

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672  
6611 SENATE STATE AFFAIRS

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Hon. Pat Pourchot  
Alaska State Senate  
Re: SB 43, conduct/admin. of elections

January 30, 1989  
Page #2

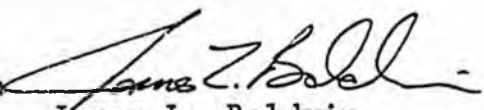
and 15.20.207 to include express authority for a ballot counting procedure that has been used recently for elections where the post-election returns indicate that a recount will be performed by the division. These sections set out the procedures for counting questioned and absentee ballots at the district level. As you know, the candidates in a close race often appear before the district review board and challenge ballots for various reasons. The board then decides whether to count a challenged ballot. Often these challenges encompass legal issues that apply to identifiable pools of ballots. We have advised the director that she may segregate ballot pools relating to a single legal issue through the recount if ballot secrecy can be maintained. However, there is no express authority for this procedure in statute.

Under the procedure used, the ballots will be counted but not commingled with all ballots counted for a race. If the election is contested in court, there is a much higher likelihood that the court will not order a new election if this procedure is used. If the court disagrees with the decision of the director to either count or not count ballots in the pool, the official totals of the candidates can be ordered changed. If the ballots are commingled, then the only remedy left to the court is to use the proportional reduction test to determine if the improperly counted ballots affected the outcome of the election. We believe that the procedure used allows the court to decide the outcome of an election based on the votes cast. I would be pleased to prepare an amendment to this bill to provide express authority for the procedure described above.

I hope that you will find these comments useful.

Sincerely yours,

GRACE BERG SCHAIBLE  
ATTORNEY GENERAL

By   
James L. Baldwin  
Assistant Attorney General

JLB/pjg

cc: Sandra Stout, Director  
Division of Elections  
Arthur H. Peterson  
Assistant Attorney General  
Department of Law  
Bob Evans, Legislative Liaison  
Office of the Governor

JB

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

( WILLIAM SIGLER, JOHN WARD, )  
 STEPHEN PIDGEON, )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 STATE OF ALASKA LIEUTENANT )  
 GOVERNOR STEVEN McALPINE, in )  
 his official capacity of )  
 Director of Elections, )  
 )  
 Defendant. )

Case No. 3AN-88-8695 CI

MEMORANDUM DECISION AND ORDER

In this ballot access case, plaintiffs William Sigler, John Ward and Stephen Pidgeon challenge the constitutionality of that portion of Alaska's Election Code, AS 15.25.150 and .170 (amended),<sup>1</sup> which requires third-party candidates to obtain nominations for state district-wide offices by filing, on or before June 1 of the election year, a petition for nomination containing voter signatures totaling at least one percent of the number of

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1. AS 15.25.170 provides: Petitions for the nomination of candidates for the office of state senator or state representative shall be signed by qualified voters of the election or senate district in which the proposed nominee desires to be a candidate equal in number to at least one percent of the number of voters who cast ballots in the proposed nominee's respective election or senate district in the preceding general election. A nominating petition may not contain less than 50 signatures for any district.

voters who cast ballots in that district during the preceding general election. Plaintiffs argue that the foregoing election scheme, i.e. the allegedly "early" filing deadline, the one-percent signature requirement and the statutory prohibition against "write-in" candidates on the ballots, AS 15.25.070, violates the freedom of expression and association rights of plaintiffs and their supporting voters under the First and Fourteenth Amendments to the United States Constitution, and creates a constitutionally impermissible barrier to ballot access for third party candidates. Plaintiffs seek a declaration that the foregoing election scheme is unconstitutional along with an order requiring defendant to place plaintiffs' names on this year's general election ballot.

#### Factual Background

Plaintiffs Sigler, Pidgeon and Ward are members of Alaska's Libertarian Party who desired to run for state house seats in this year's general election.<sup>2</sup> Plaintiffs' petitions for nominations were, however, variously rejected by defendant election officials. More specifically, on June 1, 1988, prior to the 5:00 p.m. filing deadline, plaintiffs Sigler and Pidgeon filed petitions for nominations for state representatives for

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2. The instant Memorandum of Decision will constitute this Court's findings of fact and conclusions of law on the issues adjudicated herein.

District 11, Seats B & A respectively. The petitions were reviewed and accepted by election coordinator, Jeri Dalton, with Ms. Dalton confirming that the filing documents, on their face, were in proper form. Sigler's petition contained 76 signatures and Pidgeon's petition contained 72 signatures. Elections officials determined that pursuant to AS 15.25.170, a minimum of 62 valid signatures was required for each candidate.

Following a staff check to verify the eligibility of subscribers to each of the nominating petitions, defendant election officials determined that only 54 of plaintiff Sigler's 76 subscribers and 51 of plaintiff Pidgeon's 72 subscribers were eligible. Both petitions were then deemed to be insufficient, and defendant sent plaintiffs Sigler and Pidgeon a letter on June 10, 1988 informing them that they had been disqualified. Some time following the receipt of their notice of disqualification, both plaintiffs collected additional signatures from voters which plaintiffs contend would make up the signature deficiencies found in their petitions. Apparently, such additional signatures were never presented to defendant and, in any event, would not have been accepted, according to Ms. Sandra Stout, Director of Alaska's Division of Elections. See Stout Affidavit, ¶ 15, dated September 2, 1988.

Both plaintiffs also testified that despite their receipt of the notices of disqualification, they believed they could still obtain access to the general election ballot through

"write-in" campaigns. Plaintiffs later learned that they were informed, however, when defendant's elections officials told that pursuant to AS 15.25.070,<sup>3</sup> "write-in" votes are not officially counted in the primary or general elections.

Plaintiff Ward presents a somewhat different situation. Ward testified that it was not until a major party candidate switched party affiliation immediately before the primary election - in late August, 1988 - that he first became interested in running for the state representative for District 16, Seat A. Plaintiff Ward obtained some 200 signatures on his nominating petition. The petition was, according to Ward, tendered to and rejected by elections officials on August 29, 1988. Elections officials have no record or recollection of any such petition having been filed by plaintiff Ward on or after June 1.

The instant action was commenced on August 30, 1988. On the same day, this Court issued a temporary restraining order, enjoining defendant from printing election ballots until the Court could hold a hearing on plaintiffs' challenge to the third-party elections scheme.

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3. AS 15.25.070 provides: Special provisions on counting ballots. No voter may vote for a person whose name is not on the ballot. Votes cast for a person whose name is not on the ballot shall not be counted, but writing in a candidate's name does not invalidate the entire ballot.

On September 6, 1988, this Court held a hearing on plaintiffs' motion for preliminary injunction, and defendant's oral cross-motion for summary judgment. Affidavits of the parties were considered by the Court along with testimony and exhibits from the plaintiffs as well as from other voters and/or supporters of plaintiffs.<sup>4</sup> The testimony from such voters and supporters established that some individuals encountered difficulty in soliciting names for nominating petitions for third-party candidates, and that at least one Libertarian voter felt disenfranchised or disaffected as a result of having a ballot choice of only two major-party candidates and not being able to vote for a third-party alternative.

Following the hearing, defendant was afforded an opportunity to present any additional evidence pertaining to the State's interests and justifications for the requirements of the challenged elections scheme. Additional affidavits were submitted by defendant.

#### Discussion

##### I. One-percent Signature Requirement.

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4. At this hearing, the Court also allowed plaintiffs to orally amend their complaint and join, as co-plaintiffs, several of their supporters and voters from their district.

As mentioned, plaintiffs challenge Alaska's ballot access scheme in its "totality."<sup>5</sup> The State agrees that this approach is the proper analytical approach in considering the constitutionality of the third-party aspect of Alaska's Election Code. See McLain v. Meier, 637 F.2d 1159, 1164 (8th Cir. 1980).

Moreover, in analyzing the constitutionality of the foregoing elections procedures, defendant must show "compelling government interests" in order to justify the encroachment of such fundamental constitutional rights as the freedom of speech and association. Vogler v. Miller, 651 P.2d 1, 5 (Alaska 1982) ("Vogler I"). In assessing the State's justifications for such limitations, it is essential to inquire into "whether less restrictive alternatives will adequately protect [the government's] interests", since "only a regulation which impinges on the right to speak and associate to the least degree possible consistent with the achievement of the state's legitimate goals will pass constitutional muster." Id.

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5. Citing Storer v. Brown, 415 US. 724, 737, 94 S.Ct. 1274, 1282 (1974), the 8th Circuit Court of Appeals in McLain v. Meier, supra, 637 at 1164 n. 11, addressed the applicability of the concept of "totality" in the following way: "The concept of 'totality' is applicable...in the sense that a number of facially valid provisions of election laws may operate in tandem to produce impermissible barriers to constitutional rights."

Turning to the one-percent signature requirement set forth in AS 15.25.170 (amended) and challenged by plaintiffs,<sup>6</sup> the starting point of the constitutional analysis is Vogler I. In that case, the Alaska Supreme Court recognized the validity of a ballot restriction requiring a third party candidate to demonstrate a "significant modicum of support", even when expressed as a percentage of the state's voting population, but held that a three percent signature requirement was constitutionally too burdensome. Id. at 4, 6. In so holding, the Court impliedly approved a one-percent signature requirement as being within constitutional bounds. Id. at 5, 6, 6 n. 12. To the same effect is the Alaska Supreme Court's observation in DeNardo v. State, 741 P.2d 1197, 1199 (Alaska 1987), wherein the Court noted that "by implicitly approving a one percent voter signature requirement in Vogler I, we have already found the rule to be neither unreasonable nor arbitrary." In view of the Alaska Supreme Court's clear commentary in Vogler I and DeNardo, this Court concludes that the one percent signature requirement in AS 15.25.170 (amended) is,

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6. Plaintiffs disagree between themselves over their challenge to the one percent signature requirements. Some plaintiffs concede that the one percent signature requirement is, by itself, not unconstitutional, but becomes constitutionally invalid when considered in connection with the prohibition on write-ins, AS 15.25.070 and the June 1 "early" filing deadline, AS 15.25.150. Other plaintiffs argue that the one-percent signature requirement--indeed, any signature requirement--is unconstitutional.

when considered by itself, a constitutional restriction to ballot access.<sup>7</sup> See also Munro v. Socialist Workers Party, 479 U.S. \_\_\_, 107 S.Ct. \_\_\_, 93 L.Ed.2d 499 (1986) (upholding a Washington election law requiring minor party candidates to receive at least 1% of the total primary vote).<sup>8</sup>

## II. June 1 Filing Deadline.

In the instant case, the thrust of plaintiffs' constitutional challenge to Alaska's election code is the allegedly "early" June 1 filing deadline for third-party candidates' petitions for nominations, AS 15.25.150. Plaintiffs contend that this filing deadline imposes an unfair burden on third-party candidates, deprives voters -- particularly voters disinterested in major party candidates -- of effective electoral alternatives, and violates the First and Fourteenth Amendment rights of such third-party candidates and their voters and supporters. The State maintains that the June 1 filing deadline is a constitutional restriction on ballot access, citing as justification therefor governmental interests of equal treatment

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7. Subsequent to Vogler I, the Alaska legislature amended AS 15.25.170, to reduce the signature requirement from 3% to 1%. In DeNardo, the Alaska Supreme Court rejected a challenge to a one-percent signature requirement contained in an administrative regulation promulgated subsequent to Vogler I and prior to the amendment of AS 15.25.170.

8. The United States Supreme Court did not address, in Munro v. Socialist Workers Party, supra, the constitutionality of Washington's filing requirement for minor party candidates.

of all political candidates, the promotion of voter education, the reduction of voter confusion, the maintenance of political stability and various administrative concerns.

The lead ballot access case in analyzing constitutional challenges to "early" filing deadlines by independent or third-party candidates is Anderson v. Celebrezze, 460 U.S. 780, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983). In Anderson, an independent presidential candidate successfully challenged Ohio's late-March filing deadline as imposing an unconstitutional burden on such candidate's supporters and voters. In striking down the early filing deadline, the United States Supreme Court reasoned that the deadline deprived voters, who were dissatisfied with the candidates of the two major political parties, of electoral alternatives and imposed a heavy burden on the signature-gathering efforts of the third-party candidates and their supporters. Thus, noting that "An early filing deadline may have a substantial impact on independent minded voters," the Supreme Court explained that:

Ohio's filing deadline prevents persons who wish to be independent candidates from entering the significant political arena established in the State by a Presidential election campaign--and creating new political coalitions of Ohio voters--at any time after mid to late March. At this point developments in campaigns for the major-party nominations have only begun, and the major parties will not adopt their nominees and platforms for another five months. Candidates and supporters within the major parties thus have the political advantage of continued flexibility; for independents, the

inflexibility imposed by the March filing deadline is a correlative disadvantage because of the competitive nature of the electoral process.

If the State's filing deadline were later in the year, a newly emergent independent candidate could serve as the focal point for a grouping of Ohio voters who decide, after mid-March, that they are dissatisfied with the choices within the two major parties. As we recognized in *Williams v. Rhodes*, supra, at 33, 21 L.Ed. 2d 24, 89 S.Ct. 5, 45 Ohio Ops.2d 236, '[s]ince the principal policies of the major parties change to some extent from year to year, and since the identity of the likely major party nominees may not be known until shortly before the election, this disaffected 'group' will rarely if ever be a cohesive or identifiable group until a few months before the election.

Id. at 790-91. Elaborating upon the additional burdens imposed upon a third-party candidate's signature gathering efforts by an early filing deadline, the Court observed that

[The early filing deadline] also burdens the signature-gathering efforts of independents who decide to run in time to meet the deadline. When the primary campaigns are far in the future and the election itself is even more remote, the obstacles facing an independent candidate's organizing efforts are compounded. Volunteers are more difficult to recruit and retain, media publicity and campaign contributions are more difficult to secure, and voters are less interested in the campaign.

Id. at 792.

In Anderson, the United States Supreme Court considered, and rejected, three justifications advanced by Ohio in support of its late-March filing deadline: the promotion of voter education, equal treatment of all candidates and the

maintenance of political stability. Rejecting the voter education justification, the Court noted that modern communications capability and the literacy of the electorate made it "somewhat unrealistic to suggest that it takes more than seven months to inform the electorate about the qualifications of a particular candidate simply because he lacks a partisan label." Id. at 797.

Regarding the state's equal treatment rationale, the Court recognized the realistic differences in the nominating procedures for minor and major-party candidates, and observed that

It is true that a candidate participating in a primary election must declare his candidacy on the same date as an independent. But both the burdens and the benefits of the respective requirements are materially different, and the reasons for requiring early filing for a primary candidate are inapplicable to independent candidates in the general election.

The consequences of failing to meet the statutory deadline are entirely different for party primary participants and independents. The name of the nominees of the Democratic and Republican Parties will appear on the Ohio ballot in November even if they did not decide to run until after Ohio's March deadline had passed, but the independent is simply denied a position on the ballot if he waits too long. Thus, under Ohio's schema, the major parties may include all events preceding their national conventions in the calculus that produces their respective nominees and campaign platforms, but the independent's judgment must be based on a history that ends in March.

Id. at 799-800.

The Supreme Court further rejected administrative concerns as a justification for the early filing deadline, finding that elections officials did not require many months lead time to count or verify third-party petition signatures before the general election ballots were printed. Id. at 800.

Finally, the high court rejected the state's political stability rationale, concluding that

Ohio's asserted interest in political stability amounts to a desire to protect existing political parties from competition--competition for campaign workers, voter support, and other campaign resources--generated by independent candidates who have previously been affiliated with the party.

Id. at 801. The Anderson Court thus held that the voters' freedom of choice and association interests outweighed the Ohio's "minimal interest in imposing a March deadline". Accordingly, the Court struck down the March filing deadline and ultimately upheld the trial court's injunction requiring the addition of the third-party candidate's name to the general election ballot.<sup>9</sup>

To the same effect, the Eighth Circuit invalidated North Dakota's ballot access requirements for third-party

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9. Nor was Ohio's election scheme saved by a procedure allowing "write-in" votes for independent candidates. The Court concluded that such procedure was "not an adequate substitute for having the candidate's name appear on the printed ballot." Anderson v. Calebrezze, supra, 460 U.S. at 799 n. 26. Compare AS 15.25.070 (prohibiting "write-ins").

candidates, including a 3.3% petition signature requirement and a June 1 filing deadline. McLain v. Meier, 637 F.2d 1159 (8th Cir. 1980). Regarding the early filing deadline, the Court of Appeals observed:

North Dakota's filing deadline of June 1, more than ninety days before the primary election and more than one hundred fifty days before the general election is particularly troublesome. While voters are not required to exercise their franchise or participate in the political process within the framework of organized political parties, most voters in fact look to third party alternatives only when they have become dissatisfied with the platforms and candidates put forward by the established political parties. This dissatisfaction often will not crystalize until party nominees are known... (citations omitted). Accordingly, it is important that voters be permitted to express their support for independent and new party candidates during the time of the major parties' campaigning and for some time after the selection of candidates by party primary.

Id. at 1164.<sup>10</sup> But see Rainbow Coalition v. Oklahoma State Election Board, 844 F.2d 740 (10th Cir. 1988) (upholding a 5% signature requirement and a May 31 filing deadline for third-party candidates).<sup>11</sup>

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10. Compare Alaska's June 1 filing deadline, 84 days from the primary election and 160 days from the general election.

11. This Court declines to follow the holding in Rainbow Coalition v. Oklahoma State Election Board, supra, for two reasons. First, the Tenth Circuit in Rainbow Coalition rejected the "compelling state interest" analysis and adopted, instead, a "balancing test." Id. at 743. By contrast, the

(Footnote Continued)

The teaching of Anderson and McLain is that early filing deadlines for nominating petitions for independent or third-party candidates impose an unfair burden upon such candidates and their supporters. The courts in those cases realistically recognize the differences between minimally financed and supported minor party candidacies and the selection process by which major-party candidates emerge. The Anderson and McLain courts also recognize the political reality that voters may first begin to focus upon political candidates and policy choices after the major party candidates have been nominated at their parties' primary elections and/or during the campaigning activities which ensue. Thus, it is not until the period between the major party primaries and the general election that voters tend to become interested in candidates who present a fundamental alternative to the major-parties' representatives and the latter's stances on the important political issues. Any elections procedure, such as a filing deadline many months in

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(Footnote Continued)

Alaska Supreme Court has adopted, in Vogler I, supra at 5, the "compelling government interest" test in considering ballot access cases involving such fundamental rights as freedom of speech and association.

Second, the Tenth Circuit in Rainbow Coalition attempted to distinguish Anderson on the grounds that that case concerned an independent candidate's bid for a national, rather than local, public office. Id. at 746 n. 9. This court finds such difference to be without legal significance and concludes that the policy and rationale of Anderson are equally applicable to ballot access barriers confronting third-party candidates seeking local or state-wide offices.

advance of the general election, which discourages the emergence of such third-party alternatives, infringes impermissibly upon the freedom of speech and association interests of such third-party candidates and their voters and supporters.

Applying the rationale and policy of Anderson and McLain to the instant case, this Court concludes that Alaska's June 1, filing deadline, the one-percent signature requirement and the statutory prohibition against "write-in" candidates, when considered in their totality, unconstitutionally deprive plaintiff third-party candidates and their supporters and voters of their fundamental rights of freedom of speech and association. Particularly troublesome to the Court is the effect the early filing deadline may have on voters who, at or after the primary election, may seek alternatives to the major party candidates, and on the third-party candidates' signature drives. Like the voters of Ohio and North Dakota in Anderson and McLain, supra, Alaska voters -- at least those voters in the House districts at issue in this litigation -- will be deprived of electoral alternatives, specifically the plaintiff-Libertarian Party candidates herein, should such voters become dissatisfied with the choices of the two major parties. As the Eighth Circuit emphasized, "[i]t is important that voters be permitted to express their support for independent and new party candidates ... for some time after the selection of candidates by party primaries." Id. at 1164 (emphasis added). By requiring third-party

candidates to file their nominating petitions some 84 days in advance of the primary election and 160 days before the general election, Alaska's early filing deadline, as the record indicates, tends to discourage such third-party candidates from filing and tends to deprive Alaska voters of electoral alternatives at the general election.

Further, as the record also establishes, Alaska's early filing deadline may compound the signature drive and organizing efforts of third-party candidates. As the United States Supreme Court observed in Anderson, "volunteers are more difficult to recruit and retain, media publicity and campaign contributions are more difficult to secure, and voters are less interested in the campaign" at a point in time so far in advance of the primary and general elections. 460 U.S. at 792. But see Stout Affidavit, ¶ 12, dated September 9, 1988 (listing some third-party candidates who have, between 1980-88, met the filing requirements and appeared on the ballot).

Equally troubling is the inability of third-party candidates in Alaska to secure access to the ballot through a traditional "write-in" procedure. AS 15.25.070 flatly prohibits "write-ins" on primary ballots, and instructs elections officials not to count any votes for candidates written in on the ballots. Indeed, assuming Alaska's election code contained such a write-in procedure, the Anderson Court found such procedure to be "not an adequate substitution for having the [third party] candidate's

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name appear on the printed ballot." 460 U.S. at 799 n. 26. In the instant case, two plaintiff-candidates indicated that they were less concerned with the fact that their petitions had been rejected by elections officials because they erroneously assumed that they would still have ballot access through a traditional "write-in" procedure. Had they known that such a "write-in" procedure was prohibited in this jurisdiction, they may well have increased their early signature drive activities. In any event, the Court concludes that the absence of any "write-in" procedure in Alaska's election code further limits and discourages access to the ballot for third-party candidates and their supporters and voters.

Finally, the justifications advanced by the State in support of the ballot access restrictions challenged herein are neither "compelling" nor supported by the record in this case. Equality of treatment of all candidates is, in reality, not achieved by requiring third-party candidates to file for election by June 1 - months in advance of the primary and general elections. As the Anderson Court observed, "'equal treatment' of partisan and independent candidates simply is not achieved by imposing the [early] filing deadline on both." 460 U.S. at 801.

Similarly, the need to promote voter education is not necessitated by the filing of a third-party candidate's petition some five months in advance of the general election. In view of modern communications technology and the literacy of the

electorate, it is, as the Anderson Court observed, simply "unrealistic to suggest that it takes more than seven months to inform the electorate about the qualifications of a particular candidate...." Id. at 797.

Further, concerns regarding possible voter confusion, "laundry" list ballots, undue factionalism and party fragmentation are, as the state candidly concedes, largely theoretical and "reflect a perception of potential problems, rather than any actual experience in Alaska." Stout Affidavit, ¶ 4, dated September 9, 1988; see also Vogler I, supra, 651 P.2d at 5-6; but see Munro v. Socialist Workers Party, supra, 93 L.Ed.2d at 505-06 (a particularized evidentiary showing of voter confusion, ballot overcrowding, etc. is not required to sustain reasonable ballot access restrictions).

Lastly, the challenged ballot access restrictions are not compelled by administrative necessity. Like Ohio in Anderson, the State in this case does not suggest that the June 1 filing deadline for third-party candidates is necessary to allow petition verification and signature counting. 460 U.S. at 800. Plainly, as the State concedes, the election officials could conduct their petition and signature verification activities in substantially less time than five months. See Stout Affidavit, ¶ 10, dated September 9, 1988. Nor does the State require anything like five months of lead time in order to

prepare and print ballots and the official election pamphlet.<sup>12</sup> Accordingly, the June 1 filing deadline cannot be justified on administrative grounds.

The State's final response to plaintiffs' challenge to Alaska's election code provisions is the doctrine of laches. That is, the State contends that plaintiffs should have initiated their action sooner than August 30, 1988, and that as a result of such delay, plaintiffs should now, as a matter of equity, be barred from bringing their instant claims.

It is true that plaintiffs could have brought the present action earlier than August 30. Yet, defendant has made no showing of substantial prejudice to elections officials as a result of plaintiffs' delay, nor does the record reflect any such real prejudice. Further, the record establishes that any post-filing deadline submissions by plaintiffs to defendant elections officials would have been futile. See Stout Affidavit, ¶ 15, dated September 2, 1988. In view of the importance of the fundamental constitutional interests at stake in this action -- the freedom of association and speech interests of plaintiff third-party candidates and their supporters and voters -- and the

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12. The record establishes that the printing of the general election ballots (and absentee ballots) is presently set for September 29, 1988. (A "Special Election Ballot", apparently sent to about 200 non-resident military personnel, was printed on or about September 7, 1988. Plaintiffs do not seek to have their names added to this "Special Elections Ballot.").

lack of any real prejudice to the State resulting from the 2-3 month delay in the initiation of this action, this Court declines to exercise its equity authority to bar plaintiffs' claims, pursuant to the doctrine of laches, from being adjudicated on their merits.

#### Conclusion

The importance of promoting effective political alternatives in the electoral process, and of encouraging all voters to participate in such process, cannot be overstated. As the Alaska Supreme Court stressed in Vogler I:

The range of political views in our society cannot be compressed into the platforms of only two parties. Even where minor parties do not actually place candidates in office, their presence on the ballot provides disaffected voters with a means of protesting the status quo or of embracing unorthodox ideas. ... (citations omitted). The ballot box is our established means of effecting change, and excessive restrictions on it may redirect the pressure for change into other, less legitimate channels.

Id. at 5.

Bearing these concerns in mind, this Court finds and concludes in the present case that the June 1 filing deadline, particularly when considered in combination with the one-percent signature requirement and the prohibition against "write-in" candidacies, impermissibly infringes upon the fundamental constitutional interests of freedom of association and speech of plaintiff-third-party candidates and their supporters and voters. The Court further finds and concludes that the State has, on this

record, failed to justify the filing deadline by "compelling interests", and that the State's concerns can be met with a less restrictive requirement, namely, a filing deadline for third-party candidates considerably closer to the general election.<sup>13</sup> Accordingly, the Court hereby declares the June 1 filing deadline for third-party candidates to be unconstitutional under the First and Fourteenth Amendments to the United States Constitution, and issues the following order and injunctive relief:

ORDER

IT IS HEREBY ORDERED that:

1. Plaintiffs' Motion for Preliminary Injunction is granted, and
  - a. The names of plaintiffs Sigler, Pidgeon and Ward shall be added to the November, 1988 general election ballots as Libertarian Party candidates for state representatives

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13. In so holding, the Court declines to opine whether Anderson and McLain adopt a "per se" rule, i.e., a rule holding that third-party candidates filing deadlines which precede the primary elections are "per se" unconstitutional. Nor is the Court inclined to suggest exactly when -- at, near or following the primary elections -- such a filing deadline should be set. All that the Court is holding in the instant case is that the existing filing deadline of June 1 fails to pass constitutional muster, for the reasons expressed herein.

for Seats B and A of District 11 and Seat A of District 16, respectively;<sup>14</sup> and

b. That to the extent that it is still reasonably practicable to do so, appropriate texts regarding such candidates shall also be included in the Official Election Pamphlet;<sup>15</sup> and

c. The temporary restraining order previously issued herein, enjoining the printing of general election ballots, is hereby vacated.

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14. While plaintiff Ward presents a different factual circumstance than plaintiffs Sigler and Pidgeon, having attempted to file his nominating petition on or about August 29, 1988 (6 days following the August 23 primary election), Ward Affidavit, ¶ 2, dated August 30, 1988, the Court nevertheless concludes that granting plaintiff Ward access to the ballot is consistent with the policy and rationale of Anderson and McLain. See McLain v. Meier, supra, 637 F.2d at 1164 ("It is important that voters be permitted to express their support for independent and new party candidates during the time of the major parties' campaigning and for some time after the selection of candidates by party primary.").

15. The Court notes Ms. Stout's testimony that candidates must normally submit biographical information to defendant State for inclusion in the Official Election Pamphlet by July 15 of the election year, in order for the pamphlet to be published and distributed by early October. Stout Affidavit, ¶ 9, dated September 9, 1988. The record herein is unclear as to whether such pamphlet has already been printed, and/or, what administrative expense and difficulty would be encountered by the State as a result of including plaintiffs' biographical information therein at this time. To the extent that the pamphlet has not yet been printed, and the State can reasonably make the foregoing additions, it is ordered to do so. Defendant shall advise plaintiffs of this possibility, and plaintiffs shall immediately provide defendant with relevant biographical information about themselves.



# Alaska State Legislature

Official Business

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

## MEMORANDUM

TO: Senate State Affairs Committee Members  
FROM: Senator Pat Pourchot, Chairman *Pat*  
RE: January 20 Committee Hearing  
DATE: January 19, 1989

On Friday, January 20 at 1:30 p.m. in the Beltz Room, the Senate State Affairs Committee will be presented an overview of the state's election laws by the State Division of Elections. In addition, several individuals who have first hand experience with problems in existing law have been invited to participate.

In addition, testimony will be taken on SB 43, Relating to conduct and administration of elections by the director of elections. SB 43, which makes several clarifications to current election law, has passed the House twice before and is largely a technical "clean-up" bill. However, it is my intent to use SB 43 as the vehicle for additional amendments to election law that the committee may deem necessary following Friday's hearing.

As currently written, SB 43 addresses the following issues: a voter's name change, notification of changes in precinct boundaries or polling places, placement of judicial retention candidates on the ballot, receipt of absentee ballots, and the time period for withdrawal of a candidate's name from the ballot. Backup materials on SB 43 are attached.

Date: January 16, 1989  
TO: Sandra  
fr: Jeanne  
RE SB 43 - Elections

As currently written SB 43 would:

- 1) Remedy the deficiency in the current statutes which tends to disenfranchise voters who change their names just prior to an election by allowing them to vote under their old name or vote a questioned ballot under the new name. (Section 1)
- 2) Expand services to voters (1) by providing that voters impacted by polling place or precinct boundary changes will be sent notification of the changes before the election (Section 2); and (2) by removing the requirement that applications for absentee ballots must be postmarked 10 days prior to the election. New language would extend the application period by requiring, simply, that applications be received not later than 4 days prior to the election. (Section 5)
- 3) Reduce the complexity and expense of ballot printing (1) by removing the requirement that judicial retention candidates must appear on a "separate" ballot (Sections 3, and 17 through 20); and (2) by deleting confusing references to a "+" sign which appears in the punch boxes in computer type ballots (Section 10).
- 4) Ease the impact of late candidacy withdrawals by changing the deadline from 40 to 54 days prior to an election. The current 40 day deadline severely constricts the actual time frame in which ballots must be typeset, proofread, printed and distributed. In addition, the existing deadlines allow only 10 days for preparing camera ready sample ballots for inclusion in the Official Election Pamphlet which by law must be printed and in the mail to voters 30 days prior to the election. (Sections 11 and 14; Sections 12, 13, 15 and 16 technical amendments to bring sections into conformity)
- 5) Provide for the counting of absentee ballots received before the completion of a recount. (Sections 6 and 7; Sections 8 and 9 contain conforming amendments) **PAT WANTS THESE SECTIONS AMENDED SO THAT ABSENTEE BALLOTS ARE COUNTED ONLY IF RECEIVED WITHIN THE STATUTORY DEADLINES: 10 DAYS FOR ABSENTEE BALLOTS MAILED WITHIN THE U.S. AND 15 DAYS FOR THOSE MAILED OUTSIDE THE U.S.**
- 6) Eliminate the requirement to record the time an absentee ballot is provided and received - recording of date is sufficient. (Section 4)
- 7) Establish an immediate effective date. (Section 21)

1 IN THE HOUSE

BY BOUCHER, GRUENBERG,  
DONLEY AND GOLL

2

HOUSE BILL NO. 93

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 voter registration."

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

8 \* Section 1. AS 15.07.070 is amended by adding a new subsection to  
9 read:

10 (g) The director shall provide voter registration forms prepared  
11 under (b) of this section to the Department of Public Safety for  
12 distribution to the public under AS 28.05.045.

13 \* Sec. 2. AS 28.05 is amended by adding a new section to read:

14 Sec. 28.05.045. VOTER REGISTRATION. A person applying for a  
15 driver's license, identification card issued under AS 18.65.310, or  
16 vehicle registration under AS 28.10 in an office of the division of  
17 motor vehicles who is 18 years of age or older, or who will be 18  
18 years of age or older within 90 days, shall at the time of application  
19 be advised by the department that the person may also register to  
20 vote. The department shall use a form for voter registration pre-  
21 pared by the division of elections and shall forward completed forms  
22 to the division of elections. The department shall prominently dis-  
23 play notice of the right to apply for voter registration at each place  
24 that the public may apply for a driver's license, identification card,  
25 or vehicle registration.

*Sandra*

Sen. Pat Fourchot  
February 3, 1989

2-6-89

SUMMARY OF PROPOSED CHANGES IN COMMITTEE SUBSTITUTE  
FOR SB 43 - RELATING TO CONDUCT AND ADMINISTRATION OF ELECTIONS

Amendments to existing bill sections:

- 1) Section 11 - relating to removal of name from primary ballot: Changes deadline for removal of a name from the primary ballot from 54 days (proposed in original bill) to 48 days. *current law 40 days*
- 2) Section 12, line 16 - relating to nomination by party petition where incumbent dies or is disqualified or incapacitated before the primary election: Changes period in which a candidate's place on the ballot may be filled by party petition from 54 days (proposed in original bill) to 50 days if vacancy occurs after June 1 of election year.

The number of days in Section 12, line 16 needs to be greater than in Sections 11, 13 and 14 to allow parties a few days leeway for selecting replacement candidates - in this case 2 days. Current statutes contain a 5 day leeway.

Section 12, line 24: Changes date petition must be received after death, disqualification or certification of incapacity of incumbent from 54 days (proposed in original bill) to 48 days - or within 14 days of event whichever is earlier.

Section 13 - Conforming date change.

- 3) Section 14 - relating to filling vacancies by party petition after the primary election: Conforming date change.

Note: The underlying reason for amending Sections 11 through 14 is because the current 40 day statutory deadline for removal or replacement of a candidate's name on the ballot severely constricts the time in which the Division has to prepare, print and distribute ballots across the state.

- 4) Section 21 - effective date clause: Delete immediate effective date clause to eliminate any possibility of impact on upcoming special election. *no 90 days after passage*

Additional amendments to statutes:

- 5) Amend AS 15.25.150 - relating to filing deadline for third party candidates: Would change filing deadline for third

Pat - picked date after primary 'cause  
didn't want losers of primaries  
to become 3rd party candidates.

Jim Baldwin  
can't render opinion on legality  
of setting deadline  
before primary - need  
to wait for Ct.  
decision

Superior Ct.  
ruled June 1st

party candidates from June 1 to August 1 for the general  
election. denying 3rd party candidates' access to general election  
under appeal

June 1 deadline has been found unconstitutional by Superior  
Court. Legal opinion on constitutionality of August 1  
deadline is included in your folder.

6) Amend AS 15.25.030 - relating to declaration of candidacy:

AS 15.25.030 (a) (2) - the full residence and mailing  
address of the candidate, and the length of the candidate's  
term of residence in Alaska and in the election district in  
which the office is being sought;

This change would place in statute current requirements  
for stating residency address and length of residency.

AS 15.25.030 (a) (8) - that the candidate meets [WILL MEET]  
the specific residency requirements of the office for which  
he is a candidate;

Current language is not in agreement with constitution  
which requires that the candidate meet the residency  
requirement at the time of filing. The statute implies  
that candidate must meet residency requirement at some  
future date.

AS 15.25.030 (a) (14) - that the candidate [HE] is not a  
candidate for any other office to be voted on at the primary  
or general election [AND THAT HE HAS NOT FILED ANOTHER  
DECLARATION OF CANDIDACY OR NOMINATING PETITION FOR THE  
OFFICE FOR WHICH THIS DECLARATION IS FILED];

Often candidates file for office quite early. If the  
oath is taken literally, it would mean that no candi-  
date would ever be able to withdraw his or her declara-  
tion to resubmit a new one, or to make any changes in  
his or her candidacy declaration (Faiks/Metcalf race)  
(Menard race).

AS 15.25.030 (b) - A person filing a declaration of candida-  
cy under this section shall, on the same date [SIMULTANEOUS-  
LY] file a statement of income sources and business inter-  
ests which complies with the requirements of AS 39.50.010 -  
39.50.200.

Documents cannot be filed simultaneously because they  
are filed at different locations.

7) Amend AS 15.07.070 - relating to procedures for voter  
registration:

AS 15.07.070 (c) - The names of persons submitting completed  
registration forms by mail which are received by the

*because 1/3 postmarks illegible*

director or election supervisor [POSTMARKED] at least 30 days before the next election shall be placed on the official registration list for that election. The name of a person submitting a completed registration form by mail which was not received by the director or election supervisor [POSTMARKED] before the 30 day requirement shall not be placed on the official registration list for the next election but shall be placed on the master register after that election.

The Division of Elections estimates that one-third of all first class mail received lacks a readable postmark.

AS 15.07.070 (f) - Incomplete or inaccurate registration forms may not be accepted and shall be reexecuted. The date of registration shall be the date of reexecution before a registration official, or the date the application is received by the director or election supervisor [POSTMARK DATE] if the application for registration is by mail.

Conforming amendment.

Additional considerations:

A legal opinion was requested regarding prohibiting the use of an official party name in another group or party's name.

A copy of the opinion is included in your folder.

*new CS*  
*p. 81 & 3*  
*[48] 50*

Original sponsor: Pourchot

1 IN THE SENATE

BY THE STATE AFFAIRS COMMITTEE

2 CS FOR SENATE BILL NO. 43 (State Affairs)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to conduct and administration of  
7 elections by the director of elections."

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

9 \* Section 1. AS 15.07.060(a) is amended to read:

*New section*

10 (a) Each applicant who requests registration or reregistration  
11 shall supply the following information under oath:

12 (1) name and sex;

13 (2) address and other necessary information establishing  
14 residence, including the term of residence in the state and in the  
15 district, if requested;

16 (3) [REPEALED

17 (4) TERM OF RESIDENCE IN STATE AND IN ELECTION DISTRICT;

18 AND] whether the applicant has previously been registered to vote in  
19 another jurisdiction, and, if so, the jurisdiction and the address of  
20 the previous registration;

21 (4) [(5)] a declaration that the registrant will be 18  
22 years of age or older within 90 days of the date of registration;

23 (5) [(6)] a declaration that the registrant is a citizen of  
24 the United States;

25 (6) [(7)] date of application;

26 (7) [(8)] signature or mark.

27 \* Sec. 2. AS 15.07.070(c) is amended to read:

*New section*

28 (c) The names of persons submitting completed registration forms  
29 by mail that are received by the director or election supervisor

1 [WHICH ARE POSTMARKED] at least 30 days before the next election shall  
2 be placed on the official registration list for that election. The  
3 name of a person submitting a completed registration form by mail that  
4 was not received by the director or election supervisor [WHICH WAS NOT  
5 POSTMARKED] before the 30-day requirement may not be placed on the  
6 official registration list for the next election but shall be placed  
7 on the master register after that election.

8 \* Sec. 3. AS 15.07.070(f) is amended to read:

9 *New Section*  
10 (f) Incomplete or inaccurate registration forms may not be  
11 accepted and shall be reexecuted. The date of registration shall be  
12 the date of reexecution before a registration official or the [POST-  
13 MARK] date the application is received by the director or election  
14 supervisor if the application for registration is by mail.

14 \* Sec. 4. AS 15.07.090(a) is amended to read:

15 *no change*  
16 (a) A voter whose name is changed by marriage or court order may  
17 vote under the previous name, but a [IF THE] voter who desires to use  
18 a [THE] new name shall vote a questioned ballot [, THE VOTER SHALL  
19 NOTIFY THE DIRECTOR NOT LATER THAN 30 DAYS PRECEDING AN ELECTION SO  
20 THAT THE REGISTRATION MAY BE AMENDED TO REFLECT THE CHANGE].

20 \* Sec. 5. AS 15.10.020 is amended by adding a new subsection to read:

21 *no change*  
22 (b) Whenever possible, the director shall send written notice of  
23 any change in a precinct boundary or polling place to each affected  
24 registered voter in the precinct.

24 \* Sec. 6. AS 15.15.030(10) is amended to read:

25 *no change*  
26 (10) A [SEPARATE] nonpartisan [JUDICIAL] ballot shall be  
27 designed for each judicial district in which a justice or judge is  
28 seeking retention in office. The ballot shall be divided into four  
29 parts and each part must [SHALL] bear a heading indicating the court  
to which the candidate is seeking approval. Within each part the

1 question of whether the justice or judge shall be approved or rejected  
 2 shall be set out in substantially the following manner: (A) "Shall . .  
 3 . . . . . be retained as justice of the supreme court for 10 years?";  
 4 (B) "Shall . . . . . be retained as judge of the court of  
 5 appeals for eight years?"; (C) "Shall . . . . . be retained as  
 6 judge of the superior court for six years?"; or (D) "Shall . . . . .  
 7 . . be retained as judge of the district court for four years?" Pro-  
 8 vision shall be made for marking each question "Yes" or "No."

9 \* Sec. 7. AS 15.20.071(d) is amended to read:

*no change*

10 (d) Each election official shall keep a record of the name and  
 11 signature of each personal representative requesting an absentee  
 12 ballot and the name of the person on whose behalf the ballot is re-  
 13 quested. The election official shall record the date [AND TIME] the  
 14 absentee ballot is provided and the date [TIME] the ballot is returned  
 15 to the election official.

16 \* Sec. 8. AS 15.20.081(b) is amended to read:

*no change*

17 (b) An application for an absentee ballot by mail must be re-  
 18 ceived by the division of elections [POSTMARKED] not less than four  
 19 [TEN] days before the election for which the absentee ballot is  
 20 sought. The absentee ballot application must [SHALL] permit the  
 21 person to register to vote under AS 15.07.070 and to request an absen-  
 22 tee ballot for each state election held within that calendar year for  
 23 which the voter is eligible to vote.

24 \* Sec. 9. AS 15.20.081(e) is amended to read:

*no change*

25 (e) An absentee ballot must be marked on or before the date of  
 26 the election. Except as provided in (h) of this section, a voter who  
 27 returns the ballot by mail shall use a mail service at least equal to  
 28 first class and mail the ballot not later than the day of the election  
 29 to the election supervisor for the election district in which the

1 voter seeks to vote. Except as provided in AS 15.20.480, the [THE]  
2 ballot may not be counted unless it is received by the close of busi-  
3 ness on the 10th day after the election. If the ballot is postmarked,  
4 it must be postmarked on or before election day. After the day of the  
5 election, no ballots shall be accepted unless received by mail.

6 \* Sec. 10. AS 15.20.081(h) is amended to read:

7 *no change* (h) Except as provided in AS 15.20.480, an [AN] absentee ballot  
8 returned by mail from outside the United States or from a military APO  
9 or FPO address that has been marked and mailed not later than election  
10 day may not be counted unless the ballot is received by the election  
11 supervisor not later than the close of business on the 15th day fol-  
12 lowing the election.

13 \* Sec. 11. AS 15.20.220(b) is amended to read:

14 *no change* (b) The state review board shall review and count absentee  
15 ballots under AS 15.20.081(e) and (h) and questioned ballots that have  
16 been forwarded to the director and that have not been reviewed or  
17 counted by a district counting board. [ABSENTEE AND QUESTIONED  
18 BALLOTS NOT RECEIVED IN THE OFFICE OF THE DIRECTOR BY 4:00 P.M. ON THE  
19 15TH DAY FOLLOWING THE ELECTION MAY NOT BE COUNTED IN THE REVIEW.]

20 \* Sec. 12. AS 15.20.480 is amended to read:

21 *no change* Sec. 15.20.480. PROCEDURE FOR RECOUNT. In conducting the re-  
22 count, the director shall review all ballots whether the ballots were  
23 counted at the precinct or by computer or by the district absentee  
24 counting board or the questioned ballot counting board to determine  
25 which ballots, or part of ballots, were properly marked and which  
26 ballots are to be counted in the recount, and shall check the accuracy  
27 of the original count, the precinct certificate and the review. The  
28 director shall check the number of ballots and questioned ballots cast  
29 in a precinct against the registers and shall check absentee ballots

1 voted against absentee ballots distributed. The director shall count  
2 absentee ballots received [AFTER CLOSE OF BUSINESS ON THE 15TH DAY  
3 FOLLOWING THE ELECTION AND] before the completion of the recount. For  
4 administrative purposes, the director may join and include two or more  
5 applications in a single review and count of votes. The rules in  
6 AS 15.15.360 governing the counting of hand-marked ballots and the  
7 rules in AS 15.20.730 governing the counting of punch-card ballots  
8 shall be followed in the recount. The ballots and other election  
9 material must [SHALL] remain in the custody of the director during the  
10 recount and the highest degree of care shall be exercised to protect  
11 the ballots against alteration or mutilation. The recount shall be  
12 completed within 10 days. The director may employ additional person-  
13 nel necessary to assist in the recount.

14 \* Sec. 13. AS 15.20.730(b) is amended to read:

15 *no change* (b) The computer shall be programmed to count ballots as fol-  
16 lows:

17 (1) a vote may be counted only if the punch is clearly  
18 spaced in the square [DESIGNATED BY A PLUS SIGN] following the name of  
19 the candidate the voter desires to select;

20 (2) if there is only one [PLUS-MARKED] square marked for a  
21 team whose names are on separate lines, such as president and vice-  
22 president or governor and lieutenant governor, a punch in the square  
23 or elsewhere in the rectangle following the names shall be counted for  
24 that team;

25 (3) a failure to properly punch a ballot card as to one or  
26 more candidates does not itself invalidate the entire ballot;

27 (4) if a voter punches fewer names than there are persons  
28 to be elected to the office, a vote shall be counted for each candi-  
29 date properly marked;

1 (5) if a voter punches more names than there are persons to  
2 be elected to the office, the votes for candidates to that office may  
3 not be counted;

4 (6) improper marks on the ballots may not be counted and do  
5 not invalidate punches for candidates properly made;

6 (7) an erasure or correction invalidates only that section  
7 of the ballot in which it appears;

8 (8) a vote marked for the candidate for President of the  
9 United States is considered and counted as a vote for the election of  
10 presidential electors.

11 \* Sec. 14. AS 15.25.030 is amended to read:

12 *New Section* Sec. 15.25.030. DECLARATION OF CANDIDACY. (a) A member of a  
13 political party who seeks to become a candidate of the party in the  
14 primary election shall execute and file a declaration of candidacy.  
15 The declaration shall be executed under oath before an officer au-  
16 thorized to take acknowledgments and shall state in substance:

17 (1) the full name of the candidate;

18 (2) the full mailing address of the candidate;

19 (3) if the candidacy is for the office of state senator or  
20 state representative, the election or senate district of which the  
21 candidate is a resident;

22 (4) the office for which the candidate seeks nomination;

23 (5) the name of the political party of which the person is  
24 a candidate for nomination;

25 (6) the full resident address of the candidate;

26 (7) the date of the primary election at which the candidate  
27 seeks nomination;

28 (8) the length of residency in the state and in the dis-  
29 trict of [THAT] the candidate [WILL MEET THE SPECIFIC RESIDENCY

REQUIREMENTS OF THE OFFICE FOR WHICH THE PERSON IS A CANDIDATE];

(9) that the candidate will meet the specific citizenship requirements of the office for which the person is a candidate;

(10) that the candidate is a qualified voter as required by law;

(11) that the candidate will meet the specific age requirements of the office for which the person is a candidate;

(12) that the candidate requests that the candidate's name be placed on the primary election ballot;

(13) that the required fee accompanies the declaration;

(14) that the person is not a candidate for any other office to be voted on at the primary or general election [AND THAT THE PERSON HAS NOT FILED ANOTHER DECLARATION OF CANDIDACY OR NOMINATING PETITION FOR THE OFFICE FOR WHICH THIS DECLARATION IS FILED];

(15) the manner in which the candidate wishes the candidate's name to appear on the ballot; and

(16) that the candidate is registered to vote as a member of the political party whose nomination is being sought.

(b) A person filing a declaration of candidacy under this section shall on the same date [SIMULTANEOUSLY] file a statement of income sources and business interests that [WHICH] complies with the requirements of AS 39.50.

\* Sec. 15. AS 15.25.055 is amended to read:

Sec. 15.25.055. REMOVAL OF NAME FROM PRIMARY BALLOT. A candidate's name must appear on the primary election ballot unless notice of the withdrawal from the primary is received by the director at least 48 [40] days before the date of the primary election.

\* Sec. 16. AS 15.25.056(a) is amended to read:

(a) If an unopposed incumbent candidate for renomination dies,

50

becomes disqualified from holding the office the candidate is seeking,  
 or is certified as being incapacitated between June 1 of the election  
 year and that date which is <sup>NEEDS to be at least 50 days to</sup> more than 48 [45] days before the date of  
<sup>allow at least two days for selecting replacement</sup> the primary election, the ~~candidate's~~ place on the ballot may be  
 filled by party petition. The petition shall state that the political  
 party requests the name of the proposed candidate replace that of the  
 incumbent on the primary election ballot and shall be accompanied by a  
 declaration of candidacy from the person named in the petition. The  
 petition must be received by the director no later than 14 days after  
 the death, disqualification or certification of incapacity of the  
 incumbent or <sup>54 days in original bill</sup> 48 [40] days before the primary election date, whichever  
 time is earlier.

\* Sec. 17. AS 15.25.056(c) is amended to read:

(c) The death, disqualification or certification of incapacity  
 of the incumbent within <sup>54 days in original bill</sup> 48 [40] days before or on the primary election  
 date does not affect the counting and review of the ballots. If the  
 result of the councing and review discloses that the candidate, if the  
 candidate had lived, would have been nominated, the candidate shall be  
 declared nominated. The vacancy may be filled by party petition as  
 provided in AS 15.25.110 - 15.25.130.

\* Sec. 18. AS 15.25.110 is amended to read:

Sec. 15.25.110. FILLING VACANCIES BY PARTY PETITION. If a  
 candidate nominated at the primary election dies, withdraws, resigns,  
 becomes disqualified from holding the office for which the candidate  
 is nominated, or is certified as being incapacitated in the manner  
 prescribed by this section <sup>54 days in original bill</sup> after the primary election and 48 [40] days  
 or more before the general election, the vacancy may be filled by  
 party petition. The central committee of any political party or any  
 party district committee may certify as being incapacitated any

1 candidate nominated by their respective party by presenting to the  
2 director a sworn statement made by a panel of three licensed physi-  
3 cians, not more than two of whom may [SHALL] be of the same political  
4 party, that the candidate is physically or mentally incapacitated to  
5 an extent that would in the panel's judgment prevent the candidate  
6 from active service during the term of office if elected. The direc-  
7 tor shall place the name of the person nominated by party petition on  
8 the general election ballot. The name of a candidate disqualified  
9 under this section may not appear on the general election ballot.

10 \* Sec. 19. AS 15.25.120 is amended to read:

11 Sec. 15.25.120. REQUIREMENTS FOR PARTY PETITION. Party peti-  
12 tions for the nomination of candidates shall state in substance that  
13 the political party desires and intends to support the named candidate  
14 for the named office and requests that the name of the proposed candi-  
15 date be placed on the general election ballot. The petition may be  
16 *Change* filed no later than <sup>54 days in original bill</sup> 48 [40] days before the date of the general  
17 election.

18 \* Sec. 20. AS 15.25.150 is amended to read:

19 *new section* Sec. 15.25.150. DATE OF FILING PETITION. The petition is filed  
20 with the director by actual physical delivery in person at or before  
21 5:00 p.m., prevailing time, August 1 [JUNE 1] in the year in which a  
22 general election is held for the office, or by actual physical deliv-  
23 ery to the director by registered or certified mail return receipt  
24 requested which is postmarked at or before 5:00 p.m., prevailing time,  
25 August 1 [JUNE 1] in the year in which a general election is held for  
26 the office, and received not more than 15 days after that time. If  
27 the postmark is illegible, a dated receipt from the post office where  
28 dispatched shall be acceptable as evidence of mailing. If August 1  
29 [JUNE 1] is a Sunday or holiday, the deadlines for postmarking and

receipt of the petition shall be extended 24 hours in each instance.

\* Sec. 21. AS 15.25.180 is amended to read:

Sec. 15.25.180. REQUIREMENTS FOR PETITION. The petition shall state in substance

- new section*
- (1) the full name of the candidate;
  - (2) the full resident address of the candidate;
  - (3) the full mailing address of the candidate;
  - (4) the name of the political group supporting the candidate;

(5) if the candidacy is for the office of state senator or state representative, the election or senate district of which the candidate is a resident;

(6) the office for which the candidate is nominated;

(7) the date of the election at which the candidate seeks election;

(8) the length of residency in the state and in the district of [THAT] the candidate [MEETS, OR WILL MEET, AS REQUIRED BY LAW, THE SPECIFIC REQUIREMENTS OF THE OFFICE THE CANDIDATE IS SEEKING];

(9) that the subscribers are qualified voters of the state or election or senate district in which the candidate resides;

(10) [REPEALED

(11)] that the subscribers request that the candidate's name be placed on the ballot;

(11) [(12)] that the proposed candidate accepts the nomination and will serve if elected, with the statement signed by the proposed candidate;

(12) [(13)] if the candidacy is for the office of the governor, the name of the candidate for lieutenant governor running jointly

with the candidate for governor;

(13) [(14)] the name of the candidate as the candidate wishes it to appear on the ballot; and

(14) [(15)] that the candidate is not a candidate for any other office to be voted on at the primary or general election [AND THAT THE CANDIDATE HAS NOT FILED ANOTHER NOMINATING PETITION OR DECLARATION OF CANDIDACY FOR THE OFFICE FOR WHICH THIS PETITION IS FILED].

\* Sec. 22. AS 15.25.200 is amended to read:

Sec. 15.25.200. WITHDRAWAL OF CANDIDATE'S NAME. If a candidate nominated by petition dies or withdraws after the petition has been filed and <sup>54 days in original bill</sup> at least 48 days before the date of the general election [BEFORE SEPTEMBER 1 OF THE ELECTION YEAR], the director may not place the name of the candidate on the general election ballot.

*change*

\* Sec. 23. AS 15.35.050 is amended to read:

Sec. 15.35.050. PLACING NAME OF SUPREME COURT JUSTICE ON BALLOT. The director shall place the name of a supreme court justice who has properly filed a declaration of candidacy for retention on the [JUDICIAL] ballot in each judicial district of the state for the general election at which approval is sought.

*no change*

\* Sec. 24. AS 15.35.059 is amended to read:

Sec. 15.35.059. PLACING NAME OF JUDGE OF THE COURT OF APPEALS ON BALLOT. The director shall place the name of a judge of the court of appeals who has properly filed a declaration of candidacy for retention on the [JUDICIAL] ballot in each judicial district of the state for the general election at which approval is sought.

*no change*

\* Sec. 25. AS 15.35.090 is amended to read:

Sec. 15.35.090. PLACING NAME OF SUPERIOR COURT JUDGE ON BALLOT. The director shall place the name of a superior court judge who has properly filed a declaration of candidacy for retention on the

*no change*

[JUDICIAL] ballot in the judicial district designated in the declaration of candidacy for the general election at which approval is sought.

\* Sec. 26. AS 15.35.130 is amended to read:

*no change*

Sec. 15.35.130. PLACING NAME OF DISTRICT JUDGE ON BALLOT. The director shall place the name of a district judge who has properly filed a declaration of candidacy for retention on the [JUDICIAL] ballot in the judicial district designated in the declaration of candidacy for the general election at which approval is sought.

*Change - Deleted effective date of bill*

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**S B**

**45**

SENATE STATE AFFAIRS COMMITTEE

BILL NUMBER SB 45

SPONSOR Pearce

BILL TITLE Out-of-state solicitation for state  
contracts & employees

DATE REFERRED 3/28/89

HEARING SCHEDULED

FISCAL NOTE PREPARED ✓

SPONSOR CONTACTED Jo

INTERESTED PARTIES CONTACTED

Bob LwK - Dof Admin - Procurement Code

OTHER

Need: for CS & FOT's

- (a)  $\phi$  General Services Supply
- (b)  $\phi$  Centralized Adm. Services  
Civil Personnel
- (c)  $\phi$  Dept. Law
- (d)  $\phi$  here  $\phi$  C + ED
- (e)  $\phi$  Dept. Corrections
- (f)  $\phi$  Dep. Labor
- (g)  $\phi$  DOT PF
- (h) Dept. Resources

## FISCAL NOTE

**REQUEST:**

Revision Date: March 24, 1989  
 Title: "Ar. Act relating to out-of-state Solicitation for state contracts..."  
 Sponsor: Senate Labor and Commerce  
 Requestor: Governor's Office/OMB

Agency Affected: Department of Law  
 BRU: Legal Services, Prosecution, Consumer Prot., Oil & Gas Spc. Projects  
 Components: All

**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 FJND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS:**

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

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

Please see the attached analysis.

*Richard I. Pegues*

Prepared by: Richard I. Pegues, Director  
 Division: Administrative Services

Phone: 465-3672  
 Date: March 24, 1989

Approved by Commissioner: Richard I. Pegues / For  
Douglas B. Bailey, Attorney Gen.  
 Agency: Department of Law

Date: March 24, 1989

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

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 45 (L&C)

This bill amends the State Procurement Code (AS 36.30) and the State Personnel Act (AS 39.25) in order to limit the circumstances under which state agencies may solicit out-of-state for contracts or employees. Generally, the committee substitute has addressed most of the concerns previously expressed by this department. As such, it is believed that the fiscal impact of this proposed legislation will be minimal and does not warrant fiscal note costs on the part of the Department of Law.

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_  
 Title: "An Act relating to out-of-state solicitation."  
 Sponsor: Sen. Pearce, Fischer & Rodev  
 Requestor: \_\_\_\_\_

Agency Affected: Department of Corrections  
 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>	0	0	0	0	0	0

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

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

**POSITIONS:**

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

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

This legislation would not affect the Department.

*Susan E. Knighton*

Prepared by: Susan E. Knighton, Director  
 Division: Administrative Services

Phone: 465-3376  
 Date: 3-30-89

Approved by Susan Humphrey-Barnett  
 Agency: Department of Corrections

Date: 3-30-89

**Distribution (by preparer):**

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

STATE OF ALASKA  
1989 LEGISLATIVE SESSION

BILL VERSION: CSSB 45 (L&C)

PUBLISH DATE: 4/4/89

(f)

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An Act relating to out-of-state solicitation for state contracts..."  
Sponsor: Pearce, et al.  
Requestor: Senate Labor & Commerce

Agency Affected: Labor  
BRU: Administrative Services  
Components: Management Services

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						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Frank Spargo

Division: Administrative Services

Phone: 465-2720

Date: 3/28/89

Approved by Commissioner: Jim Sampson

Agency: Department of Labor

Date: 3/28/89

Distribution (by preparer) :

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

STATE OF ALASKA  
1989 LEGISLATIVE SESSION

BILL VERSION: SCS SB 45 (Labor & Commerce)  
PUBLISH DATE: 4/4/89

(g)

REQUEST: FISCAL NOTE

Revision Date:  
Title: An Act relating to out-of-state solicitation for state contracts and state employees

Agency Affected: DOT&PF  
BRU: Design & Construction Maintenance & Operations Administration

Sponsor: Pearce, Fischer and Rodey  
Requestor:

Components:

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

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

For all contracts and proposals on state funded projects it has been and is the policy of this Department to advertise only within the State of Alaska.

Requests for solicitation outside the state to fill a position within state service are processed and approved through the Department of Administration.

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

Phone: 465-2951  
Date: March 28, 1989

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

Date: March 28, 1989

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



# POSITION PAPER

Bill No: SCS SB 45 (Labor & Commerce)  
Title: An Act relating to out-of-state solicitation  
for state contracts and state employees

Approved: *Mark S. H. [Signature]*  
Date: March 28, 1989

The Department does not oppose nor support this bill.

## Sec. 1 Legislative finding.

Sec. 2 Under this section of the bill the state may not solicit outside of the state for a contract, unless in writing, the commissioner determines that an agency has solicited within the state and has not received a responsive bidder; or determines in writing that out-of-state solicitation is in the public interest or necessary to provide reasonable competition.

This section of the bill will not have a large impact on the Department because it has been the Department's policy that all state funded construction projects will be advertised only within the State of Alaska.

It should be noted that on federally assisted projects by federal regulations 23 CFR § 535.107(e) the bidding procedures may not discriminate against qualified bidders regardless of state boundaries.

Sec. 3 Under this section of the bill an agency may not solicit outside the state for an individual to fill a position as a state employee unless the agency has actual solicits for three months within the state, or unless there is a written finding by the Governor that the agency is not likely to find a qualified individual in the state.

FISCAL NOTE

REQUEST:

Revision Date: 29-Mar-89 Agency Affected: Natural Resources  
 Title: An Act relating to out-of-state  
solicitation for state contracts and state employees. BRU: All  
 Sponsor: Pearce, Fischer and Rodey Components: \_\_\_\_\_  
 Requestor: State Affairs

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						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Sharon Barton Phone: 465-2406  
 Division: Management Date: 29-Mar-89  
 Approved by Commissioner: Lennie Gorsuch Date: 29-Mar-89  
 Agency: Department of Natural Resources

Distribution (by preparer) :

Legislative Finance  
 Legislative Sponsor  
 Requestor

##### Office of Management and Budget  
 Impacted Agency(ies)

STATE OF ALASKA  
1989 LEGISLATIVE SESSION

BILL VERSION : SB 45 (h)  
PUBLISH DATE : 3/28/89

FISCAL NOTE

REQUEST:

Revision Date: 19-Jan-89 Agency Affected: Natural Resources  
Title: An Act relating to out-of-state solicitation for state contracts and state employees. BRU: All  
Sponsor: Pearce, Fischer and Rodey Components:  
Requestor:

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						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: *Sharon Barton* Phone: 465-2406  
Division: Management Date: 19-Jan-89

Approved by Commissioner: *Lennie Gorsuch* Date: 19-Jan-89  
Agency: Department of Natural Resources

Distribution (by preparer) :

Legislative Finance  
Legislative Sponsor  
Requestor

##### Office of Management and Budget  
Impacted Agency(ies)

STATE OF ALASKA  
1989 LEGISLATIVE SESSION

BILL VERSION: SB 45 (g)  
PUBLISH DATE: 3/28/89

REQUEST: FISCAL NOTE

Revision Date:  
Title: An act relating to out-of-state solicitation for state contracts  
and state employees  
Sponsor: Pearce, Fischer and Rodey  
Requestor:

Agency Affected: DOT&PF  
BRU: Design & Construction  
Maintenance & Operations  
Administration  
Components:

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

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

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

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

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPOFARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

For all contracts and proposals on State funded projects it has been and is the policy of this Department to advertise only within the State of Alaska.

Requests for solicitation outside the state to fill a position within state service are processed and approved through the Department of Administration.

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

Phone: 465-2960

Date: 1/18/89

Approved by Commissioner: *B.K. Baker*  
Agency: Department of Transportation and Public Facilities

Date: 1/18/89

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

STATE OF ALASKA  
1989 LEGISLATIVE SESSION

BILL VERSION: SB 45 (F)  
PUBLISH DATE: 3/28/89

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Labor  
 Title: "An Act relating to out-of-state solicitation for state contracts..." BRU: Administrative Services  
 Sponsor: Pearce, Fischer, & Rodey Components: Management Services  
 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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Frank Spargo Phone: 465-2720  
 Division: Administrative Services Date: 1/19/89  
 Approved by Commissioner: Jim Sampson Date: 1/19/89  
 Agency: Department of Labor

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

**FISCAL NOTE**

**REQUEST:**

Revision Dates: \_\_\_\_\_  
Title: "An Act relating to out-of-state solicitation."  
Sponsor: Sen Pearce, Fischer & Rodey  
Requestor: \_\_\_\_\_

Agency Affected: Department of Corrections  
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						
TOTAL OPERATING	0	0	0	0	0	0

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

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

**POSITIONS:**

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

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

This legislation would not affect the Department.

*Susan E. Knighton*

Prepared by: Susan E. Knighton, Director Phone: 465-3376  
Division: Administrative Services Date: 1-19-89  
Approved by: Commissioner: *Thomas H. Barnard* Date: 1-19-89  
Agency: Department of Corrections

**Distribution (by prepares):**

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

**FISCAL NOTE**

**REQUEST:**

Revision Date: \_\_\_\_\_ Agency Affected: Commerce & Econ. Dev.  
 Title: An act relating to out-of-state BRU: \_\_\_\_\_  
solicitation for state contracts and state employees  
 Sponsor: Pearce, Fischer, Rodey Components: \_\_\_\_\_  
 Requestor: (S) 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>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

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

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

**POSITIONS:**

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

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

Prepared by: Kathy Marshall, Director Phone: 465-2505  
 Division: Administrative Services Date: 1/17/89  
 Approved by Commissioner: [Signature] Date: 1-18-1989  
 Agency: Commerce and Economic Development

**Distribution (by preparer):**

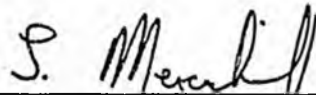
Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)  
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 011789a

Senate Bill 45: "An Act relating to out-of-state solicitation for state contractors and state employees."

This bill requires state agencies to solicit and exhaust in-state resources prior to soliciting out-of-state for state contracts and state employees.

The department does not have a position on this legislation. A negative impact of the bill would be to delay solicitation in those instances where it may be known, in advance, that the contractor or prospective state employee is available only from out of state. The department concurs, however, that this would be exceptional, and that most resources are available in-state.

Currently, the Division of Personnel conducts an intensive 30-day recruitment campaign before evaluating out-of-state recruitment. A six month in-state program is unfeasible, not cost effective, and could severely impact the agency experiencing the vacancy. Generally, the type of positions which are open to out-of-state recruitment are highly technical in nature. Out-of-state approval is requested only when Alaska cannot provide qualified in-state applicants.

  
Larry Mercurieff, Commissioner

1-18-1989  
Date

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_  
 Title: "An Act relating to out-of-state Solicitation for state contracts..."  
 Sponsor: Sen. Pearse  
 Requestor: Governor's Office/OMB

Agency Affected: SB 45  
 BRU: Legal Services, Prosecution, Consumer Protection, Oil & Gas Spc. Projects  
 Components: All

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

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

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

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

**POSITIONS:**

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

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

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672  
 Division: Administrative Services Date: January 19, 1989  
 Approved by Commissioner: Grace Berg Schaible, Attorney Gen. Date: January 19, 1989  
 Agency: Department of Law

**Distribution (by preparer):**

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

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 45

This bill amends the State Procurement Code (AS 36.30) and the State Personnel Act (AS 39.25) in a manner that will substantially limit the ability of state agencies to solicit out-of-state for contracts or employees. Generally, this bill has addressed most of the concerns previously expressed by this department over similar legislation introduced in the House last year (HB 450); however, there are still some aspects of this bill that could cause significant problems in the operation of state government.

Section 2. of the bill excludes "...contracts for professional services to be performed in an area outside of the state and requiring knowledge of the customs, procedures, rules, or laws of the area." Although this exclusion addresses services to be performed outside of Alaska; it does not address the equally important issue of obtaining services that require specialized expertise or knowledge, but are to be performed, in whole or in part, within Alaska. Frequently, this department must employ legal counsel to advise the state in highly specialized areas of law (i.e. bond counsel, investment counsel, mineral/oil & gas law, patent & copyright law, admiralty law, etc.). Many times the necessary expertise is not available within the state and, given the relative small size of Alaska's legal community, it is usually known well in advance whether or not such expertise can be found within the Alaska Bar.

In those instances where formalized procurement methods might be used to solicit for such specialized legal services, the department would have to perform two solicitations in order to meet the requirements of this act. It generally takes about three months to conduct a formal RFP solicitation, which involves a considerable expenditure of staff and state resources. The doubling of the effort, as would be required by the bill, will greatly diminish already strained resources. Also, in those instances where there might be just one or possibly two individuals or firms within the state that have the requisite expertise, the act would effectively limit the range of expertise available to the state and remove any incentive on the part of the prospective contractor to provide such services on a competitive basis. Given the potential impact on the state's fiscal situation of many of the cases being handled by the department, the Attorney General must have the latitude to obtain the best qualified legal counsel the state can reasonably afford.

In addition, it is anticipated that many other service and commodity procurements would be affected by the amendment and could adversely impact the operation of state government. An example in this department would have been the procurement of the PALLAS software program. This mainframe program is the heart of the department's litigation support system, an essential tool in both our royalty oil and oil & gas production/income tax cases. At the time this procurement was made, there was only one in-state vendor that possessed a program that could be used for litigation support purposes. However, this was an early generation computer program that, because of its inefficiencies in managing a litigation support data base, made it the least suitable of

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 45

the six programs that were considered. Had this procurement been made under the requirements of this act, it is questionable whether or not the department could have even looked at any other systems. If enacted in its present form, it is quite likely that most future mainframe system applications would have to be purchased from just a few in-state vendors (that just happen to be some of the world's largest computer companies).

In view of the examples cited above, it is important that adequate competition not be unduly limited. The following revised language is therefore suggested:

Sec. 36.30.875. OUT-OF-STATE SOLICITATION OF CONTRACTS. (a) Except as necessary to contact persons on the contractors lists established under AS 36.30.050, an agency may not solicit outside of the ~~state~~ for a contract unless: (1) the chief procurement officer, or, for construction contracts or procurements for the state equipment fleet, the commissioner of transportation and public facilities determines in writing that out-of-state solicitation is in the public interest or necessary in order to provide reasonable competition; or (2) the agency has solicited within the state and...

It should also be noted that the inclusion of the Code's small procurement provisions (AS 36.30.320) within this Act will cause many of the same problems previously related in our analysis of Senate Bill No. 99. These would include the difficulties faced by employees trying to purchase supplies, services, professional services, or construction while traveling outside the state on official business or while permanently assigned to out-of-state offices. In view of these and other problems that would occur, it is recommended that the reference to AS 36.30.320 be deleted.

With regard to section 3. of the bill, most of the department's previous concerns appear to have been addressed, assuming that the department may utilize out-of-state solicitation to meet its affirmative action objectives if a written finding is obtained under AS 39.25.165(b)(1).

The Department of Law cannot determine a fiscal impact at this time. To the extent that multiple solicitations may be required, already thin administrative resources will simply have to be stretched further, and needed procurements will be significantly delayed. To the extent that the state is prevented from procuring expertise that is adequate to its needs, and at a competitive price, the long-term cost to the state could be considerable.

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Department of Administration  
 Title: An act relating to out-of-state BRU: Division of Personnel  
solicitation for State contracts and \*\*  
 Sponsor: Pearce, Fischer, Rodev Components: Centralized Administrative Services  
 Requestor: Pearce  
 \*\*State employees.

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 not have a fiscal impact on the Division of Personnel.

Prepared By: *Daniel K. Otto* Phone: 465-4430  
 Division: Division of Personnel Date: 1-20-89  
 Approved by Commissioner: \_\_\_\_\_ Date: 2/1/89  
 Agency: Department of Administration

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 out-of-state solicitation for state contracts & state employees BRU: General Services & Supply  
 Sponsor: Pearce Components: \_\_\_\_\_  
 Requestor: \_\_\_\_\_

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

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

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

**FUNDING:** (Thousands of Dollars)

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

**POSITIONS:**

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

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

General Services and Supply assumes a modest impact for the division when issuing competitive sealed bids. Presently we either advertise all competitive sealed bid procurements in-state or solicit using the contractors lists established under AS 36.30.050. For competitive sealed bids we would not anticipate many second out-of-state solicitations to be necessary. cont.

Prepared by: Robert J. Link Director Phone: 465-2250  
 Division: General Services & Supply Date: 11/9/89

Approved by Commissioner: John M. Andrews Date: 2/1/89  
 Agency: Department of Administration

**Distribution (by preparer):**

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

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 45

Agency purchases of small procurements, sole source procurements, competitive sealed proposals, limited competition procurements, and emergency procurements will require review and written determination by the Chief Procurement Officer. While there is some impact, we expect agencies would submit complete written determinations which would be reviewed and approved or disapproved by the Chief Procurement Officer.

This fiscal note analysis only applies to the Division of General Services and Supply and does not represent fiscal impacts to other divisions within the Department or other agencies.

STATE OF ALASKA  
1989 LEGISLATIVE SESSION

BILL VERSION: CSSB 45 (L&C) (d)  
PUBLISH DATE: 32/8/89

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Commerce & Econ. Dev.  
Title: An act relating to out-of-state BRU: \_\_\_\_\_  
solicitation for state contracts and state employees  
Sponsor: Pearce, Fischer, Rodey Components: \_\_\_\_\_  
Requester: 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						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Guy Bell, Director  
Division: Administrative Services

Phone: 465-2505  
Date: 3/23/89

Approved by Commissioner: Larry Mercurieff  
Agency: Commerce and Economic Development

Phone: 465-2500  
Date: 3/23/89

Distribution (by preparer):

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

page 1 of 1

mm0601 t  
032389a

RECEIVED MAR 23 1989

# Alaska State Legislature

3111 C Street, Suite 150  
Anchorage, Alaska 99503  
(907) 561-2038

During Session:  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-4993

**Senator Drue Pearce**  
District G

## MEMORANDUM

TO: Senator Pat Pourchot, Chairman  
Senate State Affairs Committee

FROM: Senator Drue Pearce *Drue Pearce*

RE: CSSB 45 (L&C)

DATE: March 22, 1989

Today CSSB 45 (L&C) passed out of the Senate Labor and Commerce Committee.

I request that this bill be scheduled in the State Affairs Committee as soon as possible.

Information for distribution to the Committee is attached. A fiscal note from the Department of Administration will be sent to you within the next couple of days.

Attachment

DP:jf

??  
Jo, there seemed to be nothing attached - ??

Sandra

FISCAL NOTE

REQUEST: \_\_\_\_\_

Revision Date: \_\_\_\_\_ Agency Affected: Department of Administration  
Title: \* \_\_\_\_\_ BRU: General Services and Supply

Sponsor: Pearce Components: \_\_\_\_\_  
Requestor: Senate Labor and Commerce

\* An act relating to out-of-state solicitation for

State contracts and State employees

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
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

This fiscal note analysis only applies to the procurement activities in the Division of General Services and Supply and does not represent fiscal impacts to other divisions within the department or other agencies.

Prepared By: Robert J. Link, Director *RJL* Phone: 465-2250  
Division: General Services and Supply Date: 3/24/89

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

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

FISCAL NOTE

REQUEST: \_\_\_\_\_

Revision Date: \_\_\_\_\_  
Title: \* \_\_\_\_\_

Agency Affected: Department of Administration  
BRU: Centralized Administrative Services

Sponsor: Pearce, Fischer, and Rodey  
Requestor: \_\_\_\_\_

Components: Division of Personnel

\* An act relating to out-of-state solicitation for State contracts and State employees.

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
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

This bill does not apply to positions in the classified service. Consequently, it will not have a fiscal impact on the Division of Personnel.

Prepared By: David K. Otto  
Division: Division of Personnel

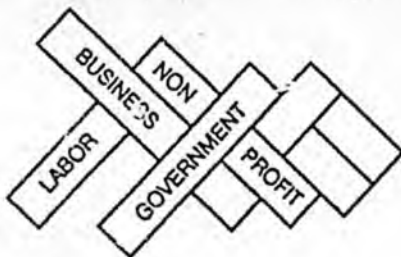
Phone: 465-4430  
Date: 3-28-89

Approved by Commissioner: John M. Andrews  
Agency: Department of Administration

Date: 3-29-89

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

MAR 28 1989



# UNIFIED FAIRBANKS

P.O. Box 60389  
Fairbanks, AK 99706  
(907) 456-7986

March 24, 1989

Dear Alaska State Legislator:

The following recommendations concerning current Legislation before the Alaska State Legislature are made by Unified Fairbanks:

**Senate Bill #45:** We wholeheartedly support this bill and its concept to try to keep more work in Alaska.

**Senate Bill #58:** We recommend Section 1(u), (6) be added, *"That the bidder hold a certificate issued by an Alaska-based insurance company for Workers' Compensation."* Our Rationale for this is to stop contract awards to outside firms, or firms that have offices in Alaska, but use an Allstates Workers' Compensation policy, therefore allowing them to underbid a true, Alaska-based firm, because of the higher Workers' Compensation premiums paid by the Alaska firm.

**Senate Bill #90:** We very strenuously object to the repealing of the Railbelt Energy Fund, and any use of that fund except for projects involving communities along the Railbelt, particularly projects that are going to lower the energy cost for the Railbelt. The Legislature should be reminded that this fund was set up for the Railbelt communities because we did not participate in the benefits of the power equalization bill that the Legislature passed several years ago, which assisted other areas of the State in lowering their electrical costs.

**Senate Bill #99:** We would request an additional sentence in Section 1(a): *"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."*

**Senate Bill #170:** Section 1(b) – delete in accordance with regulations adopted by the Commissioner. Substitute instead the wording as found in Senate Bill #58, Sections 1 (1), (2), (3), (4), and (5), including our recommendation that they hold a valid Workers' Compensation policy issued by an Alaska-based carrier.

**House Bill #75:** We wholeheartedly support Section 1(1), and this is the wording we would like included in all bills to ensure that they are purchasing Alaska Workers' Compensation policies.

**House Bill #82:** If the intent of this bill is to require more purchasing inside the State from local suppliers, we support it. If, on the other hand, it gives leeway to the State to be able to specify an outside delivery point, which would mean firms from out of state could be highly competitive to local firms, we will not support it.

**House Bill #184:** We wholeheartedly support the concept that the State of Alaska and any political subdivision should no longer compete with private businesses, and we urge immediate passage of this bill.

The above recommendations were discussed at the noon meeting of Unified Fairbanks on Wednesday, March 22, 1989, and were passed unanimously.

Sincerely,

UNIFIED FAIRBANKS

*Chuck*

Charles P. Rees, President



---

**ALASKA STATE CHAMBER OF COMMERCE**

310 Second Street  
Juneau, Alaska 99801  
(907) 586-2323

February 24, 1989

Senator Drue Pearce  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Senator Pearce:

On February 17 the Board of Directors of the Alaska State Chamber of Commerce adopted a formal motion of support for SB 45 dealing with State contracts and personnel hiring.

We would appreciate the inclusion of this letter into the record.

Please contact this office should you desire direct testimony or additional information.

Cordially,

A handwritten signature in dark ink, appearing to read 'G. Krusz', is written over the printed name.

George Krusz, President

GK:ly/pearceSB45

# CS for SB 45 (L: C)

## → Out of State Employees & Contracts

Sponsor: Pearce, Fischer, Rodey, et al (Comm?)

Action: <sup>L: C</sup> Do Pass 3.28.89 Eliason, Coghill, Fike, Kertula

### To Do: If Schedule

1. Req. Back-up File from L: C
2. Copy of AS 36.30 / 36.30.875 / 36.30.050  
36.30.30 - 36.30.320 etc
3. Bob Lusk - Regs? Policy Manuals?

<sup>Purpose?</sup>  
(Adds Gov. Legis to Law on Solicitations?)  
outside of the state

Summary: Limits ~~solicitation by state agencies~~ Limits solicitation for contracts; <sup>employees</sup> outside of the state by requiring

Sec. 2  
CONTRACTS

Sec. 2 (a) that Chief Procurement Officer of Comm. DOTPF determine in writing it is necessary <sup>for reasonable competition</sup> or in public interest, or that the agency has solicited w/in state ~~and~~ agency has not received a responsive bid or proposal

Sec. 2 (b) specifies this act does not apply to prof. service performed outside the state by state agencies located outside the state or by employees <sup>costs + traveling</sup> ~~to~~

Sec. 2 (c) includes UAA, ASBA; Railroad under agency

?'s: :

1. Line 22: Define Agency? Partial St. Funding?
2. What exists now?
3. Sec. 3 (a) "Agency" incl. ASBA, UAA, R.R.?

(over)

Amended by  
L: C

Employees

Sec. 3(a) states no out-of-state solicitation of employees unless Per. Officer shows in writing active solicitation within state for 3 mo's (Orig 6 mo's)  
Per. Officer is defined as comm. of administration of the executive branch, Speaker<sup>H</sup>, President<sup>S</sup> and E.D. for L.A.A.

Sec. 3(b) allows out of state sol if Gov. or leg. budget and audit committee determine in writing not likely to find qualified individuals w/in state.

Sec. 3(c) exempts (aswd by L.C) elected, judicial branch and University

Offered: 3/28/89  
Referred: State Affairs and  
Finance

Original sponsors: Pearce, Fischer,  
Rodey, et al.

L&C 6-0234E  
DO PASS 3-28-89

Eliason  
Coahill  
Falk  
Kerttula  
BY THE LABOR AND  
COMMERCE COMMITTEE

*Sandra*

1 IN THE SENATE

2

CS FOR SENATE BILL NO. 45 (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 out-of-state solicitation for  
7 state contracts and state employees."

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

9 \* Section 1. LEGISLATIVE FINDINGS. The legislature finds that

10 (1) the state is experiencing economic difficulties and the rate  
11 of unemployment is very high;

12 (2) the state contains a pool of able-bodied and skilled workers  
13 and organizations from which the state could, in most instances, find the  
14 persons necessary to perform its contracts and fill its employment posi-  
15 tions;

16 (3) before advertising outside the state, the state should  
17 conduct a search in the state for persons and organizations to perform its  
18 contracts and to fill its positions.

19 \* Sec. 2. AS 36.30 is amended by adding a new section to read:

20 Sec. 36.30.875. OUT-OF-STATE SOLICITATION OF CONTRACTS. (a)  
21 Except as necessary to contact the persons on the contractor lists  
22 established under AS 36.30.050, an agency may not solicit outside of  
23 the state for a contract unless

24 (1) the chief procurement officer, or, for construction  
25 contracts or procurements for the state equipment fleet, the commis-  
26 sioner of transportation and public facilities determines in writing  
27 that out-of-state solicitation is in the public interest or necessary  
28 to provide reasonable competition, or

29 (2) the agency has solicited within the state and

*WV*

1 (A) the agency has not received a responsive bid from  
2 a responsible bidder, if the agency is procuring the contract  
3 under AS 36.30.100 - 36.30.190; or

4 (B) the agency has not received a responsive proposal  
5 from a responsible offeror, if the state is procuring the con-  
6 tract under AS 36.30.200 - 36.30.270.

7 (b) This section does not apply to a contract

8 (1) for professional services to be performed in an area  
9 outside of the state and requiring knowledge of the customs, proce-  
10 dures, rules, or laws of the area;

11 (2) made by an agency employee for a travel or other ex-  
12 pense incidental to the trip while the employee is traveling outside  
13 of the state on state business;

14 (3) for an agency office that is located outside of the  
15 state; or

16 (4) under AS 36.30.300 - 36.30.320.

*added  
L&C*

*sole source, small, ltd-competition  
& emergency procurements*

17 (c) In this section

18 (1) "agency" includes the University of Alaska, the Alaska  
19 State Building Authority, and the Alaska Railroad Corporation;

20 (2) "solicit" includes advertising, initiating contact with  
21 a person, and sending an invitation to bid or a request for proposals  
22 to a person who has not requested the invitation or request.

23 \* Sec. 3. AS 39.25 is amended by adding a new section to read:

24 Sec. 39.25.165. OUT-OF-STATE SOLICITATION OF EMPLOYEES. (a)

25 Except as provided in (b) of this section, a state agency, including  
26 the division of personnel, may not solicit outside the state for an  
27 individual to fill a position as a state employee unless the personnel  
28 officer determines in writing that the agency has actively solicited  
29 in good faith in the state during the entire three-month period that

*ASBA?  
UNIV?  
RR?*

*original = 6 mo.*

1 followed the date when the agency began soliciting for the position  
2 and has been unable to find an individual who is qualified for the  
3 position. In this subsection, "personnel officer" means the commis-  
4 sioner of administration for a state agency of the executive branch,  
5 the speaker of the house of representatives for the members, commit-  
6 tees, and leadership of the house of representatives, the president of  
7 the senate for the members, committees, and leadership of the senate,  
8 and the executive director of the Legislative Affairs Agency for the  
9 other entities of the legislative branch.

10 (b) The prohibition in (a) of this section does not apply if the  
11 state agency is

12 (1) in the executive branch and the governor makes a writ-  
13 ten finding that the state agency is not likely to be able to find an  
14 individual who is qualified for the position by soliciting in the  
15 state;

16 (2) in the legislative branch and the legislative budget  
17 and audit committee makes a written finding that the state agency is  
18 not likely to be able to find an individual who is qualified for the  
19 position by soliciting in the state.

20 (c) In this section

21 (1) "position" includes a position in the exempt or par-  
22 tially exempt service, except a position identified in AS 39.25.-

23 110(1) - (2) and (5); <sup>added L+C</sup> Univ.

24 (2) "solicit" includes advertising, initiating contact with  
25 an individual, and sending a copy of an employment vacancy notice to  
26 an individual who has not requested the notice.

*elected officials*

*judicial branch*

**S B**

**48**

Bridge Number 562-2867

SENATE STATE AFFAIRS COMMITTEE

BILL NUMBER SB 48

SPONSOR Fahrenkamp, et al

BILL TITLE Extend Older Alaskans Commission

DATE REFERRED 1-17-89

HEARING SCHEDULED 1-23-89

FISCAL NOTE PREPARED yes

SPONSOR CONTACTED ✓ Joan 3834

INTERESTED PARTIES CONTACTED

*Beattie and Joan will be with them*

yes Connie Sipe, OAC 3250

present Dean Gotcher, DDA 2200

*present Jim Fox will attend - Q's only*

(Dave Kull - may come)

*yes but not sure who*

✓ AARP Bob Pavitt State Leg Chair 586-2066  
(Bob Thibodeau)

yes ✓ Joe Alter 586-6680  
Pioneer Home Advisory Board (Anos)

Commission Members / Leg Committee

*yes* Tok Melie Teruiger, Chair  
Anch Peggy Burgin, Past Chair  
J. Homer Hazel Heath

OTHER

✓ Requested audit copies (M. Greany) 1-19-89

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE 1-19-89  
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER FIN

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

DATE TURNED INTO OFFICE 1-23-89

1/9/89

Mr. President:

~~THE~~ STATE AFF Committee considered SB 48  
extending the termination date of the Older Alaskans Commission; efd

and recommended:

- replace with CS \_\_\_\_\_  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  fiscal impact  
 appropriation no FN attached  Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Ge Adams  
Jan Smith  
Tim Kelly

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[Signature]  
Chairman signature and recommendation

Committee backup attached

# Alaska State Legislature

SENATOR BETTYE FAHRENKAMP  
CHAIRMAN, RESOURCES COMMITTEE  
119 N. CUSHMAN STREET, SUITE 201  
FAIRBANKS, ALASKA 99701  
OFFICE (907) 452-4882  
HOME (907) 456-2899



Senate

WHILE IN JUNEAU  
PO. BOX V  
JUNEAU, ALASKA 99811  
CAPITOL, ROOM 125  
OFFICE (907) 465-3834  
HOME (907) 780-6027

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

TO: All Senators

FROM: Senator Bettye Fahrenkamp *BF*

DATE: February 2, 1989

SUBJECT: Senate Bill 48  
An Act extending the termination date of the Older Alaskans Commission; and providing for an effective date.

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### BILL SUMMARY:

SB 48 would extend the Older Alaskans Commission until June 30, 1993.

### FISCAL IMPACT:

There is a zero fiscal note from the Department of Administration.

### PREVIOUS COMMITTEE ACTION:

The Senate State Affairs and Finance Committees heard the bill. All members signing recommended "do-pass".

### DEPARTMENT POSITION:

The Department of Administration supports passage of this bill.

### ABOUT THE COMMISSION:

The OAC is a seven-member body created in 1981. The Commission acts as the state agency responsible for administering federal grant programs under the Older Americans Act. It is responsible for formulating a comprehensive statewide plan for senior needs, encouraging programs to serve seniors, and making policy recommendations to the governor and legislature.

The Commission's membership includes the commissioners of Administration, Health and Social Services, and Community and Regional Affairs.

The Legislative Budget and Audit Committee recommends continuation of the Commission.



Official Business

# Alaska State Legislature

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

## MEMORANDUM

TO: Senate State Affairs Committee Members  
FROM: Senator Pat Pourchot, Chairman *Pat*  
RE: January 23 Committee Hearing  
DATE: January 20, 1989

On Monday, January 23 at 1:30 p.m. in the Beltz Room the Senate State Affairs Committee will hear the following bills:

SCR 10, Relating to the promotion of Colonel Lars L. Johnson to major general in the Alaska National Guard.

SCR 10 requests that the Governor appoint Colonel Johnson as a major general in the Alaska National Guard. Johnson is now retired. The promotion would be honorary, in recognition of his service and achievements. Johnson was the first Adjutant General of the Alaska National Guard and organizer of the Alaska Air National Guard. The Guard would like to honor Johnson with this promotion at its annual awards ceremony on February 12. The appointment would be subject to legislative confirmation.

SCR 10 has a zero fiscal note. A biographical sketch of Colonel Johnson is attached.

SB 48, An Act extending the termination date of the Older Alaskans Commission.

SB 48 would continue the Older Alaskans Commission through June 30, 1993.

The Older Americans Act of 1965 (PL 100-175) provides grants to the states for programs for senior citizens, and requires that a state agency be designated to administer the grant programs. The Older Alaskans Commission was established in 1981 to perform this function. In addition, the commission is charged with developing a statewide plan for senior needs and advocating for the elderly within the state.

The commission, located within the Department of Administration, consists of seven senior citizens appointed by the Governor and representatives of DHSS, DOA, DCRA, and the Pioneers Homes Advisory Board.

SB 48 has a zero fiscal note, with funding being continued in the Governor's proposed FY 90 operating budget. A copy of the recently performed sunset audit of the Older Alaskans Commission, which recommends continuation, is attached.

SB 91, Relating to methods of appointment to the Alaska Public Offices Commission.

SB 91 clarifies that all members of APOC shall be appointed by the Governor and confirmed by the legislature.

APOC has five members. Current law provides that four of the members shall be appointed by the Governor from nominees made by political parties, and that these four members shall then appoint one public member. The legality of this provision has been questioned on the grounds that it conflicts with Article III, Section 26 of the State Constitution which requires that the Governor appoint members of boards and commissions.

SB 91 would clear up the legal question by providing for the Governor to appoint the fifth APOC member from nominees made by the other four members. The Alaska Public Offices Commission supports the bill. SB 91 has a zero fiscal note.

SB 94, Limiting liability for activities of the Alaska National Guard.

SB 94 will prevent suits against the State for injuries or damage resulting from federally mandated and controlled National Guard activities. Federal law was amended in 1981 to permit such suits against the United States. Alaska is one of the few states that has not enacted protective legislation to ensure that the state is not held liable in such cases. SB 91 would not affect the liability of the State during periods of state active duty (i.e. duty called by the Governor).

Because SB 94 would reduce the civil liability exposure of the state, the Department estimates an annual savings of \$50,000 in insurance costs charged by the Division of Risk Management.

STATE OF ALASKA  
1989 LEGISLATIVE SESSION

BILL VERSION: SB 43  
PUBLISH DATE: \_\_\_\_\_

**FISCAL NOTE**

REQUEST: \_\_\_\_\_

REVISION DATE: \_\_\_\_\_  
TITLE: Continuing Older  
Alaskans Commission  
SPONSOR: Fahrenkamp  
REQUESTOR: \_\_\_\_\_

AGENCY: Dept. of Administration  
BRU: Older Alaskans Commission  
COMPONENTS: \_\_\_\_\_

**EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)**

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERS. SERVICES	784.0	784.0	784.0	784.0	784.0	784.0
TRAVEL	68.5	68.5	68.5	68.5	68.5	68.5
CONTRACTUAL	238.8	238.8	238.8	238.8	238.8	238.8
SUPPLIES	10.8	10.8	10.8	10.8	10.8	10.8
EQUIPMENT	0	0	0	0	0	0
LAND/BUILD.	0	0	0	0	0	0
GRANTS/CLAIMS	8418.5	8418.5	8418.5	8418.5	8418.5	8418.5
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL</b>	<b>9520.6</b>	<b>9520.6</b>	<b>9520.6</b>	<b>9520.6</b>	<b>9520.6</b>	<b>9520.6</b>
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING: (THOUSANDS OF DOLLARS)**

GENERAL FUNDS	2865.9	2865.9	2865.9	2865.9	2865.9	2865.9
FEDERAL FUNDS	5693.7	5693.7	5693.7	5693.7	5693.7	5693.7
OTHER I/A Rec	52.8	52.8	52.8	52.8	52.8	52.8
<b>TOTAL GF/Match</b>	<b>908.2</b>	<b>908.2</b>	<b>908.2</b>	<b>908.2</b>	<b>908.2</b>	<b>908.2</b>
<b>TOTAL</b>	<b>9520.6</b>	<b>9520.6</b>	<b>9520.6</b>	<b>9520.6</b>	<b>9520.6</b>	<b>9520.6</b>
<b>POSITIONS:</b>						
FULL-TIME	15.0	15.0	15.0	15.0	15.0	15.0
PART-TIME	2.0	2.0	2.0	2.0	2.0	2.0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: The above funding represents FY 89 authorized.

PREPARED BY: \_\_\_\_\_

*Rick Uehling*  
SENATOR RICK UEHLING, CO-CHAIRMAN  
SENATE FINANCE COMMITTEE

DATE: February 2, 1989

PHONE No.: 465-4821

DEPARTMENT OF ADMINISTRATION  
POSITION PAPER

DIVISION: Older Alaskans Commission

BILL NUMBER: SB 48

BILL TITLE: An act extending the termination date of the Older Alaskans Commission

The Older Alaskans Commission and the Department of Administration support the passage of SB 48.

SB 48 will extend for an additional four years the important functions of the Older Alaskans Commission, as enumerated in AS 44.21 and AS 47.65. The Commission will also continue as the State of Alaska's designated State Unit on Aging for the purpose of receiving funds from the federal Administration on Aging.

The Commission, with its seven senior citizen members, serves as a sounding board for seniors throughout the state on local, state and national issues affecting the dignity and quality of life of Alaska's elders. The Commission, with its reserved seats for representatives from three state agencies and the Pioneers Home board, works at the heart of state government to assess and respond to senior needs, and to coordinate policy decisions and services by various agencies.

The Older Alaskans Commission believes strongly that the people to be served by government should have a direct voice in the planning, monitoring and evaluation of those services. The Commission is that voice on the state level.

The Commission operates through an executive director and small staff, and its office is located within the administrative structure of the Department of Administration. The Commission's administration of all grants and programs is subject to the approval of the Commissioner of Administration.

Both the Department and the Commission strongly urge the renewal of the Older Alaskans Commission statute.

APPROVED:

Director: Connie J. Sipe

Signature: *Connie J. Sipe*

Date: January 19, 1989

Commissioner: John M. Andrews

Signature: *JMA*

Date: 1/19/89