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IXCs electing to confirm sales electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a customer to a voice response unit, or similar mechanism, that records the required information regarding the PIC change, including automatically recording the originating ANI; or

3) an appropriately qualified and independent third party operating in a location physically separate from the telemarketing representative has obtained the customer's oral authorization to submit the PIC change order that confirms and includes appropriate verification data (*e.g.*, the customer's date of birth or social security number). The independent third party will use a script substantially similar to the form attached. The IXC must retain the independent third party's services pursuant to a written contract that will be available for inspection by the FCC and that does not provide compensation based upon the percentage of sales confirmed.

4) Regardless of which of the above confirmation procedures is used, the IXC must retain all records and data pertaining to the customer's authorization for a period of 12 months after submission of the PIC change order.

D. *Auditing Requirements.* IXCs shall implement auditing procedures to ensure that the disclosure and confirmation provisions of this section are followed. Such audits will include an analysis to confirm that the IXC is submitting only PICs (other than customer-initiated PIC changes) that have been confirmed in one of the ways specified above. Audits must be performed by a qualified third party at least once every month. If any such audit reveals (1) non-compliance in any material respect with the confirmation requirements of Section C, or (2) a rate of non-compliance in excess of two percent (at a 98 percent level of confidence plus or minus 1 percent) plus the upper bound of the confidence interval, the IXC shall immediately implement corrective measures specified by the auditor, and submit the auditor's report to the FCC.

QUALITY ASSURANCE PRINCIPLES

A. *Quality Assurance Program.* The Quality Assurance Program ("QAP") to be adopted by the FCC is intended to ensure that interexchange carriers ("IXCs") which make more than outbound telemarketing calls per year are not making blatantly false and misleading claims (as defined in Section D below) in their telemarketing sales practices. The QAP is to be managed under the direction and authority of an independent auditor ("QAP Director") selected by each IXC obligated to maintain a QAP, subject to review by the FCC. The QAP Director shall have full and complete access to all items subject to review.

B. *QAP Director's Responsibilities.* The QAP Director shall conduct a quality assurance audit quarterly (1) to determine whether an IXC is making blatantly false and misleading claims ("blatant falsehoods") in its telemarketing practices, and (2) where such blatant falsehoods have been found to occur, to certify when the problem that caused the blatant falsehoods has been corrected. The QAP Director is only to evaluate and report on cases of blatant falsehoods and is expressly prohibited from disclosing to any IXC the marketing claims being made by any other IXC.

C. *Items Subject To Review.* Any IXC subject to the QAP shall provide the QAP Director with any and all information, reports, methods and practices, guidelines, training materials and cooperative assistance requested by the QAP Director for the purpose of making an independent evaluation of (1) scripts and (2) the conduct of telemarketing by the IC. The QAP Director may examine all management controls, including, but not limited to the following:

1. remote monitoring with random selection of monitored representatives;
2. on-site monitoring; and
3. recordkeeping and retention.

D. *Blatant Falsehoods.* Blatant falsehoods are representations that seriously and substantially misstate the nature, characteristics, qualities and geographic boundaries of a competing IXC. Examples include:

1. "[IXC] is going out of business."
2. "[IXC #1] is, by its own choice, no longer providing your services and [IXC #2] has instead been designated as your new long distance carrier."
3. "[IXC #1] and [IXC #2] are part of the same company and/or [IXC #1] has merged with [IXC #2] (or any other similar misrepresentation of a corporate relationship)."
4. "You have no choice about your long distance service" and must change to [IXC]."
5. "Your long distance company or your LEC have authorized the switch to [IXC]."
6. "[IXC] and your local phone company are one and the same."

E. *Corrective Measures.* On a quarterly basis, the QAP Director will monitor a sufficient number of telephone calls in progress to achieve a 98 percent (plus or minus 1 percent) level of confidence that the percentage of calls in which blatant falsehoods are occurring does not exceed 2 percent. If that level is exceeded, the IXC must implement corrective measures immediately. The QAP Director shall then commence monitoring of the IXC on a monthly basis until the IXC reduces the percentage of blatant falsehoods below 2 percent. A report on the non-compliance shall be submitted to the FCC until the corrective measures are effective.

F. *Costs.* Costs of each IXC's QAP will be borne by the IXC subject to the QAP.

SAMPLE SCRIPT FOR THIRD PARTY CONFIRMATION

Hello, my name is ______________________ from ______________________, an independent verification company. I'm calling to confirm your order for [IXC] long distance service.

the docket number of the particular proceeding and the fact that an original and one copy of it have been submitted to the Secretary, and must be labeled or captioned as an *ex parte* presentation. Section 1.1206 of the Commission's Rules, 47 C.F.R. § 1.1206.

37. All relevant and timely comments and reply comments will be considered by this Commission. In reaching our decision, this Commission may take into account information and ideas not contained in the comments, provided that such information or a writing containing the nature and source of such information is placed in the public file, and provided that the fact of this Commission's reliance on such information is noted in the Order.

VII. ORDERING CLAUSES

38. Accordingly, IT IS ORDERED that NOTICE IS HEREBY GIVEN of the proposed regulatory changes described above, and that COMMENT IS SOUGHT on these proposals.

39. IT IS FURTHER ORDERED that pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 U.S.C. §§ 1.415, 1.419, comments SHALL BE FILED with the Secretary, Federal Communications Commission, Washington, D.C. 20554 on or before May 1, 1991. Reply comments should be filed no later than May 31, 1991. To file formally in this proceeding, participants must file and original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. In addition, parties should file two copies of any such pleadings with the Tariff Division, Common Carrier Bureau, Room 518, 1919 M Street N.W., Washington, D.C. Parties should also file one copy of any documents filed in this docket with this Commission's copy contractor, Downtown Copy Center, room 246, 1919 M Street, N.W., Washington, D.C. 20554.

40. IT IS FURTHER ORDERED that the Secretary shall mail a copy of this Notice of Proposed Rule Making to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX A

AT&T AND MCI SETTLEMENT AGREEMENT PROPOSAL

CONFIRMATION PROCEDURES

PIC Changes. No interexchange carrier may submit orders to change a customer's primary interexchange carrier (PIC) except in accordance with the provisions of this section.

A. *Definitions*

– "customer means a person with two or fewer residential telephone lines;

– "customer-initiated PIC change" means an order to change a customer's PIC that is generated as a result of a communication to an IC or LEC originated by a customer;

– "independent third party" means an appropriately qualified (*i.e.*, capable of performing large scale verification processes as specified herein) person retained by an IXC to perform verification or auditing functions described in this section and in which the IXC has no ownership interest and which performs no telemarketing, direct mail, or other sales solicitation functions for the IXC;

– "IXC" means an interexchange carrier or a person (other than an independent third party) acting on behalf of an interexchange carrier;

B. *Mandatory Disclosures.* Any IXC telemarketing solicitations seeking to change a customer's PIC must include the following disclosures:

1) identification of the IXC placing the call;

2) the purpose of the call is to solicit a change of the customer's PIC;

3) the customer's PIC may not be changed unless and until the sale is confirmed, together with a description of the confirmation process to be used;

4) a description of any charge for processing the PIC change that may be imposed by the customer's LEC, and

5) the IXC will send the customer a form that meets the requirements of subsection (c)(1) that authorizes the carrier to submit the PIC change, with a request that the customer sign and return the form to the IXC.

C. *Confirmation.* No IXC shall submit a PIC change order (other than a customer-initiated PIC change) to a LEC unless and until the order has first been confirmed in accordance with the following procedures:

1) the IXC has obtained the customer's written authorization to submit the order that explains what occurs when a PIC is changed and confirms:

a) the customer's billing name and address and each telephone number to be covered by the PIC change order,

b) the decision to change the PIC to the IXC, and

c) the customer's understanding of the existence of the PIC change fee; or

2) the IXC has obtained the customer's electronic authorization, placed from the telephone number(s) on which the PIC is to be changed, to submit the order that confirms the information described in subsection (1) above to confirm the authorization.

Q1. I'd like to confirm your name, address and telephone number(s). IF AVAILABLE ON SCREEN, READ BACK. Is that correct? TAKE ANY CORRECTIONS. IF NOT ON SCREEN, ASK FOR EACH ITEM AND RECORD.

Q1A. Did you or another person in your household recently receive a call asking you to select [IXC] as your long distance company?

Q2. I'd like to confirm that you have decided to select [IXC] to carry long distance calls from this (these) telephone(s). Is that correct?

Q3. I'd like to confirm that you are an adult resident of this household. Is that correct? IF QUESTIONED BY CUSTOMER, MAY STATE THAT PURPOSE IS TO DETERMINE IF YOU ARE A DECISION MAKER FOR LONG DISTANCE SERVICE FOR THE HOUSEHOLD.

Q4. I'd like to confirm that you were advised that the local telephone company may charge a fee for switching to [IC]. Is that correct? IF CUSTOMER ASKS HOW MUCH, VERIFIER MAY STATE AMOUNT FROM LEC TARIFFS.

Q5. Finally, to show that I've spoken to you, please give me the last four digits of your Social Security Number. RECORD INFORMATION: IF CUSTOMER REFUSES, TRY DATE OF BIRTH OR MOTHER'S MAIDEN NAME.

I will now process the order. Thank you and goodbye.

IF RESPONSE IS NEGATIVE ON ANY ITEM, INFORM CUSTOMER THAT YOU CANNOT PROCESS THE ORDER AND THAT THE CUSTOMER MAY SPEAK DIRECTLY WITH IXC OR MAY CALL THE LOCAL PHONE COMPANY TO ORDER THE SWITCH IN SERVICE TO THE IXC. ANY QUESTIONS (EXCEPT THOSE IN THE Q AND A) ABOUT THE LONG DISTANCE SERVICES OR RATES ARE TO BE REFERRED BACK TO THE IXC.

Would you like me to return you to an IXC representative? IF YES, THE CALL CAN GO BACK TO THE IXC REPRESENTATIVE.

APPENDIX B

Pleadings Filed in Rule Making No. 7245

Petition for Rule Making, filed January 10, 1990 by American Telephone and Telegraph Company

Comments, filed March 2, 1990

Ameritech Operating Companies (Ameritech)

Competitive Telecommunications Association (CompTel)

General Communications, Inc. (GCI)

MCI Telecommunications Corporation (MCI)

Pennsylvania Office of Consumer Advocacy and the National Association of State Utility Consumer Advocates (PAOCA/NASUCA)

Southwestern Bell Telephone Company (Southwestern Bell)

US Sprint Communications Company Limited Partnership (Sprint)

Replies, filed March 19, 1990

AT&T

America's Carriers Telecommunications Association (ACTA)

MCI

National Association of Regulatory Utility Commissioners (NARUC)

Nebraska Public Service Commission (Nebraska PSC)

Operator Service Providers of America (OSPA)

Southwestern Bell

Sprint

United States Telephone Association (USTA)

Letters

California Public Utilities Commission

CFW Telephone Company

Citizens Telephone Cooperative

City of Charleston, West Virginia

Consumer Action

State of Colorado

Conference of Consumer Organizations

Dubois Telephone Exchange, Inc.

Illinois Commerce Commission

Iowa Network Services, Inc.

Iowa State Utilities Board

Lincoln Telephone Co.

Louisiana Consumers League

Maryland Public Service Commission

Minnesota Department of Public Service

Minnesota Public Utilities Commission

Office of Minnesota Attorney General

Montana Public Service Commission

Nebraska Public Service Commission

Ohio Public Service Commission

Oklahoma Corporation Commission

Roosevelt County Rural Telephone Cooperative, Inc.

South Carolina Public Service Commission

United Refining Co. of Pennsylvania

Virginia State Corporation Commission

West Virginia Public Service Commission

Western New Mexico Telephone Co., Inc.

Wisconsin Public Service Commission (Wisconsin PSC)

FOOTNOTES

[1] *See* United States v. American Tel. & Tel., 552 F. Supp. 131 (D.D.C. 1982) *aff'd sub nom.* Maryland v. United States, 460 U.S. 1001 (1983).

[2] Equal access is that which is equal in type, quality, and price to access to local exchange facilities provided to AT&T and its affiliates. *Id.* at 227.

[3] Default traffic refers to the interexchange telephone calls of any customer who failed to make a selection of an interexchange carrier.

[4] A letter of agency is a document, signed by the customer, which states that a particular carrier has been selected as that customer's long distance carrier. In its petition, AT&T seeks a requirement that an IXC have a customer's LOA on file before submitting an order to the local exchange carrier to switch that customer to the IXC's service.

[5] AT&T describes the unauthorized switching of customers as "slamming." MCI describes such switches as SWOPs (switched without permission).

[6] *See* Letter from James L. Lewis, MCI Telecommunications Corporation, to Secretary, Federal Communications Commission, Dec. 12, 1990 (MCI Letter).

[7] Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 FCC 2d 911 (1985)(*Allocation Order*), *recon. denied*, 102 FCC 2d 503 (*Reconsideration Order*); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 FCC 2d 935 (1985)(*Waiver Order*). *See also Illinois Citizens Utility Board Petition for Rule Making*, 2 FCC Rcd 1726 (1987)(*Illinois CUB Order*).

[8] Customers may also order service directly from the LEC.

[9] AT&T later refined this figure, alleging that 13.9 percent of the end users switched away from AT&T are unauthorized PIC changes. AT&T Reply at App. I.

[10] A list of parties filing pleadings in this matter appears at Appendix B.

[11] Alternative approaches to the problem of unauthorized switching were also suggested by MCI, Sprint, Ameritech, Bell Atlantic, and Comptel.

[12] *See* MCI Letter, n.6, *supra*.

[13] On February 12, 1991, MCI and AT&T formally filed a joint request that the Commission adopt the proposal contained in Attachment A of this NPRM.

[14] In recognition of the problems consumers have encountered, the Commission issued a Public Notice on November 2, 1990, informing consumers of their rights and describing steps they might take to protect themselves against unauthorized switches.

[15] At the present time, AT&T's own supervisors verify telemarketing orders for long distance service; MCI reports that it has initiated a system of third party verification, which is not yet complete.

[16] *See* Settlement Proposal, Confirmation Procedures, at Section C.

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Lincoln Telephone Co.
Louisiana Consumers League
Maryland Public Service Commission
Minnesota Department of Public Service
Minnesota Public Utilities Commission
Office of Minnesota Attorney General
Montana Public Service Commission
Nebraska Public Service Commission
Ohio Public Service Commission
Oklahoma Corporation Commission
Roosevelt County Rural Telephone Cooperative, Inc.
South Carolina Public Service Commission
United Refining Co. of Pennsylvania

ALASCOM'S
BRIEFING PAPER
ON HB 289

I. INTRODUCTION

The purpose of competition is to encourage the most efficient allocation of resources, the lowest prices and the highest quality of consumer products. Competition promotes the protection of consumer interests. Sometimes, however, the pressures of competition within a particular industry to win customers and thereby increase revenues, may lead to the use of undesirable, deceptive and fraudulent marketing techniques which are not in the best interest of the consumer.

The long distance telephone industry, once considered virtually immune from the effects of recession has shown a recent decline in growth from the annual 12% per year in the late 1980's to an estimated 7% per year in 1990. Competition for market share in this $50 billion-dollar-a-year industry has become one of the fiercest fought battles in any American business arena. With the expected advent of competition in Alaska in mid-year 1991, it is appropriate for the Legislature to examine the potential for undesirable marketing practices in the state.

II. THE PROBLEM

Competitive pressures in the long distance industry have led to the use of deceptive sales and telemarketing methods as each long distance carrier strives to increase its revenues by increasing their market share.

Telemarketing is used extensively in the long distance industry and the industry's two largest carriers (AT&T and MCI) estimate that they make a combined 12 million calls a month to consumers. Telemarketing firms are used to solicit new business and there is some concern that these firms are being paid on a commission basis directly related to the number of new customers they develop. This may result in "slamming", the unauthorized transfer of a customer from one long distance carrier to another.

Slamming is blamed on overzealous sales people and usually occurs after a high pressure sales pitch from another long distance carrier over the telephone. Even if the consumer does not wish to change his long distance carrier he or she may find that the change has been made without his or her knowledge or consent.

During a recent Congressional subcommittee hearing to examine the issue of slamming, AT&T said it received 90,000 complaints of slamming from customers during a six month period in

1990. Bell Atlantic, a local telephone company which is responsible for making the actual change from one long distance carrier to another, received 18,000 slamming complaints in 1988, 37,000 complaints in 1989, and estimated it received over 80,000 slamming complaints in 1990.

Concern with the problem of slamming has recently caught the attention of Congress, the Federal Communications Commission and the California State Legislature. Federal legislation to regulate changes in consumers' selection of long distance carriers has been introduced in the House. The FCC has issued a notice of proposed rulemaking that would require long distance carriers to secure written authorization, electronic authorization, or third-party oral verification from consumers before implementing a change in the selection of a long distance carrier. Last year, the California legislature passed its own anti-slamming legislation, which went into effect in January.

III. THE ISSUES

The current FCC rules governing the transfer of long distance service were modified following the 1984 breakup of the Bell Telephone System to benefit the new alternative carriers emerging after the breakup. In an effort to help dissolve the AT&T monopoly, federal regulators decided that new carriers would need only verbal permission to sign up prospective customers.

Once verbal permission is granted for the change by the consumer, the long distance provider informs the local phone company which makes the switch. Although Federal rules require that long distance companies follow up by sending customers forms to be signed and returned, it is estimated that 70% of the forms are not returned. Still, the switch can be legally made.

Long distance customers are particularly vulnerable to potential fraudulent and deceptive sales and marketing practices by representatives of long distance carriers. Telemarketers typically prey on elderly and infirm consumers and those with language disabilities.

As a result of slamming practices the consumer is not only deprived of knowledgeable decision making but is further burdened and inconvenienced with having to ensure that his long distance service is switched back to the carrier of his preference.

Local telephone companies have typically been made to bear the burden of switching back the customer who has been slammed. This constant churn increases the overall costs of telecommunications services and reduces industry efficiency.

IV. THE PROPOSED LEGISLATION

Because slamming is fostered by loose regulations and the fierce competition among long distance carriers, it is necessary to protect long distance consumers by adopting appropriate rules and prescribing procedures for switching from one long distance carrier to another.

This proposed legislation is designed to protect consumers from being switched to other long distance companies without their knowledge or consent. It prescribes specific procedures and a verification process for authorized changes in a consumers selection of a long distance carrier. The existing Alaska Public Utilities Commission regulations recognize this need, but provide only a one-sentence requirement concerning the need for a written authorization for change of service. Neither the need for informed consent, nor the need for verification is addressed.

Customer solicitation must be on a fully disclosed basis. Certain relevant disclosures are required to be made. The request for a change in a consumer's selection of a long distance carrier must be verified, after solicitation and before execution, by an independent third party. The customer is given a cooling-off period, similar to laws governing door-to-door solicitation, during which he may reflect on and/or cancel any change in a long distance carrier.

The independent third party confirming the change in the selection of a consumer's long distance carrier is required to make specific disclosures to the consumer to further increase consumer awareness and provide a knowledgeable basis for decision making. A written record of all solicitations and confirmations are required to be made and maintained by each long distance carrier and made available for Commission inspection.

V. BENEFITS

The protection of consumers against slamming while preserving competition in the long distance industry would be the ultimate benefit of this legislation.

The consumer would receive relevant, accurate information upon which to make telecommunication services decisions. All competitors would be required to adhere to the same standards, discouraging high pressure tactics for soliciting customers. Consumers are spared the burden and inconvenience of the switching of long distance carriers without their knowledge and consent and local telephone companies can avoid the costs and inefficiencies involved with churning practices employed by long distance carriers.

The procedures and verifications proposed should substantially diminish the problem of unauthorized switching of long distance customers while continuing to encourage carriers to compete for a customer's business.

VI. CONCLUSION

Consumers should have the right to choose their long distance carriers without being victimized by deceptive, fraudulent or unfair marketing practices. The best way to ensure consumer protection against slamming is to put the control where it belongs -- in the hands of the consumer. Written authorization is the best way to protect the consumer's freedom of choice.

Deceptive and fraudulent marketing practices inconvenience consumers and deny them basis for making informed telecommunications choices. Further, such practices defeat legislative purposes in opening Alaska to intrastate competition.

The process of choosing a long distance carrier should be driven by the informed choice of consumers and not by deceptive sales and advertising practices of long distance companies.

FROM: GCI

HB 289
BRIEFING PAPER

OVERVIEW

Passage of HB 289 would adversely affect long distance competition in Alaska in two important ways. First, new competitors, such as GCI, would not be able to sign up future customers prior to certification; second, any customers wishing to sign up with a new company, such as GCI, or wishing to change carriers in any way would have to not only sign a written authorization, but also undergo a cumbersome confirmation process. Instead of being called the Interexchange Consumer Protection Act of 1991, this bill should be called the Telephone Consumer Harassment Act of 1991. This bill is not designed to protect consumers, it is purely designed to frustrate and delay robust competition.

Following is a sectional analysis of the impact of this proposed legislation. Notably, in response to SB 206, the APUC has already addressed the issues presented in HB 289 and has promulgated definitive regulations which require written authorization before changing telephone companies. In short, HB 289 is unnecessary, anti-competitive, and anti-consumer.

Section 1. SHORT TITLE.

As pointed out above, calling this the Interexchange Consumer Protection Act of 1991 is clearly a sham, and legislators should be made aware of this fact. This bill does not provide any meaningful protection beyond that already provided by the APUC.

Section 2. FINDINGS.

This section attempts to link the lower-48 practice of slamming with Alaska. In the lower-48 there have been instances where customers were switched to another long distance carrier without the customer's knowledge or consent. This issue was the focus of a lawsuit between MCI and ATT which has been settled by requiring carriers either: (1) to obtain letters of authorization for changes from the customer to be kept on file by the carrier; or (2) to provide tapes of carrier changes phoned in by customers via touch tone phones; or (3) to obtain third party independent verification.

The FCC is currently engaged in a rulemaking proceeding to determine whether or not the MCI-ATT settlement should be adopted as a universal requirement, or if the FCC should adopt some other, lesser form of protection. To date, the FCC has not required letters of authorization or third party verification. Nor has it required confirmation of a customer's wish to change carriers.

In Alaska, there is no evidence that slamming has been a problem. Even so, the APUC in promulgating its competitive regulations opted to require letters of authorization. This means that (except with the introduction of 1-PIC) GCI cannot switch a consumer from Alascom to GCI without a signed letter of authorization from that consumer, and vice versa. This is protection beyond what the FCC requires today.

It is counterfactual for the legislature to make a finding that there is evidence of slamming in Alaska. In a prolonged proceeding before the APUC where slamming was an issue, no evidence was brought forward to indicate that slamming was a problem in Alaska. Moreover, the proposed legislation assumes in finding number (6) that the APUC has not acted to protect consumer interests and therefore the legislature must. This is simply untrue.

Section 3. AMENDMENTS TO AS 42.05

Sec. 42.05.870(b) essentially states that unless a carrier is certified to provide competitive long distance service under the new competitive statute, it cannot solicit customers.

While appearing benign on the surface, this section would have the effect of prohibiting GCI, or any other new competitor, from collecting letters of authorization prior to the company's certification date. GCI expects to be certified May 15, 1991. This is also the date the legislature intended competition to begin. By forcing GCI to begin collecting letters of authorization after May 15, 1991, the advent of competition will be further delayed.

The intent of this section is not to protect consumers. There is no risk to consumers in signing a form which states that "if GCI is certificated, then I would like GCI to be my long distance carrier." The risk is all on GCI in marketing time and expense. The purpose of this section is solely to delay competition.

Sec. 42.05.870(c). This section describes the process that must take place before a consumer can change carriers. The only additional substantive requirement, beyond that which is already required by the APUC and good business practices, is the notion that the change will not be valid unless separately confirmed. The intent of this bill is to require separate confirmation in addition to a written authorization by the customer. This requirement goes far beyond anything ever contemplated by either the FCC or the APUC and constitutes customer harassment. Furthermore, contrary to SB 206 this requirement impedes robust competition. This legislation, if passed, would make it harder to change long distance carriers than it is to get married or obtain a driver's license. This is hardly in keeping with a free competitive market.

Sec. 42.05.870(d)-(h). These sections lay out the separate confirmation requirement. A carrier may either obtain a signed, written confirmation from the customer itself, or employ an independent third party to obtain oral verification. If the carrier elects to use independent verification, confirmation will only be valid if the confirmation is made at lease 72 hours after the initial change order by the customer. The carrier is required to retain all records subject to audit. The confirmation procedures also apply to any customer wishing to change carriers on his or her own initiative.

Clearly, this legislation if passed, would interfere with healthy competition. A long distance carrier may not take a customer's written word that he or she wishes to use that carrier for its long distance service. It must either mail out yet another form or incur the expense of hiring an independent party to call the customer 72 hours later to ensure the customer really knows what it wants.

This frustration of competition is clearly designed to benefit the incumbent carrier which has 100% of the market today. If this legislation is passed, changing from Alascom to GCI, or any other competitor, for in-state service will become costly in terms of consumer irritation and time, and Alascom will continue to unfairly dominate in-state long distance service. The legislation is completely unnecessary: the APUC has already acted and there is no evidence of slamming in Alaska. Consumers will be disadvantaged for no reason.

ALASKA PUBLIC UTILITIES COMMISSION

Comments on CSHB 289

May 9, 1991

The Commission still does not believe this bill is necessary. However, the proposed committee substitute dated May 8, 1991 is the preferable alternative.

The focus of the problem of "slamming" is upon the absence of customer consent to a change in his long distance carrier due to manipulation by competing companies, or their marketing representatives.

There has been no evidence of such a problem on the interstate level in Alaska. Nevertheless, the Commission has already issued a regulation to address any potential problem on the in-state level. That regulation requires a signed authorization from the customer before a change in carriers can be made.

The key here is to achieve the best balance between consumer convenience and consumer protection. A writing is the best expression of one's consent and it should not need to be "confirmed", verified, or duplicated. Also, the costs of doing business (which are ultimately borne by the consumer) should be considered.

The original bill was complex and inconvenient without a significant gain in consumer protection. The May 2nd proposed committee substitute is an improvement but still contains inconsistencies and confusing terminology. The better alternative is the May 8th proposed committee substitute which simplifies and clarifies the required procedure for all parties. It also enhances the existent regulation of the Commission.

Once in-state competition begins and a track record begins to develop, the Legislature and the Commission will be in a better position to determine what other specific steps, if any, may be necessary to address potential or actual incidences of "slamming."

MCI

MCI TELECOMMUNICATIONS CORPORATION
STATEMENT REGARDING HB 289

MCI Telecommunications Corporation has serious concerns about the anticompetitive nature of HB 289, the Interexchange Consumer Protection Act of 1991. The legislation in its current form would undo much of the progress made by the Legislature and the Alaska Public Utilities Commission (APUC) toward providing intrastate competition.

- HB 289 is not in the best interest of consumers depriving them of the advantages of a competitive marketplace and subjecting them to additional delays and increased costs for telecommunications services.

- Today consumers routinely purchase good and services over the telephone. To require another written confirmation or an independent third party verification in addition to the APUC requirement of written authorization is inconsistent with the current practices in the marketplace, is likely to cause customer confusion and denies the consumer the flexibility of easily switching companies to take advantage of lower prices or to choose a service which will better fit his/her needs.

- The bill provides an unfair advantage to Alascom reinforcing its dominant position in the marketplace by creating additional hurdles for other carriers to overcome in obtaining new customers.

- HB 289 goes beyond the current proposal being considered by the Federal Communications Commission (FCC). The FCC's Rulemaking in CC Docket No. 91-64 proposes to allow an interexchange carrier to use any of the following three actions before switching a customers long distance service: 1) long distance carrier has on hand an authorization card signed by the customer and sent back to the carrier; 2) consumer initiates a call from home to an automated 800 number, and through a sequence of prompts, confirms the choice of the long distance carrier; or 3) consumer's choice of a long distance carrier is verified by an independent firm unaffiliated with any long distance carrier.

CONDON, PARTNOW & SHARROCK
A PROFESSIONAL CORPORATION
LAWYERS
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JERRY A. WERTZBAUGHER
DENISE D. WIKE
DEBORAH L. WILLIAMS

ROBERT E. STOLLER

May 8, 1991

VIA FACSIMILE

Clifford J. Groh
c/o Representative David Finkelstein
P.O. Box V
Juneau, AK 99811

Dear Cliff:

It was a pleasure speaking with you today about CSHB 289. As we discussed, I am sending you three recommended changes to the CS Work Draft.

(1) To eliminate ambiguity on the 1 versus 2 written consumer authorizations issue, AS 42.05.870(d) should be amended to read:

> (d) In this section, "change order" means an instruction ~~to~~ the local exchange carrier <u>from a long distance carrier</u> to substitute one long distance carrier for another as the provider of long distance services to the customer.

(2) To allow companies to collect conditional change orders prior to certification, a new section AS 42.05.870(e) needs to be added that states (something like):

> A company that has applied for a certificate to provide long distance telephone service may collect conditional change orders and customer confirmations prior to certification, as long as the company complies with the provisions of AS 45.05.870(a) and (b). Conditional change orders become effective on the date the APUC grants the company a certificate. For purposes of implementing this provision, the word "company" shall be substituted for the phrase "long distance carrier" in AS 45.05.870(a) and (b).

(3) To allow the APUC to implement competition in Anchorage and Ketchikan as ordered (using 1-FIC), a new section AS 42.05.870(f) needs to be added that states (something like):

> This legislation does not apply to the areas served by Anchorage Telephone Utilities or Ketchikan Public Utilities, until so ordered by the Alaska Public Utilities Commission.

Thank you, Cliff, for considering these revisions. If you have any questions, please call.

Very truly yours,

CONDON, PARTNOW & SHARROCK

BY: Deborah L. Williams

Deborah L. Williams

DLW/kkc

House State Affairs Committee
Representative Gene Kubina, Chair

DATE: May 15, 1991

PLACE: Capitol, Room 102

SUBJECT OF MEETING:
*HB 42 - Relating to Health Benefits for Part-Time St. Employees
*HB 273 - Relating to Payment for Medicare Premium Charges
*HB 308 - Relating to Adoption of Emergency Regulations

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Bob Stalnaker	Retirement	P.O. Box. CR		~~4470~~	4470	Y	N	HB 42
Gail Graven	MCI	707 17th St #3900 Denver CO 80202			303 291 6696	Y	N	HB 289
Bob Manners	NEA	105 Municipal Way # 302				Y	N	HB 273
Diane Lindback Dianne Lindback	Ulmer					Y	N	HB 42
Reed Stoops	GCI	Box 1211 Juneau		5863380		Y	N	HB 289
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	

Page __ of __

MCI

At a Glance

MCI Communications Corporation
1133 19th Street, N.W.
Washington, DC 20036

June 1989

Profile

MCI Communications Corporation offers complete worldwide voice, data and messaging services to millions of business and residential customers, state and federal agencies and other organizations.

MCI® owns and operates the world's second largest telecommunications network, representing an investment of more than $6 billion. The new MCI system, second to none in leading-edge technology, uses the highest level of network intelligence and the most advanced monitoring and control systems. Transmission modes include fiber optics, digital microwave and digital switching technologies.

Services include residential long distance calling, operator services and voice and data options geared to commercial enterprises, including 800 and 900 applications, WATS-like PRISM℠ services and the MCI Card®, convenient for domestic and international calling.

MCI's long distance service enables customers to call throughout the United States and to dial direct to 151 nations representing 99 percent of overseas calling from the U.S.

MCI is the only U.S. telecommunications company with a complete array of domestic and international business services – private global networks, telex, electronic mail, packet switching and a dedicated facsimile network.

MCI's 17,000 employees are located in seven domestic divisions and an international division with offices in 46 countries.

MCI Southwest
The MCI Building
100 South Fourth Street
St. Louis, MO 63102
314-342-8100

MCI Pacific
201 Spear Street
San Francisco, CA 94105
415-978-1100

MCI International, Inc.
Two International Drive
Rye Brook, NY 10573
914-937-3444

Western Union International, Inc.
(a subsidiary of MCI International)
Two Executive Drive
Fort Lee, NJ 07024
201-585-1880

RCA Global Communications, Inc.
(a subsidiary of MCI International)
201 Centennial Avenue
Piscataway, NJ 08854
201-885-4330

The MCI worldwide communications system delivers a wide array of voice, data and messaging products and services – anywhere, anytime. Quality and reliability are hallmarks of MCI domestic and international services, from residential long distance calling to a range of technologically advanced services for every business need. Following is a list of MCI's major products and services.

MCI VOICE SERVICES

MCI Dial "1" and Dial-Up Long Distance Service
With MCI long distance, customers can make interstate calls at any time throughout the United States, Puerto Rico and the U.S. Virgin Islands. MCI also provides intrastate long distance service where authorized by state regulatory agencies.

MCI Worldwide Direct Dialing
Enables customers to place calls to 151 countries that can be reached by dialing direct.

MCI Card®
Available without charge for easy calling to domestic and international locations while traveling. MCI Card users can place calls from the U.S. to 151 foreign countries and, with the MCI CALL USA feature, can make calls to the U.S. from a growing list of countries.

Operator Services
A full range of operator services is available to business and residential customers for domestic and international calling. Operator services include collect, third-party charging, person-to-person and station-to-station calling assistance. Through MCI CALL USA, customers can use the MCI Card to make direct calls to the U.S. from a growing list of foreign countries.

MCI PRISM PLUS℠
Designed for companies spending at least $120 a month on long distance calling. PRISM PLUS offers lower rates than Dial "1" service, without the need for dedicated or special lines.

MCI PRISM℠
A family of outbound long distance and international services tailored for business users of all sizes. PRISM services provide complete coverage at the right price, based on the size of the business and its calling patterns. Unlike traditional WATS, domestic PRISM calls are priced based on the actual distance of each call.

MCI 800 Service℠

An inbound WATS service providing full coverage to the 48 states, plus options for calling from Hawaii, Alaska, Puerto Rico, the U.S. Virgin Islands and Canada. MCI 800 Service's features include flat distance-sensitive rates on each call; same number calling for both in-state and out-of-state callers; volume discounts; call detail reporting; and dedicated or switched customer connection. MCI also provides international 800 service between the U.S. and a growing number of countries. MCI 800 Service also offers the ability to route calls based on area code origination, day of week and time of day. Calls can also overflow to another location if the primary location is busy.

MCI 900 Service

The first nationwide caller-paid 900 service that can accommodate both two-way conversations and pre-recorded messages. It enables subscribers to offer a single nationwide telephone number.

MCI Corporate Account Service®
Corporate Account Service PLUS℠

Special discounts and reporting services for multi-location businesses spending a combined total of at least $2,500 monthly for any combination of MCI's long distance services—Dial "1," Prime Calling Option, MCI Card and the PRISM family of services. Corporate Account Services feature discounts, detailed calling reports and monthly management reports.

The MCI network is monitored and controlled 24 hours a day by a national and three regional network management centers. Any single center could manage the entire network if necessary, ensuring reliable backup and smooth functioning at all times.

The MCI network represents an investment of over $6 billion. An additional investment of $3.5 billion over the next five years will expand the network's reach, capacity and versatility. The investment will provide greater redundancy through alternative routing and backup systems to reduce the possibility of service interruption. It will increase intelligence and automation to ensure flexibility in network operations and make possible rapid introduction of new products and services.

Before new technologies are integrated into the MCI network, they are tested in real time at the MCI Engineering Development Laboratory, located in Reston, Virginia, to make sure all hardware and software work in harmony before being placed in service.

Network Statistics: 1988

Gross Investment: $6.5 billion

Planned Investment: $3.5 billion 1989-1993

Billable Call Volume: 23.8 billion minutes

Total Route Miles: 44,300

Total Capacity Circuit Miles: 898 million

Switch Ports: 1.8 million

MCI owns and operates the world's most modern telecommunications network to carry voice, data and messaging transmissions around the world. The system consists of the most advanced fiber optic, digital microwave and digital switching technologies and satellite facilities. MCI emphasizes digital transmission because it provides maximum quality, efficiency and flexibility in communications.

The MCI network features ultra-high speed transmission, virtually unlimited capacity and unique network control capabilities. MCI's global network provides voice, high speed data and messaging services to more than 200 countries and facsimile over a unique dedicated network.

The MCI system includes transcontinental and regional high density fiber optic and digital microwave routes. MCI was the first to carry commercial traffic at 1.8 gigabits—billions of bits per second.

The highest level of network intelligence—Common Channel Signalling System No. 7 (CCS7) —is used by MCI to extend network control to customers, to reduce call setup time and to make possible continued enhancement of MCI's virtual private network and 800 services.

Vnet®

An advanced private network service that combines the benefits of control and value, traditionally enjoyed by users of private networks, with the efficiency and economy of a shared public network. Vnet service is also available to provide links between customers' overseas locations and their domestic networks via MCI's international private line service.

MCI WATS

A customized long distance service for businesses that offers the traditional five bands of U.S. coverage. MCI WATS also enables users to call overseas at maximum discounts, while enjoying the advantages of dedicated service.

MCI Hotel WATS

Provides the lodging industry with less expensive domestic and international calling services for guests.

MCI University WATS

A variation of Hotel WATS for colleges and universities, which accommodates lower usage in the summer months.

Prime Calling Option℠

Offers customers discounts on calls from home or office to points within the U.S., Puerto Rico and the U.S. Virgin Islands for a modest monthly fee.

MCI Commercial Affinity Group Billing Arrangement

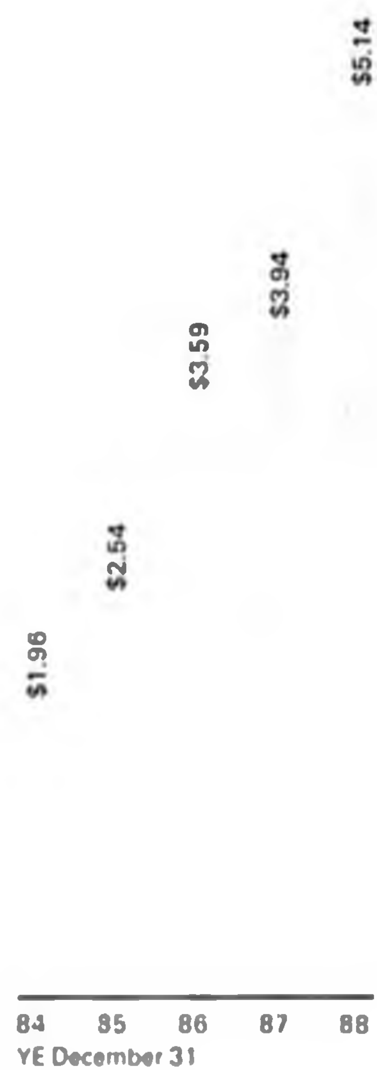
Provides discounts and other special benefits to qualified organizations, such as trade associations, who enter into agreements with MCI to jointly market MCI commercial services to their members. Over 70 groups are currently participating in this program.

MCI Voice Grade Private Line

A voice transmission service via a dedicated channel for a single customer's use between two or more domestic or international locations.

Revenue Growth

(In Billions)



Over the past five years, MCI's revenue has grown from $1.96 billion in 1984, to $5.14 billion in 1988.

Financial Highlights

MCI set records for growth and profitability in 1988, reporting revenue of $5.1 billion and earnings of $334 million, or $1.23 per common share. Revenue rose 30 percent, compared with 1987, while earnings and earnings per common share increased five-fold over the prior year.

MCI's stock is traded on the National Market System of NASDAQ, under the symbol MCIC. At the end of 1988, there were 60,182 record holders of MCI common stock and 243 million shares outstanding.

During 1988, MCI's common stock was the most actively traded security in the over-the-counter market, accounting for a trading volume of over 473 million shares. That was the eighth year in a row that MCI's common stock led the over-the-counter market in trading activity.

Financial Statistics

Operating Margins

6%

11.4%

87 88

Earnings Per Share

$.22

$1.23

87 88

DATA AND MESSAGING SERVICES

MCI Data Network Services

A cost-effective means of carrying customer data, voice and image applications at many speeds by either terrestrial or satellite systems. Included in MCI's digital data offerings are T-1 access and T-1 intercity channels. MCI offers its business customers end-to-end service, including local access and customer premise equipment. MCI offers a wide range of private line services between the U.S. and major business centers in more than 80 countries.

MCI Mail

An efficient and effective worldwide electronic mail service. Using any personal computer or terminal, correspondence can be sent by electronic means, or by telex, fax or hardcopy delivery services, to virtually anywhere in the world over the MCI Mail network.

Switched 56 Kilobit Data Service

Customers can transmit data over existing facilities with dial-up 56 kilobit (56,000 bits per second) service. The service offers on-demand, high-volume data communications for the price of voice calls. Data transmissions are carried over MCI's digital data network to assure quality and reliability for critical data, facsimile, video and secure voice transmission applications.

MCI fax
MCI offers a worldwide facsimile transmission service for every need, from real time fax-to-fax to PC-to-fax applications. MCI fax transmits documents over a dedicated fax network that is part of MCI's digital backbone network, ensuring fast, error-free delivery. Customers enjoy savings because transmission charges are based on the time a message takes, rather than full-minute rounding. The service includes authorization codes and personalized range privileges. Detailed management reports are provided, along with a specialized fax invoice. Enhanced fax messaging capabilities are provided through the integration of store-and-forward fax and MCI Mail-to-Fax and MCI Mail-to-Telex into the MCI fax network.

Fax Dispatch[sm]
Combines the technologies of facsimile and electronic mail. It enables MCI Mail subscribers to send faxes directly from their PCs to more than 4.2 million Group 3 facsimile machines worldwide. Fully integrated with MCI Mail's message-handling features, Fax Dispatch features include abbreviated and multiple addressing and confirmation and cancellation notices as well as an electronically generated cover page.

MCI Telex
An advanced international and domestic telex system featuring basic, real-time and store-and-forward service. MCI telex can be used by subscribers with telex and data terminals, or personal computers with communicating word processors, to send text electronically to nearly two million telex subscribers worldwide.

1986 MCI acquires Satellite Business Systems from IBM, establishing a business relationship with IBM that continues today.

1987 MCI completes construction of a coast-to-coast fiber optic system, giving the company coast-to-coast and border-to-border digital connectivity through a combination of fiber, digital radio and satellite links. MCI is also the first to carry commercial traffic at a transmission speed of 1.13 gigabits (billions of bits per second).

MCI offers domestic and international 800 service with call-in capability from all 50 states, Puerto Rico, the U.S. Virgin Islands and selected foreign locations.

1988 MCI initiates direct dial international service to all direct-dial countries in the world and offers operator services for the origination of MCI Card calls from rotary dial phones throughout the U.S. and Puerto Rico. MCI also becomes the first to carry commercial traffic at a transmission speed of 1.8 gigabits.

MCI acquires RCA Global Communications (RCA Globcom*), consolidating its position as the only U.S. telecommunications company offering domestic and international voice, telex, facsimile, high speed data and electronic mail services.

Pursuant to an agreement with IBM, MCI pays $677 million for the nearly 47 million shares of MCI common stock issued to IBM in connection with the acquisition of SBS, and IBM acquires $400 million of MCI preferred stock.

*RCA used with permission

1968 MCI founded by William G. McGowan, chairman, and incorporated in Delaware on August 8.

1969 MCI becomes the first company authorized by the FCC to compete with AT&T in the domestic long distance market.

1978 The Execunet decision becomes final, giving MCI the right to provide any long distance service it lawfully tariffs.

1982 MCI acquires Western Union International, giving the company a valuable presence in the international marketplace.

AT&T signs a consent decree with the Department of Justice, requiring the company to divest the Bell operating companies, effective January 1, 1984.

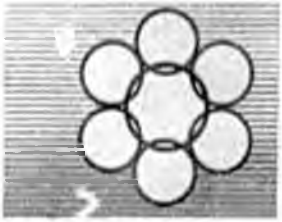
1983 Under an agreement with TransCanada, MCI initiates dial-up voice service to Canada, becoming the first company to offer an alternative international long distance service.

MCI Mail®, worldwide electronic mail service, is introduced.

1984 Divestiture breaks up the Bell System, and Americans for the first time can choose among long distance companies on an equal basis.

1985 MCI is organized into seven domestic divisions, corresponding to the regional Bell holding companies. An eighth division, MCI International,® manages MCI's rapidly growing international business.

MANAGEMENT SERVICES



MCI Integrated Network Management Services (INMS℠)
An innovative family of services that gives customers a comprehensive set of network management applications. With INMS, MCI customers can cost-effectively monitor, analyze and control their MCI voice and data services through a single user interface.

MCI View℠
Provides an interface to IBM's NetView℠ and a real-time delivery of Vnet switch and traffic statistical alarms and DDN performance and service affecting alarms. MCI is the only long distance carrier to provide this network management interface.

MCI Intelsat Business Services (IBS)
A completely digital private line service for customers with large international communications requirements. IBS enables users to transmit high speed data, voice, facsimile and video traffic via satellite anywhere in the world.

Headquarter Locations

MCI Communications Corporation
1133 19th Street, N.W.
Washington, DC 20036
202-872-1600

MCI Northeast
Five International Drive
Rye Brook, NY 10573
914-937-6000

MCI Mid-Atlantic
601 South 12th Street
Arlington, VA 22202
703-486-6000

MCI Southeast
400 Perimeter Center
Terrace, N.E., Suite 400
Atlanta, GA 30346
404-688-6000

MCI Midwest
205 North Michigan Avenue
Chicago, IL 60601
312-856-2121

MCI West
707 Seventeenth Street
Suite 4200
Denver, CO 80202
303-294-0005

Mission

MCI's objective is leadership in the global telecommunications industry, a business with tremendous growth and profit opportunities. To achieve this leadership, MCI's strategic priorities are to:

- Double revenue over the next four years.
- Compete in all long distance services markets, in all geographic areas, providing a full range of high-value services for customers who must communicate or move information electronically in the U.S. and throughout the world.
- Increase profitability to better serve the interests of our customers and stockholders.
- Improve operating and capital efficiencies so as to be the low-cost provider of services.
- Continue to enhance what is already the most modern network in the industry, fully able to deliver any service our customers demand in the U.S. and the world.
- Make premier service the standard by which we serve our customers.
- Be a champion of competition, supporting government policies that safeguard choice for consumers and businesses.
- Continue to attract and retain knowledgeable, resourceful and hard-driving people who can make things happen for our customers.

HOUSE COMMITTEE REPORT

(7)

Date Referred: April 24, 1991

FURTHER REFERRALS: Judiciary
Finance

Date of Committee Action: 5-1-91

The STATE AFFAIRS Committee considered: HB 298

HOUSE BILL NO. 298 PRESIDENTIAL PRIMARY ELECTION

"An Act establishing a presidential primary election; and providing for an effective date."

RECOMMENDATIONS:

be replaced with ______ [ ] the same title [ ] a new title

[ ] have attached amendments(s)

[ ] do pass

[ ] do not pass

[ ] no recommendations

[✓] individual recommendations

[ ] additional referral to the ______ Committee

ADOPTS: ______ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[✓] fiscal impact Elections

[ ] zero fiscal note ______

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) ______

[ ] zero fiscal note(s) ______

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Gene Kubina	–	[illegible]		–	
[illegible]	✓	[illegible]		✓	
		[illegible]		✓	
		[illegible]		✓	

Gene Kubina
CHAIRMAN'S SIGNATURE

Alaska State Legislature

HOUSE OF REPRESENTATIVES

REPRESENTATIVE FRAN ULMER

MEMORANDUM April 30, 1991

TO: Rep. Gene Kubina, Chair
House State Affairs Committee

FROM: Rep. Fran Ulmer

RE: HB 298 "An act establishing a presidential primary election; and providing for an effective date."

Thank you for scheduling a hearing for HB 298. This bill would create a presidential primary election in Alaska.

The Secretaries of State for Oregon and Washington are both working on a plan to hold an "early" Northwest Presidential Primary. They have requested that Alaska consider joining these two states in this endeavor to bring attention to Northwest issues and attract presidential candidates to our region. Hence, the purpose of this bill.

In the past, Alaska has declined to create a primary, partly because our sparse population and distance from the lower 48, keeps candidates from making Alaska a campaign stop. As a result, many Alaskan issues with tremendous national importance are not addressed. But a regional primary will help solve this problem by creating an early test for a crowded presidential field that focuses debate on issues concerning the Northwest and Alaska.

This focus will almost certainly attract more candidates to our state. It will also give Alaskans a greater opportunity to be heard on the many national issues that directly affect our lives.

Thank you for your prompt consideration of this bill.

District 4B — Juneau
PO Box V • Juneau, Alaska 99811-3100 • (907) 465-4947

PHIL KEISLING
SECRETARY OF STATE
MICHAEL GREENFIELD
DEPUTY SECRETARY OF STATE

STATE OF OREGON 1859

STATE OF OREGON
SECRETARY OF STATE
136 STATE CAPITOL
SALEM OREGON 97310-0722
(503) 378-4139

March 27, 1991

The Honorable Fran Ulmer
Alaska House of Representatives
P.O. Box V
Juneau, AK 99811-3100

Dear ~~Rep. Ulmer~~: Fran

It was great to talk with you again last week and get caught up. There's certainly a lot happening with both of us.

I appreciate your willingness to help with the regional primary issue. I'd like to expand on our earlier conversation and give you an idea of where Washington and Oregon are right now.

I met with Washington Secretary of State Ralph Munro earlier this month to discuss the issue, and here's what each of us brought to the table. By current statute, Oregon's presidential primary falls on the third Tuesday in May. But in 1987, we passed a law which states that Oregon will hold a presidential primary election on the fourth Tuesday in March if three of five states -- Alaska, Washington, Idaho, Montana and Wyoming -- do so as well.

Washington's statutory primary date is the fourth Tuesday in May. But, under existing law, the Secretary of State has statutory authority to unilaterally move the primary date to advance the concept of a regional primary.

Secretary Munro came to Salem to encourage Oregon to move to a March date, but faced with budgetary restraints and legislative resistance to changing current Oregon law, I told him that a move to March is unlikely. Instead, we discussed Washington joining Oregon on the third Tuesday in May. Secretary Munro likes this idea and apparently has received a lot of editorial support for this.

But Secretary Munro faces a challenge. House Bill 2089, which has recently passed the Washington House, moves Washington's primary to the fourth Tuesday in March and removes the secretary of state's statutory authority to move the primary date to advance the concept of a regional primary. (An amendment to HB 2089 which would have preserved the secretary's authority to move the date was defeated.)

House Bill 2089 has moved to the Washington Senate but has not yet been scheduled for a hearing. Secretary Munro's Office tells me that if a hearing is not scheduled by April 5, then the bill is likely dead this session. I have offered to help Secretary Munro however I can over the next week to defeat HB 2089 so that we can continue on the road to a May 19, 1992 primary.

As for Alaska's possible role, it seems that having a presidential primary or caucus on whatever date Oregon and Washington can agree to would maximize the possibility of attracting candidates to your state. Obviously, nothing is certain -- they may avoid us anyway, even if all three of us converge on a single date -- but it seems like it's worth a shot.

I hope this helps. I'll be in touch soon to discuss how we can move closer to a truly regional presidential primary.

Best,

Phil Keisling

Phil Keisling

PK/tj

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

M E M O R A N D U M — March 29, 1991

SUBJECT: Presidential primary bill (W.O. 7LS1138)

TO: Representative Fran Ulmer

FROM: John B. Gaguine JBG
Legislative Counsel

Enclosed is a draft bill establishing a presidential primary election in Alaska. It is based on the repealed presidential primary bill, ch. 20, SLA 1980 (a copy of which I previously sent to you), with some major changes.

The first major change is that the lieutenant governor will no longer choose who is a recognized candidate. Instead the lieutenant governor will list all candidates who have filed for matching funds under the federal Presidential Primary Matching Payment Account, 26 U.S.C. 9031 - 9042 (copy attached), have been certified by the Federal Election Commission, and have not withdrawn. This should leave on the ballot candidates who, because of fading support, are no longer eligible for federal funding under 26 U.S.C. 9033(c); they have not been decertified. As I read it, the federal law also applies to minor party candidates and independents, so that they will also be automatically on the ballot, assuming that they have the minimum level of support necessary to qualify for federal funding.

I deleted the provision in the old law that a candidate placed on the ballot by the lieutenant governor could have his or her name withdrawn. This may have been appropriate when the lieutenant governor could place on the ballot the name of a person only mentioned as a candidate, and not necessarily planning to run (e.g., Mario Cuomo in 1988). It does not seem appropriate for a declared candidate. Since a point of this primary, I think, is to force national candidates to pay more attention to Alaska, a withdrawal provision would be inconsistent with that goal; the major candidates, if given the option, might all withdraw, rather than either having to spend time in the state or risk a poor showing.

I retained the provisions that allow a would-be candidate's supporters to get the candidate's name on the ballot by petition, and that allow a candidate so nominated to withdraw (since that person may be a genuine non-candidate). I reduced the number of signatures necessary to one percent of the number of votes cast in the last gubernatorial election; that number is consistent with the number necessary to get on the ballot as a statewide candidate, and the five percent figure in the old law is clearly unconstitutional under decisions of the United States and the Alaska Supreme Courts.

I also deleted the part of the old law that made the primary results binding on delegates to the national party conventions. As I explained in my earlier memorandum to you, the United States Supreme Court has ruled that a state's presidential primary election laws cannot supersede a national party's rules because of the party's First Amendment rights to freedom of association. The procedure prescribed by this bill (where all candidates appear on one ballot, and a voter registered in party A may vote for a candidate in party B) is, I believe, inconsistent with the charter of the national Democratic Party. (I do not know what the provisions of the Republican party are on this question.) Therefore the Democratic Party could not be bound. Of course, there is nothing to prevent the parties themselves from adopting a party rule making the primary results binding on party delegates.

Please let me know if I can be of further assistance.

JBG:pl
91-222.plm

Enclosure

CHAPTER 96—PRESIDENTIAL PRIMARY MATCHING PAYMENT ACCOUNT

Sec.

In '76, P.L. 94-283, Sec. 305(b), substituted "limitations" for "limitation" in the title of Sec. 9035, effective 5/11/76.

In '74, P.L. 93-443, Sec. 408(c), substituted a new chapter 96. Prior to amendment, chapter 96 read as follows:

"CHAPTER 96–PRESIDENTIAL ELECTION CAMPAIGN FUND ADVISORY BOARD

"Sec. 9021. Establishment of advisory board

"(a) *Establishment of board*

"There is hereby established an advisory board to be known as the Presidential Election Campaign Fund Advisory Board (hereinafter in this section referred to as the 'Board'). It shall be the duty and function of the Board to counsel and assist the Comptroller General of the United States in the performance of the duties and functions imposed on him under the Presidential Election Campaign Fund Act.

"(b) *Composition of board*

"The Board shall be composed of the following members:

"(1) the majority leader and minority leader of the Senate and the Speaker and minority leader of the House of Representatives, who shall serve ex officio;

"(2) two members representing each political party which is a major party (as defined in section 9002(6)), which members shall be appointed by the Comptroller General from recommendations submitted by each political party; and

"(3) three members representing the general public, which members shall be selected by the members described in paragraphs (1) and (2).

"The terms of the first members of the Board described in paragraphs (2) and (3) shall expire on the sixtieth day after the date of the first presidential election following January 1, 1973, and the terms of subsequent members described in paragraphs (2) and (3) shall begin on the sixty-first day after the date of a presidential election and expire on the sixtieth day following the date of the subsequent presidential election. The Board shall elect a Chairman from its members.

"(c) *Compensation*

"Members of the Board (other than members described in subsection (b)(1)) shall receive compensation at the rate of $75 a day for each day they are engaged in performing duties and functions as such members, including traveltime, and, while away from their homes or regular places of business, shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons in the Government service employed intermittently.

"(d) *Status*

"Service by an individual as a member of the Board shall not, for purposes of any other law of the United States be considered as service as an officer or employee of the United States."

Sec. 9031. Short title.

This chapter may be cited as the "Presidential Primary Matching Payment Account Act".

In '74, P.L. 93-443, Sec. 408(c), added Code Sec. 9031, effective with respect to tax yrs begin after 12/31/74.

Sec. 9032. Definitions.

For purposes of this chapter—

(1) The term "authorized committee" means, with respect to the candidates of a political party for President and Vice President of the United States, any political committee which is authorized in writing by such candidates to incur expenses to further the election of such candidates. Such authorization shall be addressed to the chairman of such political committee, and a copy of such authorization shall be filed by such candidates with the Commission. Any withdrawal of any authorization shall also be in writing and shall be addressed and filed in the same manner as the authorization.

(2) The term "candidate" means an individual who seeks nomination for election to be President of the United States. For purposes of this paragraph, an individual shall be considered to seek nomination for election if he (A) takes the action necessary under the law of a State to qualify himself for nomination for election, (B) receives contributions or incurs qualified campaign expenses, or (C) gives his consent for any other person to receive contributions or to incur qualified campaign expenses on his behalf. The term "candidate" shall not include any individual who is not actively conducting campaigns in more than one State in connection with seeking nomination for election to be President of the United States.

(3) The term "Commission" means the Federal Election Commission established by section 309(a)(1) of the Federal Election Campaign Act of 1971.

(4) Except as provided by section 9034(a), the term "contribution"—

(A) means a gift, subscription, loan, advance, or deposit of money, or anything of value, the payment of which was made on or after the beginning of the calendar year immediately preceding the calendar year of the presidential election with respect to which such gift, subscription, loan, advance, or deposit of money, or anything of value, is made, for the purpose of influencing the result of a primary election,

(B) means a contract, promise, or agreement, whether or not legally enforceable, to make a contribution for any such purpose,

(C) means funds received by a political committee which are transferred to that committee from another committee, and

(D) means the payment by any person other than a candidate, or his authorized committee, of compensation for the personal services of another person which are rendered to the candidate or committee without charge, but

(E) does not include—

(i) except as provided in subparagraph (D), the value of personal services rendered to or for the benefit of a candidate by an individual who receives no compensation for rendering such service to or for the benefit of the candidate, or

(ii) payments under section 9037.

(5) The term "matching payment account" means the Presidential Primary Matching Payment Account established under section 9037(a).

(6) The term "matching payment period" means the period beginning with the beginning of the calendar year in which a general election for the office of President of the United States will be held and ending on the date on which the national convention of the party whose nomination a candidate seeks nominates

its candidate for the office of President of the United States, or, in the case of a party which does not make such nomination by national convention, ending on the earlier of (A) the date such party nominates its candidate for the office of President of the United States, or (B) the last day of the last national convention held by a major party during such calendar year.

(7) The term "primary election" means an election, including a runoff election or a nominating convention or caucus held by a political party, for the selection of delegates to a national nominating convention of a political party, or for the expression of a preference for the nomination of persons for election to the office of President of the United States.

(8) The term "political committee" means any individual, committee, association, or organization (whether or not incorporated) which accepts contributions or incurs qualified campaign expenses for the purpose of influencing, or attempting to influence, the nomination of any person for election to the office of President of the United States.

(9) The term "qualified campaign expense" means a purchase, payment, distribution, loan, advance, deposit, or gift of money or of anything of value—

(A) incurred by a candidate, or by his authorized committee, in connection with his campaign for nomination for election, and

(B) neither the incurring nor payment of which constitutes a violation of any law of the United States or of the State in which the expense is incurred or paid.

For purposes of this paragraph, an expense is incurred by a candidate or by an authorized committee if it is incurred by a person specifically authorized in writing by the candidate or committee, as the case may be, to incur such expense on behalf of the candidate or the committee.

(10) The term "State" means each State of the United States and the District of Columbia.

In '76, P.L. 94-283, Sec. 306(b)(1) added a sentence to the end of para. (2), effective 5/11/76. The new sentence read as follows: "The term 'candidate' shall not include any individual who is not actively conducting campaigns in more than one State in connection with seeking nomination for election to be President of the United States."

—P.L. 94-283, Sec. 115(e)(2) substituted "309(a)(1)" for "310(a)(1)" in para. (1), effective 5/11/76.

In '74, P.L. 93-443, Sec. 408(c) added Code Sec. 9032, effective with respect to tax yrs. begin. after 12/31/74.

Sec. 9033. Eligibility for payments.

(a) Conditions.

To be eligible to receive payments under section 9037, a candidate shall, in writing—

(1) agree to obtain and furnish to the Commission any evidence it may request of qualified campaign expenses,

(2) agree to keep and furnish to the Commission any records, books, and other information it may request, and

(3) agree to an audit and examination by the Commission under section 9038 and to pay any amounts required to be paid under such section.

(b) Expense limitation; declaration of intent; minimum contributions.

To be eligible to receive payments under section 9037, a candidate shall certify to the Commission that—

(1) the candidate and his authorized committees will not incur qualified campaign expenses in excess of the limitations on such expenses under section 9035,

(2) the candidate is seeking nomination by a political party for election to the office of President of the United States,

(3) the candidate has received matching contributions which in the aggregate, exceed $5,000 in contributions from residents of each of at least 20 States, and

(4) the aggregate of contributions certified with respect to any person under paragraph (3) does not exceed $250.

(c) Termination of payments.

(1) General rule. Except as provided by paragraph (2), no payment shall be made to any individual under section 9037—

(A) if such individual ceases to be a candidate as a result of the operation of the last sentence of section 9032(2); or

(B) more than 30 days after the date of the second consecutive primary election in which such individual receives less than 10 percent of the number of votes cast for all candidates of the same party for the same office in such primary election, if such individual permitted or authorized the appearance of his name on the ballot, unless such individual certifies to the Commission that he will not be an active candidate in the primary involved.

(2) **Qualified campaign expenses; payments to secretary.** Any candidate who is ineligible under paragraph (1) to receive any payments under section 9037 shall be eligible to continue to receive payments under section 9037 to defray qualified campaign expenses incurred before the date upon which such candidate becomes ineligible under paragraph (1).

(3) **Calculation of voting percentage.** For purposes of paragraph (1)(B), if the primary elections involved are held in more than one State on the same date, a candidate shall be treated as receiving that percentage of the votes on such date which he received in the primary election conducted on such date in which he received the greatest percentage vote.

(4) **Reestablishment of eligibility.**

(A) In any case in which an individual is ineligible to receive payments under section 9037 as a result of the operation of paragraph (1)(A), the Commission may subsequently determine that such individual is a candidate upon a finding that such individual is actively seeking election to the office of President of the United States in more than one State. The Commission shall make such determination without requiring such individual to reestablish his eligibility to receive payments under subsection (a).

(B) Notwithstanding the provisions of paragraph (1)(B), a candidate whose payments have been terminated under paragraph (1)(B) may again receive payments (including amounts he would have received but for paragraph (1)(B)) if he receives 20 percent or more of the total number of votes cast for candidates of the same party in a primary election held after the date on which the election was held which was the basis for terminating payments to him.

In '76, P.L. 94-283, Sec. 107(c) substituted "limitations" for "limitation" in para. (b)(1), effective 5/11/76.

—P.L. 94-283, Sec. 106(b)(2) added new subsec. (c), effective 5/11/76.

In '74, P.L. 93-443, Sec. 408(c) added Code Sec. 9033, effective with respect to tax yrs. begin. after 12/31/74.

Sec. 9034. Entitlement of eligible candidates to payments.

(a) In general.

Every candidate who is eligible to receive payments under section 9033 is entitled to payments under section 9037 in an amount equal to the amount of each contribution received by such candidate on or after the beginning of the calendar year immediately preceding the calendar year of the presidential election with respect to which such candidate is seeking nomination, or by his authorized committees, disregarding any amount of contributions from any person to the extent that the total of the amounts contributed by such person on or after the beginning of such preceding calendar year exceeds $250. For purposes of this subsection and section 9033(b), the term "contribution" means a gift of money made by a written instrument which identifies the person making the contribution by full name and mailing address, but does not include a subscription, loan, advance, or deposit of money, or anything of value or anything described in subparagraph (B), (C), or (D) of section 9032(4).

(b) Limitations.

The total amount of payments to which a candidate is entitled under subsection (a) shall not exceed 50 percent of the expenditure limitation applicable under section 320(b)(1)(A) of the Federal Election Campaign Act of 1971.

In '76, P.L. 94-283, Sec. 107(b), substituted "section 320(b)(1)(A) of the Federal Election Campaign Act of 1971" for "section 608(c)(1)(A) of title 18, United States Code," [sic] in subsec. (b), effective 5/11/76.

In '74, P.L. 93-443, Sec. 408(c), added Code Sec. 9034, effective with respect to tax. yrs. begin. after 12/31/74.

Sec. 9035. Qualified campaign expense limitations.

(a) Expenditure limitations.

No candidate shall knowingly incur qualified campaign expenses in excess of the expenditure limitation applicable under section 320(b)(1)(A) of the Federal Election Campaign Act of 1971, and no candidate shall knowingly make expenditures from his personal funds, or the personal funds of his immediate family, in connection with his campaign for nomination for election to the office of President in excess of, in the aggregate, $50,000.

(b) Definition of immediate family.

For purposes of this section, the term "immediate family" means a candidate's spouse, and any child, parent, grandparent, brother, half-brother, sister, or half-sister of the candidate, and the spouses of such persons.

In '76, P.L. 94-283, Sec. 305(a), substituted "limitations" for "limitation" in the title of Sec. 9035 ... added "(a) Expenditure limitation.—" before "No candidate" to designate subsec. (a) ... added ", and no candidate shall knowingly make expenditures from his personal funds, or the personal funds of his immediate family, in connection with his campaign for nomination for election to the office of President in excess of, in the aggregate, $50,000" after "State Code" in subsec. (a) ... added new subsec. (b), enacted 5/11/76. Sec. 305(d) of the Act provides: "For purposes of applying section 9035(a) of the Internal Revenue Code of 1954, as amended by subsection (a), expenditures made by an individual after January 29, 1976, and before the date of the enactment of this Act [5/11/76] shall not be taken into account."

—P.L. 94-283, Sec. 107(b), substituted "section 320(b)(1)(A) of the Federal Election Campaign Act of 1971" for "section 608(c)(1)(A) of title 18, United States Code" in subsec. (a), effective 5/11/76.

In '74, P.L. 93-443, Sec. 408(c), added Code Sec. 9035, effective with respect to tax. yrs. begin. after 12/31/74.

Sec. 9036. Certification by Commission.

(a) Initial certifications.

Not later than 10 days after a candidate establishes his eligibility under section 9033 to receive payments under section 9037, the Commission shall certify to the Secretary for payment to such candidate under section 9037 payment in full of amounts to which such candidate is entitled under section 9034. The Commission shall make such additional certifications as may be necessary to permit candidates to receive payments for contributions under section 9037.

(b) Finality of determinations.

Initial certifications by the Commission under subsection (a), and all determinations made by it under this chapter, are final and conclusive, except to the extent that they are subject to examination and audit by the Commission under section 9038 and judicial review under section 9041.

In '74, P.L. 93-443, Sec. 408(c), added Code Sec. 9036, effective with respect to tax. yrs. begin. after 12/31/74.

Sec. 9037. Payments to eligible candidates.

(a) Establishment of account.

The Secretary shall maintain in the Presidential Election Campaign Fund established by section 9006(a), in addition to any account which he maintains under such section, a separate account to be known as the Presidential Primary Matching Payment Account. The Secretary shall deposit into the matching payment account, for use by the candidate of any political party who is eligible to receive payments under section 9033, the amount available after the Secretary determines that amounts for payments under section 9006(c) and for payments under section 9008(b)(3) are available for such payments.

(b) Payments from the matching payment account.

Upon receipt of a certification from the Commission under section 9036, but not before the beginning of the matching payment period, the Secretary shall promptly transfer the amount certified by the Commission from the matching payment account to the candidate. In making such transfers to candidates of the same political party, the Secretary shall seek to achieve an equitable distribution of funds available under subsection (a), and the Secretary shall take into account, in seeking to achieve an equitable distribution, the sequence in which such certifications are received.

In '76, P.L. 94-455, Sec. 1906(b)(13)(A), substituted "Secretary" for "Secretary or his delegate" each place it appeared in subsec. (b), effective 2/1/77.

In '74, P.L. 93-443, Sec. 408(c), added Code Sec. 9037, effective with respect to tax. yrs. begin. after 12/31/74.

Sec. 9038. Examinations and audits; repayments.

(a) Examinations and audits.

After each matching payment period, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of every candidate and his authorized committees who received payments under section 9037.

(b) Repayments.

(1) If the Commission determines that any portion of the payments made to a candidate from the matching payment account was in excess of the aggregate amount of payments to which such candidate was entitled under section 9034, it shall notify the candi-

date, and the candidate shall pay to the Secretary an amount equal to the amount of excess payments.

(2) If the Commission determines that any amount of any payment made to a candidate from the matching payment account was used for any purpose other than—

(A) to defray the qualified campaign expenses with respect to which such payment was made, or

(B) to repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray qualified campaign expenses,

it shall notify such candidate of the amount so used, and the candidate shall pay to the Secretary an amount equal to such amount.

(3) Amounts received by a candidate from the matching payment account may be retained for the liquidation of all obligations to pay qualified campaign expenses incurred for a period not exceeding 6 months after the end of the matching payment period. After all obligations have been liquidated, that portion of any unexpended balance remaining in the candidate's accounts which bears the same ratio to the total unexpended balance as the total amount received from the matching payment account bears to the total of all deposits made into the candidate's accounts shall be promptly repaid to the matching payment account.

(c) Notification.

No notification shall be made by the Commission under subsection (b) with respect to a matching payment period more than 3 years after the end of such period.

(d) Deposit of repayments.

All payments received by the Secretary under subsection (b) shall be deposited by him in the matching payment account.

In '76, P.L. 94-455, Sec. 1904(b)(1)(A), substituted "Secretary" for "Secretary or his delegate" in paras. (b)(1) and (2), and subsec. (d), effective 2/1/77.

In '74, P.L. 93-443, Sec. 408(c), added Code Sec. 9038 effective with respect to tax. yrs. begin. after 12/31/74.

Sec. 9039. Reports to Congress; regulations.

(a) Reports.

The Commission shall, as soon as practicable after each matching payment period, submit a full report to the Senate and House of Representatives setting forth—

(1) the qualified campaign expenses (shown in such detail as the Commission determines necessary) incurred by the candidates of each political party and their authorized committees,

(2) the amounts certified by it under section 9036 for payment to each eligible candidate, and

(3) the amount of payments, if any, required from candidates under section 9038, and the reasons for each payment required.

Each report submitted pursuant to this section shall be printed as a Senate document.

(b) Regulations, etc.

The Commission is authorized to prescribe rules and regulations in accordance with the provisions of subsection (c), to conduct examinations and audits (in addition to the examinations and audits required by section 9038(a)), to conduct investigations, and to require the keeping and submission of any books, records, and information, which it determines to be necessary to carry out its responsibilities under this chapter.

(c) Review of regulations.

(1) The Commission, before prescribing any rule or regulation under subsection (b), shall transmit a statement with respect to such rule or regulation to the Senate and to the House of Representatives, in accordance with the provisions of this subsection. Such statement shall set forth the proposed rule or regulation and shall contain a detailed explanation and justification of such rule or regulation.

(2) If either such House does not, through appropriate action, disapprove the proposed rule or regulation set forth in such statement no later than 30 legislative days after receipt of such statement, then the Commission may prescribe such rule or regulation. Whenever a committee of the House of Representatives reports any resolution relating to any such rule or regulation, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to. The Commission may not prescribe any rule or regulation which is disapproved by either such House under this paragraph.

(3) For purposes of this subsection, the term "legislative days" does not include any calendar day on which both Houses of the Congress are not in session.

(4) For purposes of this subsection, the term "rule or regulation" means a provision or series of interrelated provisions stating a single separable rule of law.

In '76, P.L. 94-283, 304(b), added three new sentences at the end of the first sentence in para. (c)(2) . . . added new para. (c)(4), effective 5/11/76. Prior to amendment, para. (c)(2) read as follows:

"(2) If either such House does not, through appropriate action, disapprove the proposed rule or regulation set forth in such statement no later than 30 legislative days after receipt of such statement, then the Commission may prescribe such rule or regulation. The Commission may not prescribe any rule or regulation which is disapproved by either such House under this paragraph."

In '74, P.L. 93-443, Sec. 408(c), added Code Sec. 9039 effective with respect to tax. yrs. begin. after 12/31/74.

Sec. 9040. Participation by commission in judicial proceedings.

(a) Appearance by counsel.

The Commission is authorized to appear in and defend against any action instituted under this section, either by attorneys employed in its office or by counsel whom it may appoint without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and whose compensation it may fix without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title.

(b) Recovery of certain payments.

The Commission is authorized, through attorneys and counsel described in subsection (a), to institute actions in the district courts of the United States to seek recovery of any amounts determined to be payable to the Secretary as a result of an examination and audit made pursuant to section 9038.

(c) Injunctive relief.

The Commission is authorized, through attorneys and counsel described in subsection (a), to petition the courts of the United States for such injunctive relief as is appropriate to implement any provision of this chapter.

(d) Appeal.

The Commission is authorized on behalf of the United States to appeal from, and to petition the Supreme Court for certiorari to review, judgments or decrees entered with respect to actions in which it appears pursuant to the authority provided in this section.

In '76, P.L. 94-455, Sec. 1906(b)(13)(A), substituted "Secretary" for "Secretary or his delegate" in subsec. (b), effective 2/1/77.

In '74, P.L. 93-443, Sec. 408(c), added Code Sec. 9040, effective with respect to tax. yrs. begin. after 12/31/74.

Sec. 9041. Judicial review.

(a) Review of agency action by the Commission.

Any agency action by the Commission made under the provisions of this chapter shall be subject to review by the United States Court of Appeals for the District of Columbia Circuit upon petition filed in such court within 30 days after the agency action by the Commission for which review is sought.

(b) Review procedures.

The provisions of chapter 7 of title 5, United States Code, apply to judicial review of any agency action, as defined in section 551(13) of title 5, United States Code, by the Commission.

In '74, P.L. 93-443, Sec. 408(c), added Code Sec. 9041, effective with respect to tax. yrs. begin. after 12/31/74.

Sec. 9042. Criminal penalties.

(a) Excess campaign expenses.

Any person who violates the provisions of section 9035 shall be fined not more than $25,000, or imprisoned not more than 5 years, or both. Any officer or member of any political committee who knowingly consents to any expenditure in violation of the provisions of section 9035 shall be fined not more than $25,000, or imprisoned not more than 5 years, or both.

(b) Unlawful use of payments.

(1) It is unlawful for any person who receives any payment under section 9037, or to whom any portion of any such payment is transferred, knowingly and willfully to use, or authorize the use of, such payment or such portion for any purpose other than—

(A) to defray qualified campaign expenses, or

(B) to repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray qualified campaign expenses.

(2) Any person who violates the provisions of paragraph (1) shall be fined not more than $10,000, or imprisoned not more than 5 years, or both.

(c) False statements, etc.

(1) It is unlawful for any person knowingly and willfully—

(A) to furnish any false, fictitious, or fraudulent evidence, books, or information to the Commission under this chapter, or to include in any evidence, books, or information so furnished any misrepresentation of a material fact, or to falsify or conceal any evidence, books, or information relevant to a certification by the Commission or an examination and audit by the Commission under this chapter, or

(B) to fail to furnish to the Commission any records, books, or information requested by it for purposes of this chapter.

(2) Any person who violates the provisions of paragraph (1) shall be fined not more than $10,000, or imprisoned not more than 5 years, or both.

(d) Kickbacks and illegal payments.

(1) It is unlawful for any person knowingly and willfully to give or accept any kickback or any illegal payment in connection with any qualified campaign expense of a candidate, or his authorized committees, who receives payments under section 9037.

(2) Any person who violates the provisions of paragraph (1) shall be fined not more than $10,000, or imprisoned not more than 5 years, or both.

(3) In addition to the penalty provided by paragraph (2), any person who accepts any kickback or illegal payment in connection with any qualified campaign expense of a candidate or his authorized committees shall pay to the Secretary for deposit in the matching payment account, an amount equal to 125 percent of the kickback or payment received.

In '74, P.L. 93-443, Sec. 408(c), added Code Sec. 9042, effective with respect to tax. yrs. begin. after 12/31/74.

Subtitle I—Trust Fund Code

CHAPTER 98—TRUST FUND CODE

Subchapter A—Establishment of Trust Funds

In '87, P.L. 100-203, Sec. 9202(b), added item 9510.

In '86, P.L. 99-662, Sec. 1403(c), added item 9505; Sec. 1405(c), added item 9506.

—P.L. 99-509, Sec. 8033(c), added item 9509.

—P.L. 99-499, Sec. 517(c), added item 9507; Sec. 522(b), added item 9508.

In '84, P.L. 98-369, Sec. 1016(c), added item 9504.

In '83, P.L. 97-424, Sec. 531(b), added item 9503.

In '82, P.L. 97-248, Sec. 280(c)(1), amended item 9501 and added item 9502. Prior to amendment item 9501 read as follows:

"9501. Establishment of Black Lung Disability Trust Fund."

Sec. 9501. Black Lung Disability Trust Fund.

(a) Creation of trust fund.

(1) **In general.** There is established in the Treasury of

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 298

Revision Date: ______________

Department Affected: Elections

Title: Establishing a presidential primary

BRU: Elections

Component: General & Primary

Sponsor: Rep. Ulmer

Requestor: House State Affairs Comm.

COMPONENT SERIAL NO. | 0 | 0 | 2 | 2 |

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES		350.8	147.6	385.8	149.1	
TRAVEL		38.4	35.9	42.2	39.5	
CONTRACTUAL		866.2	79.4	953.2	87.3	
SUPPLIES		2.5	9.2	2.8	10.1	
EQUIPMENT		2.7	37.3	3.0	41.0	
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		1260.6	309.4	1387.	327.	

CAPITAL						

REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		1260.6	309.4	1387.	327.	
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		1	1	1	1	
PART-TIME						
TEMPORARY		14	14	14	14	

Estimate of current year impact: ______________

ANALYSIS: (Attach a separate page if necessary.)

Max

Prepared By: Elizabeth Ziegler, Dep. Dir.

Phone: 465-4611

Division: Division of Elections

Date: 5-1-91

Approved by Commissioner: D. Max Hodel, Chief of Staff

Agency: Office of the Governor

Date: 5-1-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

Page ____ of ____

House State Affairs Committee
Representative Gene Kubina, Chair

DATE: May 1, 1991

PLACE: Capitol, Room 102

SUBJECT OF MEETING:
*HB 195 - Relating to Campaign Finance Reform
*HB 298 - Relating to Presidential Primary Election
*HJR 13 - Relating to Run-Off Election: Gov. and Lt. Gov.

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Elizabeth Ziegler	Elections					Y	N	for questions HB 298, HJR 13
JOHN GAGUINE	LAA LEGAL					Y	N	for questions HB 195/298
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	

HB
300

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 300

Revision Date:
Department Affected: Administration
Title: Funding a Study to Determine which State Produced Goods & Services...
BRU: General Services
Component: Purchasing
Sponsor: Choquette
Requestor:
COMPONENT SERIAL NO. 6 0

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
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-

Estimate of current year impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

This bill will have no fiscal impact on our activities.

Prepared By: Robert J. Link [signature]
Phone: 465-2250
Division: General Services
Date: 4/30/91

Approved by Commissioner:
Agency: Milton Keller
Date: 5/7/91

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CONTROLLING THE DEMAND FOR TAXES THROUGH COMPETITIVE INCENTIVES

See page 10

Presented to the

NATIONAL ORIENTATION CONFERENCE

for

NEW STATE LEGISLATORS

By: Wendell Cox and Jean Love

THE AMERICAN LEGISLATIVE EXCHANGE COUNCIL

Washington, D.C.

December 1, 1990

PEOPLE ARE CONCERNED ABOUT TAXES

"The American people want public services, but they don't want to pay for them." This is the common refrain of inside-the-beltway commentators. A different reality exists beyond the beltway, which is that the American people perceive that taxes are high enough and government is spending more than is needed to provide public services. More than three-quarters of the American people believe that governments waste much of their tax money. <1>

State legislators and other elected officials are faced with difficult choices. The demand for public services is great. That much the Washington commentators have understood. At the same time, the supply of taxes is limited. The conventional wisdom is that there are but two approaches to balance government budgets when spending exceeds taxation: reduce services or increase taxes. There is a third way: use tax money more efficiently. This is a simple strategy known by every household and every business: when you can't increase income, you decrease expenses.

More efficient government has been discussed for years. But despite growing public indignation at government waste, despite genuine intentions by many elected officials, little real progress has been made. Attempts at removing government inefficiency and waste have failed not because there is little potential to make government more efficient, but because the incentives that face public managers and employees are skewed toward higher spending.

What follows is an analysis of the incentives that drives higher public spending, and proposals to redesign spending incentives to favor lower levels of taxation. This analysis does not propose that government do less (that is a different debate) — indeed implementation of the proposed strategies could permit government to do more. Finally, it is important to understand that the analysis is not a criticism of government, of public managers, of public employees, or of public employee unions; it is a criticism of the incentives that drive the decisions and activities of government.

STATE LEGISLATURES HAVE A PIVOTAL ROLE IN TAXATION

State legislators are integral to the process of making government more efficient. All governments in the United States except for the federal government are creations of the states. Each municipally, county or parish, school district and special district operates subject the powers and responsibilities conferred upon it by the corresponding state government. The ability of state and local government units to tax and spend is under the control of state legislators.

State legislators often express the view that they should provide maximum flexibility for local governments and exercise little control over the spending decisions of local governments. And while the level of government closest to the people should have great latitude to respond to the interests of its taxpayers, there is also an appropriate oversight role for state legislatures. When local governments get into financial trouble, they have one place to go — to the state legislature. The present situation in Pennsylvania is a case in point, with the city of Philadelphia seeking a state bail out to avoid insolvency. The inability of Philadelphia to live within its means has become an issue in the state capital. There has even been the specter of federalizing state tax policy with a federal attempt to coerce the Pennsylvania legislature into establishing a new tax for a particular public service. <2>

State legislators have an important interest in efficient spending at both the state and local level, then because in the final analysis it will be the states that will pay. And the stakes have been raised considerably by the attempted federalization of state tax policy referred to above. If state legislatures do not ensure that local spending is kept under control, state bail outs and even federal mandates may follow.

The incentives that drive state and local spending higher are getting stronger. The fundamental question for state legislators may be stated two ways:

1. Shall state and local governments be permitted to spend more than necessary to delivery any public service?

2. Shall state and local governments be permitted to ignore alternatives for providing the same level and quality of public services for less?

HIGHER TAXES DO NOT MEAN MORE SERVICE

Taxes as a Panacea

Strong special interest groups that seek greater public revenues for themselves and their constituents have concentrated the political debate on ways to raise new taxes. Focusing on issues of fairness and compassion, they have diverted attention from the performance and cost-effectiveness of public programs. If the proponents of higher government spending are to be believed, then taxes are a panacea. The answer to every problem is more money.

But taxes are not a panacea. All taxes are paid by households and businesses, so economic growth depends upon the strength of the private sector. As taxes consume a higher percentage of income, society becomes weaker economically. This lesson has been painful to Argentina and Eastern Europe where the high percentage of income consumed by government has sapped initiative and reduced living standards. Taxes always reduce the amount of money that would be used in the private sector to increase production and to boost the Gross National Product. Taxes always reduce the size of the economic pie. Therefore, there is no justification for higher than necessary public expenditures. There is no valid reason for U.S. competitiveness in world markets to be impaired or for Americans to have lower standards of living because of government inefficiency.

The stronger the private sector, the greater is the ability of government to provide public services. The taxation issue is not only about what government should do or should not do. It is also about whether the functions of government should be performed at the lowest possible cost. As presently structured in the United States, governments routinely spend more than necessary to perform their functions. It should be clear by now that not even the most generous state legislatures can match the ability of the public sector to spend money.

Government's fundamental problem is not funding, it is spending. The fundamental issue is not about finding new taxes for government, it is about controlling the demand for taxes through the efficient use of public resources. It is time to cast the public debate in these terms.

The Fallacy of Judging Results by Spending

Seeking higher subsidies, public agencies compare their level of public subsidies to that of more highly subsidized agencies to demonstrate the short-sightedness of their elected officials and the selfishness of the taxpayers in their catchment area. Spending interests fund or publish studies that compare spending levels of various public programs, taxing districts, states, and countries to determine the effectiveness and performance of public programs. Following the logic of these arguments, that higher government spending is equivalent to superior output, we could determine that students in Salt Lake City are not as knowledgeable as students in the inner city of Detroit or that Japanese students receive an education that is inferior to that of students in Egypt. Likewise, we might surmise that Americans have an inadequate diet while Ethiopians are over-fed or that the streets of Stockholm are less safe than the streets of Newark.

Obviously, there is no reliable correlation between higher spending and superior results. Nor can we infer from the data that the citizens or elected officials of Salt Lake City or Japan are less compassionate, more selfish, or care less for the education of their children than citizens of Detroit or Egypt.

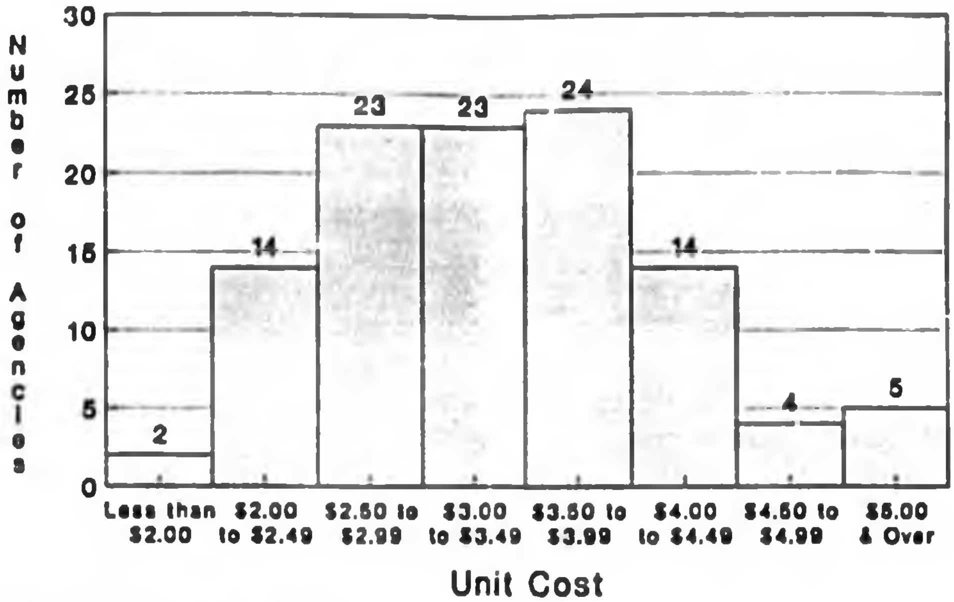
The Public Spending Corollary to "Parkinson's Law"

Growing evidence demonstrates that there need be little if any correlation between the amount of tax money spent on a public service and the amount or quality of that public service.

These points are illustrated by an analysis of costs at 109 U.S. public transit agencies. The analysis showed that unit costs (costs per mile) vary significantly between public transit agencies. (Chart: "Variation in Unit Costs for a Public Service") The most expensive public transit agencies spend more than double that of the most efficient public transit agencies in cost per mile. Further, the analysis shows that cost increases vary greatly (costs per mile increased in a range of from 35 percent to more than 100 percent — inflation was 54 percent). These differences cannot be explained by geographical differences or by differences in service quality.

There was, however, a relationship between new revenue available to the public transit agency and the extent of the cost increase. Generally, from 1979 to 1988 the higher the increase in

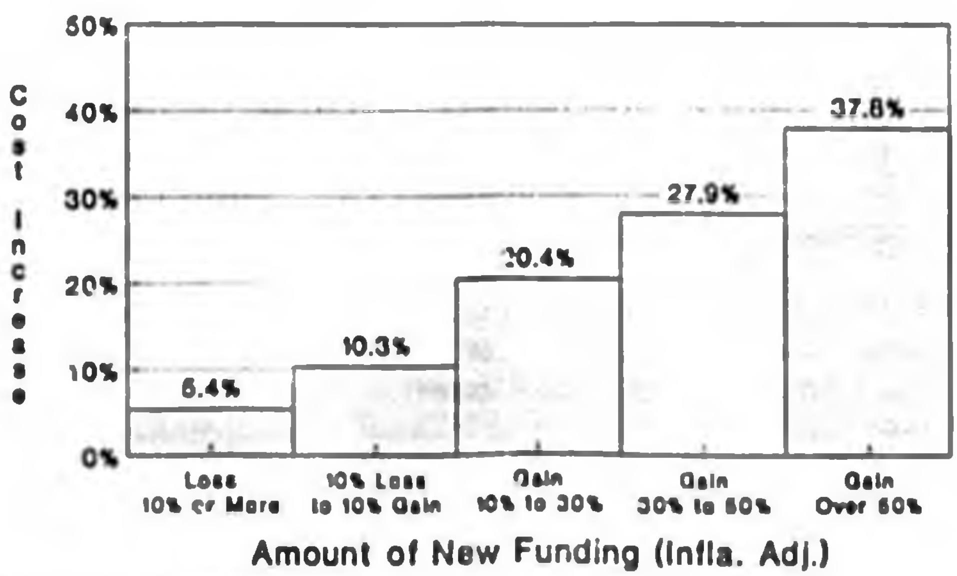
VARIATION IN UNIT COSTS FOR A PUBLIC SERVICE



Sample of 109 U.S. Public Transit Agencies: Bus Cost per Mile: 1988

PUBLIC UNIT COST INCREASES COMPARED TO INCREASES IN FUNDING

(1979-1988: Inflation Adjusted)



Sample of 109 U.S. Public Transit Agencies Bus Costs & Revenues

revenues, the greater the cost increases. (Chart: "Public Unit Cost Increases Compared to Increases in Funding")

-Of the 82 agencies that received an increase in funding (inflation adjusted), only six kept their costs within inflation.

-Of the 27 agencies that received a decrease in funding, nine kept their costs within inflation. Seven of the nine had revenue increases of less than ten percent.

Two conclusions are drawn from this analysis.

1. That public agency costs are not fixed — that some governments perform the same services as others for less.

2. That unit cost increases tend to be higher where the increase in funding is higher.

In 1955, C. Northcote Parkinson proposed "Parkinson's Law" — that work in a bureaucracy tend to expand to fill the available time.<3> Parkinson noted that, even when public service levels remained stable, the size of the bureaucracy increased. The research on public transit suggests that even where service does not increase, unit costs tend to increase. The cost behavior of public agencies implies a public spending Corollary to Parkinson's law:

"Unit costs of public services tend to increase to consume the available funding."

Higher Taxes Generate Higher Unit Costs

Studies in education and elsewhere echo the dynamic identified in public transit.<4> New public funding does not necessarily result in higher levels of public service. A large percentage of the rising costs of public services is consumed by greater than inflationary cost increases. Even in the absence of new government services, there is an increasing demand for taxes, because the costs of existing services tend to rise inordinately.

The amount of money spent by a jurisdiction on a public service may be more a reflection of the political strength of spending interests than it is a reflection of the commitment and compassion of the citizens and their elected officials. The test of a public service is the quantity and quality of the service provided, not the amount spent on the service.

The American consumer does not believe that the "Excedrin" purchased at the airport gift shop is a more effective pain reliever than the "Excedrin" purchased at "K-Mart." And an increasing majority of the American taxpayers no longer believes that higher taxes necessarily result in more or better services. We must change the political debate from an emphasis on input — what is spent — to an emphasis on outcome — what return is obtained for the tax funding. It is time to wean ourselves from the myth that public spending equates to public results.

PUBLIC SECTOR INCENTIVES REWARD HIGHER SPENDING

Having dismissed the proposition public spending is a reliable standard for evaluating public services, it is appropriate to review the incentives facing the public sector — incentives that reward higher spending.

Competition, Monopoly, and Performance

The fundamental flaw in public sector incentives is that the cost control induced by competition is absent.

Competition in the marketplace improves performance and keeps costs down. This economic principle is based upon human nature. On the other hand, monopoly is characterized by higher prices and limited production. As a result, government has routinely limited the creation or the effect of monopoly in the private sector.

Once upon a time, some economic theorists believed that the problems of monopoly were problems of ownership — that only private monopolies were harmful, while public monopolies were virtuous, because they would replace the profit motive with a public service motive. Experience has shown this view to be near-sighted. As a group, the people who manage and operate public services are no more virtuous than the people who manage and operate private businesses.

Some functions of public agencies are subjected to the competitive market. Nearly all governments require that goods and services purchased from outside the public agency be done so in a competitive process. But competition does not routinely extend to the largest element of public expenditure, labor costs (wages and benefits), and costs are rising rapidly. Higher labor costs are occurring in three ways:

1. Higher employee compensation (wages and benefits).

2. Larger staffs.

3. Diminishing productivity, often due to overly restrictive work rules.

Incentives in the Public Sector

Public services are managed and produced by people. Just like all of us, government workers want higher standards of living. Accordingly, government employees gear their work toward incentives and away from penalties. Human nature operates as surely in government as it does outside government.

Incentives, however, are different in government than they are outside government.

For example an individual, family, or company must make economic choices and live within its income. Efficient spending produces a better life, because more can be purchased with available income. In the short-term, the economic situation can be improved only by efficient allocation of financial resources. Except in the most protected industries, the losses that result from wasteful, inefficient spending are not borne by others. The rewards in the private sector are tied to obtaining the most value for the amount of available money.

A government manager, however, faces a different set of incentives. Government management salaries are highly correlated to the size of the manager's staff and budget. If a public manager under spends the budget or utilizes workers more productively, the manager will be penalized with a smaller budget and staff (in relative terms) in following years, and the manager's salary and career progression will be hampered. Alternatively, the economic losses that result from wasteful, inefficient spending can be passed on to others — the taxpayers. In the public sector, then, managers are rewarded for inefficiency with higher funding, increased staffing, and enhanced career prospects. The rewards in government are tied to higher spending and the search for higher revenue.

The Incentives Facing Management

The interests of public managers and employees are consistent with greater spending and the growth of government. The direct and concentrated interests of public managers and employees have been very effective against the far more diffuse interests of the taxpayers. A public manager or employee can experience an immediate and substantial increase in compensation merely from responding to the incentives of government. And because public employees have greater knowledge of and greater access to government, the cost of manipulating the political process is less and the reward is far greater for public employees than for the taxpayer. The more numerous taxpayers rarely notice the increased tax that occurs from a single increase in public expenditures. But taxpayers have begun to notice the accumulation of such increases, and the present public concern with taxation is such an effect. The declining trust of government by taxpayers has been illustrated in surveys and in the most recent elections.

Public sector decision making is much different than competitive decision making.

In the competitive market, companies make decisions based upon consumer preferences. Consumers know the price per unit of the company's products, and consumers have the freedom to purchase from the competition or not at all if price exceeds the value of the product. A good decision on the part of the company will improve the firm financially, while a bad decision will lose it money or even cause it to fail. The company cannot extract funding from customers who have not purchased its products. No amount of rationalization or excuses can eliminate the judgement of consumers with respect to the company's products. As a result, administrative staff size tends to be lean, with the greatest effort committed to developing and marketing the products of the company. Armies of administrative staff would only burden a company in a competitive market and hasten its failure.

In the public sector, taxpayers do not know the price per unit of an agency's individual products. Because government services are produced by monopolies, taxpayers do not have the freedom to purchase from the competition, and they have no meaningful comparisons by which to judge value. As a result, taxpayers have little power to exert meaningful influence over government efficiency. The resulting lack of market discipline and the right of government to tax combines to encourage larger administrative staffs. The inability of taxpayers and their elected officials to measure value allows the public sector to rationalize or excuse any perceived inefficiencies and to pass the cost of these and other failings on to the taxpayer. As a result, public sector decision making is administrative. Public administrators prepare administrative justifications for their proposals at the expense of the taxpayers. If the approved programs fail or require more funding than was anticipated, rationalizations and justifications are provided to demonstrate how the shortcomings resulted form circumstances that could not have been foreseen or — more often — from inadequate funding. Thus, in the public sector, armies of administrators assist the public agency in increasing its budget still further. Too much of taxpayers' money is used to lobby state legislatures and the U.S. Congress to provide even more funding. And, in many states, the administrative staff and resources of the state legislature are modest in comparison to the publicly funded spending advocates employed by large public agencies.

<u>The Incentives Facing Public Employees</u>

The incentives facing public employee unions also encourage higher than necessary spending. This is not a criticism of public employee unions, it is rather a criticism of the spending incentives. These incentives have permitted public employee unions to increase costs through bloated staffing and steadily growing budgets.

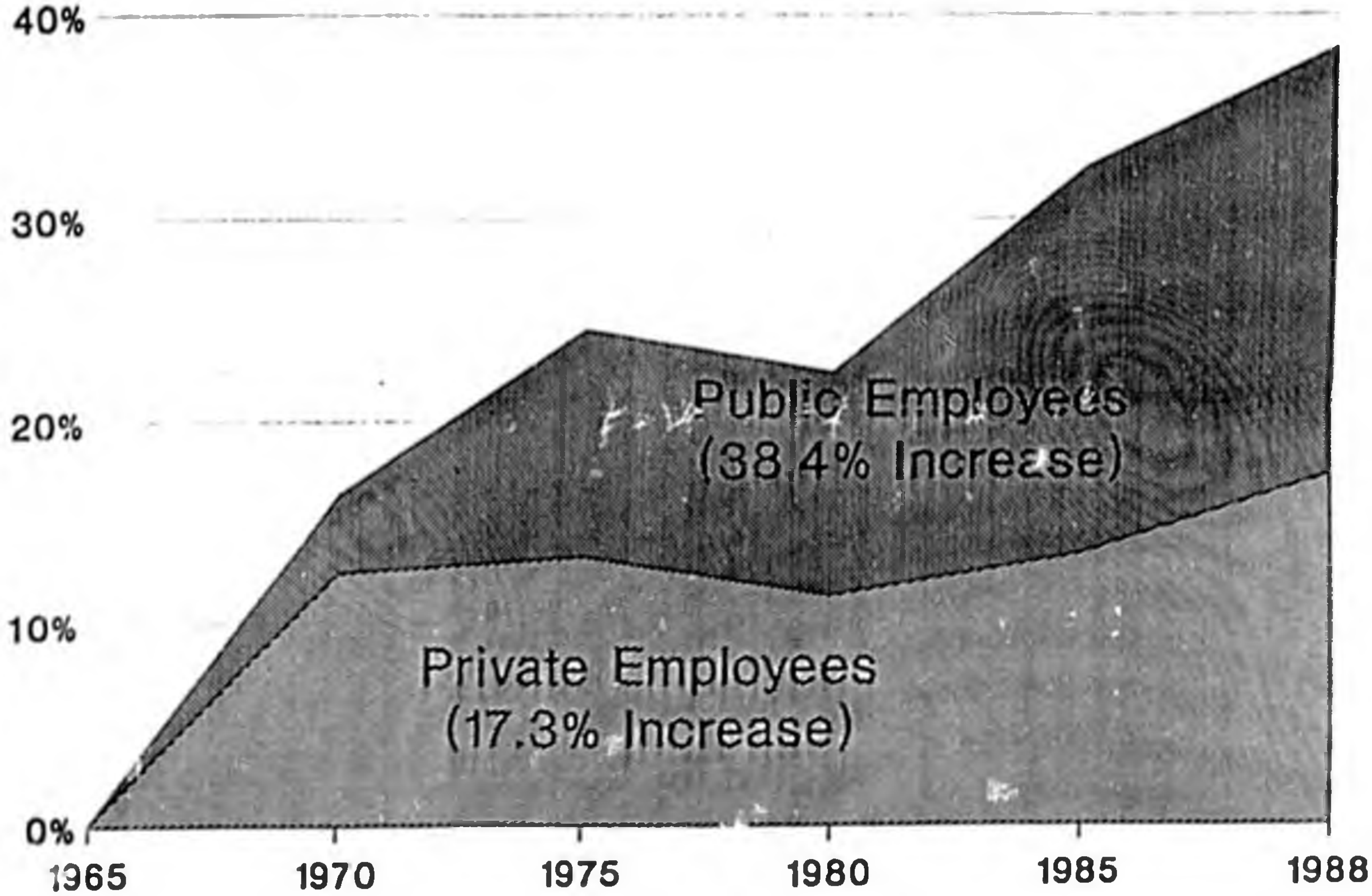
The effect of labor unions on unit cost differs between competitive or monopoly providers. Labor unions can increase employee income in concentrated industries — industries that are oligopolistic or monopolistic — but unions are unable to increase employee compensation above the market rate in competitive industries. It should be noted that collective bargaining processes may impose monopoly conditions on competitive industries where government has intervened and where employers and unions have engaged in "pattern bargaining."

Labor unions can increase employee compensation to above the market rate in monopolies and concentrated industries, because there is no competition for labor rates, and because costs can always be passed on to the consumer. The higher income won by labor unions in monopolies is not taken from owners or managers, it is taken from the consumers, who are denied the lower prices that would occur in a competitive industry. Since most of the wages in this country are set by the competitive market, the effect of unions in a monopoly are unfair to the majority of US consumers.

In competitive industries, however, firms must ensure that their costs do not rise above those of their competitors, or they will lose their customers to less costly producers. As a result, competitive industries must keep their labor costs under control. Labor unions are incapable of

CHANGE IN ANNUAL EMPLOYEE COMPENSATION

From 1965 Adjusted for Inflation



Includes Fringe Benefits

taking more than they can get. Excessive increases in pay in competitive industries comes from the share of the owner and will eventually result in the failure of the firm.

Labor union officials talk of "living wages," inferring that wages set in a competitive society are unfair. They infer that union labor is somehow virtuous compared to non-union labor. But this is a simplistic, discriminatory, and dangerous view. The real wages (inflation adjusted) of employees in a society are set by the competitive market. To the extent that some employees are paid more, because their particular employment market is noncompetitive, employees in competitive firms — the vast majority of Americans — will be paid less. Would-be employees will not be paid at all, because funds that would have created economic growth and employment are being diverted to pay for higher than market wages to those in the monopoly industries.

Some societies have attempted to negate the principles of economics by intervening in the market to increase the wages of all. Those societies have invariably failed, because government is incapable of raising real wages for all employees. Government can raise all wages only by creating the hyper-inflation that destroys both domestic and export markets. This is the story of the failures of interventionist policies — from the Soviet Union to Eastern Europe to Brazil and Argentina.

Government services are monopolies. And public employee unions predictably and rightly seek the greatest benefit for their members. Public employee unions seek whatever portion of new tax funding they can obtain and make large political contributions in an effort to influence higher spending on labor. Without a competitive environment, there is little to constrain public employee unions from obtaining extraordinary increases in wages and fringe benefits. And, as public employee unions have become stronger, they have been able to obtain exceptional increases.

The compensation of public employees has been rising at a faster rate than compensation of non-government employees. In 1965, the average private employee was paid slightly more than the average public employee. In 1988, the average public employee was paid more than 10 percent more than the average private employee. (Chart: "Change In Annual Employee Compensation") In some cases, public employees are paid up to double that received by unionized workers doing the same work in the private sector. The growing strength of the public employee unions is likely to result in the creation of more "monopoly wage premiums."

Should public employees be paid more than the employees doing the same or similar work in the competitive market? Obviously, the answer is "no" — government should do no more for public employees than it its prepared to do for private employees. Bank clerks, nurses, and other private employees should not be relegated to second class citizenship by virtue of government policies that favor public employees. Government cannot increase the real earnings of public employees without taking from private employees. And government cannot raise the wages of all without destroying the economy in the process. Equal opportunity and fairness requires that public employees be no more favored by government than private employees. The compensation of employees performing public functions should be subject to the competitive market as it is with private employees. The net effect of unions in monopolies including government has been higher compensation for their workers in exchange for a lower standard of living for the majority of other Americans.

In the competitive market, labor unions have incentives to seek economic gains for their members, but that incentive is tempered by the necessity for the firm to remain profitable in a competitive market, otherwise the members will be without income. In government, where there is no competition, there is no effective limitation to the incentive of unions except the limitation of public budgets. Even the countervailing force exerted by management is absent in government as more expensive labor settlements lead to higher compensation for managers (in some cases the managers themselves are union members). And the accessibility of complete financial information (an important safeguard in a free society) gives the public employee unions more reliable monetary targets for collective bargaining — a practice some have called "treasure hunting."<5>

The Never Ending Funding Crisis

So the incentives in government are structured such that the demand for higher taxes is self perpetuating. Managers are rewarded for spending more, and public employee unions are able to obtain inordinately increased compensation.

No amount of internal reform will solve the problem. Prior attempts to solve the problem have spawned innumerable committees, citizen review boards, endless meetings, countless hours spent on zero-based budgeting, management-by-objectives, and five year plans, and all the while there is a mad dash at the end of the fiscal year to spend funds to ensure funding increases for the following year. Efforts at reform and accountability have only increased the size of government. The problem is not management, nor can the problem be solved by management. Efficient management cannot be legislated, nor can legislation eliminate regulatory or bureaucratic capture — bureaucratic behavior is driven by incentives. Laws may dissuade outright fraud, but they are ineffective against steadily rising unit costs.

Higher taxes can themselves fuel the demand for even higher taxes. Clearly, until the incentives change, the demand for new taxes will only increase.

There are alternatives — tax limitation and subjecting public services to competitive incentives.

Alternatives for Limiting Taxation

Tax limitations have been imposed in some states, and rejected in others. Certainly, tax limitations are an important ingredient of any strategy to control taxation. But there are disadvantages:

-The spending interests will portray even the most modest tax limitation in "doomsday" terms. This will often attract even business and other interests that usually oppose higher taxes.

-If passed, public agencies will often respond with the tactic of "firemen first" — in which the most essential, the most compassionate, the most visible services are cut first in an effort to obtain additional public revenues and to convince the electorate of its imprudence and selfishness in passing the measure.

Public services may also be subjected to competitive incentives. This approach, called competitive contracting, reduces the demand for taxation by bringing spending under control. It can be used as an alternative to tax limitation or as a supplement. Competitive contracting makes tax limitation more effective. Because it is cost efficient, it allows for higher levels of public service even in the presence of a tax limitation measure.

THE SOLUTION: COMPETITIVE CONTRACTING

Competitive contracting has been used for decades by private and public organizations to ensure that goods and services of a defined quantity and quality are produced for the lowest possible cost. Each good or service made or consumed by the organization is studied to determine if the same quality of good or service can be purchased from the outside less expensively than it can be produced internally.

Competitive contracting is the provision of a public service through a competitively awarded contract. The public agency chooses what services to competitively contract and chooses the private providers from which it purchases the services. Competitive contracting involves a synthesis of public and private roles. The public sector decides what services should be competitively contracted and what specifications should apply to the service. The competitive market responds to the invitation of the public agency, and one or more producer is selected to provide a specific service for a period of time. The public sector retains policy control over the service, while the competitive market produces the service under public scrutiny.

How Competitive Contracting Works

Under competitive contracting the public agency produces service itself when it is less expensive to do so; when service produced by the public agency is more expensive, the service is "bought" from contractors. There are five basic steps in the process:

1. The public agency seeks competitive proposals to deliver a specific quality and quantity of service for a defined period of time.

2. The public agency may submit its own cost proposal, capturing all attributable costs, and subject to the same terms and conditions that apply to private proposals.

3. A contract is awarded to the lowest responsible and responsive public or private proposer who demonstrates an ability to provide the same quality and quantity of public service at a cost lower than that of the public agency.

4. Contractors, public or private, that fail to provide the service as specified are financially penalized or replaced.

5. New competitive proposals are sought in sufficient time to award a new contract for service commencing at the expiration of the contract. New competitive proposals are sought regardless of whether the incumbent contractor is a private company or the public agency itself.

Competitive contracting does not necessarily result in private operation of public services. It merely requires that the public service be provided according to the specifications of the public agency for the lowest possible cost. Competitive contracting removes the present bias toward in-house public service provision and replaces it with a results oriented approach in which the lowest cost qualifying proposer, public or private, operates the service.

Public Agencies May Participate

The public agency can submit a proposal to continue to operate the service. There is, however, a potential for the public agency treating itself more favorably in such a procurement than it does the private proposers. Both in the U.S. and Great Britain public agencies have submitted "low-ball" bids that are below their actual cost with the result that costs are made up ("cross-subsidized") from other public services so that the total cost to users and taxpayers is the same as before, or higher. Other public agencies have compiled internal costs for comparison after opening the private proposals. It is not surprising that public agencies have typically won such skewed procurements.

Because of these abuses, some public agencies have taken important steps to ensure the objectivity of the procurement process<6> — requiring the submittal of the public proposal at the same time and according to the same terms that apply to private proposers. They have also required that the evaluation of proposals exclude any personnel who have been involved in preparing the public proposal, or who would stand to gain by providing the service in-house (conflict of interest).

Competitive Contracting Saves Money

Competitive contracting reduces public costs in three ways:

1. Lower costs through provision of service at no more than the competitive rate (the "going" rate).

2. Lower costs through the "ripple effect" as public agencies improve their cost performance in response to the competitive environment.

3. Lower net costs as a result of tax revenues paid by private contractors on the public services they operate.

Lower Costs: Competitive contracting lowers public costs. Cost savings of 15 to 30 percent are frequent, with occasional savings of up to 50 percent. Touche Ross reports cost savings in 98 percent of cases with savings more than 40 percent in some cases.<7> Net cost savings are higher still, because these figures do not include the taxes and government fees paid by private companies and from which public agencies are exempt. The taxes paid by private contractors may be as much as 15 percent of the contract value.

The Ripple Effect: Competitive contracting not only results in lower costs for the public services competitively contracted, it also induces improved internal public cost performance. This "ripple effect" has been identified in various public services, including solid waste collection, public transit, fire protection, and other services. Public employee unions have negotiated competitive wage and benefit packages in response to competitive contracting. As a city of Phoenix public administrator put it:

> "Our people are in a competitive mode. We have cut our costs way back because we have learned from the experience of private contractors. We have the unions convinced about the need to improve productivity."<8>

Principles of Competitive Contracting

There are two fundamental principles of competitive contracting of public services:

1. The public agency should retain full policy control, determining which services are purchased, establishing quality and safety standards, administering contracts, and monitoring service performance.

2. The public agency should foster a competitive market.

The maintenance of a competitive market is crucial to the success of competitive contracting. Private monopoly should not be tolerated any more than public monopoly. Fostering a competitive market requires:

-Wide participation and full disclosure of information, so that all potential interested proposers have sufficient information to submit a proposal if they desire.

-Limitation of contract duration (usually no more than five years including renewal options).

-Limitation of contract size, so that smaller companies have an opportunity to participate.

EXTENT OF COMPETITIVE CONTRACTING BY LOCAL GOVERNMENTS

Public Service	Percent Competitively Contracting
Administration	36
Airport	11
Building and Grounds	43
Child or Day Care	5
Data Processing	31
Elderly or Disabled	12
Fleet or Vehicle Maintenance	21
Hospitals & Health Care	16
Housing or Shelters	5
Parking Lots or Garages	7
Public Safety or Corrections	7
Public Transit: Disabled & Elderly	70
Public Transit: Non-specialized	8
Recreation, Parks, Conventions	19
School Bus	30
Solid Waste Collection or Disposal	59
Streets and Roads	29
Traffic Signals or Street Lighting	32
Utilities	10
Vehicle Towing or Storage	45

Sources: Touche Ross (1987), USDOT Urban Mass Transportation Administration (1988), School Bus Fleet Magazine (1988), Wendell Cox Consultancy (1990)

-Cost control through a requirement for fixed price proposals, and prohibition of price negotiation after contract execution.

-No public agency specification of labor arrangements except compliance with state and federal law.

-The public agency should compete in the process under the same terms as the private proposers and should include all attributable costs.

Competitive contracting saves money not because the private sector is superior to the public sector; competitive contracting saves money because competition induces lower costs than monopoly. Services provided by private contractors are as fully public services as the same services provided by public agencies themselves, because the public agency remains in complete control.

The Extent of Competitive Contracting

Competitive contracting is being used by governments of various ideological persuasions around the world. The Conservative government of Great Britain requires that certain public services be competitively contracted. Socialist governments in Sweden and New Zealand have implemented competitive contracting programs. A wide range of municipal services are competitively contracted in Canada.

Competitive contracting is expanding in the United States. An overwhelming percentage of municipal governments competitively contract for some services — more than 90 percent according to one study.<9> The extent of competitive contracting by type of public service is illustrated in the Table "Extent of Competitive Contracting by Local Governments." Despite its broad use, there is potential for a substantial increase in the use of competitive contracting.

Supplier Markets for Public Services

Private supplier markets are ready, willing and able to provide public services under contract. And if government were to commit to competitively contract for other services, the supplier markets would develop.

Some functions, of course, should not be contracted. The fundamental function of government is legislation and policy. These functions can only be performed appropriately by government itself.

Opposition with a Vested Interest

Opposition to competitive contracting can be expected from those profiting from the present monopoly incentives. These are the public administrators (though not all) and public employee unions. The strongest opposition comes from the public employee unions, which fully understand that they can obtain more lucrative contracts with government in a non-competitive environment than they would if they were subject to the same restraints as the majority of Americans, who work in the private sector. Public employee unions are so convinced of the cost reducing potential of competitive contracting that they have opposed legislation that would require comparison of public and competitive costs just as adamantly as they have opposed mandatory competitive contracting legislation.

Public employee unions have attempted to portray competitive contracting as being anti-union. But contractor employers have the same rights to organize as other employees. And a large percentage of private contractors have already been organized by unions.

Public employees can be protected by phasing in competitive contracting through the use of attrition and special voluntary separation incentive programs (early retirement incentives, voluntary separation bonuses, etc.). In addition, successful contractors can be encouraged to offer employment to qualified personnel (though the private contractor will probably require fewer employees). Some displacement of public employees might occur — and every individual case is regrettable from a personal standpoint. But there is no justification for protecting public employees as a special class to which privileges are granted beyond those that government could reasonably grant to other employees.

Implementing Competitive Contracting

Various legislative approaches have already been implemented, with success. The most direct approach is to require that government agencies within the state subject some of their public services to competitive contracting.

Colorado: The first mandatory competitive contracting legislation in the United States was authored by ALEC member Senator Terry Considine (1988).<10> This legislation required the Denver public transit agency to competitively contract 20 percent of its services over a two year period. The legislatively required performance audit has just been released, reporting the following results:<11>

-Short term cost savings of 18 percent — even after paying idled employees for not working (the Act contained a layoff prohibition).

-Long term sustainable savings of 27 percent.

Great Britain: Parliament requires local governments and school districts to competitively contract for refuse collection, custodial services, food services, grounds maintenance vehicle maintenance, public transit and school bus service.<12> The local governments may compete for the services themselves, but their proposals must meet the requirements imposed upon the private proposers. The results have been:<13>

-Cost savings of 22 percent when contracts are awarded to the private sector.

-Cost reductions of 17 percent when contracts are awarded to in-house departments.

There have been other important initiatives:

Arizona: A bill that would have required competitive contracting of virtually any public service was passed by the Arizona legislature in 1990,<14> but was vetoed by the Governor. The bill, authored by ALEC member Representative Robert Burns would have required a competitive contracting process initiated by a bona fide expression of interest by a capable company. The private company would file a "petition of interest," demonstrating its ability to provide the service and expressing its interest. The public agency would issue a request for proposals to all interest organizations after certification of the "petition of interest." The "petition of interest" approach is unique, in that it would require competitive contracting only where the competitive market demonstrates both sufficient capability and interest in a particular public service.

ALEC Model legislation: The American Legislative Exchange Council has published model legislation requiring competitive contracting of school bus service and public transit service.<15>

Additional legislative initiatives such as these will be required if the demand for taxation is to be controlled. Competitive contracting replaces the monopoly incentives of the public sector with competitive incentives. This will permit taxpayers and their elected officials will be able to determine value (benefit v. cost) and allow allocation of scarce tax dollars. The U.S. cannot be competitive on world markets, cannot maintain the present high standards of living, and cannot continue to provide quality public services in the presence of government programs that cost more than necessary.

CONTROLLING THE DEMAND FOR TAXES

Americans want public services, but they do not want to pay for wasteful government.

Taxes always reduce the amount of money that would have been used by the private sector to increase production, which fuels the Gross National Product and increases overall standards of living.

While many government services are needed, there is no justification for government to waste money through inefficiency.

Incentives for public sector management and employees fuel higher government spending, so real (inflation-adjusted) costs rise even in the absence of new public programs.

Government has a spending problem not a funding problem.

To solve the spending problem, government must change the monopoly incentives that cause the problem.

FOOTNOTES

<1> For example, see Michael Prowse, "An Anxious Nation on the Couch, Financial Times, November 19, 1990.

<2> Proposed amendment to the Transportation Appropriations bill of 1990. The most infringing provisions were softened in the final bill.

<3> The Economist, November 19, 1955.

<4> For example, see Eric A Hanushek, "The Impact of Differential Expenditures on School Performance," Educational Researcher, May 1989.

<5> Llewellyn M. Toulman, "The Treasure Hundt: Budget Search Behavior by Public Employee Unions." Public Administration Review, April 1988.

<6> City of Phoenix, Southeastern Ohio Regional Transit Authority (Cincinnati), Bi-State Development Agency (St. Louis) and the Suburban Mobility Authority for Regional Transportation (Detroit).

<7> Touche Ross, Privatization in America: An Opinion Survey of City and County Governments on their Use of Privatization and their Infrastructure Needs, 1987.

<8> Ron Jenson, quoted in Peter A. Holmes, "Taking Public Services Private." Nation's Business, August 1985.

<9> Touche-Ross

<10 Colorado Senate Bill #164: 1988.

<11> KMPG Peat Marwick in Association with Mundle & Associates, Inc.: Performance Audit of Privatization of RTD Services, November 1990.

<12> Local Government Act of 1988 and the Transport Act of 1985.

<13> The Tender Traps, ASI Research Ltd. (1990)

<14> Arizona House Bill #2507: 1990.

<15> The Source Book of American State Legislation: 1988-1989 and The Source Book of American State Legislation: 1990-1991 (the latter to be published)

<16> Supreme Court of Pennsylvania, Ridley Arms Inc. v. Township of Ridley, 1987.

Rep. Choquette's proposed amendments to CS HB 300 (State Affairs):

page 1, line 12: after "reducing the quality or quantity" insert ", or increase the delivery time"

page 1, line 14: strike "Second Session of the Seventeenth" and replace with "First Session of the Eighteenth"

page 2, line 2: strike "June 30, 1992" and replace with "June 30, 1993."

(7)

HOUSE COMMITTEE REPORT

Date Referred: April 24, 1991

FURTHER REFERRALS: Finance

Date of Committee Action: 3/11/92

The STATE AFFAIRS Committee considered: HB 300

HOUSE BILL NO. 300

APPROP: STUDY PRIVATIZING STATE SERVICES

"An Act making a special appropriation to the Alaska Legislative Council for a study to determine which goods and services provided by state agencies can be provided by the private sector under an award after completion of a competitive sealed bidding or proposal process; and providing for an effective date."

RECOMMENDATIONS:
be replaced with CS HB 300(STA) [X] the same title [ ] a new title

[ ] have attached amendments(s)

[ ] do pass

[ ] do not pass

[X] no recommendations

[ ] individual recommendations

[ ] additional referral to the ______ Committee

ADOPTS: ______ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[ ] fiscal impact ______

[ ] zero fiscal note ______

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) ______

[ ] zero fiscal note(s) ______

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
[signature]	✓	Eugene H. Kubina		✓	
[signature]	✓	Tom Moyer		✓	
Mike Miller	✓	[signature]		—	
		[signature]		—	

Eugene H. Kubina
CHAIRMAN'S SIGNATURE

7-LS1196\D
Bannister
5/8/91

CS FOR HOUSE BILL NO. 300 (STATE AFFAIRS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered:
Referred:

Funding Information:	General Fund	$125,000
	Other Funds	-0-
		$125,000

Sponsor(s): REPRESENTATIVE CHOQUETTE

A BILL

FOR AN ACT ENTITLED

"An Act making a special appropriation to the Alaska Legislative Council for a study to determine which goods and services provided by or to state agencies can be provided by the private sector under an award after completion of a competitive sealed bidding or proposal process; and providing for an effective date."

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

* Section 1. The sum of $125,000 is appropriated from the general fund to the Alaska Legislative Council to pay for a study to be performed by private individuals or entities to determine which goods and services provided by or to the agencies of the executive, legislative, and judicial branches of the state, including the University of Alaska, the Alaska Railroad Corporation, the Alaska Housing Finance Corporation, the Alaska State Housing Authority, and all other quasi-public entities, can be provided by the private sector under an award after completion of a competitive sealed bid or proposal process in which state agencies may compete, without reducing the quality or the quantity of the goods or services being provided. It is the intent of the legislature that the completed study be submitted to the legislature on or before the first day of the Second Session of the Seventeenth Alaska State Legislature and that the

legislature hold hearings on the completed study.

* Sec. 2. The appropriation made by this Act lapses June 30, 1992.

* Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

Alaska State Legislature
House of Representatives

INTERIM
3111 C Street
Anchorage, Alaska 99503
(907) 561-2032

SESSION
PO Box V
Juneau, Alaska 99811
(907) 465-2995

Representative Dave Choquette

M E M O R A N D U M

DATE: January 27, 1992

TO: Rep. Gene Kubina, Chairman
House State Affairs Committee

FROM: Rep. Dave Choquette DC.

RE: HB 300, "An Act making a special appropriation to the Alaska Legislative Council for a study to determine which goods and services provided by state agencies can be provided by the private sector under an award after completion of a competitive sealed bidding or proposal process, and providing for an effective date."

I would appreciate your scheduling HB 300 for consideration by the House State Affairs Committee at the Committee's earliest convenience.

I've attached a copy of a May 3, 1991 Memo to you which summarizes the bill and my rationale for introducing it. In addition, I've attached a zero fiscal note from the Department of Administration.

Josh Fink is my staff assistant assigned to this legislation. If I can provide any additional information, please have your staff contact Josh at x2995.

Your timely consideration is appreciated.

1990

An Act

SENATE BILL 90-8.

BY SENATORS Pascoe, Meiklejohn, Owens, Schaffer, and Allison; also REPRESENTATIVES D. Williams, Owen, Gillis, Grant, and Shoemaker.

CONCERNING THE USE OF PRIVATE BUSINESS TO PROVIDE PUBLIC TRANSPORTATION WITHIN THE REGIONAL TRANSPORTATION DISTRICT.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 32-9-119.5 (2) (a), (2) (d) (X), (3) (c), (3) (d), and (3) (e), Colorado Revised Statutes, as amended, are amended to read:

32-9-119.5. Competition to provide bus service within the regional transportation district. (2) (a) The district shall implement a system whereby at least twenty percent of the bus service determined by the district to be in the public interest shall be provided by qualified private businesses pursuant to competitively ~~bid~~ NEGOTIATED contracts.

(d) (X) An initial term of ~~one-year~~ UP TO THREE YEARS, with options for the provider to extend the contract for ~~four~~ A TOTAL OF UP TO FIVE years, unless the district and the provider shall mutually agree to a lesser initial term or extension; and

(3) (c) Each individual request for proposals shall reflect the district's determination as to the appropriate size for each such request in order to maximize the number of qualified ~~bidders~~ PROVIDERS SUBMITTING PROPOSALS without causing undue operating inefficiencies.

(d) Any qualified provider may respond to any request for proposals. The district shall ensure that disadvantaged business enterprises, as defined in part 23 of title 49 of the

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

code of federal regulations, as amended, have the greatest possible opportunity to respond. Any response shall be timely if received by the district within ~~ninety--days--of~~ THE TIME SPECIFIED IN its request for proposals, WHICH SHALL NOT EXCEED NINETY DAYS NOR BE LESS THAN FORTY-FIVE DAYS. Each response shall specify the least ~~subsidy~~ COST TO THE DISTRICT required by the ~~bidder~~ PROVIDER SUBMITTING THE PROPOSAL to provide the services described in the request for proposals. If it determines the public interest requires such, the district retains the right to enter into noncompetitively awarded contracts on an interim basis for the time needed to implement the request for proposal process.

(e) With respect to each request for proposals, the district shall award the contract to the TECHNICALLY qualified provider whose responsive ~~bid~~ PROPOSAL offers the lowest cost to the district; except that no one provider shall receive contracts covering more than fifty percent of the vehicle hours subject to such requests, and, with respect to awards made after January 1, 1994, the district shall accept no ~~bid~~ PROPOSAL from a ~~bidder~~ PROVIDER providing fifty percent or more of the vehicle hours contracted by the district. Each contract shall be effective not later than ninety days after its award. If the district determines that no responsive ~~bids~~ PROPOSALS are received for a request for proposals or that the ~~bids~~ PROPOSALS submitted would not be in the best interest of the district to accept, the district may solicit new ~~bids~~ PROPOSALS for ~~such--request--for--proposals~~ THE DESIGNATED SERVICE in accordance with the provisions of this section.

SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Ted L. Strickland
Ted L. Strickland
PRESIDENT OF
THE SENATE

C B Bledsoe
Carl B. Bledsoe
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Joan M. Albi
Joan M. Albi
SECRETARY OF
THE SENATE

Lee C. Bahrych
Lee C. Bahrych
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED April 9, 1990 at 8:09 am

Roy Romer
Roy Romer
GOVERNOR OF THE STATE OF COLORADO

State of Arizona
House of Representatives
Thirty-ninth Legislature
Second Regular Session
1990

HOUSE BILL 2507

AN ACT

RELATING TO STATE GOVERNMENT; PRESCRIBING PRIVATE ENTERPRISE REVIEW BOARD MEMBERSHIP; PRESCRIBING ADDITIONAL POWERS AND DUTIES OF THE PRIVATE ENTERPRISE REVIEW BOARD RELATING TO PRIVATIZATION OF PUBLIC GOODS AND SERVICES; PRESCRIBING REQUIREMENTS AND PROCEDURES RELATING TO PRIVATIZATION PROPOSALS AND THE EVALUATION PROCESS TO DETERMINE WHETHER A PUBLIC GOOD OR SERVICE MAY BE BETTER PROVIDED BY PRIVATE INDUSTRY; MAKING TECHNICAL CHANGES TO INCLUDE DISTRICTS WHEN REFERRING TO COMMUNITY COLLEGES; MAKING CONFORMING CHANGES; PRESCRIBING DEFINITIONS; PRESCRIBING PRIVATIZATION BY POLITICAL SUBDIVISIONS; PRESCRIBING INITIAL IMPLEMENTATION; AMENDING SECTIONS 41-2752, 41-2753 AND 41-2754, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 25, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 2, AND MAKING AN APPROPRIATION.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 41-2752, Arizona Revised Statutes, is amended to read:

41-2752. State competition with private enterprise prohibited; exceptions

A. A state agency shall not engage in the manufacturing, processing, sale, offering for sale, rental, leasing, delivery, dispensing, distributing or advertising of goods or services to the public which are also offered by private enterprise unless specifically authorized by law other than administrative law and executive orders.

B. A state agency shall not offer or provide goods or services to the public for or through another state agency or a local agency, including by intergovernmental or interagency agreement, in violation of this section or section 41-2753.

C. Except as otherwise provided in section 41-2754, subsection ~~H~~ G, the restrictions on activities which compete with private enterprise contained in this section do not apply to:

1. The development, operation and management of state parks, historical monuments and hiking or equestrian trails.

2. Correctional industries established and operated by the state department of corrections providing the prices charged for products sold

by the correctional industries are not less than the actual cost of producing and marketing the product plus a reasonable allowance for overhead and administrative costs.

3. The Arizona office of tourism.

4. The Arizona highways magazine, operated by the department of transportation.

5. Printing and distributing information to the public if the agency is otherwise authorized to do so, and printing or copying public records or other material relating to the public agency's public business and recovering through fees and charges the costs of such printing, copying and distribution.

6. The department of public safety.

7. The construction, maintenance and operation of state transportation facilities.

D. The restrictions on activities which compete with private enterprise contained in subsection A of this section do not apply to community ~~colleges~~ COLLEGE DISTRICTS and universities under the jurisdiction of a state governing board.

Sec. 2. Section 41-2753, Arizona Revised Statutes, is amended to read:

41-2753. Competition with private enterprise by community college districts and universities; limitations; rules; complaints

A. Community ~~colleges~~ COLLEGE DISTRICTS and universities under the jurisdiction of a state governing board shall not, unless specifically authorized by statute:

1. Provide to persons other than students, faculty, staff and invited guests goods, services or facilities that are practically available from private enterprise, unless the provision of the goods, service or facility offers a valuable educational or research experience for students as a part of their education or fulfills the public service mission of the community college DISTRICT or university. This paragraph does not apply to sponsoring or providing facilities for recreational, cultural and athletic events or to facilities providing food services and sales.

2. Enter competitive bidding for rendering any goods or services unless a clear educational or research advantage would accrue to this state by the community college DISTRICT or university rendering the goods or services. Any such bid shall fairly and fully allocate all direct and indirect costs unless the funding agency or sources provide for or require all bidders to use a specific procedure or formula for allocating costs.

3. Provide to students, faculty, staff or invited guests goods, services or facilities that are practically available from private enterprise except as authorized by the state governing board.

4. Provide goods, services or facilities for or through another state agency or a local agency, including by intergovernmental or interagency agreement, which, if provided directly by the contractor, would be in violation of this section or section 41-2752.

B. The state governing board may adopt and implement rules to provide for the disposal by sale of products and by-products which are an integral part of research or instruction conducted by community ~~colleges~~ COLLEGE DISTRICTS and universities under its jurisdiction if the products and by-products are not sold to a retailer or sold at retail to the public by the particular community college DISTRICT or university unless the sale is an integral part of the particular research project or instructional program or there is no other practical way of disposing by sale of the products or by-products, and if the products or by-products are sold at their market value.

C. The state governing board shall adopt and implement rules to:

1. Regulate community college DISTRICT and university competition with private enterprise and ensure compliance with this section.

2. Regulate use of community college and university facilities by students, faculty, staff, invited guests and the general public.

3. Provide procedures for promptly hearing and resolving complaints lodged under this article relating to community ~~colleges~~ COLLEGE DISTRICTS and state universities under the jurisdiction of the state governing board. Such procedures shall include provisions for an expedited hearing process if it is determined the alleged competition may cause severe financial hardship on the person filing the complaint.

D. Any person aggrieved by a violation of this section may file a complaint with the state governing board. The state governing board shall transmit a copy of a complaint received pursuant to this subsection to the private enterprise review board. The state governing board shall hear complaints made pursuant to this section within sixty days and shall render its decision within thirty days after the hearing. A person does not have standing to challenge violations of this section in the courts of this state until the person has first made a complaint to the board and has received the board's decision.

E. This section does not apply to:

1. The Arizona health sciences center operated by the university of Arizona, except in those cases in which the health sciences center provides prosthetic or medical devices, or services related to such devices, and a surgical or medical procedure is not involved in the application of the device.

2. The provision of free medical services or equipment to indigents in association with a community service health program.

3. Public service radio and television stations licensed to the state governing boards or to community ~~colleges~~ COLLEGE DISTRICTS and universities under their jurisdiction.

4. Skill centers operated by the community college districts.

F. The exceptions to the restrictions on community college DISTRICT and university competition with private enterprise in subsections A, B and E of this section are subject to review by the private enterprise review board in accordance with section 41-2754, subsection ~~H~~ G.

Sec. 3. Section 41-2754, Arizona Revised Statutes, is amended to read:

41-2754. Private enterprise review board; members; terms; compensation; duties; staff; judicial review; definitions

A. A private enterprise review board is established composed of the following members:

1. The chief executive or administrative officer of one state agency who is appointed by the governor.

2. One member who is appointed by the state board of directors for community colleges.

3. One member who is appointed by the Arizona board of regents.

4. Six members who are engaged in private enterprise, at least three of whom represent the small business community. The speaker of the house of representatives, the president of the senate and the governor shall each appoint two members, and of the two appointed by each at least one shall be a representative of the small business community.

5. ONE MEMBER WHO IS APPOINTED BY THE GOVERNOR AND WHO REPRESENTS LABOR.

~~5.~~ 6. Two advisory members from the house of representatives who are appointed by the speaker of the house of representatives, one of whom shall be a member of the house appropriations committee.

~~6.~~ 7. Two advisory members from the senate who are appointed by the president of the senate, one of whom shall be a member of the senate appropriations committee.

B. Terms of appointment to the board are for two years unless an advisory member or the chief executive or administrative officer of a state agency ceases to hold such office. In that case, the appointing officer shall appoint a replacement member for the remainder of the unexpired term.

C. Members of the board in subsection A, paragraph 4 of this section are not eligible to receive compensation but are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2.

D. The board shall:

1. Select a chairman from among its members.

2. Meet at least four times each year at the state capitol and hold additional hearings as may be necessary on the call of the chairman.

3. Receive written complaints of violations of the provisions of this article.

4. Transmit complaints received under paragraph 3 of this subsection to the state agency, university or community college DISTRICT alleged to be in violation.

5. Hold public hearings on complaints and determine whether the STATE agency, university or community college DISTRICT is in violation of the provisions of this article.

6. Within sixty days after receiving the STATE agency's response, issue a written report of its findings to the complainant.

7. Transmit a complete report of each meeting to the legislature and the governor including recommendations to remedy violations of

prohibitions on competition with private enterprise and findings on necessary exceptions to the prohibitions.

E. The private enterprise review board may receive, but shall not consider, a complaint relating to a university or community college DISTRICT until the complaint has been filed with the state governing board under section 41-2743, subsection D and the state governing board has rendered a decision.

F. The STATE agency, university or community college DISTRICT shall respond to the board in writing within forty-five days after receipt of a complaint transmitted under subsection D, paragraph 4 of this section and shall either deny or concur with the complaint and indicate any necessary and contemplated remedial measures. When a specific complaint concerning section 41-2753, subsection A, paragraph 1 is received by the board regarding the providing of goods, services or facilities as a valuable educational or research experience for its students or to fulfill its public service mission, a community college DISTRICT or university shall file with the response to the private enterprise review board either a written description of what it believes is the valuable educational or research experience for its students or a written description of the public service mission, as applicable.

~~G. The board may evaluate and review opportunities to contract with private enterprise that are deemed to be in the public interest. The public agencies, offering services subject to review shall be involved as participants in the evaluation process.~~

~~The board may hold public hearings as a part of its evaluation process and shall report its recommendations to the legislature and the governor.~~

~~H.~~ G. The board may evaluate and review all state agency exemptions and exceptions to the restrictions on competition with private enterprise in this article and may determine that any function or functions of a state agency, university or community college DISTRICT are or could be made a violation of this article. The board shall report its findings and recommendations to the legislature and the governor.

~~I.~~ H. At the request of the board, the department of commerce shall provide such staff support as is necessary to carry out its duties pursuant to this section AND ARTICLE 2 OF THIS CHAPTER. The auditor general shall provide performance audit information relating to state agency, university and community college DISTRICT budgets and functions that the auditor general has available without additional contact with state agencies through the legislative review of agencies pursuant to chapter 20 of this title.

~~J.~~ I. Notwithstanding the provisions for relief prescribed by this article and except as provided by section 41-2753, subsection D, any aggrieved person may elect to directly seek judicial relief including relief under the provisions of section 12-2030.

~~K.~~ J. For the purposes of this section, "advisory member" means a member who gives advice to the other members of the private enterprise review board at meetings of the board but who is not eligible to vote, is not a member for purposes of determining whether a quorum is present and is not eligible to receive compensation.

Sec. 4. Title 41, chapter 25, Arizona Revised Statutes, is amended by adding article 2, to read:

ARTICLE 2. PRIVATIZATION OF PUBLIC GOODS AND SERVICES

41-2771. Additional powers and duties of the private enterprise review board

A. IN ADDITION TO ITS DUTIES UNDER ARTICLE 1 OF THIS CHAPTER, THE PRIVATE ENTERPRISE REVIEW BOARD SHALL:

1. DETERMINE THROUGH A MAKE OR BUY ANALYSIS WHICH FUNCTIONS OF STATE AGENCIES, COMMUNITY COLLEGE DISTRICTS, AND UNIVERSITIES MAY BE MORE EFFICIENTLY PERFORMED AT LESS EXPENSE BY CONTRACTING OUT CERTAIN FUNCTIONS WITH PRIVATE ENTERPRISE. THE STATE AGENCIES, COMMUNITY COLLEGE DISTRICTS OR UNIVERSITIES OFFERING SERVICES OR GOODS SUBJECT TO REVIEW SHALL BE INVOLVED AS PARTICIPANTS IN THE EVALUATION PROCESS.

2. FORWARD TO THE APPROPRIATE STATE AGENCY, COMMUNITY COLLEGE DISTRICT OR UNIVERSITY ANY RECOMMENDATION THAT THE STATE AGENCY, COMMUNITY COLLEGE DISTRICT OR UNIVERSITY CONTRACT WITH PRIVATE INDUSTRY FOR THE PROVISION OF A GOOD OR SERVICE, BASED ON A MAKE OR BUY ANALYSIS CONDUCTED BY THE BOARD.

3. DETERMINE WHETHER THE STATE AGENCIES, COMMUNITY COLLEGE DISTRICTS AND UNIVERSITIES HAVE IMPLEMENTED ITS RECOMMENDATIONS.

4. SUBMIT AN ANNUAL REPORT OF ITS RECOMMENDATIONS TO THE GOVERNOR, THE PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES ON OR BEFORE DECEMBER 31.

B. IF THE BOARD'S RECOMMENDATIONS REQUIRE ENABLING LEGISLATION, THE BOARD, THE AFFECTED STATE AGENCY, COMMUNITY COLLEGE DISTRICT OR UNIVERSITY MAY PRESENT A REQUEST FOR ENABLING LEGISLATION TO THE LEGISLATURE IN THE NEXT REGULAR LEGISLATIVE SESSION.

C. THE BOARD MAY HOLD PUBLIC HEARINGS AS PART OF ITS EVALUATION PROCESS TO DETERMINE WHICH PUBLIC GOODS AND SERVICES MAY BE BETTER PROVIDED BY PRIVATE INDUSTRY. ANY PUBLIC HEARINGS SHALL BE LIMITED TO TESTIMONY ON THE FEASIBILITY OF CONTRACTING WITH PRIVATE INDUSTRY TO PROVIDE THE GOOD OR SERVICE. ANY PERSON MAY PRESENT TESTIMONY AT A PUBLIC HEARING. THE BOARD SHALL NOT DISCLOSE AT A PUBLIC HEARING ANY INFORMATION DERIVED FROM A PETITION OF INTEREST WITHOUT THE CONSENT OF THE PRIVATE COMPANY THAT SUBMITTED THE PETITION.

41-2772. Petitions of interest; request for proposals; make or buy analysis; contract award; definitions

A. THE BOARD SHALL CAUSE TO BE PUBLISHED TWICE ANNUALLY IN A SINGLE NEWSPAPER OR IN MULTIPLE NEWSPAPERS WITHIN THIS STATE WITH AN ACCUMULATED GENERAL CIRCULATION OF AT LEAST FIFTY THOUSAND SUBSCRIBERS A PUBLIC NOTICE INVITING PRIVATE COMPANIES TO SUBMIT PETITIONS OF INTEREST. EACH PUBLIC NOTICE SHALL NOT BE LESS THAN SIX NOR MORE THAN TEN DAYS APART, SHALL INCLUDE THE DEADLINE FOR FILING A PETITION OF INTEREST AND SHALL DESCRIBE THE CONTENT REQUIRED IN A PETITION OF INTEREST. THE BOARD MAY CAUSE TO BE PUBLISHED SUCH ADDITIONAL NOTICES AS IT DEEMS APPROPRIATE.

B. EACH PETITION OF INTEREST SUBMITTED BY A PRIVATE COMPANY SHALL INCLUDE:

1. A DESCRIPTION OF THE PUBLIC GOOD OR SERVICE THAT THE COMPANY WOULD LIKE TO PROVIDE, AND THE IDENTIFICATION OF THE STATE AGENCY, COMMUNITY COLLEGE DISTRICT OR UNIVERSITY FOR WHICH THE COMPANY WOULD LIKE TO PROVIDE THE GOOD OR SERVICE.

2. A STATEMENT THAT THE COMPANY BELIEVES THAT IT CAN PROVIDE THE SAME GOOD OR SERVICE, UNDER CONTRACT WITH THE STATE AGENCY, COMMUNITY COLLEGE DISTRICT OR UNIVERSITY, FOR A LOWER COST THAN THE PRESENT COST. THIS STATEMENT SHALL INCLUDE THE COMPANY'S ANNUAL PRICE TO PROVIDE THE GOOD OR SERVICE AS WELL AS COMPLETE AND CURRENT COST OR PRICING DATA.

3. A DESCRIPTION OF THE COMPANY'S FINANCIAL CAPACITY TO PROVIDE THE GOOD OR SERVICE.

4. A DESCRIPTION OF THE COMPANY'S TECHNICAL ABILITY TO PRODUCE THE GOOD OR SERVICE, ESPECIALLY EVIDENCED BY IDENTICAL, SIMILAR OR RELEVANT GOODS OR SERVICES PROVIDED BY THE COMPANY.

C. NO COMPANY, SUBSIDIARY OF A COMPANY, PARENT OF A COMPANY OR COMPANY RELATED TO A COMPANY HOLDING A CONTRACT TO MANAGE THE AFFECTED STATE AGENCY, COMMUNITY COLLEGE DISTRICT OR UNIVERSITY IS QUALIFIED TO SUBMIT A PETITION OR TO BE AWARDED ANY CONTRACT TO PROVIDE GOODS OR SERVICES FOR THAT STATE AGENCY, COMMUNITY COLLEGE DISTRICT OR UNIVERSITY.

D. WITHIN A REASONABLE PERIOD OF TIME THE BOARD SHALL DETERMINE WHETHER THERE IS SUFFICIENT REASON TO BELIEVE THAT THE PRIVATE COMPANY HAS THE FINANCIAL AND TECHNICAL ABILITY TO PROVIDE THE GOOD OR SERVICE AT A LOWER COST THAN UNDER THE CURRENT SYSTEM WHERE THE GOOD OR SERVICE IS PROVIDED BY PUBLIC EMPLOYEES. THE BOARD MAY MAKE ONE OF TWO FINDINGS:

1. IF THE BOARD DETERMINES THAT THE COMPANY HAS INSUFFICIENT FINANCIAL AND TECHNICAL ABILITY TO PROVIDE THE GOOD OR SERVICE, THE BOARD SHALL ISSUE A WRITTEN DENIAL OF THE PETITION AND STATE ITS JUSTIFICATION FOR ITS DETERMINATION. NO PERSON SHALL DERIVE A CAUSE OF ACTION BASED ON ANY DENIAL OF A PETITION.

2. IF THE BOARD DETERMINES THAT THE COMPANY HAS SUFFICIENT FINANCIAL AND TECHNICAL ABILITY TO PROVIDE THE GOOD OR SERVICE, THE BOARD SHALL PROCEED TO CONDUCT A MAKE OR BUY ANALYSIS CONCERNING THE GOOD OR SERVICE. THE BOARD SHALL NOTIFY THE PETITIONER AND THE AFFECTED STATE AGENCY, COMMUNITY COLLEGE DISTRICT OR UNIVERSITY THAT AN ANALYSIS HAS BEEN SCHEDULED.

E. THE BOARD SHALL PERFORM THE MAKE OR BUY ANALYSIS THROUGH AN ANALYSIS OF ANY PETITIONS OF INTEREST SUBMITTED BY PRIVATE COMPANIES AND THE AFFECTED STATE AGENCY'S, COMMUNITY COLLEGE DISTRICT'S OR UNIVERSITY'S COSTS FOR PROVIDING THE GOOD OR SERVICE.

F. THE AFFECTED STATE AGENCY, COMMUNITY COLLEGE DISTRICT OR UNIVERSITY SHALL SUBMIT A CURRENT SCHEDULE OF ITS INTERNAL COSTS OF PRODUCING THE GOOD OR SERVICE AND SHALL SUBMIT ITS OWN PROPOSAL, SUBJECT TO THE FOLLOWING:

1. THE STATE AGENCY, COMMUNITY COLLEGE DISTRICT OR UNIVERSITY SHALL SUBMIT A SEALED PROPOSAL AFTER NOTIFICATION FROM THE BOARD THAT A MAKE OR BUY ANALYSIS WILL BE CONDUCTED.

2. THE STATE AGENCY'S, COMMUNITY COLLEGE DISTRICT'S OR UNIVERSITY'S PROPOSAL PRICE SHALL NOT BE LESS THAN ITS ATTRIBUTABLE FULLY ALLOCATED COST FOR THE GOOD OR SERVICE, ITS PROPOSAL PRICE SHALL NOT BE BASED ON PART-TIME LABOR PROVISIONS OR OTHER LESS COSTLY LABOR PROVISIONS TO A GREATER PERCENTAGE THAN THESE PROVISIONS ARE EMPLOYED IN COMPARABLE PROVISIONS WITHIN IT AND ITS PROPOSAL PRICE SHALL BE CONSISTENT WITH CURRENTLY ADOPTED BUDGETS AND FINANCIAL PLANS.

G. THE BOARD SHALL NOT DISCLOSE ANY INFORMATION DERIVED FROM PETITIONS SUBMITTED BY COMPETING OFFERORS. A PETITION OF INTEREST SHALL NOT BE A PUBLIC RECORD UNTIL ONE OF THE FOLLOWING OCCURS:

1. THE DIRECTOR OR HEAD OF THE AFFECTED STATE AGENCY, COMMUNITY COLLEGE DISTRICT OR UNIVERSITY HAS ISSUED A WRITTEN RESPONSE TO THE BOARD REJECTING THE BOARD'S RECOMMENDATION.

2. THE DIRECTOR OR HEAD OF THE AFFECTED STATE AGENCY, COMMUNITY COLLEGE DISTRICT OR UNIVERSITY HAS ISSUED A WRITTEN RESPONSE TO THE BOARD ACCEPTING THE BOARD'S RECOMMENDATION, AND A CONTRACT HAS BEEN AWARDED

H. AFTER THE BOARD COMPLETES THE MAKE OR BUY ANALYSIS, IT SHALL MAKE A FORMAL RECOMMENDATION TO THE DIRECTOR OR HEAD OF THE AFFECTED STATE AGENCY, COMMUNITY COLLEGE DISTRICT OR UNIVERSITY. THE RECOMMENDATION SHALL STATE THE BOARD'S FINDINGS WITH RESPECT TO THE MAKE OR BUY ANALYSIS AND SHALL REQUEST THAT THE BOARD'S RECOMMENDATION BE IMPLEMENTED.

I. THE DIRECTOR OR HEAD OF THE AFFECTED STATE AGENCY, COMMUNITY COLLEGE DISTRICT OR UNIVERSITY SHALL REVIEW THE RECOMMENDATION AND RESPOND IN WRITING TO THE BOARD WITHIN SIXTY DAYS AFTER RECEIVING THE BOARD'S RECOMMENDATION. IF THE DIRECTOR OR HEAD OF THE AFFECTED STATE AGENCY, COMMUNITY COLLEGE DISTRICT OR UNIVERSITY ACCEPTS THE BOARD'S RECOMMENDATION, HE SHALL NOTIFY THE BOARD AND THE DEPARTMENT OF ADMINISTRATION. THE PROCUREMENT SHALL BE CONDUCTED IN ACCORDANCE WITH CHAPTER 23 OF THIS TITLE IN THE CASE OF A STATE AGENCY OR UNIVERSITY. IN THE CASE OF A COMMUNITY COLLEGE DISTRICT, THE PROCUREMENT SHALL BE CONDUCTED IN ACCORDANCE WITH APPLICABLE LAW. PRIVATE COMPANIES WHO SUBMITTED PETITIONS OF INTEREST PURSUANT TO SUBSECTION C OF THIS SECTION SHALL BE GIVEN AN OPPORTUNITY TO SUBMIT A BID OR PROPOSAL ON THE CONTRACT.

J. A DECISION BY THE DIRECTOR OR HEAD OF THE AFFECTED STATE AGENCY, COMMUNITY COLLEGE DISTRICT OR UNIVERSITY TO REJECT THE BOARD'S RECOMMENDATION SHALL INCLUDE A STATEMENT OF THE REASONS FOR THE REJECTION AND ANY DATA USED IN MAKING THE DECISION TO REJECT THE RECOMMENDATION. NO PERSON SHALL DERIVE A CAUSE OF ACTION BASED ON ANY REJECTION OF THE BOARD'S RECOMMENDATION.

K. EACH AFFECTED STATE AGENCY, COMMUNITY COLLEGE DISTRICT OR UNIVERSITY MAY MAKE CAPITAL FACILITIES AVAILABLE FOR OPERATION UNDER CONTRACTS AWARDED TO PRIVATE COMPANIES SUBJECT TO THE SUPERVISION OF THE STATE AGENCY, COMMUNITY COLLEGE DISTRICT OR UNIVERSITY.

L. FOR PURPOSES OF THIS SECTION:

1. "MAKE OR BUY ANALYSIS" MEANS AN ANALYSIS IN WHICH THE COSTS OF INTERNAL PRODUCTION OF A GOOD OR SERVICE ARE COMPARED WITH THE COSTS OF PRODUCTION BY OUTSIDE COMPANIES. THE PROCESS ASSUMES THE COMPARISON OF

THE TRUE COSTS OF PUBLIC AND PRIVATE PRODUCTION METHODS THAT RESULT IN COMPARABLE PUBLIC GOODS OR SERVICES.

2. "PETITION OF INTEREST" MEANS THE DOCUMENT PROVIDED BY A PRIVATE COMPANY WHICH EXPRESSES AN INTEREST IN PROVIDING A PUBLIC GOOD OR SERVICE THAT IS CURRENTLY PROVIDED BY PUBLIC EMPLOYEES.

3. "PUBLIC GOODS OR SERVICES" MEANS ANY PRODUCT OR SERVICE PRODUCED BY A STATE AGENCY, COMMUNITY COLLEGE DISTRICT OR UNIVERSITY UNDER ITS PUBLIC AUTHORITY AND ANY PRODUCT OR SERVICE SUPPORTIVE OF OR ANCILLARY TO ITS FUNCTIONS.

41-2773. Privatization by political subdivisions

NOTWITHSTANDING ANY OTHER LAW, ALL POLITICAL SUBDIVISIONS OF THIS STATE SHALL ANNUALLY EVALUATE AND REVIEW OPPORTUNITIES TO CONTRACT WITH PRIVATE COMPANIES WHEN DEEMED TO BE IN THE PUBLIC INTEREST. FOR THE PURPOSES OF THIS SECTION, "POLITICAL SUBDIVISION" MEANS ALL COUNTIES, TOWNS AND CITIES, INCLUDING CHARTER CITIES.

Sec. 5. Initial implementation

The board shall cause the initial public notice required pursuant to section 41-2772, subsection A, to be published no later than June 30, 1991. In addition to this published notice, the board, in conjunction with the state purchasing office of the department of administration, shall mail an announcement inviting petitions of interest to all persons on the prospective bidder's list maintained by the state purchasing administrator. The announcements shall be mailed no later than January 30, 1991 and shall contain at least the same information contained in the notices published pursuant to section 41-2772, subsection A. The board is not required to, but may in its sole discretion, mail such announcements in subsequent years.

Sec. 6. Appropriation

The sum of one hundred thirty-five thousand seven hundred dollars is appropriated from the state general fund in the following proportions:

1. Ninety-four thousand dollars to the department of commerce for the purposes of employing personnel to hear and evaluate proposals to provide public goods and services submitted by private enterprises.

2. Forty-one thousand seven hundred dollars to the department of administration for the purposes of employing personnel to compile and maintain a list of persons engaged in private enterprise who are interested in submitting bids to provide public goods or services to state agencies and to evaluate bids submitted by persons engaged in private enterprise.

NFIB Alaska

National Federation of
Independent Business

POSITION PAPER

OF

NATIONAL FEDERATION OF INDEPENDENT BUSINESS
(NFIB/ALASKA)

TO THE

ON

HB 300

AN ACT MAKING A SPECIAL APPROPRIATION TO THE ALASKA LEGISLATIVE COUNCIL FOR A STUDY TO DETERMINE WHICH GOODS AND SERVICES PROVIDED BY STATE AGENCIES CAN BE PROVIDED BY THE PRIVATE SECTOR UNDER AWARD AFTER COMPLETION OF A COMPETITIVE SEALED BIDDING OR PROPOSAL PROCESS.

State Office
9159 Skywood Lane
Juneau, AK 99801
(907) 789-4278

The Guardian of
Small Business

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, MY NAME IS RESA JERREL, AND I REPRESENT THE NATIONAL FEDERATION OF INDEPENDENT BUSINESS - NFIB/ALASKA.

NFIB/ALASKA IS COMPRISED OF 5,240 SMALL AND INDEPENDENT BUSINESS OWNERS. THE LEGISLATIVE AGENDA OF NFIB/ALASKA IS DETERMINED BY OUT BALLOT. THE BALLOT IS OUR ANNUAL POLL OF OUR MEMBERSHIP ON A SERIES OF ISSUES DEEMED CRITICAL TO SMALL BUSINESS. A MAJORITY VOTE, OF THE MEMBERS IN RESPONSE TO THE POLL, SETS OUR POLICY AND POSITION ON LEGISLATIVE ISSUES. WE THEN SHARE THE RESULTS OF OUR POLL WITH THE LEGISLATURE AND ADMINISTRATION. THERE IS NOT ENOUGH SPACE ON THE ANNUAL POLL TO PLACE EVERY POSSIBLE ISSUE TO OUR MEMBERSHIP. THEREFORE, WE ALSO USE THE THREE PREVIOUS YEARS BALLOT RESULTS AS GUIDANCE ON ISSUES.

THE FOLLOWING IS THE RESULT OF THE 1991 NFIB/ALASKA BALLOT QUESTION REGARDING CREATING A TASK FORCE ON UNFAIR COMPETITION:

> SHOULD THE LEGISLATURE ESTABLISH A PRIVATE ENTERPRISE PRESERVATION TASK FORCE IN ORDER TO STUDY AND RECOMMEND LEGISLATION TO LIMIT COMPETITION WITH PRIVATE BUSINESS BY STATE AND LOCAL GOVERNMENT?
>
> YES 67% NO 23% UNDECIDED 10%

THE FOLLOWING IS THE RESULT OF THE 1988 NFIB/ALASKA BALLOT QUESTION REGARDING UNFAIR COMPETITION:

> SHOULD LEGISLATION BE ENACTED TO RESTRICT THE COMMERCIAL ACTIVITIES OF GOVERNMENT ENTITIES SO THEY ARE NOT PERMITTED TO COMPETE WITH EXISTING PRIVATE ENTERPRISES?
>
> YES 78% NO 12 UNDECIDED 10%

WE ARE ENCOURAGED BY THE INTRODUCTION OF HB 300. SMALL BUSINESSES IN ALASKA FACES COMPETITION FROM STATE AND LOCAL GOVERNMENT AGENCIES IN A WIDE VARIETY OF COMMERCIAL ACTIVITIES. MANY SMALL BUSINESS SUCH AS PRINTING FIRMS, GIFT SHOPS, VIDEOTAPE OUTLETS, DAY-CARE CENTERS, SERVICE STATIONS, LABORATORIES, MEDICAL