injured workers in their return to the work place. We, therefore, through the suggestion of vocational rehabilitation specialists in Alaska, decided to use a national standard for professional certification.

We knew at the time that there might be a few individuals currently practicing vocational rehabilitation that would be negatively impacted by this choice. However our goal was to consider the injured worker first. We also recognized that we had to focus on the good of the many not the few.


When the legislation was in hearing in the House with Representative Donnelly's Labor and Commerce Committee, Representative Collins brought the question of "grandfathering-in" current rehab providers. We had not intended to grandfather any providers but considered her proposal in light of its basic fairness. Representative Hudson was particularly concerned about one of his constituents Denise Van Der Pol who was pursuing rehab certification. The Labor and Commerce Committee considered one year, two year and three year grandfathering. After testimony to the committees and discussion with Hudson and Van Der Pole it was concluded and agreed that everyone could live with a one year grandfathering provision.

We find it surprising that a year later a single individual who was included in the original decision should be complaining about the agreement. We are not aware of any other individuals that have been unfairly impacted by this statute.


We feel that the statute should be allowed at least a year to be tested. It is premature we think to conclude that it isn't working. We also feel that since only one individual seems to have a complaint that it is much more important to be concerned about the majority.

Although we certainly appreciate your concern as a legislature for your constituency; we feel strongly that the injured workers in Alaska are the overriding concern. We feel the need is to guarantee to injured workers a level of professional competency in their rehabilitation specialist. We therefore must tell you we can't support your proposed legislation. We thank you very much for requesting our opinion.

Sincerely,



Mary Pierce  
Co-Chair



Robert Anders  
Co-Chair

cc: Senator Tim Kelly  
Jacquelin McClintock  
Representative Dave Donnelly

**S B**

**56**

SENATE COMMITTEE REPORT

FURTHER

FIN

2/16/89

DATE TURNED INTO OFFICE \_\_\_\_\_

Mr. President:

L&C

SB 56

Committee considered \_\_\_\_\_

state employment preference for service in the national guard  
and recommended

replace with \_\_\_\_\_ CS SB 56(L+C) )  same title  
 or adopt \_\_\_\_\_ CS \_\_\_\_\_ )  new title  
 attached amendment(s) and  technical  
 \_\_\_\_\_ letter of intent adopted title change  
(HB only)

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

FISCAL NOTE(S)  zero  fiscal impact  appropriation no FN  
 new  updated  previous  
 same as previous fiscal note(s) published \_\_\_\_\_

MEMBERS SIGNING DO PASS

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

OTHER RECOMMENDATIONS

Jan ... No Rec.  
\_\_\_\_\_  
J. ... No Rec.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Chairman signature and recommendation

Committee Backup attached

Original sponsors: Kelly, Kerttula,  
and Halford

CS includes amendment #1 adopted  
Friday, 3/17/89

1 IN THE SENATE

BY THE LABOR AND  
COMMERCE COMMITTEE

2 CS FOR SENATE BILL NO. 56 (L&C)

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 employment preferences for  
7 veterans and for service in the national guard."

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

9 \* Section 1. AS 39.25.150(19) is amended to read:

10 (19) the granting of employment preference rights to a  
11 veteran not within the area of promotion, when the veteran possesses  
12 the necessary qualifications in the job classification applied for  
13 under this chapter; in an examination to determine the qualification  
14 of applicants for entrance into the classified service under merit  
15 system examination, five additional points shall be added to the  
16 passing grade of a veteran who is not a state employee in a permanent  
17 position in the classified service and ten additional points shall be  
18 added to the passing grade of a disabled veteran who is not a state  
19 employee in a permanent position in the classified service [, BUT THE  
20 ADDITIONAL POINTS MAY BE USED ONLY THE FIRST TIME THE VETERAN OBTAINS  
21 A POSITION IN THE CLASSIFIED SERVICE]; if a position in the classified  
22 service is eliminated, employees shall be released in accordance with  
23 rules which give due effect to all factors; if all job qualifications  
24 are equal, the veteran shall be given preference over the nonveteran  
25 and the veteran shall be kept on the job; this paragraph may not be  
26 interpreted to amend the terms of a collective bargaining agreement;  
27 in this paragraph

28 (A) "veteran" means a person with 181 days or more  
29 active service in the armed forces of the United States who has

1           been honorably discharged after having served during any period  
2                           (i) between April 6, 1917, and December 1, 1919,  
3           between September 16, 1940, and December 31, 1947, or between  
4           June 27, 1950, and October 14, 1976; or

5                           (ii) in which the person was awarded a campaign  
6           badge or expedition medal, or the Purple Heart or other award or  
7           decoration for heroism or gallantry in action;

8                           (B) "disabled veteran" means a veteran who is entitled  
9           to compensation under laws administered by the United States  
10          Veterans' Administration, or a person who was honorably dis-  
11          charged or released from active duty because of a service-con-  
12          nected disability;

13 \* Sec. 2. AS 39.25.150 is amended by adding a new paragraph to read:

14                           (26) the granting of employment preference rights, not  
15          within the area of promotion, to a member of the national guard who  
16          has not received preference rights as a veteran when the national  
17          guard member possesses the necessary qualifications in the job classi-  
18          fication applied for under this chapter; in an examination to deter-  
19          mine the qualification of applicants for entrance into the classified  
20          service under merit system examination, three additional points shall  
21          be added to the passing grade of a national guard member who is not a  
22          state employee in a permanent position in the classified service and  
23          six additional points shall be added to the passing grade of a dis-  
24          abled national guard member who is not a state employee in a permanent  
25          position in the classified service; if a position in the classified  
26          service is eliminated, employees shall be released under rules that  
27          give due effect to all factors; if all job qualifications are equal,  
28          the national guard member shall be given preference over employees who  
29          are not veterans or national guard members and the national guard

1 member shall be kept on the job; this paragraph may not be interpreted  
2 to amend the terms of a collective bargaining agreement; in this  
3 paragraph

4 (A) "disabled national guard member" means a former  
5 member of the national guard who was discharged or released from  
6 the national guard under honorable conditions because of a dis-  
7 ability incurred in the line of duty;

8 (B) "national guard member" means a person who has  
9 served for at least eight years as a member of the Alaska  
10 National Guard or an Alaska National Guard Reserve Unit.  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

OFFICE OF THE PRESIDENT

MEMBER

TENTH ALASKA LEGISLATURE  
ELEVENTH ALASKA LEGISLATURE  
TWELFTH ALASKA LEGISLATURE  
THIRTEENTH ALASKA LEGISLATURE  
FOURTEENTH ALASKA LEGISLATURE  
FIFTEENTH ALASKA LEGISLATURE  
SIXTEENTH ALASKA LEGISLATURE



SENATOR TIM KELLY

P.O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-3822

P.O. BOX 210001  
ANCHORAGE, ALASKA 99521  
(907) 561-7612

February 23, 1989

Senator Eliason, Chairman  
Labor and Commerce Committee  
Box V  
Juneau, Ak. 99811

Re; SB 56, state employment preference for National Guard.

Dear Senator Eliason,

I would appreciate the committee's hearing SB 56 at your earliest convenience.

There is an additional consideration that the committee might address with this bill. This is the restriction to a once only application of the veterans preference award which is currently in statute. There is no corresponding restriction to the veteran employment preference in federal law.

I have been recently approached by the veterans organizations about their desire to have the state preference mirror federal law. I expect you will be receiving some correspondence in this regard.

Sincerely,

A handwritten signature in cursive script that reads "Tim".

TIM KELLY  
Alaska State Senator

## FISCAL NOTE

**REQUEST:**

Revision Date: February 14, 1989  
 Title: Relating to National Guard  
           hiring preference  
 Sponsor: Kelly  
 Requestor: Senate State Affairs

Agency Affected: Military & Veterans Affairs  
 BRU: \_\_\_\_\_  
 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						
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

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

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

**FUNDING: (Thousands of Dollars)**

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

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

Prepared by: Jeff Morrison, Director  
 Division: Administrative & Support Services, DMVA  
 Approved by Commissioner: for MG John Schaeffer  
 Agency: Department of Military & Veterans Affairs

Phone: 465-4600  
 Date: February 14, 1989  
 Date: February 14, 1989

**Distribution (by preparer):**

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

**FISCAL NOTE**

**REQUEST:**

Revision Date: 3/22/89 Agency Affected: Military and Veterans  
 Title: An act relating to state employment preference for veterans. BRU: Affairs  
 Sponsor: Senator Kelly Components: \_\_\_\_\_  
 Requestor: Senate Labor & Commerce

**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						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING: (Thousands of Dollars)**

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

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

Prepared by: Jeff Morrison, Director Phone: 465-4600  
 Division: Administrative and Support Services Date: 3/23/89  
 Approved by Commissioner: John W. Schaeffer Date: 3/23/89  
 Agency: Military and Veterans Affairs

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

# Alaska State Legislature



Sen. Pat Pourchot, Chairman

Sen. Jan Falks, Vice Chairman

Sen. Al Adams

Sen. Tim Kelly

Sen. Rick Uehling

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

907-465-3712

## Senate State Affairs Committee

### MEMORANDUM

TO: Senator Dick Eliason, Chairman  
Senate Labor and Commerce Committee

FROM: Senator Pat Pourchot, Chairman  
Senate State Affairs Committee *Pat*

RE: SB 56, Relating to state employment preference for  
service in the National Guard

DATE: February 22, 1989

SB 56 was recently considered by the State Affairs Committee and now rests in the Labor and Commerce Committee. After the bill had moved from State Affairs it was brought to my attention that the language we adopted regarding disabled national guard members is inaccurate. The following amendment has been recommended by the Department of Military and Veterans Affairs, and I would urge your favorable consideration of it.

Page 1, line 28 through page 2, line 3:

Delete existing language and insert:

(A) "disabled national guard member" means a former member of the national guard who was released or discharged from the national guard under honorable conditions because of a disability incurred in the line of duty;

cc: Senator Kelly  
Dept. Military & Veterans Affairs



# Alaska State Legislature

SENATE

*Office of the President*

P.O. Box V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-3755

February 7, 1989

Senator Pat Pourchot, Chairman  
State Affairs Committee  
Alaska State Senate  
Box V  
Juneau, Ak 99811

Re: SB 56, National Guard employment preference.

Dear Senator Pourchot,

I would appreciate a committee hearing of SB 56 at your earliest convenience. Attached is a rationale and discussion of this legislative proposal.

The state currently rewards, gratefully, veterans who have served in the armed forces of the nation in a number of ways; preferences in employment, loan programs, and land selection to name a few. It would seem that the service of Alaska National Guard veterans should similarly and most appropriately be recognised and rewarded.

Thank you for your consideration.

Sincerely,

TIM KELLY  
Alaska State Senate

ALASKA NATIONAL GUARD  
OFFICER'S ASSOCIATION  
200 W. 34th Street, Suite 727  
Anchorage, Alaska 99503

28 November 1988

3. STATE VETERAN'S HIRING PREFERENCE FOR ALASKA NATIONAL GUARD VETERANS

A. PROPOSAL: This proposal would enact legislation to grant Alaska National Guard members, who have successfully completed **5 years** of Alaska National Guard Membership, the same State veteran's hiring preference currently granted to active duty veterans.

B. DISCUSSION: Members of the Alaska National Guard who have never served with the armed forces on extended active duty (non-prior service) do not receive veteran's hiring preference points for Federal civil service jobs. Prior-service veterans do. Prior-service veterans DO receive hiring preference for State jobs. Non-prior service State veterans do NOT. It seems equitable that non-prior service STATE veterans should receive hiring preference for State jobs in their own State of Alaska.

There is an unknown number of State veterans interested in State jobs who would benefit from State veteran's hiring preference.

Members of the Alaska National Guard (approximately 4000) and their spouses (approximately 3000) support this initiative.

C. COST: There is no known cost.

D. PRECEDENTS:

OHIO: Veterans honorably discharged from active service or transferred to a Reserve Component are entitled to 20% added credit on State civil service exam.

DEPARTMENT OF MILITARY AND VETERANS AFFAIRS

POSITION PAPER  
SB56

Summary of Bill: This bill would extend the eligibility to receive veterans preference points for initial hiring into state classified service to include persons who have served for at least five years in the national guard or a reserve unit. A person eligible under this bill would receive five additional points added to their score. This is the same number of additional points added to the score of a person who is a veteran as currently defined in statute--basically someone who served in World War I, World War II, or the period between the Korean Conflict and the end of the Vietnam War.

Background: Last year the Legislature added language to the definition of "veteran" to include persons who are awarded the Purple Heart, a campaign or expedition medal, or a decoration for heroism or gallantry in action. This addition was made to include veterans who served after the end of the Vietnam era (October 14, 1976), but who were engaged in hostile action as a member of the United States armed forces (e.g. Persian Gulf, Granada). The original intent of the veterans employment preference points was to compensate veterans for time spent away from the pursuit of civilian employment while a full-time member of the armed forces.

Impact of Bill on Department of Military and Veterans Affairs: Any additional benefits created by this bill would be publicized and promoted by both the Division of Veterans Affairs and by the military leadership of the Alaska National Guard. No fiscal impact on the Department of Military and Veterans Affairs is anticipated.

Departmental Position on Bill: The Department of Military and Veterans Affairs is neutral on this bill.

Approved: \_\_\_\_\_

*J. Morrison*  
for

MG John W. Schaeffer

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

2/15/89

PDC PRINT/RETRY NO. 001

# THE AMERICAN LEGION

DEPARTMENT OF ALASKA  
P.O. BOX 201949  
ANCHORAGE, ALASKA 99520-1949  
(907) 276-2211

**JAMES H. MALONE**  
Department Commander  
235 East 8th Avenue, Anchorage, Alaska 99501

**WILLIAM M. BISHOP**  
National Executive Committeeman  
302 Marine Way  
Kodiak, Alaska 99615

**JOSEPH E. CRAIG**  
Alternate NEC  
2323 First Ave  
Ketchikan, AK 99901

**Warren C. Colvor**  
Department Adjutant/Service Officer  
235 East 8th Avenue, Anchorage, AK 99501

*Dave*

February 24, 1989

Senator Tim Kelly  
P. O. Box V  
Juneau, Alaska 99811

Subj: HB 56

Dear Senator Kelly:

Attached as requested by Dave Gray copies of the Federal Personnel Manual pertaining to Veterans preference. The original Legislation is the Veterans Preference Act of 1944 as amended and now codified in various provisions of Title 5, United States Code.

Restoring the previous language to the State Veterans Preference Law; being able to continue using the 5 or 10 points on promotions, or a new job will certainly aid any Alaskan Veteran who has used his preference for a temporary State job since the Legislation was amended in 1982.

Your continuing support on Legislation aiding and assisting all Veterans is certainly appreciated.

Reference is made to our meeting on February 14th pertaining to employment preference for service in the National Guard. The American Legion will only endorse this Legislation if a minimum of eight years service in the "Active" National Guard: Attending Regular scheduled drills (or at other approved times) and two week annual training.

Ray Perkins Past Department Commander of the American Legion, Department of Alaska will testify on this Legislation. He can be contacted through Sitka Post #13, Phone #747-8629 if the hearings are to be held other than Wednesday March 1st between 3:30 - 5:30 P.M.

For God and Country

*James H. Malone*  
James H. Malone  
Department Commander

cc: Ray Perkins (PDC)

## Subchapter 1. General Provisions

---

### 1-1. LEGAL BASIS

The legal basis for veterans' preference is the Veterans' Preference Act of 1944, as amended, now codified in various provisions of title 5, United States Code. Preference applies to civilian positions, permanent or temporary, in the competitive service, the Excepted Service, and in a temporary or emergency establishment, agency, bureau, administration, project and department of the Federal Government. Preference does not apply in the Senior Executive Service. All positions in the legislative or judicial branches of the Government, and positions in the Executive Branch which are required to be confirmed by the Senate are exempt from the provisions of the Act. Preference is given in competitive examinations, in appointments to positions, and in retention during reductions-in-force. Other benefits to which veterans are entitled include reinstatement and reemployment

(restoration). To receive preference, a veteran of the U.S. Armed Forces must be a United States citizen. See FPM chapter 315, Subchapter 4 and FPM chapter 353. Provisions for veterans' preference appear in the following sections of title 5, United States Code:

<i>Sections)</i>	<i>Provision</i>
2108.	Veteran; disabled veteran; preference eligible.
3309-3319.	Examination, selection, appointment, and reinstatement of preference eligibles.
3351.	Preference eligibles; Transfer; Physical Qualifications; Waiver.
3363.	Preference eligibles; Promotion; Physical Qualifications; Waiver.
3501-3504.	Retention of preference eligibles.
7511-7514.	Suspension and removal.

## Subchapter 2. Entitlement to Preference

### 2-1. DEFINITIONS

The following definitions are used for the purposes of preference in Federal employment:

(1) "Veteran" means a person who was separated with an honorable discharge or under honorable conditions from active duty in the armed forces performed

- (a) in a war; *or*,
- (b) in a campaign or expedition for which a campaign badge has been authorized; *or*,
- (c) during the period beginning April 28, 1952, and ending July 1, 1955; *or*,
- (d) for more than 180 consecutive days, other than for training, any part of which occurred during the period beginning February 1, 1955 and ending October 14, 1976.<sup>1</sup>

Persons who lost their lives under honorable conditions while serving in the armed forces during a period named in (1)(a) through (d) are also referred to as veterans for the purposes of this chapter only. (Refer to FPM Supplement 296-33 for a list of recognized wars, campaigns, and expeditions).

(2) "Active duty," or "active military duty," means full-time duty with military pay and allowances in the armed forces, except for training or for determining physical fitness and except for service in the Reserves or National Guards.

(3) "Armed Forces" means the United States Army, Navy, Air Force, Marine Corps, and Coast Guard.

(4) "Uniformed services" means the armed forces, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration, (formerly the Environmental Science Services Administration, Coast and Geodetic Survey).

(5) "Discharge under honorable conditions" means either an honorable or a general discharge from the

<sup>1</sup> Section 702 of Public Law 94-502, enacted October 15, 1976 abolishes peacetime preference for those entering active duty after October 14, 1976, unless they serve in a campaign or war or meet the definition of "disabled veteran" described in subchapter 2-1(6) of this chapter.

armed forces. The Department of Defense has responsibility for administering and defining military discharges. (An amnesty or clemency discharge does not meet the Veterans' Preference Act requirement for discharge under honorable conditions. Accordingly, no preference may be granted to applicants with such discharges.)

(6) "Disabled veteran" means a person who was separated under honorable conditions from active duty in the armed forces performed at any time and who has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pension because of a public statute administered by the Veterans Administration or a military department.<sup>2</sup> (Refer to FPM Supplement 296-33 for a list of acceptable evidence).

(7) "Ex-serviceperson" means a person who was separated from active duty performed in peace or war. (A person on active duty may be an ex-serviceperson because of separation from previous active duty.)

(8) "Spouse" means legal husband or wife. Common law marriage is recognized for preference, if valid under the laws of the place where the parties lived at the time of the marriage.

(9) "Separation" from a spouse means living apart. A separation need not be approved by a court of law but must be bona fide and permanent.

(10) "Legal separation" from a spouse means a separation a *mensa et thoro* (from bed and board) by court decree, which frees the parties but does not dissolve the marriage tie.

<sup>2</sup> If the Veterans Administration recognizes the existence of a service-connected disability arising from an injury or disease incurred while enroute to, at, or returning from, a place of induction or entry into duty, the person is considered to be a disabled veteran. However, even an individual who is receiving compensation, disability retirement benefits, or pension by reason of laws administered by the Veterans Administration is not eligible for preference, unless he or she has met the requirement of having served on active duty, other than for training, as defined in 2-1(2) of this section. Furthermore, the spouse, widow, widower, or mother of such a disabled veteran is not entitled to preference.

An individual who is disabled while undergoing training with a military reserve unit is not considered to be a disabled veteran and is not entitled to preference.

## 2-2. TYPES OF PREFERENCE

There are 7 different types of preference, each with a separate set of requirements. When used for competitive civil service examination purposes, the applicant must first make a passing grade before preference points may be added to the rating score.

(1) Five-point. Every veteran as defined in subchapter 2-1(1) of this chapter is entitled to a 5-point preference.<sup>3</sup> However, veterans who are eligible for and take advantage of 10-point preference are not entitled to an additional 5-point preference.

(2) Ten-point (disability). Every disabled veteran as defined in subchapter 2-1(6) of this chapter is entitled to 10-point (disability) preference.

(3) Ten-point (compensable disability). A disabled veteran who was separated under honorable conditions from active duty in the armed forces performed at any time and who has a compensable service-connected disability rating of 10 percent or more is entitled to 10-point (compensable disability) preference rather than 10-point (disability) preference.

Because of certain provisions of the Civil Service Reform Act of 1978, employing offices must distinguish between:

- (a) those veterans entitled to 10 point preference due to a compensable service-connected disability of less than 30 percent; and
- (b) those veterans entitled to 10 point preference due to a compensable service-connected disability of 30 percent or more. (These persons are given additional passover and retention rights. They may also be appointed noncompetitively to positions for which they qualified.)

The following types of preference are referred to as derivative preference, because they are derived from the military service of a veteran who is not using the preference:

(4) Ten-point (spouse). The spouse of a disabled veteran is entitled to 10-point (spouse) preference provided that the veteran is disqualified by reason of a service-connected disability for a Federal civil service position along the general lines of his or her usual occupation.

(5) Ten-point (widow or widower). The widow or

widower of a veteran is entitled to 10-point (widow or widower) preference under the following conditions:

- (a) he or she was not divorced from the veteran;
- (b) he or she has not remarried, or the remarriage was annulled; *and*,
- (c) the veteran
  - served during a war; *or*,
  - served during the period April 28, 1952 through July 1, 1955; *or*,
  - served in a campaign or expedition for which a campaign badge has been authorized; *or*,
  - died while on active duty that included service specified above provided that the conditions surrounding the death would not have been cause for other than honorable separation.

(6) Ten-point (mother, deceased veteran). The mother of a deceased veteran is entitled to 10-point (mother) preference under the following conditions:

- (a) she is the mother of the veteran who died under honorable conditions when on active duty—
  - during a war; *or*,
  - during the period April 28, 1952 through July 1, 1955; *or*,
  - in a campaign or expedition for which a campaign badge is authorized; *and*,
- (b) she is, or was, married to the father of the veteran; *and*,
- (c) she—lives with her totally and permanently disabled husband (either the veteran's father or her husband through remarriage); *or*,
  - is widowed, divorced, or separated from the veteran's father but has not remarried; *or*,
  - remarried but is now widowed, divorced, or legally separated from her husband.

(7) Ten-point (mother, disabled veteran). The mother of a living disabled veteran is entitled to 10-point (mother) preference under the following conditions:

- (a) she is the mother of the veteran who was separated under honorable conditions from active duty performed at any time; and
- ◆ (b) the veteran is permanently and totally disabled from a service-connected injury or illness; and ◆
- (c) she is, or was, married to the father of the veteran; and
- (d) she
  - lives with her totally and permanently disabled husband (either the veteran's father or husband through remarriage); *or*,

<sup>3</sup> Under section 307 of Public Law 95-454, signed October 13, 1978, as of October 1, 1980 "preference eligible" will no longer include a retired member of the armed forces, unless the individual is a disabled veteran as defined in subchapter 2-1(6) of this chapter of the individual retired below the rank of major or its equivalent.

- is widowed, divorced, or separated from the veteran's father and has not remarried; *or*,
- did remarry but is now widowed, divorced, or legally separated from her husband.

### 2-3. DUAL PREFERENCE

Both a mother and a spouse (including widow or widower) may be entitled to preference on the basis of one veteran's service if they both meet the requirements. However, no derivative preference is available if the veteran is living and is qualified for Federal employment.

### 2-4. PREFERENCE PRESERVED

(1) Service before June 27, 1944. Preference authorized by any law, Executive order, rule, or regulation in effect on June 27, 1944 (the date of the Veterans' Preference Act of 1944) and based on peacetime military service is preserved. However, such peacetime ex-servicemen (or their spouses or

unmarried widows/widowers) have preference only for reduction-in-force purposes. Preserved preference eligibility depends upon the following:

- (a) the ex-servicemen (or the spouse or widow/widower) was a Federal employee on June 27, 1944, and has been a Federal employee continuously since that date without a break in service of more than one workday; *or*,
- (b) the ex-servicemen (or the spouse or widow/widower) was on a register of eligibles on June 27, 1944, was appointed from that register, and has been a Federal employee continuously since that appointment without a break in service of more than one workday.

(2) Break in service. For preservation of preference based on peacetime service before June 27, 1944, the time between an employee's separation by reduction-in-force and reemployment from the reemployment priority list is not a break in service.

### 2-5. MINIMUM SERVICE REQUIREMENT FOR PREFERENCE

a. Persons who entered on active duty in the armed forces after October 14, 1976—the closing date for performing peacetime service which qualifies for veterans' preference—do not qualify for preference unless they are disabled veterans under 5 U.S.C. 2108, or serve during a war or in a campaign or expedition for which a campaign badge has been authorized. The statutory minimum length of service requirement described in this section only applies to those ex-servicemen who may be entitled to preference based on service in a war, campaign, or expedition. It is an additional requirement to be met before an agency or OPM may award preference. A list of campaigns and expeditions appears in FPM supplement 296-33, subchapter 7.

b. Section 408 of Public Law 97-306, enacted October 14, 1982, amended 38 U.S.C. 3103A to clarify the application of the general minimum-service requirement established by Public Law 95-342 enacted September 8, 1980, for Veterans Administration and other veterans' benefits, to the definition of preference eligible under the civil service laws. ¶

c. Accordingly, to qualify for veterans' preference in Federal employment, a person who enlists after September 7, 1980, or enters on active duty<sup>1</sup> on or after October 14, 1982, and has not previously completed 24 months of continuous active duty must:

- (1) perform active duty in the armed forces during a war or in a campaign or expedition for which a campaign badge has been authorized, (the long-standing requirement for preference) *and*
- (2) serve continuously for 24 months or the full period called or ordered for active duty.

d. Exclusions. The law excepts a person who:

- (1) is discharged or released from active duty (a) for a disability incurred or aggravated in line of duty, or (b) under 10 USC 1171 or 1173 for hardship or other reasons, *or*
- (2) has a service-connected disability which the Veterans Administration determines is compensable.

e. The service requirement does not affect eligibility for veterans' readjustment appointment or for veterans' preference based on peacetime service exceeding 180 days from 1955 to 1976, or other qualifying service prior to September 8, 1980.

<sup>1</sup> The "enters on active duty" language was added by statutory amendment to make clear that officers and others who may begin active duty through means other than enlistment are subject to the minimum-service requirement. The original 1980 law only covered persons who enlist. ¶

ALASKA NATIONAL GUARD  
OFFICER'S ASSOCIATION  
200 W. 34th Street, Suite 727  
Anchorage, Alaska 99503

28 November 1988

3. STATE VETERAN'S HIRING PREFERENCE FOR ALASKA NATIONAL GUARD VETERANS

A. PROPOSAL: This proposal would enact legislation to grant Alaska National Guard members, who have successfully completed **5 years** of Alaska National Guard Membership, the same State veteran's hiring preference currently granted to active duty veterans.

B. DISCUSSION: Members of the Alaska National Guard who have never served with the armed forces on extended active duty (non-prior service) do not receive veteran's hiring preference points for Federal civil service jobs. Prior-service veterans do. Prior-service veterans DO receive hiring preference for State jobs. Non-prior service State veterans do NOT. It seems equitable that non-prior service STATE veterans should receive hiring preference for State jobs in their own State of Alaska.

There is an unknown number of State veterans interested in State jobs who would benefit from State veteran's hiring preference.

Members of the Alaska National Guard (approximately 4000) and their spouses (approximately 3000) support this initiative.

C. COST: There is no known cost.

D. PRECEDENTS:

OHIO: Veterans honorably discharged from active service or transferred to a Reserve Component are entitled to 20% added credit on State civil service exam.

THE AMERICAN LEGION  
SOUTHEAST DISTRICT

SUBJECT; Veterans Preference

WHEREAS; A grateful nation has, following each war indicated its thanks to those who bore the battle by providing certain rights and benefits, one of which has been a small advantage when seeking state employment; and

WHEREAS; Alaska Statutes (39.25.150) does not provide for veterans preference on subsequent employment or promotions, now therefore, be it

RESOLVED; by The American Legion, Southeast District, The Department of Alaska in convention assembled in Wrangell, Alaska February 2,3, and 4th 1989, that The American Legion urges the 20th State Legislature to amend AS 39.25.150, to reflect that veteran applicants for State classified employment be granted preference rights in any subsequent employment or promotion.

FAIRBANKS NORTH STAR BOROUGH  
VETERANS ADVISORY COMMITTEE

2070 Flight Street  
North Pole, Alaska 99705

April 4, 1989

Senator Richard Eliason  
P.O. Box V  
Juneau AK 99811

Dear Senator,

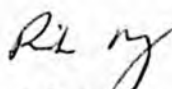
The Fairbanks North Star Borough Mayor's Veterans Advisory Committee met March 30, 1989 and discussed Senate Bill 56 relating to allowing veteran's preference for guard and reserve members with over 5 years of guard and reserve service.

The committee unanimously opposes the bill for a variety of reasons:

- 1) There is an obvious difference between active duty and "active duty for training".
- 2) The current federal guideline for "veteran" status is having over 180 days of active duty other than for training.
- 3) Guard and reserve members can qualify for vet status if they serve an active duty tour (other than for training) exceeding 180 days.
- 4) Using even the weakest formula available, 5 years of guard and reserve (active duty for training) would still only equal 75 days of active duty.
- 5) A closed hiring system already serves guard and reserve members: only guard and reserve members can be hired as technicians.
- 6) The addition of guard and reserve members to the preference pool would dilute an already failing preference system. The State of Alaska Court System and Public Employees Local No. 71 have no vet preference at all. Legislative pressure to force these agencies to invoke veteran's preference is a more practical starting point to help veterans.
- 7) And finally, a gross inequity would occur if this bill is implemented in that currently state and federal veteran's preference for jobs is not even available for regular active duty veterans who served after October 1976 and have no campaign or expeditionary medal.

The Fairbanks North Star Borough Veterans Advisory Committee urges you...do not support Senate Bill 56.

Sincerely,

  
Rick Meyer  
Chairman

Proposed amendment to CS SB 56 (State Affairs):

Line 6, page 1: Insert after "for"

"veterans and for"

Lines 19 and 20, page 1: Delete

, but the additional points may be used only  
the first time the member obtains a position in  
the classified service

Add new section 1 and renumber accordingly:

\*Section 1. AS 39.25.150 (19) is amended to read:

(19) the granting of employment preference rights to a veteran not within the area of promotion, when the veteran possesses the necessary qualifications in the job classification applied for under this chapter; in an examination to determine the qualification of applicants for entrance into the classified service under merit system examination, five additional points shall be added to the passing grade of a veteran and ten additional points shall be added to the passing grade of a disabled veteran[, but the additional points may be used only the first time the veteran obtains a position in the classified service]; if a position in the classified service is eliminated, employees shall be released in accordance with rules which give due effect to all factors; if all job qualifications are equal, the veteran shall be given preference over the nonveteran and the veteran shall be kept on the job; this paragraph may not be interpreted to amend the terms of a collective bargaining agreement; in this paragraph

(A) "veteran" means a person with 181 days or more active service in the armed forces of the United States who has been honorably discharged after having served during any period between April 6, 1917, and December 1, 1919, between September 16, 1940, and December 31, 1947, or between June 27, 1950, and October 14, 1976;

(B) "disabled veteran" means a veteran who is entitled to compensation under laws administered by the United States Veterans' Administration, or a person who was honorably discharged or released from active duty because of a service-connected disability;

Amendment #1

To proposed CS SB 56 (L&C) of 3/16/39

Page 1, line 16: Insert after "veteran"

who is not a state employee in a permanent position in  
the classified service

Page 1, line 17: Insert after "veteran"

who is not a state employee in a permanent position in  
the classified service

Page 2, line 19: Insert after "member"

who is not a state employee in a permanent position in  
the classified service

Page 2, line 21: Insert after "member"

who is not a state employee in a permanent position in  
the classified service

Adopted

Original sponsors: Kelly, Kerttula,  
and Halford

1 IN THE SENATE

BY THE LABOR AND  
COMMERCE COMMITTEE

2 CS FOR SENATE BILL NO. 56 (L&C)

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 employment preferences for  
7 veterans and for service in the national guard."

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

9 \* Section 1. AS 39.25.150(19) is amended to read:

10 (19) the granting of employment preference rights to a  
11 veteran not within the area of promotion, when the veteran possesses  
12 the necessary qualifications in the job classification applied for  
13 under this chapter; in an examination to determine the qualification  
14 of applicants for entrance into the classified service under merit  
15 system examination, five additional points shall be added to the  
16 passing grade of a veteran and ten additional points shall be added to  
17 the passing grade of a disabled veteran [, BUT THE ADDITIONAL POINTS  
18 MAY BE USED ONLY THE FIRST TIME THE VETERAN OBTAINS A POSITION IN THE  
19 CLASSIFIED SERVICE]; if a position in the classified service is elim-  
20 inated, employees shall be released in accordance with rules which  
21 give due effect to all factors; if all job qualifications are equal,  
22 the veteran shall be given preference over the nonveteran and the  
23 veteran shall be kept on the job; this paragraph may not be interpret-  
24 ed to amend the terms of a collective bargaining agreement; in this  
25 paragraph

26 (A) "veteran" means a person with 181 days or more  
27 active service in the armed forces of the United States who has  
28 been honorably discharged after having served during any period

29 (i) between April 6, 1917, and December 1, 1919,

1 between September 16, 1940, and December 31, 1947, or between  
2 June 27, 1950, and October 14, 1976; or

3 (ii) in which the person was awarded a campaign  
4 badge or expedition medal, or the Purple Heart or other award or  
5 decoration for heroism or gallantry in action;

6 (B) "disabled veteran" means a veteran who is entitled  
7 to compensation under laws administered by the United States  
8 Veterans' Administration, or a person who was honorably dis-  
9 charged or released from active duty because of a service-con-  
10 nected disability;

11 \* Sec. 2. AS 39.25.150 is amended by adding a new paragraph to read:

12 (26) the granting of employment preference rights, not  
13 within the area of promotion, to a member of the national guard who  
14 has not received preference rights as a veteran when the national  
15 guard member possesses the necessary qualifications in the job classi-  
16 fication applied for under this chapter; in an examination to deter-  
17 mine the qualification of applicants for entrance into the classified  
18 service under merit system examination, three additional points shall  
19 be added to the passing grade of a national guard member and six  
20 additional points shall be added to the passing grade of a disabled  
21 national guard member; if a position in the classified service is  
22 eliminated, employees shall be released under rules that give due  
23 effect to all factors; if all job qualifications are equal, the  
24 national guard member shall be given preference over employees who are  
25 not veterans or national guard members and the national guard member  
26 shall be kept on the job; this paragraph may not be interpreted to  
27 amend the terms of a collective bargaining agreement; in this  
28 paragraph

29 (A) "disabled national guard member" means a former

1 member of the national guard who was discharged or released from  
2 the national guard under honorable conditions because of a dis-  
3 ability incurred in the line of duty;

4 (B) "national guard member" means a person who has  
5 served for at least eight years as a member of the Alaska  
6 National Guard or an Alaska National Guard Reserve Unit.  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

CS includes amendment # 1

6-0300H

Cramer

3/20/89

Original sponsors: Kelly, Kerttula,  
and Halford

adopted Friday, 3/17/89

1 IN THE SENATE

BY THE LABOR AND  
COMMERCE COMMITTEE

2 CS FOR SENATE BILL NO. 56 (L&C)

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 employment preferences for  
7 veterans and for service in the national guard."

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

9 \* Section 1. AS 39.25.150(19) is amended to read:

10 (19) the granting of employment preference rights to a  
11 veteran not within the area of promotion, when the veteran possesses  
12 the necessary qualifications in the job classification applied for  
13 under this chapter; in an examination to determine the qualification  
14 of applicants for entrance into the classified service under merit  
15 system examination, five additional points shall be added to the  
16 passing grade of a veteran who is not a state employee in a permanent  
17 position in the classified service and ten additional points shall be  
18 added to the passing grade of a disabled veteran who is not a state  
19 employee in a permanent position in the classified service [, BUT THE  
20 ADDITIONAL POINTS MAY BE USED ONLY THE FIRST TIME THE VETERAN OBTAINS  
21 A POSITION IN THE CLASSIFIED SERVICE]; if a position in the classified  
22 service is eliminated, employees shall be released in accordance with  
23 rules which give due effect to all factors; if all job qualifications  
24 are equal, the veteran shall be given preference over the nonveteran  
25 and the veteran shall be kept on the job; this paragraph may not be  
26 interpreted to amend the terms of a collective bargaining agreement;  
27 in this paragraph

28 (A) "veteran" means a person with 181 days or more  
29 active service in the armed forces of the United States who has

1           been honorably discharged after having served during any period

2                           (i) between April 6, 1917, and December 1, 1919,  
3 between September 16, 1940, and December 31, 1947, or between  
4 June 27, 1950, and October 14, 1976; or

5                           (ii) in which the person was awarded a campaign  
6 badge or expedition medal, or the Purple Heart or other award or  
7 decoration for heroism or gallantry in action;

8                           (B) "disabled veteran" means a veteran who is entitled  
9 to compensation under laws administered by the United States  
10 Veterans' Administration, or a person who was honorably dis-  
11 charged or released from active duty because of a service-con-  
12 nected disability;

13 \* Sec. 2. AS 39.25.150 is amended by adding a new paragraph to read:

14                           (26) the granting of employment preference rights, not  
15 within the area of promotion, to a member of the national guard who  
16 has not received preference rights as a veteran when the national  
17 guard member possesses the necessary qualifications in the job classi-  
18 fication applied for under this chapter; in an examination to deter-  
19 mine the qualification of applicants for entrance into the classified  
20 service under merit system examination, three additional points shall  
21 be added to the passing grade of a national guard member who is not a  
22 state employee in a permanent position in the classified service and  
23 six additional points shall be added to the passing grade of a dis-  
24 abled national guard member who is not a state employee in a permanent  
25 position in the classified service; if a position in the classified  
26 service is eliminated, employees shall be released under rules that  
27 give due effect to all factors; if all job qualifications are equal,  
28 the national guard member shall be given preference over employees who  
29 are not veterans or national guard members and the national guard

1 member shall be kept on the job; this paragraph may not be interpreted  
2 to amend the terms of a collective bargaining agreement; in this  
3 paragraph

4 (A) "disabled national guard member" means a former  
5 member of the national guard who was discharged or released from  
6 the national guard under honorable conditions because of a dis-  
7 ability incurred in the line of duty;

8 (B) "national guard member" means a person who has  
9 served for at least eight years as a member of the Alaska  
10 National Guard or an Alaska National Guard Reserve Unit.

**S B**

**58**

COPY

STATE OF ALASKA  
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 15, 1989

SUBJECT: Bidder's preference--constitutional  
question (SB 58, Work Order No. 6-0200A)

TO: Senator Dick Eliason

FROM: Theresa Bannister  
Legislative Counsel

You have requested an opinion on the constitutional questions raised by the legal counsel for Dames & Moore regarding the bidder's preference in AS 36.30.170 as it presently applies to partnerships. The position in the letter is that the bidder's preference discriminates against partnerships. It is my understanding that you do not want this opinion to address the constitutionality of resident bidder preference in general.

I agree with Mr. O'Donnell that the differing treatment of entities under AS 36.30.170 can produce some results that undermine the purpose of the statute and discriminate unreasonably against partnerships. If handled under the state's equal protection provision, a challenge to the treatment of partnerships on this basis would have a good possibility of being successful. It is my opinion that the state equal protection provision is the appropriate provision to consider in this case, since this is a question of differing treatment within the statute, not the extent to which resident preference may be required by the state. However, since art. 1, sec. 23 of the state constitution states that resident preference is to be allowed to the extent allowed by federal law, a court may apply the more lenient federal equal protection clause. In that case, although I believe that the present statutory treatment of entities is not completely rationally related to achieving the statute's goal, it would be more difficult to find the provision unconstitutional because the rational basis test under that provision is nearly a presumption of constitutionality.

Senator Dick Eliason  
Page 2  
February 15, 1989

With regard to the issue of subcontracting, I do not view this as a significant problem since a prohibition against subcontracting could be inserted in the contract between the state agency and the contractor.

If I may be of further assistance, please advise.

TB:kb  
wkk2/006

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Department of Administration  
 Title: \* \_\_\_\_\_ BRU: General Services and Supply  
 Sponsor: Faiks Components: Purchasing  
 Requestor: Labor and Commerce

\* An act relating to the definition of "Alaska Bidder"

for purposes of the Alaska Bidder Preference

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
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)

This bill would have an impact to partnerships' qualifications for the Alaska Bidders Preference. For a partnership to qualify under this bill for the Alaska Bidders Preference, only one of the partners must be a resident rather than the present requirement for all partners to be a resident. The Division of General Services and Supply does not anticipate significant impacts when applying the Alaska Bidders Preference if this bill is enacted.

Prepared By: Robert J. Link, Director *RL* Phone: 465-2250  
 Division: General Services and Supply Date: \_\_\_\_\_

Approved by Commissioner: John M. Andrews Date: 3/28/89  
 Agency: Department of Administration *JMA*

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

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_ Agency Affected: Dept. of Administration  
 Title: 'An Act relating to the definition of ARU: General Services & Supply  
'Alaska Bidder' for purposes of the AK bidder pref.  
 Sponsor: Faiks Components: Purchasing  
 Requestor: Labor & Commerce

**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
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)

See attachment.

Prepared by: Robert J. Link, Director *Robert Link* Phone: 465-2250  
 Division: General Services & Supply Date: 1/24/89

Approved by Commissioner: John M. Andrews *John M. Andrews* Date: 1/24/89  
 Agency: Department of Administration

**Distribution (by preparer):**

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

**DEPARTMENT OF ADMINISTRATION  
POSITION PAPER**

**DIVISION:** General Services and Supply

**BILL NUMBER:** SB 59

**BILL TITLE:** An Act relating to the definition of Alaska bidder for purposes of the Alaska bidder preference in the awarding of State contracts.

If this Bill becomes law, it would change the group of bidders who qualify for an Alaska bidder preference. It would do this two ways.

By deleting "or qualified to do business" those firms that are incorporated in other jurisdictions but qualified by DCED would no longer qualify for the Alaska bidder preference. This would reduce the number of firms that qualify for the bidder preference.

By adding "at least 50 percent of the" would allow partnerships with partners who are not residents of the State to qualify for the bidder preference. This would increase the number of firms that qualify for the preference.

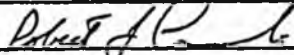
Some inequity would remain in that partnerships such as accounting firms and architectural and engineering firms that have offices within the State staffed by residents would not qualify for the preference while offices of corporations located in State would qualify.

The effects of passage of this bill on competitive sealed bid or competitive sealed proposal process would be minimal.

The department's position on this bill is neutral. It is appropriate that the legislature determine who qualifies for State preferences.

**APPROVED:**

Director: Robert J. Link

Signature: 

Date: 2/3/89

Commissioner: John M. Andrews

Signature: 

Date: 2/3/89

For further information call Dean Gottehrer at 465-2200

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 58

## IMPACTS

This bill would have impacts to partnerships and corporation qualifications for the Alaska Bidders Preference.

1. Corporations bidding on supplies, services, and professional services would not qualify for the Alaska Bidders Preference unless they were incorporated under the laws of the State. Some corporate vendors qualify to do business with the State but, are not incorporated under the laws of the State. These vendors currently receive the Alaska Bidders Preference and would no longer qualify under this bill.
2. For a partnership to qualify under this bill for the Alaska Bidders Preference, only 50% of the partners must be residents rather than the present requirement for all partners to be a resident.
3. The Division of General Services and Supply does not anticipate significant impacts when applying the Alaska Bidders Preference if this bill is enacted.

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE 3/1/89  
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER

\*\*FISCAL NOTE(S) MUST BE ATTACHED  
IN ACCORDANCE WITH AS 24.08.035

DATE TURNED INTO OFFICE 3/23/89

1/9/89

Mr. President:

L&C Committee considered SB 58

definition of 'Alaska bidder' for purposes of the Alaska bidder preference in the awarding of state contracts

and recommended:

replace with CS SB 58 (L+C)  same title  
 attached amendment(s) and  new title  
 \_\_\_\_\_ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

FISCAL NOTE(S) attached  zero  
 appropriation no FN attached

fiscal impact  
 Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS  
[Signature]  
[Signature]  
[Signature]  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

OTHER RECOMMENDATIONS  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[Signature]  
Chairman signature and recommendation

Committee backup attached

Original sponsors: Faiks and Coghill

*As compared to 2/24/89 draft*

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 58 ( )

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 the definition of 'Alaska bidder'  
7 for purposes of the Alaska bidder preference in the  
8 awarding of state contracts."

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

10 \* Section 1. AS 36.30.170(b) is amended to read:

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

15 In this subsection, "Alaska bidder" means a person who

16 (1) holds a current Alaska business license;

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

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

23 (4) is incorporated [OR QUALIFIED TO DO BUSINESS] under the  
24 laws of the state or is incorporated under other laws and qualified to  
25 do business under the laws of the state, is a sole proprietorship [,]  
26 and the proprietor is a resident of the state, or is a partnership [,]  
27 and at least one of the [ALL] partners is a resident [ARE RESIDENTS]  
28 of the state; <sup>was originally "50% of the"</sup> and

29 (5) if a joint venture, is composed entirely of venturers

1 [VENTURES] that qualify under (1) - (4) of this subsection.  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

Original sponsors: Faiks and Coghill

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 58 ( )

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 the definition of 'Alaska bidder'  
7 for purposes of the Alaska bidder preference in the  
8 awarding of state contracts."

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

10 \* Section 1. AS 36.30.170(b) is amended to read:

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

16 (1) holds a current Alaska business license;

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

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

23 (4) is incorporated [OR QUALIFIED TO DO BUSINESS] under the  
24 laws of the state or is incorporated under other laws and qualified to  
25 do business under the laws of the state, is a sole proprietorship [,]  
26 and the proprietor is a resident of the state, or is a partnership [,]  
27 and at least 50 percent of the [ALL] partners are residents of the  
28 state; and

29 (5) if a joint venture, is composed entirely of venturers

1 [VENTURES] that qualify under (1) - (4) of this subsection.

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

8 (d) The procurement officer shall award an insurance-related  
9 contract based on solicited bids to the lowest responsive and respon-  
10 sible bidder after an Alaska bidder preference of five percent. In  
11 this subsection, "Alaska bidder" means a person who meets the criteria  
12 set out in (b)(1) - (5) of this section and who is an Alaska domestic  
13 insurer.

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

4 (4) is incorporated or qualified to do business under the  
5 laws of the state, or is a sole proprietorship[,] and the proprietor  
6 is a resident of the state, or is a partnership[,] and one or more of  
7 the general [ALL] partners is a resident [ARE RESIDENTS] of the state;

8 (5) if a joint venture, is composed entirely of ventures  
9 that qualify under (1) -- (4) of this subsection.

10 \* Sec. 6. AS 36.30.210(a) is amended to read:

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

27 \* Sec. 7. AS 36.30.210 is amended by adding a new subsection to  
28 read:

29 (e) The offeror must have a valid Alaska business license at the

February 24, 1989

MEMORANDUM

TO: Senator Dick Eliason, Chairman  
Senate Labor and Commerce Committee

FROM: Senator Jan Faiks, Chairman  
Senate Judiciary Committee

SUBJECT: SB 58 "An Act relating to the definition of  
'Alaska bidder' for purposes of the Alaska  
bidder preference in the awarding of state  
contracts."

SB 58 has been referred to the Senate Labor and Commerce Committee for consideration. This bill amends the definition of 'Alaska bidder' for purposes of the Alaska bidder preference in the awarding of state contracts under AS 36.30, the State Procurement Code.

As 36.30.170 provides that the state must award contracts based upon solicited bids to the lowest responsible and responsive bidder, after an Alaska bidder preference of five percent has been applied. An Alaska bidder is defined as a person who

- (1) holds a current Alaska business license;
- (2) submits a bid for goods, services, or construction under the name as appearing on th person's current Alaska business license;
- (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;

(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 all partners are residents of the state; and

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

SB 58 was introduced at the recommendation of Duncan Fowler, the Ombudsman. In a letter to me dated October 8, 1988, Mr. Fowler discussed the apparent unfairness of AS 36.30.170, which provides that a corporation qualified to do business in Alaska is entitled to an Alaska bidder preference, regardless of where the business is incorporated and whether the stockholders are Alaskans. On the other hand, a partnership is entitled to an Alaska bidder preference only if all the partners are residents of Alaska.

Mr. Fowler stated that this was inequitable, in that it gives corporations an unfair advantage which partnerships are denied. He said that it seems to penalize long time Alaska partnerships when a single member retains partnership status but moves out of state, which does not lessen the partnership's Alaskan commitment as a whole. It penalizes the partnership in which one partner "bails out" on the another without the Alaska partner's permission, leaving the survivor without Alaska bidders' preference status while he extricates himself from the partnership.

To correct these inequities, Mr. Fowler recommended a redefinition of "Alaska bidder" to include partnerships in which 50 percent or more of the partners are full time residents of Alaska.

As originally drafted by legal services, SB 58 did two things: first, on page 1, line 25, it made the change to AS 36.30.179(b) that was recommended by Mr. Fowler.

Second, on page 1, line 23, it deleted the phrase "or qualified to do business" from the list of factors that qualified a business for a bidder preference. This phrase was intended to apply only to foreign corporations that obtained a certificate of authority to do business in Alaska from the Department of Commerce and Economic Development. Its purpose was to hold that foreign corporations that were legally authorized to do business in Alaska were eligible to qualify for a bidder preference.

The drafter deleted "or qualified to do business" because she viewed the inclusion of this phrase as a drafting error in the original statute that could be interpreted as allowing any non-corporation that possessed an Alaska business license,

such as partnerships and sole proprietorships, to qualify for an Alaska bidder preference, even if all the partners or the proprietor of the partnership or sole proprietorship were not Alaskans. In fact, there have been some non-Alaskan partnerships that have claimed rights under this interpretation.

Unfortunately, the change made by the drafter has the unintended side effect of making any corporation not incorporated in Alaska ineligible for a bidder preference, regardless of the amount of business or number of offices it has here.

For this reason, I am recommending that the committee consider adopting the attached CS. This CS takes care of the drafter's concerns regarding the applicability of the phrase "or qualified to do business," without having the unintended side effect of preventing all foreign corporations from qualifying for a bidder preference. In effect, the CS makes this particular line of the Procurement Code mean what most people always thought it meant, and what the drafters intended.

# Alaska State Legislature

Chairman  
(907) 465-4523



Jan Faiks  
Post Office Box V  
Juneau, Alaska 99811

## Senate Judiciary Committee

February 27, 1989

### MEMORANDUM

TO: Senator Dick Eliason, Chairman  
Senate Labor and Commerce Committee

FROM: Senator Jan Faiks, Chairman  
Senate Judiciary Committee

SUBJECT: SB 58 "An Act relating to the definition of 'Alaska bidder' for purposes of the Alaska bidder preference in the awarding of state contracts."

SB 58 has been referred to the Senate Labor and Commerce Committee for consideration. This bill amends the definition of 'Alaska bidder' for purposes of the Alaska bidder preference in the awarding of state contracts under AS 36.30, the State Procurement Code.

As 36.30.170 provides that the state must award contracts based upon solicited bids to the lowest responsible and responsive bidder, after an Alaska bidder preference of five percent has been applied. An Alaska bidder is defined as a person who

- (1) holds a current Alaska business license;
- (2) submits a bid for goods, services, or construction under the name as appearing on the person's current Alaska business license;
- (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;
- (4) is incorporated or qualified to do business under the laws of the state, is a sole proprietorship, and the pro-

Members  
Mike Szymanski, Vice-Chairman • Rick Halford • Drue Pearce • Pat Rodey

Out of Session

3111 C Street, Anchorage, Alaska 99503 • (907) 561-7610

prietor is a resident of the state or is a partnership, and all partners are residents of the state; and

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

SB 58 was introduced at the recommendation of the Ombudsman, Mr. Duncan Fowler. In a letter dated October 8, 1988, Mr. Fowler discussed the apparent unfairness of AS 36.30.170, which provides that a corporation qualified to do business in Alaska is entitled to an Alaska bidder preference, regardless of where the business is incorporated and whether the stockholders are Alaskans. On the other hand, a partnership is entitled to an Alaska bidder preference only if all the partners are residents of Alaska.

Mr. Fowler stated that this was inequitable, in that it gives corporations an unfair advantage which partnerships are denied. He said that it seems to penalize long time Alaska partnerships when a single member retains partnership status but moves out of state, which does not lessen the partnership's Alaskan commitment as a whole. It penalizes the partnership in which one partner "bails out" on the other without the Alaska partner's permission, leaving the survivor without Alaska bidder preference status while he extricates himself from the partnership.

To correct these inequities, Mr. Fowler recommended a redefinition of "Alaska bidder" to include partnerships in which 50 percent or more of the partners are full time residents of Alaska.

As originally drafted by Legal Services, SB 58 did two things: first, on page 1, line 25, it made the change to AS 36.30.170(b) that was recommended by Mr. Fowler. This change provides a good deal more equity in the bidder preference than is currently the case.

Second, on page 1, line 23, SB 58 deleted the phrase "or qualified to do business" from the list of factors that qualified a business for a bidder preference. This phrase was intended to apply only to foreign corporations that obtained a certificate of authority to do business in Alaska from the Department of Commerce and Economic Development. Its purpose was to hold that foreign corporations that were legally authorized to do business in Alaska were eligible to qualify for a bidder preference.

The drafter deleted "or qualified to do business" from current law because she viewed the inclusion of this phrase as a drafting error in the original statute that could be interpreted as allowing any non-corporation that possessed an Alaska business license, such as partnerships and sole proprietorships, to

qualify for an Alaska bidder preference, even if all the partners of the partnership or the proprietor of the sole proprietorship were not Alaskans. In fact, there have been some non-Alaskan partnerships that have claimed preference rights under this interpretation.

Unfortunately, this change has the unintended side effect of making any corporation not incorporated in Alaska ineligible for a bidder preference, regardless of the amount of business or number of offices it has here.

For this reason, I recommend that the committee consider adopting the attached CS. This CS takes care of the drafter's concerns regarding the applicability of the phrase "or qualified to do business," without having the unintended side effect of preventing all foreign corporations from qualifying for a bidder preference. In effect, the CS makes this particular line of the Procurement Code mean what most people always thought it meant, and what the original drafters intended.

The Procurement Code is a new area of state law, taking effect only last year. As such, we are still at the stage of discovering which sections work as intended and which sections are in need of modification. The committee substitute for SB 58 makes two simple yet necessary modifications to the code, one of which makes it more equitable, while the other makes it do what the drafters intended. I urge the committee to give favorable consideration to this legislation.



Real Estate Brokerage,  
Leasing, Management and  
Investments. Since 1953.  
3201 "C" Street, Suite 100  
Anchorage, Alaska 99503-3994  
(907) 563-5500

March 3, 1989

The Honorable Richard Eliason  
Chairman  
Labor and Commerce Committee  
Alaska State Senate  
P.O. Box V  
Juneau, Alaska 99811

Subject: Senate Bill 58

Dear Senator Eliason:

As a forty-three year resident of the state, sixteen years as an Anchorage real estate broker, and as agent for Calais Properties, Ltd., owners of the Calais Office Center in Anchorage (the third largest private office complex in the state), I strongly support a revision to the language regarding partnership residency set forth in AS36.30.170(b).

I would in the first instance support a revision providing for "any partnership" doing business in the state of Alaska which meets the requirements of subsections (1)-3). In the alternative, I would support a revision providing for "at least one (1) partner, including a corporation, be a resident of the state".

The primary rationale for this change is that partnerships containing one or more partner residing out of state are at an unfair competitive disadvantage to any corporate entity, notwithstanding the amount of investment, length of local business operation and taxes paid. This disadvantage is readily apparent in the area of office space procurement.

My client, Calais Properties, Ltd., is a limited partnership (quite common in real estate development) whose General Partner is Wright Runstad & Company, a corporation. Its Limited Partners include The Calais Company, Inc. of Anchorage which has a sixteen and one-half (16.5%) interest in the partnership. The shareholders of Calais Company, Inc. are, to the best of my knowledge, all old time Alaskans.

The Honorable Richard Eliason  
March 3, 1989  
Page 2

As a result of the existing definition of partnership in the new procurement statute, my client may have lost at least two bid competitions during the past nine (9) months, i.e., the Anchorage offices of the Ombudsman and the Permanent Fund Dividend. In the latter instance, the New York Life Insurance Company, due to its corporate organization qualified as an Alaskan bidder, while my clients who have been active in the state since 1973, invested in excess of 15 million dollars in new capital, paid millions in taxes and created untold jobs, is not qualified under the existing law. This is unfair - "the play field is not level".

I have two additional concerns 1) that a corporation be considered a resident partner (although this may be legally redundant) and, 2) that the effective date of the technical correction be immediate given the near term expectation of some large sized State of Alaska bid solicitations.

Thank you for your consideration of this matter.

Respectfully submitted by,

JACK WHITE COMPANY

*H. Norman Rokeberg (KR)*

H. Norman Rokeberg  
Associate Broker

HNR:krb

cc: Senator Jan Haik  
Bob Link  
Barbara Dingfield



# DAMES & MOORE

A PROFESSIONAL LIMITED PARTNERSHIP

5761 SILVERADO WAY, SUITE P, ANCHORAGE, ALASKA 99518-4657 (907) 562-3366

January 27, 1989

Senator Dick Eliason  
Capitol, Room 417  
P.O. Box V  
Juneau, Alaska 99811

Dear Senator Eliason:

At the suggestion of Senator Faiks I wish to request an amendment to Senate Bill No. 58 regarding Alaska bidder preference.

My name is Jim Hemming and I have been an Alaska resident for 28 years. For the past 11 years, I have managed the Anchorage office of Dames & Moore, Consulting Engineers. Dames & Moore has been in business in Alaska for 18 years. We are committed to Alaska and have worked hard to keep our office in Anchorage open through the economic downturn while other companies have closed their offices and moved out.

Now, however, our ability to do business in Alaska is being threatened. When the regulations for AS 36.30.170 (B) (Alaska Bidders Preference) were finalized this year, we were told that we no longer qualified as an Alaskan business because Dames & Moore is a limited partnership rather than a corporation. We would be penalized at least 15 points on any state contract that we bid on in the future.

The statute states that for a partnership to be qualified as an Alaskan business, all of the partners must be residents of Alaska. The same is not true for corporations. A corporation could qualify after being in the state for 6 months even if none of the managers, board of directors or major stockholders are Alaskan residents. The intent of the legislation, I believe, was to prevent large outside companies rather than partnerships from setting up joint ventures with small companies in Alaska as a "front" with most of the work being done outside the state. This, however, is not what the law says.

The longterm picture is that Dames & Moore may no longer be able to compete on state projects. As you can see from the attached list, state projects have been a significant part of our business in the past. We have used Alaskan residents on virtually all of our projects in the state. I may have to lay off Alaskan residents if State of Alaska projects are no longer open to my company.



Senator Dick Eliason  
January 27, 1989  
Page 2

The remedy to our problem is relatively simple. If line 25 and 26 of the proposed bill were amended to delete [at least 50 percent] and add at least one our problem would be solved and we could continue to keep Alaskans employed. I have enclosed a legal opinion from our attorneys for your information.

Please let me know what you can do.

Sincerely,

DAMES & MOORE

James E. Hemming, Partner (Ltd.)  
Manager, Alaska Operations

JEH/029lms

Attachments

cc: Governor Steve Cowper, w/o attach  
Senator Jan Faiks, w/o attach.

KENNETH R. ATKINSON  
JOHN M. CONWAY  
BRUCE E. GAGNON  
ROBERT J. DICKSON  
W. MICHAEL MOODY  
GEORGE M. KAPOLCHOK  
JOHN A. TREPTOW  
PATRICK B. GILMORE  
SUSAN WRIGHT MASON  
RICHARD E. VOLLERTSEN  
GARY M. GUARINO  
NEIL T. O'DONNELL  
JEROME H. JUDAY  
PAUL F. LYNCH  
CATHLEEN NELSON McLAUGHLIN  
CRAIG F. STOWERS

LAW OFFICES OF  
ATKINSON, CONWAY & GAGNON, INC.  
A PROFESSIONAL CORPORATION  
420 L STREET  
SUITE 500  
ANCHORAGE, ALASKA 99501

CABLE ADDRESS:  
DOVER

TELEPHONE 276-1700  
AREA CODE 907

TELECOPIER/FACSIMILE:  
(907) 272-2082

November 10, 1988

Dames & Moore  
5761 Silverado Way, Suite P  
Anchorage, Alaska 99518-1657

Mr. James E. Hemming

Re: Alaska Preference Statutes

Dear Mr. Hemming:

You have asked us to determine what statutes or regulations may preclude Dames & Moore, a limited partnership, from qualifying as an Alaskan bidder. That statute is AS 36.30.170(b)(4) which provides that a partnership may not qualify as an Alaskan bidder unless "all partners are residents of the state". As a result of being denied an Alaskan bidders preference, Dames & Moore would not qualify for either the 5% preference found in AS 36.30.170(b) or the newly imposed 10% evaluation preference found in 2 AAC 12.260(e). The latter regulation incorporates the definition of "Alaskan bidder" found in AS 36.30.170(b).

You have asked us to evaluate the constitutionality of the foregoing definition of "Alaskan bidder" in light of Dames & Moore's long term presence in the state. It is my understanding that Dames & Moore is a limited partnership comprised of Dames & Moore Inc., the general partner, and approximately 70 individual limited partners located around the world. Dames & Moore has maintained an office in Alaska for eighteen (18) years and is qualified to do business in the state. Dames & Moore has had an office in Anchorage continuously since 1970, and maintained a second office in Homer from 1976 to 1987. Dames & Moore currently has eight Alaska employees, although it has employed up to 52 Alaskans in better economic times. The manager of Alaska operations for Dames & Moore is Mr. James E. Hemming. Mr. Hemming is a limited partner in the Dames & Moore limited partnership and has lived in Alaska since 1961.

In our view, a strong argument can be made that the denial of an Alaskan bidders preference to a partnership in the position of Dames & Moore is unconstitutional. First, the goal of the statute, to favor Alaska residents, appears constitutionally impermissible. Second, assuming a permissible goal, the means chosen appear unreasonable as applied to partnerships.

Article I, section 1, of the Alaska Constitution provides, in part, that " all persons are equal and entitled to equal rights, opportunities and protection under the law." A similar equal protection provision is contained in the United States Constitution. The Fourteenth Amendment to the United States Constitution also prohibits the states from making or enforcing "any law which shall abridge the privileges or immunities of citizens of the United States." The opportunity for equal employment, including employment in the construction industry, is a fundamental right. Robinson v. Francis, 713 P.2d 259, 265 (Alaska 1986).

In Lynden Transport, Inc. v. State, 532 P.2d 700 (Alaska 1975), the Alaska Supreme Court struck down a statute which created certain preferences for Alaskan owned motor carriers. The court stated:

Handicapping nonresidents admitted to do business in the state, however, has never in itself been considered a valid reason for a classification . . . . A discrimination between residents and nonresidents based solely on the object of assisting one class over the other economically cannot be upheld under either the privileges and immunities or equal protection clauses.

(emphasis added; id. at 709-710). See also Robinson v. Frances, 713 P.2d 259 (Alaska 1986). Thus a strong argument can be made that present preference scheme is prohibited by both the state and federal constitutions.

Second, assuming that the goal of favoring Alaska residents is constitutionally permissible, the means chosen appear unreasonable thus rendering the statute unconstitutional on this alternative ground. As stated in Isakson v. Rickey, 550 P.2d 359, 362 (Alaska 1976), a classification must "be reasonable, not arbitrary, and must rest upon some difference having a fair and

Dames & Moore  
November 11, 1988  
Page 3

substantial relationship to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." The present statute arguably fails this test as it unreasonably and arbitrarily penalizes businesses which operate in the form of a partnership.

The means chosen here do not ensure that Alaska businesses receive a preference and in fact can actually frustrate Alaska businesses. For example, an Alaskan based engineering firm with the majority of its partners in Alaska and one partner in a Seattle branch office would be considered a nonresident as all its partners do not reside in the state. AS 36.30.170(b)(4). A foreign corporation, however, can qualify as an Alaskan resident simply by applying to do business in the state and by staffing an office here with one employee for six months. AS 36.30.170(b)(4). Thus a Texas corporation with thousands of employees in Texas and one file clerk stationed in Anchorage for six months would be entitled to an Alaskan bidders preference whereas the foregoing Alaskan engineering firm, which may have been located here for twenty years, would not. Where an Alaskan business operates in the form of a partnership and has one or more partners located outside the state, the preference statute may actually operate as a preference for out-of-state corporations.

The means chosen by the legislature are further unreasonable as they do not prohibit an "Alaskan bidder" from subcontracting the work to a nonresident firm. Thus a partnership which has operated a large office in Anchorage for nearly two decades, like Dames & Moore, can be deemed a nonresident while a single six-month Alaskan resident, who intends to subcontract all or most of the work to an outside firm, will receive an "Alaskan bidder's" preference. As the means chosen by the legislature do not bear "a fair and substantial relationship" to the legislative goal of favoring Alaska residents, a strong argument can be made that the statute is unconstitutional as applied to partnerships.

There are two possible avenues for remedying Dames & Moore's exclusion from the Alaskan bidders preference: (1) a lawsuit and (2) legislative amendment to the definition of an Alaskan bidder contained in A.S 36.30.170(b)(4). A lawsuit may well prove successful. Depending on the effort put into defense of the statute by the state, however, such a lawsuit could potentially require a substantial expenditure of time and money. For this reason, I would recommend an initial attempt to obtain an amendment to the statute.

Dames & Moore  
November 11, 1988  
Page 4

The legislature may be amenable to amendment given the dissatisfaction expressed to you by state contracting officers with the present definition of an "Alaskan bidder". In addition, such an amendment would discourage a broad based legal challenge to the concept of Alaskan bidders preferences. The final argument is that an amendment would remove the disability presently imposed on Alaskan partnerships and further the purpose of the statute.

In terms of specific language, I would suggest that you seek to amend AS 36.30.170(b)(4) to read:

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 one or more of the partners is a resident of the state.

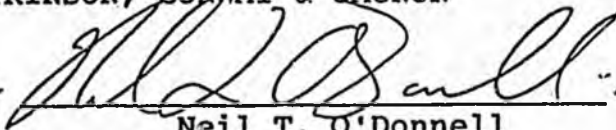
This language will result in partnerships being treated on a equal basis with corporations and proprietorships. If you wish to pursue a judicial resolution of this issue, please contact me so that we can further discuss the merits of the specific legal challenges and the means by which to pursue the same.

Please advise if I may be of further assistance.

Very truly yours,

ATKINSON, CONWAY & GAGNON-

By



Neil T. O'Donnell

NTO:jmm

List of Projects Conducted for the  
State of Alaska  
by  
Dames & Moore Professional Limited Partnership\*  
Anchorage, Alaska  
1970-1989

\*Each of the projects on the attached list utilized Alaska residents.

- 1970 Alaska Department of Transportation and Public Facilities (ADOT&PF) Geologic and geophysical studies, proposed Ketchikan airport, Gravina Island, Alaska.
- 1970 ADOT&PF - Soils engineering studies, offshore rock fill area, Ketchikan, Gravina Island, Alaska.
- 1970 ADOT&PF - Soils investigation, proposed state capitol building, Juneau, Alaska.
- 1970 ADOT&PF - Soils investigation, tidelands ADDN, proposed maintenance building, Juneau, Alaska.
- 1971 ADOT&PF - Geologic and oceanographic studies, proposed airport runway extension, Sitka, Alaska.
- 1971 ADOT&PF - Inspection of rock excavation, proposed state office building, Juneau, Alaska.
- 1971 ADOT&PF - Review of pile driving and socket inspection, state office building, Juneau, Alaska.
- 1971 ADOT&PF - Design consultation, proposed runway extension, Sitka, Alaska.
- 1971 ADOT&PF - Consultation for dredged fill, small boat harbor, Whittier, Alaska.
- 1972 ADOT&PF - Geophysical and soils investigation, airport ferry terminal, Gravina Island, Alaska.
- 1972 ADOT&PF - Subsurface investigation and ocean engineering, mobilization and demobilization, ferry terminals, southeast Alaska.
- 1973 ADOT&PF - Subsurface investigation and ocean engineering, ferry terminals, Hoonah, Alaska.
- 1973 ADOT&PF - Subsurface investigation and ocean engineering, ferry terminal, Kake, Alaska.
- 1973 ADOT&PF - Consultation, proposed dock facility, Cold Bay, Alaska.
- 1973 ADOT&PF - Consultation quarry development, airport runway extension, Sitka, Alaska.
- 1973 ADOT&PF - Wind monitoring system installation, Anchorage International Airport, Anchorage, Alaska.
- 1974 ADOT&PF - Microclimate evaluation, parking garage, Fairbanks, Alaska.
- 1974 ADOT&PF - Environmental impact report, airport runway, Anchorage, Alaska.
- 1974 ADOT&PF - Preliminary foundation investigation, school buildings, Tanana-Fort Yukon, Alaska.

- 1974 ADOT&PF - Characterization of wastewater effluent, International Airport, Fairbanks, Alaska.
- 1974 ADOT&PF - Site selection, ferry terminal, Anchorage, Alaska.
- 1974 ADOT&PF - Foundation investigation, vocational education building, Fort Yukon, Alaska.
- 1974-75 ADOT&PF - Meteorological analysis, International Airport, Anchorage, Alaska.
- 1974-78 Alaska Department of Fish & Game (ADF&G) - Baseline marine ecology studies, marine plant communities, Kachemak Bay, Alaska.
- 1975 ADOT&PF - Underwater inspection, airport runway extension, Sitka, Alaska.
- 1975 ADOT&PF - Consultation, testing, wastewater treatment facilities, Deadhorse, Alaska.
- 1975 ADOT&PF - Foundation investigation, vocational education building, Tanana, Alaska.
- 1975 ADOT&PF - Site selection, state capitol, Alaska.
- 1975 ADOT&PF - Inspection and recommendations, water & wastewater treatment facilities, Nulato, Alaska.
- 1975 ADOT&PF - Environmental report, airport runway, Anchorage, Alaska.
- 1975-78 ADF&G - Baseline marine ecology studies, Kachemak Bay, Alaska.
- 1975-78 ADF&G - Management data study, kelp herring egg fishery, Prince William Sound, Alaska.
- 1975-78 ADF&G - Benthic crab survey, marine environment, Kachemak Bay, Alaska.
- 1976 ADOT&PF - Laboratory services, sewage treatment plant, Fairbanks, Alaska.
- 1976 ADOT&PF - Foundation investigation, village schools, northern Alaska.
- 1976-77 ADF&G - Geophysical and benthic investigation, Lower Cook Inlet, Alaska.
- 1976-78 ADOT&PF - Laboratory testing, Fairbanks International Airport, Fairbanks, Alaska.
- 1977 ADF&G - Site investigation, fish hatchery, Prince William Sound, Alaska.
- 1977 ADOT&PF - Consultation, bush schools, Alaska.
- 1977-78 ADF&G - Site evaluation, fish hatchery with geothermal heat source, Bell Island, Alaska.

- 1978 ADOT&PF - Geotechnical Investigation, proposed state office building, Juneau, Alaska.
- 1978-79 ADF&G - Water quality analyses, coastal waters, Ketchikan, Alaska.
- 1978-79 ADOT&PF - Meteorology & air quality investigations, proposed state capital site, Willow, Alaska.
- 1979 ADOT&PF - Soils and hydrology, Fish hatchery, Prince William Sound Main Bay, Alaska.
- 1979 ADOT&PF - Expert weather testimony, Anchorage International Airport, Anchorage, Alaska.
- 1979-80 ADOT&PF - Foundation investigation, fish hatchery, Snettisham, Alaska.
- 1980 ADOT&PF - Consultation preliminary planning, proposed bridge, Naknek, Alaska.
- 1980-81 ADOT&PF - Feasibility study, runway extension, Dutch Harbor, Alaska.
- 1980-81 ADOT&PF - Soils logging, Fish dock, Dutch Harbor, Alaska.
- 1980-81 ADOT&PF - Bathymetric survey, dock and facilities, Dutch Harbor, Alaska.
- 1980-81 Alaska Power Authority (APA) - Environmental assessment, hydroelectric plant, Dillingham, Alaska.
- 1980-81 APA - Environmental Assessment, hydroelectric power plant, Haines, Alaska.
- 1980-81 APA - Potential coal supply for village fuel in Northwest Alaska.
- 1981 ADOT&PF - Economic consultation
- 1981 ADOT&PF - Consultation, foundation bedrock, Main Bay salmon hatchery, Prince William Sound, Alaska.
- 1981-82 APA - Hydro power plan feasibility analysis, Bristol Bay region, Alaska.
- 1981-82 ADOT&PF - Engineering feasibility, economics & development plan, Chernofsky Harbor port facility, Unalaska Island, Alaska.
- 1981-82 ADOT&PF - Harbor feasibility study, St. Paul, St. George Island, Alaska.
- 1981-82 State of Alaska, Department of Policy & Development planning - Economic consultation.
- 1981-82 ADOT&PF - Geotechnical services, St. Paul Harbor, Alaska.
- 1981-83 ADOT&PF - Environmental Assessment, Wasilla bypass, Wasilla, Alaska.

1981-83 ADOT&PF - Socio-economics, New Parks Highway, Alaska.

1981-83 ADOT&PF - Geotechnical services, St. George Harbor, Alaska.

1981-83 ADOT&PF - Noise impact analysis, New Parks Highway, Alaska.

1981-83 ADOT&PF - Air quality impact assessment, New Parks Highway, Alaska.

1982 State of Alaska, Office of the Governor - Develop/analyze Alaska fisheries research alternatives.

1982 State of Alaska, Petroleum Revenue Division - Petroleum forecast.

1982 ADOT&PF - Transportation study, St. George Island, Alaska.

1982 ADOT&PF - Transportation study, St Paul Island, Alaska.

1982 ADOT&PF - Biological & field investigation, boat harbor , Pribilof Islands, Alaska.

1982 ADOT&PF - Geotechnical offshore and onshore boat harbor, Pribilof Islands, Alaska.

1982 Alaska Power Authority (APA) - Assess feasibility of coal & gas energy for Bethel, Alaska.

1982-83 ADOT&PF - Environmental analyses & report preparation, St. George Harbor design, St. George Island, Alaska.

1982-83 Alaska Power Authority (APA) - Geothermal well, Unalaska, Alaska.

1982-83 APA - Hydro power plan feasibility analysis, Newhalen River, Alaska.

1982-84 ADOT&PF - Environmental studies, Knik Arm Crossing, Anchorage, Alaska.

1983 ADOT&PF - Consultation compliance seafood quality assurance program, Juneau, Alaska.

1983 ADOT&PF - Determine demand for marine services, Pribilof Islands, Alaska.

1983 State of Alaska, Department of Community Regional Affairs - Biological & Commercial Consulting, Bristol Bay, Alaska.

1983 ADOT&PF - Draft EIS revision, Limited access highway, Wasilla, Alaska.

1983 APA - Hydro power plan feasibility analysis, Iliamna, Alaska.

1984 ADOT&PF - Highway air quality assessment, Anchorage, Alaska.

1984 State of Alaska, Department of Natural Resources (DNR) - Geotechnical services, coal mining, Anchorage, Alaska.

- 1984-85 ADOT&PF - Marine seismic survey/geology, Turnagain Arm, Alaska.
- 1984-85 DNR - Dam safety inspections, Vortag Lake & Isatkoak Dams, Barrow & Kotzebue, Alaska.
- 1984-85 DNR - Cost guidelines for reclamation of coal mines. Anchorage, Alaska.
- 1984-85 APA - Susitna alternative economic studies, Susitna Hydroelectric Project, Susitna, Alaska.
- 1984-85 APA - Environmental permitting, exploratory geothermal well, Unalaska, Alaska.
- 1984-85 APA - Sockeye salmon smolt survey, hydro power feasibility analysis, Iliamna, Alaska.
- 1984-85 State of Alaska, Court System - Seismic & earthquake engineering analysis, courthouse addition, Anchorage, Alaska.
- 1985 DNR - Dam safety inspection, Slate Creek, Kodiak, Alaska.
- 1985 APA - Wildlife users survey, Susitna hydroelectric project, Susitna, Alaska.
- 1985-86 State of Alaska, Department of Environmental Conservation (DEC) - Steam use inventory.
- 1986 ADOT&PF - Monitor gravel extraction, Elmendorf AFB, Alaska.
- 1986 State of Alaska, Department of Community and Regional Affairs (DCRA) - Bristol Bay underutilized fisheries potential.
- 1986 DEC - Fishery, mining and recreational use survey of Tolovana River.
- 1986 APA - Consulting services, hydroelectric project, Bradley Lake, Alaska.
- 1986-87 APA - Engineering & economic feasibility study, geothermal power plant, Aleutian Islands, Unalaska, Alaska.
- 1987 DEC - Crown Point tank car incident, environmental assessment.
- 1988-89 APA - Railbelt Intertie, environmental assessment.
- 1985 - present APA - Bradley Lake hydro salmon monitoring project.



State of Alaska  
**Ombudsman**

Duncan C. Fowler

October 20, 1988

Senator Jan Faiks  
6060 Yukon Drive  
Anchorage, Alaska 99516

Dear Senator *Jan* Faiks:

There have been lots of changes, high volume complaints and some great issues at the Ombudsman's office since my last legislative newsletter in May.

- The Fairbanks Ombudsman's office opened for business on July 18, 1988 at the Courthouse Square, 250 Cushman St., 452-4001.
- The Anchorage and Juneau offices relocated this summer: in Anchorage to the Post Office Mall, Room 305, with telephone service at 277-8848 and in Juneau to the Court Plaza, 240 Main St., Room 700, with the same phone number, 465-4970.
- Business has been brisk the first quarter of FY89. So far, this may be the busiest year for our office since 1985.
  - 1364 complaints have been filed.
  - 1281 cases closed of which 28 were fully investigated.
  - 540 requests for information or referral services.
  - 245 complaints are pending action by my staff.
- The City of Wrangell entered a contract for us to provide Ombudsman services effective July 1, 1988.
- I also entered into a one-time contract with the City of Fairbanks for investigation of an allegation of harassment by a city policeman.
- I have been working with the City of Ketchikan regarding its request for information about contracting for ombudsman services under AS 24.55.320 beginning in 1989.

Reply to:

- P.O. Box 102636  
Anchorage, AK 99510-2636  
(907) 563-3673  
(800) 478-2624
- P.O. Box W0  
Juneau, AK 99811-3000  
(907) 465-4970  
(800) 478-4970
- P.O. Box 74358  
Fairbanks, AK 99707  
(907) 452-4001  
(800) 478-3257

The recent requests by local communities for ombudsman services has not only surprised me but has proved interesting. These requests have been initiated by conservative taxpayers in those communities. Those citizens are wanting assurance their government is operating efficiently, effectively and being responsive to the needs of the citizens. This local role was envisioned by the drafters of The Alaska Ombudsman Act. They included a provision requiring communities choosing such services to pay their fair share of the costs of our operation.

#### RURAL ISSUES

Alaska citizens who live outside Juneau, Anchorage and Fairbanks continue to have free access to the Ombudsman through one of the three toll free telephone numbers (Southcentral residents call 800-478-2624, our Anchorage office; Interior residents call 800-478-3257, our Fairbanks office; and Southeastern residents call 800-478-4970, our Juneau office).

Among the diverse issues brought to my attention in the past few months are (1) allegation of inefficient administration of alcohol programs and staffing in Dillingham; (2) an arbitrary termination of a Kenny Lake School employee by an REAA superintendent, (3) a poorly located DEC hearing about spraying herbicides along a railroad right of way, and (4) a fish molestation charge by a game warden against a man on a Sunday outing.

In A88-0253, a Dillingham resident complained that the Commissioner of Health and Social Services and her staff had not adequately monitored an alcohol treatment program in his town. He complained about the credentials of the program staff and stated that one of them was using and selling illegal drugs. Assistant Ombudsman Ruth DeCamp's investigation coincided with an on-site program review by the State Office of Alcohol and Drug Addiction (SOADA), which revealed that the department had maintained a close overview of the program and there was no substance to the allegations. However, I recommended and the agency agreed to immediately conduct a confidential investigation into the drug abuse charges, despite the anonymous nature of that complaint. The agency's review into the "hearsay" allegations, by an independent investigator, exonerated the staff member.

My Anchorage office received a number of complaints about the Copper River School District. Although the Ombudsman theoretically has jurisdiction over Rural Education Attendance Areas (REAA's), in fact most complaints are either technically premature because they have not been heard by the school board, or they are out of our statutorily defined jurisdiction because they have been heard and decided by elected officials (the school board). There are few decisions made by superintendents or others without review of the school boards.

In A88-0454, a janitor at the Kenny Lake School attempted to complain, as a parent, about the principal and two teachers at a school board meeting. He stated he was threatened with a law suit and told to complain through the superintendent. The next day he did so and was placed on suspension and then fired, after working for the district for 12 years. He appealed to the same school board who referred him to the superintendent.

Although this matter is outside my jurisdiction, it appears that several fairness issues deserve to be addressed. One involves the janitor's termination and lack of real appeal rights. Another involves citizen complaints that the superintendent is using state money to fight an investigation against him by the Professional Teaching Practices Commission (PTPC). Complainants stated that the school board had assured the superintendent his salary and position even if the PTPC ultimately decertified him. It appears that there may be room for some legislative checks and balances in the REAA system.

In J88-0236, a Seward man, and later the city clerk, believed the people of Seward were promised a public hearing in Seward regarding the spraying of herbicides along the railroad right of way. Ombudsman investigator Odette Foster talked with the Department of Environmental Conservation (DEC) director of Environmental Health, who did not remember making such a promise. Instead, he selected Moose Pass for a hearing, having encouraged members of that community to send in petitions requesting the hearing. He insisted he had been misunderstood but agreed to hold an additional hearing in Seward. Assistant Ombudsman Foster facilitated the meetings between DEC and the Seward community.

Ms. Foster received her first fish molestation complaint in July. The complainant had taken his family on a Sunday outing, having just received a subsistence permit. Not knowing the rules of the game, he got tired of waiting for the fish net to do its work and jumped in the creek and swam after the fish. That failing, he started throwing rocks at the fish. All this was observed by a game warden hiding out in the bushes, who cited the man for fish molestation. This matter was closed as a matter before the courts but the gentleman was referred to a copy of the fish and game rules so that he could avoid this sort of difficulty in the future.

#### WRANGELL

Our contract with Wrangell began on July 1, 1988 and we have received 16 complaints from that community since then. Assistant Ombudsman Kim Elton visited the community to provide information and gather impressions from folks in Wrangell on September 29 and 30. The contract is for a yearly cost of \$12,000 plus travel expenses. Because of the distance involved, we are dependent on Wrangell officials to deal openly

and honestly with our office over the telephone and I have been given assurances that will to happen.

J88-0499 was a short investigation which explored the appropriateness of the City of Wrangell denying a connection to city electricity because of the location of the citizen's meter box, which was eleven feet above ground. The Ombudsman confirmed that the city was correct in denying hook up because of the inaccessibility of the box. The agency based its decision on a reference manual not included in city ordinance. My office recommended and the city agreed to two recommendations: (1) that the city write and adopt clear written standards for what is required to pass an electrical inspection (to specifically include references to manuals and other written standards); (2) that the city reimburse the complainant for half of his out of pocket expenses for moving the box to an attainable height.

#### DELAYS

The bane of government, the dreaded delay, continues to strike. For dozens of Fairbanks public assistance applicants, a delay of 10 minutes in meeting an agency appointment was the cause of grievous inconvenience. For others, a delay of two years was the norm for citizens awaiting a decision by the Commissioner of Natural Resources.

In July and August the Anchorage Ombudsman's office reviewed a complaint (A87-1344) that the Northern Regional Office of Public Assistance was arbitrary in requiring clients who were ten minutes or more late to reschedule appointments. Some clients were required to wait for several weeks for new appointments, although they claimed to have arrived on time for appointments. They claimed the paperwork they were asked to fill out took so much time that the time slot for their meetings with caseworkers passed and they were told they would have to be rescheduled, usually days and sometimes weeks later.

Assistant Ombudsman Robyn Williams learned different public assistance offices throughout the state have different ways of handling clients who do not arrive on time for scheduled appointments. My finding was that the Fairbanks office has a valid reason for employing a late policy, which is applied consistently and with advance notice to clients. However, I recommended that the division provide prior notice of late policies to clients throughout the state; that it allow clients as much flexibility as possible; that clients should have several options for rescheduling a cancelled appointment; that priority should be given clients whose applications are about to expire; and that the division have more uniformity statewide in its tardiness policy. The division agreed to all of these and has drafted an administrative procedure on rescheduling late clients.

Assistant Ombudsman Dave Plaskett investigated an allegation that the Department of Natural Resources (DNR) delayed a citizen's appeal to the commissioner for two years (A87-1284/A87-1344). Investigation revealed a large agency backlog of appeals to the commissioner; unresolved problems with developing a system for timely answering appeals to the commissioner; problems with the commissioner's staff responding to political and administrative pressures by answering appeals out of chronological sequence; and insufficient staff assigned to appeals work.

I recommended: (1) that the agency set out an appeals process, including a deadline for commissioner's response, in regulation; (2) that the number of staff needed to process backlogged and ongoing appeals be enhanced; (3) that staff be trained to use the available computer system for obtaining information needed in reviewing appeals; (4) and that staff discontinue working appeals out of order. An appeals process should be fair to all appellants.

The department committed itself to examining the appeals process and to streamlining it. The Commissioner stated that appeals backlogs would be cleaned up and new procedures implemented to prevent further backlog. She also committed to examining staff training needs and have the appeal procedure promulgated into state regulations.

I am pleased to report a recent letter from the Commissioner indicates the backlog has been entirely eliminated. Future appeals will be handled in a timely manner. This represented a significant commitment of time and effort on the part of Commissioner Brady, Deputy Commissioner Boston-Gorsuch and their staff in response to an ombudsman investigation.

#### BOTCHED

My Anchorage office received the most botched state complaint of the year, when a woman notified us that her husband was ordered by the Child Support Enforcement Division to provide medical support for his three children, two of whom were adults and one of whom died in 1985. CSED confirmed the administrative error and promised to write a letter of apology to the complainant, who replied, "It's about time!" (A88-0590)

#### KIDS' ISSUES

The mother of a girl who was called as a grand jury witness in a sexual abuse case protested the girl's interviews by the District Attorney outside the mother's presence (A88-0825). Assistant Ombudsman Gwen Byington investigated and found that Assistant DA Marsha Bissell interviewed the witness alone, attempting to establish rapport with her and to prepare her for her appearance before the grand jury. No abuse of

discretionary authority was found in the procedures used. In fact, Ms. Bissell's contact with the girl was sensitively performed and conducted in accordance with the guidelines of the 1987 Interagency Child Sexual Abuse Agreement.

A88-0482, -0483 and -0514 brought to my attention a problem which affected a number of long term handicapped children. The mother of a severely handicapped child learned that the Division of Medical Assistance would no longer pay for diapers for incontinent children. Her supplier had received a notice of discontinuation of coverage and the mother was informed that previous coverage had been an error and that federal guidelines prohibited diaper coverage. This mother, herself handicapped, had no means of paying for diaper supplies if she kept her daughter at home. Ironically, the child's medical needs would be covered in full if the mother chose to place her in a residential care facility.

The mother, acting for herself and other parents of handicapped children, contacted Advocacy Services of Alaska, several elected officials and researched Medicaid coverage in six other states, where diapers are provided by Medicaid. She could not get a satisfactory explanation for the noncoverage from Alaska's Division of Medical Assistance.

Assistant Ombudsman Steve Atkinson requested from the Division a copy of the federal Medicaid regulations which prohibited payment for diapers for the incontinent. He also requested a copy of the Division's poll of insurance companies and other states' Medicaid programs, on which the division based its denial of coverage.

The persistence of the mother and the Ombudsman's office had a positive outcome. The division received verbal permission from the federal regional office to provide restricted coverage for diapers for such handicapped children. There was some delay in return of coverage, due to problems with the federally mandated computer payment system. Sometimes finding the right solution takes remarkable tenacity and patience.

The grandmother of a hearing-impaired child filed a complaint that the Educational Support Office of the Department of Education was violating federal law by inadequately supervising the education of children enrolled at the Alaska State School for the Deaf (ASSD) (A88-0814). When Assistant Ombudsman Atkinson investigated the matter, he discovered that the staff failed to get approval from the boy's mother of their initial plan before his placement at ASSD. There appeared to be a conflict between the personal parenting style and expectations of the boy's family and the recommendations of the staff at ASSD concerning his educational needs. However, there was no indication that P.L. 94-142, which requires Individualized Education Programs for all special needs

students before placement, was being routinely overlooked by staff. ASSD staff and the child's family were able to continue working together for the education of the hearing impaired child.

#### PIONEERS

In A88-0739, Older Alaskans Ombudsman William O'Connor contacted our office on behalf of the family of a Palmer Pioneer Home resident who was involuntarily being transferred out of that facility. The resident was suffering from Alzheimers and had other mental health problems. Recent modification of his medication had caused dramatic behavior changes and the staff considered him dangerous and beyond their control. The family needed time to locate a more appropriate facility, but the transfer was scheduled at the end of June.

By the time the complaint came to Assistant Ombudsman Robyn Williams, she discovered the parties involved were working out a plan for a more orderly transfer. The resident's doctor was developing a medication regime which better controlled his behavior and met his medical needs. The family was arranging placement in Michigan and was getting financial affairs in order for Medicare coverage.

It appears that the intervention of the Ombudsman's office helped moderate high emotions and critical needs so that all parties could work out a just and reasonable solution.

#### PHONES

The state is providing an increasingly better level of telephone service to its citizens, if the results of recent Ombudsman activity are indicative of this general area of communication.

In J88-0422, a job applicant was unhappy because the Anchorage job service called him collect in Wasilla to tell him about a job opportunity. As you know, many job applicants are without income and having a difficult financial time. As a result of ombudsman involvement, Job Service has now changed the collect-call policy and calls out of region applicants at state expense. The agency also accepts collect calls.

A88-0270 and A88-0274 dealt with telephone overloads at Postsecondary Education Commission (PSEC). The Commission had no 800 lines, did not accept collect calls, had no recorded messages and some staff accepted and returned calls during restricted hours. As a result of the agency's awareness of the problem and our recommendations, PSEC will be modifying its telephone system to provide better access to its callers by late October. The new system will allow automated call answering, recorded messages based on touch tone input from the caller. If more information is needed, the call will

automatically be routed to "human" or it will allow the caller to leave a message for a staff member.

#### GENDER

Assistant Ombudsman Penelope Horter received a complaint from a woman who was attempting to gain title to land under a patent and objected to the requirement by the Department of Natural Resources, Division of Land and Water Management that she specify her sex and marital status on the transfer form. She'd been informed by the division that if she did not specify "single woman" or "married woman" as directed on the questionnaire that she might not receive title to her property.

This particular form had not been updated in 1984 when other forms were changed to reflect gender neutral language of "single person" and "married person." The division quickly agreed to accommodate the complainant and to change the form at the next printing.

However, the division, following legal requirements, will continue to require marital status for a land patent.

Even archaic legal language is subject, somewhat, to influence from our changing times.

In J88-0223, the Commissioner of Labor set legal precedent for unemployment law in Alaska when he decided that leaving a job to establish a household with a spouse is a fundamental right. This change was in large part due to the persistence of a complainant in appealing denial of her benefits. She was denied unemployment insurance benefits because leaving work to join her spouse was not considered "good cause" by the labor appeal tribunal. She quit her job in Juneau to join her husband in Freshwater Bay. She actively sought and found work but continued to appeal the adverse unemployment insurance decision, with encouragement from the ombudsman's office.

The Commissioner's precedent-setting decision will favorably affect benefits for spouses who join each other in the future. This is a good example of what a citizen can accomplish by pursuing a just solution to a personal predicament. It also is an example of how the ombudsman educates and helps citizens use agency appeal procedures.

#### PAYROLL AND PERSONNEL

We reviewed several problems in this area which involved timing. In June, Anchorage Assistant Ombudsman Steve Atkinson completed an investigation that the Department of Corrections had contacted a job applicant's current employer against the complainant's specific instructions. The current employer (private sector) demoted the employee when they learned he was actively seeking other employment. Investigation revealed that

Corrections was not considering the applicant as a finalist but simply notified current employers as a standard procedure. In this case, the application reviewer did not note the complainant's request not to contact the current employer unless he was a finalist. I found that the state has an obligation to thoroughly review information submitted in applications to avoid unnecessarily harming applicants. The department agreed to add language to its background investigation packet (application material), asking applicants to check a box on the personal history form if they do not want their current employer contacted.

Another state employer, the Anchorage International Airport (Department of Transportation and Public Facilities), directed an employee to terminate his outside employment. The employee felt his outside employment caused no conflict with his state employment. The designated supervisor, who normally would have heard an appeal, was out of town. Because of the immediacy of the threatened termination, the Commissioner instead heard this case and determined that the outside employment did not violate provisions of the Executive Ethics Act. The employee was allowed to retain both jobs.

#### DITCHES TO BE DUG

In one case the State said a ditch couldn't be dug; in another, it required digging in an unsafe area, claimed two citizens from different parts of Alaska.

In J88-0359, a Juneau property owner believed it was unreasonable to be denied a permit from the Habitat Protection division of Fish and Game for digging a trench across a small stream. He claimed the creek was on his property and the division had no right to tell him what to do there. Assistant Ombudsman Dave Plaskett's review indicated that the Department of Fish and Game has authority under AS 16.05.870 to require the Commissioner's approval and a fish habitat permit to excavate in a stream bed, no matter who owns the land. Additionally, the Attorney General advised the property owner he did not have the right to pollute a water column and affect fish spawning.

On the Kenai Peninsula a man was awarded a timber sale bid in the Cooper Creek Sale by the Division of Forestry. The logger found the division nonresponsive when he asked for guidance about logging in an area with two unmarked electrical cables running along the ground. Assistant Ombudsman Gwen Byington helped facilitate a meeting between the division and the complainant so that logging would be conducted outside a newly established corridor, to protect the electrical cables and the logger.

**ENFORCEMENT**

A small claims court plaintiff found a major glitch in her case against a military man who failed to pay his rent (A88-0922). She found that she was required to provide legal counsel for any military defendant. She told Assistant Ombudsman Robyn Williams this was totally unreasonable. Additionally, the complainant alleged that she received no specific notice of this requirement when she initially filed her claim.

Ms. Williams talked with court personnel and learned that legal representation was required by the Federal Soldiers and Sailors Relief Act. Apparently this act was passed to protect service personnel from being sued without notice or representation while they are "in service for their country."

Ms. Williams suggested that the Forms Committee for the Court System consider developing a way to notify the public about this requirement for military defendants. However, the investigation was discontinued due to lack of jurisdiction over this federal legislation.

A complaint of police brutality during an enforcement procedure (A88-0600) was brought by a complainant who sought treatment for a migraine headache at a Palmer hospital, who later refused treatment when a blood-alcohol test was required, and who was forcibly removed by the Palmer police and the Alaska State Troopers following a request for help from the hospital.

The complainant alleged that the Troopers used excessive force making an arrest for disorderly conduct, brutalizing him in the process. The investigation by Assistant Ombudsman Ruth DeCamp revealed that the police followed correct procedure in the arrest and made some effort to respond to the complainant's needs during incarceration. Hospital and police staff described his strong resistance and refusal to accept their reasons for denying him medical treatment and for involving the police. This resistance seems to have aggravated the incident. Valley Hospital, a private agency, the Palmer Police, a local government agency, the Alaska State Troopers, and the staff at Mat-Su Pretrial Facility were all cooperative in the investigation.

The complainant, who did not feel vindicated by the Ombudsman's investigation, continues his search for justice.

**ART SCHOLARSHIP**

My Juneau office received a complaint alleging that the University of Alaska's student activities office in Juneau had inefficiently managed an art scholarship fund (J87-0762). The fund accumulated money through nine student art shows from 1982

through 1988. The students kept 90 percent of the receipts as commission; the remaining 10 percent went to the fund to be used for scholarships. Investigation by Assistant Ombudsman Odette Foster revealed that no scholarships had been awarded, that the scholarship's purpose and guidelines were never written, and record keeping of the funds contained numerous errors.

As a result of investigation, University staff reconstructed the books and identified \$526.92 which should be applied to scholarships. The University of Alaska Southeast agreed with my recommendation to award one or more scholarships with this fund and to reconsider whether this type of small scholarship is practical. It is now focusing its fund raising efforts on larger scholarships.

#### ALASKA BIDDERS' PREFERENCE

AS 36.30, the State Procurement Code, took effect January 1, 1988. The Ombudsman's Office is subject to that code and we have amended our procurement practices to conform, including the promulgation of regulations.

Following the new procedures, the Ombudsman's office issued an invitation to bid in May for competitive sealed bidding when seeking lease space in Anchorage. Bids were opened on June 2 and an intent to award a contract was issued to the apparent low bidder on June 28. I received a protest from two competing bidders on June 30 and on July 13.

In addition to other matters, both bidders specifically protested an apparent unfairness inherent in AS 36.30.170, which defines "Alaska bidder." Both protesting bidders believed they should have received any Alaska bidders' preference because they met all reasonable definitions of "Alaska bidder." Upon review, it was evident that neither met the criteria of AS 36.30.170(b)(4) which states an Alaska bidder "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 all partners are residents of the state." [Emphasis added.]

Specifically, both protesters were members of partnerships in which all partners were not Alaska residents. In the one instance, there are a number of partners, most of whom are long time Alaska residents; at least one now lives out of the state. In the other instance, a partnership is in the process of dissolving, since one partner left the state and the partnership, leaving the other partner to lease business space, pay all debtors, and actively dissolve the partnership. The remaining partner is a long time Alaska resident who meets the statutes' other definitions. This latter protestor would have been low responsive bidder had he received the 5 percent bidders' preference. Following the mandate of the statute, I

could not define him as an Alaska bidder for purposes of the preference, and I awarded the contract to the next bidder, who in fact did qualify for the Alaska bidders' preference.

There are several inequities in the statute. One is that an incorporated entity is not required to have its members residents of Alaska to be entitled to the Alaska bidders' preference. This seems to grant corporations an unfair advantage which partnerships are denied. It seems to penalize long time Alaska partnerships when a single member retains partnership status but moves out of state, which does not lessen the partnership's Alaskan commitment as a whole. It certainly penalizes the partnership in which one partner "bails out" on another without the Alaska partner's permission, leaving the survivor without Alaska bidders' preference status while he extricates himself from the partnership.

The State Procurement Code is to be reviewed by the legislature in late 1989. The Commissioner of Administration and the Commissioner of Transportation and Public Facilities are required to report to you concerning procurement by state agencies during fiscal year 1988, which is now complete. That report is due you on December 1, 1989 and is to include recommendations for changes in AS 36.30. Please accept as my recommendation for change a redefinition of Alaska bidder to include partnerships in which 50 percent or more of the partners are full time residents of Alaska.

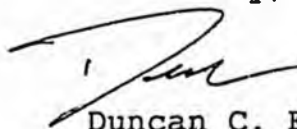
If you would like more information about this recommendation, or if you desire a report in another format, please feel free to contact me at any time.

\* \* \*

I have included copies of new brochures and posters. They are aimed at increasing citizen awareness not only of this office but also giving them "how to" tips on solving their own problems with government. Call any of my offices if you would like additional copies for your offices or constituents.

Please let me know if you have questions or comments about this report, or if you wish more detailed information about these case summaries or other work of the office.

Sincerely,



Duncan C. Fowler  
Ombudsman

**S B**

**61**

# STATE OF ALASKA

## DEPARTMENT OF FISH AND GAME

### OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX 3-2000  
JUNEAU, ALASKA 99802-2000  
PHONE: (907) 465-4100

March 17, 1989

The Honorable Dick Eliason  
Alaska State Senator  
P.O. Box V  
Juneau, AK 99811

Dear Senator Eliason:

Enclosed please find the statewide statistics on the Department of Fish and Game's Regional Supervisors, Area Management Biologists, and Assistant Area Management Biologists. The names of the Area and Assistant Area Management Biologists for the Southeast Region have been included.

If I can be of any further assistance, please call me.

Sincerely,



Don W. Collinsworth  
Commissioner

Enclosure

DEPARTMENT OF FISH AND GAME

	<u>Director</u>	<u>Deputy Director</u>	<u>Regional Supervisor</u>	<u>Area Management</u>	<u>Assistant Area Management</u>	
<b>Commercial Fisheries</b>						
Headquarters	1	1				
Southeast			1	6	4	
Central			1	5	3	
AYK			1	4	2	
Kodiak			1	6	3	
			<u>4</u>	<u>21</u>	<u>12</u>	
<b>Sport Fish</b>						
Headquarters	1	1				
Southeast			1	4	5	
Central			1	6	6	
Interior			1	2	0	
			<u>3</u>	<u>12</u>	<u>11</u>	
<b>Wildlife Conservation</b>						
Headquarters	1	1				
Southeast			1	4	2	
Central			1	9	5	
Interior			1	6	1	
Arctic			1	4	2	
			<u>4</u>	<u>23</u>	<u>10</u>	
<b>TOTALS</b>	<b>3</b>	<b>3</b>	<b>11</b>	<b>56</b>	<b>33</b>	<b><u>106</u></b>

COMMERCIAL FISHERIES

Regional Supervisor

Scott Marshall Juneau

Area Management Biologists

Ray Staska Haines  
Don Ingledue Juneau  
Philip Doherty Ketchikan  
William Bergmann Petersburg  
Robert DeJong Sitka  
Keith Weiland Yakutat

Assistant Area Management Biologists

Ken Imamura Juneau  
Vacant Ketchikan  
Robert Larson Petersburg  
Randy Timothy Wrangell

SPORT FISH

Regional Supervisor

Fred Gaffney Juneau

Area Management Biologist

Michael Bethers Juneau, Douglas, Haines, Yakutat  
Artwin Schmidt Sitka  
Stephen Hoffman Ketchikan, Klawock  
Robert Zorich Petersburg

Assistant Area Management Biologist

Michael Dean Juneau  
Randolph Erickson Haines  
Dennis Hubartt Ketchikan  
Glenn Freeman Klawock

WILDLIFE CONSERVATION

Regional Supervisor

Dave Anderson Juneau

Area Management Biologist

Bruce Dinneford Juneau  
Bob Wood Ketchikan  
Dave James Petersburg  
Butch Young Sitka

Assistant Area Management Biologist

Tom McCarthy Juneau  
Charles Lard Petersburg

# STATE OF ALASKA

## DEPARTMENT OF FISH AND GAME

### OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX 3-2000  
JUNEAU, ALASKA 99802-2000  
PHONE: (907) 465-4100

March 14, 1989

The Honorable Richard Eliason  
Senate Labor and Commerce Committee  
P.O. Box V  
Juneau, AK 99811

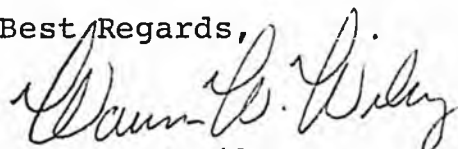
Dear Senator Eliason:

During a recent discussion on Senate Bill 61 by Senator Zharoff you requested information which might assist you in assessing the impact of the bill on employees of the Department of Fish and Game. As I recall, at that time I indicated that we surely could come up with a list of those employees who would most immediately be directly affected if SB 61 were to become law. While it is relatively easy for us to identify employees who are directly responsible for management decisions regarding fisheries, it is less easy to identify those employees who might, to a lesser or greater degree, actually be involved in arriving at those management decisions.

Enclosed is a list of employees readily identified as those responsible for management decisions within their respective divisions. As you can see, we have identified these employees only down to the assistant area management biologist level. To define "management" authority or responsibility to any greater degree might become a difficult task. We certainly will attempt to do this if you wish, and I am willing to discuss this issue with you further at your request.

I gain the impression that the committee might be considering broadening the language in SB 61 or perhaps looking toward amendments to AS 39.52 the Executive Ethics Act, as a part of their consideration of the issues raised by SB 61. If I can be of any assistance to you or to the committee in this discussion, all you need to do is call.

Best Regards,



Warren W. Wiley  
Assistant Commissioner

Enclosure

	Director	Deputy Director	Reg. Sup.	Area Mgmt.	Asst. Area Mgmt.	TOTAL
Comm. Fish						39
HQ	1	1				
SE			1	6	4	
Central			1	5	3	
AYK			1	4	2	
Kodiak			<u>1</u>	<u>6</u>	<u>3</u>	
			4	21	12	
Sport Fish						28
HQ	1	1				
SE			1	4	5	
Central			1	6	6	
Internal			<u>1</u>	<u>2</u>	<u>0</u>	
			3	12	11	
Wildlife Cons.						39
HQ	1	1				
SE			1	4	2	
Central			1	9	5	
Interior			1	6	1	
Arctic			<u>1</u>	<u>4</u>	<u>2</u>	
			4	23	10	
TOTALS:	3	3	11	56	33	106

HABITAT EMPLOYEES WITH PERMITTING AUTHORITY



**SENATOR FRED F. ZHAROFF**  
**ALASKA STATE LEGISLATURE**

P.O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:

P.O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

**MEMORANDUM**

**TO:** Senator Richard Eliason  
Chairman  
Senate Labor and Commerce Committee

**FROM:** Senator Fred F. Zharoff *FZ*

**DATE:** February 28, 1989

**RE:** Senate Bill 61 - "An Act prohibiting certain employees of the Department of Fish and Game from having certain financial interests."

**POSITION STATEMENT**

The fishery management decisions made by employees of the Alaska Department of Fish and Game have a major economic impact on Alaska's commercial fishermen. These decisions include whether to have an opening or not, what areas or specific bays to open, how much to allow for escapement, etc. Each of these decisions could make or break a commercial fisherman's season.

For these reasons, it is absolutely important that Fish and Game personnel make these decisions in the most fair and most impartial manner possible. This can not be accomplished if Fish and Game personnel have financial interests in the fisheries they are managing. With the many management decisions that must be made during Alaska's fast-moving fishing seasons, opportunities exist for individual Fish and Game employees to favor certain fishermen or groups of fishermen over others.

SB 61 ensures this will never be a problem. The bill prohibits permanent full-time employees of the Department of Fish and Game from having a financial interest in the fisheries they manage. This prohibition also extends to immediate family members.

In addition, the bill contains the following provisions:

- It gives the department the power to extend the prohibition, by regulation, to other employees.
- It allows employees to avoid discipline if they divest themselves of their financial interests.
- It provides for discharge from the department and class B misdemeanor penalties for employees who violate the law.