

JUDICIARY COMMITTEEMINUTES OF HEARING HELD  
JANUARY 31, 1967

The Hearing by the Judiciary Committee on Senate Bill No. 7 was held at 2:30 P.M., Tuesday, January 31, 1967, in Committee Room 56, Chairman Monroe presiding.

## Members Present:

Warren L. Monroe, Chairman  
V. L. Bunker  
M. J. Christensen  
Carl F. Dodge  
Procter Hug, Sr.  
Coe Swobe  
C. Clifton Young

## Also Present:

Senator Helen Herr, Co-introducer of S.B. 7  
Senator Chic Hecht  
Francis Brooks, State Purchasing Agent  
E. Cuno, Homebuilders Assoc. of No. Nevada  
Rowland Oakes, Secretary-Manager, AGC  
Clyde Biglieri, Anderson Dairy  
Charles A. Pierson, Sales Mgr., Welsh's  
Roy Vannet, Newsman

Chairman Monroe announced that the purpose of the Hearing was to permit persons interested in testifying relative to Senate Bill No. 7, which provides a preference for in-state contractors, to be heard. Chairman Monroe invited Mr. Brooks to address the Committee.

Mr. Brooks stated that in-state preference has been a controversy during the past three Sessions, and Session before that, but it has never been brought to a vote. He mentioned that there are real "pro's and con's" relative to this problem. On one side is the economy of the State and the local contractors, on the other the possibility of additional cost to the taxpayers. "As you Purchasing Agent for the past eleven years, I have exercised in-state preference in a limited way" Mr. Brooks stated, and continued "if there is service involved, I can award to in-state bidders." He explained that he had based his decisions, more or less, on volume, "if it is a large bid and I believe there is substantial savings involved by awarding a contract out-of-state, I do". He has a study that has been made by the National Association of State Purchasing Officers over a period of ten years. In 1954 there were 31 states with some type of in-state preference, today it has been cut down to 10, Mr. Brooks is to provide the Committee with a copy of the report. Mr. Brooks also stated, "The National Association of State Purchasing Officers, last year I was President and had the honor and privilege of appointing an Ad Hoc Committee, is making a study of state purchasing, including in-state preference. I appointed Dr. James of the University of Kentucky along with nine others to the Committee, and I will turn this report over to you when it is available. I recommend that we have some type of in-state preference legislation for the next couple of years at least. My office will keep a record of how much is involved and then you can weight the evidence later on as to whether it affects the economy or not. That is my recommendation."

Senator Monroe asked Mr. Brooks what the present percentages of in-state and out-of-state purchases were. Mr. Brooks replied that, unfortunately, there

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had not been a record kept.

Senator Dodge asked Mr. Brooks, if we adopt the 5% preference would there be any other qualifications. Mr. Brooks replied, yes. He would like it set out in writing, what it constitutes, what is an in-state business, as these will create problems. Senator Dodge continued, you are talking about some paying taxes, carrying local inventories and so forth, and Mr. Brooks replied, yes -- things common to the trade. We have some people here who do business out of their homes and say they are in-state bidders, I don't believe they are.

Senator Dodge asked Mr. Brooks, on the type of contract that requires service or warranty, how much trouble have you had with out-of-state purchases. Mr. Brooks replied, now, with transportation as it is, 24 hours from coast to coast, none. Senator Dodge again queried Mr. Brooks, you don't have any trouble with them in carrying out their responsibility for services. Mr. Brooks replied, no I have not, however, it is always better to deal locally.

Senator Hug asked Mr. Brooks, the way this is written it applies only to the State, would it be the intention here to give preference to bidders who bid on items that are not purchased through the State Purchasing Office, some counties for instance. Mr. Brooks replied that if they come to my office and ask me to put out the bid, they should abide by the State Laws. Senator Hug asked, suppose they get a bid of \$10,000. they don't pay the preference do they. Senator Dodge replied, they may, it says "public officers and bodies".

Senator Hug requested that the word equipment be added to the first line of Section 2.

Senator Young asked Mr. Brooks how he would define the firms who are doing business in Nevada. Mr. Brooks replied, having county licenses, should carry sufficient inventories to do business. Senator Dodge asked, do you know of any other State that has a definition that we can use, perhaps California. Mr. Brooks replied, yes, it is one of the better Acts, California and New York are outstanding.

Senator Swobe commented that, in the States surrounding us, California just repealed their preference, and Washington and Oregon repealed theirs. Mr. Hornbeck, State of Pennsylvania, came out with a ruling that in-state preference was illegal under the Anti-Trust Act, and the State of Pennsylvania would not do any business with an in-state preference act state, so they had to repeal their legislation. After some discussion it was mentioned that probably the only company doing business in Nevada that this might affect was Sea & Ski.

Chairman Monroe recognized Mr. Biglieri. Mr. Biglieri addressed the Committee and stated that he thought this would be a good law but thought some consideration should be given to "manufacturers". He cited several instances in which his company had been unjustly treated in Oregon under the in-state preference. He also mentioned that companies that enjoyed the preference would not sell for less in their own state, that they would transport their product to another state and "dump" it there at a low cost which hurt the business of the local manufacturers.



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Senator Monroe asked Mr. Biglieri if he thought Section 2 should be amended to include "products manufactured in Nevada". Mr. Biglieri replied yes, as it is now a fellow can come in and take out a license, rent a \$20.00 office and is in business.

Mr. Pierson intervened with a pertinent case history. Our company, Welsh's Bakery, is a victim of this very problem, we have a plant by the University of Nevada, just eight blocks up the street, and we can't sell them a loaf of bread, they are buying from a firm in Sacramento, California. They use a "dumping" process in this area, they almost give it away. It is a blessing for the University but not for us. If the wording doesn't say "manufacturing" it would not help us at all.

Senator Monroe asked if under the wording "suppliers, material and equipment" they wouldn't be a supplier. Why do we have to put this under manufacturers. Mr. Pierson replied, a 5% advantage would not help me the same way. Mr. Brooks stated that "principal place of business" takes care of manufacturers. Mr. Biglieri persisted that if the wording "manufacturers" could be incorporated it would help them more.

Chairman Monroe recognized Mr. E. Cuno, Executive Vice President, Homebuilders Association of Northern Nevada. Mr. Cuno addressed the Committee. He stated that their group is not affected too much by the proposed legislation but they feel that their suppliers and subcontractors are interested and feel that the Association should take care of the economy of the State. Their Directors endorse in principle, the awarding of preference unless it costs the taxpayers money, and have confirmed their interest by resolution. He said that in some bidding situations a 5% preference could be sufficient to blunt true competitive bidding, and they feel that this is truly a problem and extended their sympathy. He suggested that where the Bill uses the word "compel" the purchasing agent, the Committee might like to consider substituting the word "may". They had two other thoughts: 1. Have the purchasing department required by statute to ascertain in advance if the business intended to be let for bid required state-licensed bidders; and, 2. A law change stating that all state licensing requirements must be met by all those bidding on State business.

Senator Dodge asked Mr. Cuno if the people in his organization had any thoughts about the measure of stimulation that might be enjoyed through the preference, 2% or 3%. We want to give the preference to the extent that having the business locally affects the economy. Mr. Cuno replied that many, many contractors can "guesstimate" how the prices will come out. Many of them can look at a set of plans and specifications and know how it will come out, and I do think that 2% or 3% would probably be sufficient, but we have no figures to use in this matter.

Chairman Monroe recognized Mr. Oakes, Secretary-Manager, Associated General Contractors. Mr. Oakes mentioned to the Committee that he was sorry that the AGC has been blamed for killing this Bill every Session. He then passed out a copy of his presentation and an exhibit to each member and they will be considered a part of these minutes.

Senator Dodge asked Mr. Brooks if he felt this definition of an out-of-state firm should be one that would be worthwhile, say using "2 years". Mr. Brooks replied that it would be a real step forward, at least it means they have been here

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trying to establish a business. Mr. Pierson interjected the statement that although some people have maintained an office here for years they don't really work at it.

Mr. Oakes was asked if he thought the 5% figure was reasonable, and he replied that he didn't know what the percentage should be, but thought bidding on an "in lieu" tax rather than a "preference" would be better. Senator Dodge asked Mr. Oakes, if, in his opinion, they added 5% to the bid, would that really put money into the "State coffers", and Mr. Oakes replied in the affirmative. Senator Dodge then asked Mr. Brooks if he thought this was realistic, and Mr. Brooks replied that he thought so. Senator Dodge commented that perhaps we are getting into broader matters than intended, such as distribution of milk -- we do have out-of-state suppliers of milk and bread. Mr. Pierson interjected, that milk was a controlled price item and there is no bidding on it. Senator Dodge agreed that this may be true but by setting up a 5% preference we may be getting into some other areas.

Senator Young asked Mr. Brooks what he thought about pre-qualifications of bidders. Mr. Brooks replied that he liked that and that he hoped we could have pre-qualified commodities too some day.

Senator Christensen addressed a question to the attorneys present: "Do you think that this is the same law that was considered unconstitutional in Pennsylvania, and, do you think that it might be unconstitutional here too?" Senator Young replied that he would be surprised if this point of law hadn't been tested. Mr. Oakes also commented that it had been tested in Arizona and found to be constitutional.

Senator Dodge commented that he had noticed a great deal of interest in this proposed legislation in Las Vegas, when he had been in Las Vegas the previous week-end. Senator Herr stated that there was, that she had been contacted by a great many people in Las Vegas who would like to be heard. The members of the Committee agreed that they would hold another meeting on this subject at a later date.

The Chairman adjourned the meeting at 3:25 P.M.

IN STATE PREFERENCE SURVEY  
AUGUST 24, 1966

A LIST OF STATES, TOGETHER WITH AN INDICATION AS TO THE EXISTENCE  
OF IN-STATE PREFERENCE PRACTICE, INCLUDING COMMODITIES AFFECTED  
THEREBY. (FOOTNOTES EXTEND AND CLARIFY COMMODITIES)

<u>STATE</u>	<u>IN-STATE BIDDERS</u>	<u>IN-STATE PRODUCTS</u>
ALABAMA	NO **	NO
ALASKA	YES	YES (See footnote #1)
ARIZONA	No answer	
ARKANSAS	No answer	
CALIFORNIA	YES ** (See footnote #2)	NO
COLORADO	NO	YES (See footnote #3)
CONNECTICUT	NO	NO
DELAWARE	NO	NO
FLORIDA	No answer	
GEORGIA	YES ** (See footnote #4)	NO
HAWAII	YES (See footnote #5)	YES
IDAHO	NO	NO
ILLINOIS	NO	NO
INDIANA	NO *	YES (See footnote #6)
IOWA	YES (See footnote #7)	NO
KANSAS	NO **	NO
KENTUCKY	NO	NO
LOUISIANA	No answer	
MAINE	NO ** (See footnote #8)	NO
MARYLAND	NO	YES (See footnote #9)
MASSACHUSETTS	YES (See footnote #10)	YES
MICHIGAN	NO **	NO
MINNESOTA	YES (See footnote #11)	NO
MISSISSIPPI	NO (See footnote #12)	NO
MISSOURI	NO **	NO
MONTANA	YES (See footnote #13)	YES
NEBRASKA	NO	NO
NEVADA	NO	NO
NEW HAMPSHIRE	NO *	NO
NEW JERSEY	YES	YES (See footnote #14)
NEW MEXICO	YES	YES (See footnote #15)
NEW YORK	NO *	YES (See footnote #16)
NORTH CAROLINA	NO ** (See footnote #17)	NO
NORTH DAKOTA	YES ** (See footnote #18)	NO
OHIO	No answer	
OKLAHOMA	NO *	NO
OREGON	YES **	YES (See footnote #19)
PENNSYLVANIA	NO	NO
RHODE ISLAND	NO	NO
SOUTH CAROLINA	NO **	NO
SOUTH DAKOTA	YES (See footnote #20)	NO
TENNESSEE	NO	NO
TEXAS	YES (See footnote #21)	YES
UTAH	NO	NO
VERMONT	NO *	NO
VIRGINIA	YES (See footnote #22)	NO

<u>STATE</u>	<u>IN-STATE BIDDERS</u>	<u>IN-STATE PRODUCTS</u>
WASHINGTON	YES (See footnote #23)	NO
WISCONSIN	NO	NO
WEST VIRGINIA	NO	NO
WYOMING	YES	YES (See footnote #24)
GUAM	No answer	
PUERTO RICO	YES	YES (See footnote #25)
VIRGIN ISLANDS	No answer	

- \*\* Tie-bid preference mandatory  
\* Tie-bid preference permissive

FOOTNOTES -

- 1.) Product preference - timber lumber and manufactured lumber products originating in the state, from local forests.
- 2.) California's in-state preference law is no longer in practice.
- 3.) A 5% product preference is in practice.
- 4.) Preference granted on bids of in-state firms is mandatory.
- 5.) In-state bidders are allowed 5% differential by statute. In-state produced or manufactured products are allowed 3%, 5% and 10% in accordance with the percentage of "Hawaii in-put". The greater "Hawaii in-put" the greater the allowable percentage. This is by statute.
- 6.) Product preference - coal and printing.
- 7.) "When such can be done without loss to the State" Iowa Purchasing Law
- 8.) Preference granted on bids of in-state products is mandatory.
- 9.) "In purchasing materials, supplies and equipment for the using authorities, the Director shall give a preference to products manufactured or produced in Maryland, except when in the judgement of the Director such purchases would operate to the disadvantage of the State." General Rules, Regulations, and Conditions, The Maryland Department of Budget and Procurement.
- 10.) "other considerations being equal" Massachusetts' Rules and Regulations Governing Purchasing.
- 11.) Resident bidder allowed a preference as against a non-resident bidder from a state giving or requiring a preference to bidders from that state. The preference is equal to that of the State of the non-resident bidder.
- 12.) Only when things are equal with regards to price, quality, and service.
- 13.) Preference of 2% mandatory on all products.

## FOOTNOTES (Continued)

- 14.) Product preference - printing and eggs.
- 15.) Preference of 5% mandatory on all products.
- 16.) Product preference - agricultural products.
- 17.) Only where all factors are equal.
- 18.) Preference of 10% mandatory on printing.
- 19.) Product preference - cement, sand, gravel, crushed rock.
- 20.) There are two exceptions to the preference law: 1. Motor vehicles must be purchased from authorized dealers licensed by the State of South Dakota. 2. Legislative and Public Printing (official reports) must be performed by an in-State printer.
- 21.) All things being equal.
- 22.) The intent is to protect Virginia suppliers against discrimination by other states.
- 23.) Washington's in-state preference law is not practiced.
- 24.) Product preference - paint, posts, canned vegetables, printing.
- 25.) The in-state preference law is inoperative.

# THE NATIONAL ASSOCIATION OF STATE PURCHASING OFFICIALS

## "THE IN-STATE PREFERENCE STORY"

Report of  
The Committee on Competition in Governmental Purchasing  
for 1966



Submitted to:  
21st NASPO CONFERENCE  
SEPTEMBER 18-22, 1966  
SEATTLE, WASHINGTON

by:

R. M. Hornbeck, Chairman  
Secretary of Property and Supplies  
Commonwealth of Pennsylvania



by

R. M. HORNBECK, CHAIRMAN  
SECRETARY OF PROPERTY AND SUPPLIES  
COMMONWEALTH OF PENNSYLVANIA

One hundred eighty-nine years ago, manufacturers doing business between their home colony, and one of the other twelve, could expect to pay a tariff to the colony government into which they were shipping their goods. This practice could hardly be the case today. In a democracy that grows on free enterprise and is governed by interstate commerce and anti-trust regulations, "tariff walls" should not exist.

Not only do tariff walls exist in the United States, but the practice of favoring the local state's manufacturers and penalizing out of state vendors is found to be an accepted part of state government purchasing in nineteen states. These results were the findings of R. M. Hornbeck, Secretary of Property and Supplies for the Commonwealth of Pennsylvania, after extensive research on the practice of in-state preference.

"We studied every state's purchasing laws, policies and practices," said Hornbeck. "The results were amazing and startling. Fourteen states had 'blanket in-state preference' laws and were using them to give their in-state vendors a price advantage over out of state vendors. Five states were practicing product preference such as paper, wood, and printing, thus preventing outside suppliers of these goods doing business at all in their state."

"The startling part of the study was that five and possibly six states were in the process of either introducing legislation in their states in favor of in-state preference, or had already done so."

"It was my feeling at the time that something must be done to bring this unfair practice into the national limelight," Hornbeck continued.

Hornbeck had his opportunity to set the stage for his action of July first of 1965 at the Convention of the National Association of State Purchasing Officials held in Atlantic City, November, 1964. Here Secretary Hornbeck revealed to the membership, the top purchasing officials from each state, his state's law which had never been enforced. He requested officials from states having in-state preference laws and those proposing them to work with him to have these laws repealed or defeated. He received a resolution affirming NASPO's stand against the practice of "In-State Preference".

Again in Chicago at an Executive Committee meeting of NASPO in January of 1965, Hornbeck requested action. This time Alan O. Vessey, Director of Procurement for Minnesota, and the President of NASPO, authorized the Committee on Competition in Governmental Purchasing, which is chaired by Secretary Hornbeck, to prepare a publication against In-State preference laws and policies. The paper would then be distributed to all state officials through the Council of State Governments in Chicago. The paper published in 1965 and titled "In-State Preference In Public Purchasing" received wide distribution, and was generally acclaimed as an excellent aid in helping to combat In-State Preference legislation.

In Harrisburg in June of 1965, Hornbeck learned that the five states proposing legislation were planning to act on the bills prior to the release of the NASPO publication. From informed sources it was learned that bills would pass in three of the states unless something drastic happened.

June twenty-fourth Hornbeck called in Frederick Klein, business writer for the WALL STREET JOURNAL, and gave him the story. Effective July 1, 1965, the Commonwealth of Pennsylvania would not honor bids submitted by manufacturers located in nineteen states that practiced In-State preference. The Secretary had decided to enforce Section 523 of the Administrative Code of the Commonwealth of Pennsylvania, which states that, "It shall be unlawful for any administrative department, board, or commission . . . to purchase any supplies, equipment, or materials manufactured in any state which . . . has laws favoring their In-state bidders." (A reprint of the WALL STREET JOURNAL article is included herewith.)

That was over a year ago. What has happened since July first?

When first asked to describe the anticipated reaction to his announcement, Mr. Hornbeck stated that he felt, "it would be favorably accepted by the business community, who generally want a healthy competitive climate free from such obstacles as In-State preference. As for those states affected by the new policy, I think that they will certainly try and measure how this affects their economy, both presently and for the future. I hope they will choose to repeal their laws."

Of the original nineteen states, at present nine remain on the banned list with the Commonwealth. Connecticut, New Hampshire, Wisconsin, and Maine were removed from the list after they dropped their product preference policies.

Edward W. Brooke, Attorney General for the State of Massachusetts, immediately took the necessary legal steps to remove all In-State preference policies, rules, and regulations from the buying procedures in that State.

Pending legislation introduced in the five states previously mentioned, received a sounding defeat. In the sixth state, New York, the legislature passed the bill and sent it on to Governor Nelson Rockefeller who vetoed the bill, and in so doing, cited, "the stand taken by Secretary Hornbeck is a stand for free enterprise."

As states were removed from the Commonwealth's Banned List, a formal press release was issued announcing that particular state's reinstatement to Pennsylvania's Bidders List.

A sequential list of reinstatements is included in this report.

"The Commonwealth of Pennsylvania is not just sitting back waiting for the states to take action," said Hornbeck. "Instead we are working with these states for the repeal of their preference laws."

"Two days after we announced the enforcement of our law, I received unsolicited correspondence from Hans A. Linde, Professor of Law, University of Oregon. Attached to his letter was the reprint of Section 8 of the GEORGE WASHINGTON LAW REVIEW, dated April, 1965, in which the Professor discusses the unconstitutionality of In-State preference purchasing. The Professor stated that In-State preference "may violate several clauses of the United States Constitution." Oregon has a five per cent In-State preference law.

Armed with this new information, Mr. Hornbeck wrote the U. S. Attorney General for legal assistance in the matter. At present the Anti-trust Division of the U. S. Department of Justice is investigating In-State preference laws. Hornbeck is also working with U. S. Senator Hugh Scott (Pennsylvania) in preparing a bill citing In-State preference laws as being in direct violation of the Interstate Commerce Act. It is hoped that the bill will be introduced early next year.

Secretary Hornbeck's support for his action of July first comes from literally everywhere in America. Governor Edmund Brown, California; the National Association of State Purchasing Officials; the California Association of Public Purchasing Officers; Xerox Corporation; the Detroit Edison Company; the National Institute of Governmental Purchasing; Friden Corporation; and the Division of Singer, are but a few of Hornbeck's followers.

"The results have been gratifying," remarked Hornbeck. "Probably the most significant gain is to make the governors and legislators of the states which have In-State preference laws aware of the evils of establishing trade barriers between the states." Hornbeck hopes that all fifty states will be free of any type of preference buying practices by the end of 1967.

STATE LAWS FAVORING LOCAL FIRMS' JOB BIDS NOW UNDER NEW FIRE

Pennsylvania Will Bar Bidders From 'Protectionist' States; Will Move Spur Retaliation?

(Reprinted by permission and courtesy of the WALL STREET JOURNAL)

By Frederick C. Klein - Staff Reporter of THE WALL STREET JOURNAL

The State of Oregon recently awarded a contract for highway sign blanks to Coral Corp. in Portland. But Coral's bid of \$20,374 was \$517 higher than that of the lowest bidder, a Massachusetts company.

The Bay State bidder didn't get the job because Oregon, like a growing number of other states, gives companies headquartered within its borders an edge in competitive bidding. State purchasing agents there are permitted to grant contracts to a home-state firm if its bid is no more than 5% above the lowest-bidding concern from out of state.

The statutes granting favoritism to the home folks are called in-state preference laws, and their purpose is to help protect local industries and jobs. Achievement of this aim, claim champions of the laws, more than offsets the extra cost to taxpayers implicit in them. But opponents, alarmed by the spread of statutes they consider bars to free commerce, are mapping counterattacks that promise to touch off commercial conflict between many states.

The sharpest anti-preference assault yet will be announced within a day or two by Pennsylvania, which will rule that no vendor from any state with preference laws will be permitted to bid for Pennsylvania's properties and supplies business, totaling \$125 million a year. The aim of the ruling, says R. M. Hornbeck, secretary of properties and supplies, is to "encourage states that have the laws to remove their barriers." If they do, this would help the many Pennsylvania manufacturers who rely heavily on contracts with other state governments; currently, they find themselves at a disadvantage bidding competitively in states with preference laws.

#### Persuading Legislators

Shortly, the National Association of State Purchasing Officials will launch its first big "educational" campaign to persuade legislators to resist protectionist statutes. In the past, NASPO contented itself with passing resolutions condemning such laws, "but now we are concerned enough to go beyond that," comments NASPO President A. O. Vessey, Minnesota's purchasing chief.

Explains Mr. Vessey: "Preference laws defeat the purpose of public bidding on state contracts, and they open the door to favoritism and increase state costs. In the long run, they tend to eliminate from the state market many competent bidders necessary to sustain a competitive economic climate for quality merchandise."

The moves by Pennsylvania and NASPO are directed at the 14 states which now have broad mandatory or optional preference laws on the books, the dozen or so others with statutes applying to only a few specialty products, and those states now considering new legislation. Preference foes are particularly alarmed over the latter development, for several big states seem to be drifting toward protectionism.

In New York, for example, a bill giving preference to New York-based contractors on public works jobs now awaits only the signature of Gov. Nelson Rockefeller to become law; a similar bill covering state purchases was also introduced during the recently adjourned legislative session in Albany. A preference bill dealing with state purchases was killed in the Illinois senate after passing the house in 1963, but observers there say its sure to be revived. Preference bills have been introduced in a half-dozen other states, including Indiana, Kansas, and, ironically, Pennsylvania (where it stands little chance of passage).



## Protectionism in Hawaii

Of the states with comprehensive preference laws now in effect, only two -- California and Massachusetts -- rank high on the population scale and thus are prime targets for out-of-state contractors. The severity of the statutes among all the preference states varies; Hawaii, the most recent state moving under the protectionist umbrella, has one of the stiffest. Adopted in 1963, that state's law gives a whopping 10% edge to bidders on some items.

Though Pennsylvania's attack on preference will be the strongest yet by any state, it will not be the first. In recent years, Minnesota, South Dakota, and Oklahoma have adopted "reciprocity" policies that reverse the bidding percentage edge against vendors from preference states. New Mexico, for example, grants a 5% preference; so a New Mexico company bidding on a Minnesota job would have to submit a bid at least 5% lower than the lowest local bid to win the contract.

Last March, a new purchasing chief took over in Missouri and attempted to give Missouri bidders a 5% bidding edge on state jobs, though the Missouri regulation says only that local bidders would have preference if prices were "reasonably" the same on in-state and out-of-state bids. Thomas Blanco, a top purchasing official in neighboring Illinois, says: "When I heard about that I got on the phone and told Missouri we might consider some form of retaliation if they kept it up." Missouri backed off.

How preference states will react to Pennsylvania's ban on their bidders is still uncertain. Pennsylvania officials know there's a risk involved; there might be stiffer retaliation rather than lowering of trade barriers. Some mumblings have been heard already.

"Such an action might be in restraint of trade -- it could go to the courts," declares William A. Moreland, majority leader of the state senate in West Virginia, which shares a border with Pennsylvania and has a 5% preference law applied at its purchasing agents' option. "There's no doubt it would hurt us. We'd have to take some action."

The Pennsylvania actions "is sure to generate stronger feelings on both sides of the issue," says James R. Mills, chairman of the rules committee of the California State Assembly. Assemblyman Mills explains that California's present law, like West Virginia's operates on purchasing officials' options. "There have been a lot of attempts to make it mandatory," he says, "and right now the side backing stronger preference looks stronger than the side for repeal."

Naturally, preference has its staunch backers in states that use it. For example, New Mexico's purchasing director, Dante J. Valo, concedes that his state's preference law costs taxpayers an extra \$75,000 to \$100,000 yearly -- the difference between winning bids by New Mexico concerns and lower ones submitted from out of state. But he adds: "The money we take in through state taxes when a New Mexico company gets the job takes care of most of that difference. And because companies here know we favor them on state contracts, they're encouraged to come here and bid."

Not all purchasing agents in preference states agree. "I use the law as little as possible," says one. "If I followed it to the letter, some of our in-state bidders might start feeling secure and jack up their bids by a percentage point or two." Talks with purchasing officials in a dozen states reveal that many don't apply preference as strictly as the letter of the law permits on high-cost projects.

But there is still evidence that preference can turn away outside bidders. An unwritten preference in New York State for locally made carpets and rugs "has pretty well discouraged us from bidding there," says John F. Driscoll, commercial sales manager for Magee Carpet Co., Bloomsburg, Pennsylvania.

July 1, 1965

Richard M. Hornbeck, Secretary of Property and Supplies, in charge of Pennsylvania's centralized purchasing operation, announced today that Pennsylvania will stop purchasing from those states having "in-state preference" laws.

The new policy will be effective July 1, 1965, and it affects nineteen states. The Commonwealth will stop purchasing all supplies, equipment, and materials manufactured in Alaska, Arkansas, California, Hawaii, Louisiana, Massachusetts, Mississippi, Montana, New Mexico, North Dakota, Oregon, Washington, West Virginia, Wyoming and Puerto Rico (Not a state per se). In addition, Pennsylvania will not purchase printing from Connecticut, New Hampshire, New Jersey, Wisconsin or paper from Maine.

Secretary Hornbeck's action was based on his decision to enforce Section 523 of the Administrative Code of the Commonwealth of Pennsylvania which states that "It shall be unlawful for any administrative department, board, or commission to purchase any supplies, equipment, or materials manufactured in any state which has laws favoring their in-state bidders."

A blanket "in-state preference" law usually gives bidders within a state a price advantage over bidders from all other states. The law normally specifies a percentage differential. In the fourteen states who have excluded themselves from doing business with Pennsylvania by passing "in-state preference" laws the price advantage ranges from 1% to 10% with most states having a 5% law.

Other types of "in-state preference" laws simply prohibit any out-of-state firm from doing business in a particular state. These usually pertain to a particular product such as printing or paper where the law states that "all printing or paper must be purchased within the state."

Secretary Hornbeck arrived at this decision after more than a year of study on the subject of "in-state preference" laws. Hornbeck is Chairman of the Committee on Competition in Governmental Purchasing of the National Association of State Purchasing Officials (NASPO). At that capacity, he was charged with the responsibility for finding ways of combating "in-state preference" laws on a national basis. NASPO has consistently opposed such laws having passed resolutions at their national conventions for several years.

"Pennsylvania's current move," Hornbeck said, "is designed to dramatize the issue nationally. In this manner, we hope to discourage states from passing new 'in-state preference' laws. Moreover, we are going to encourage states to repeal existing laws," Hornbeck continued. "Our recommendation to states will be to follow the example of South Dakota who repealed a 2% preference policy and passed a 'do-unto-others-as-they-do-unto-you' reciprocity law".

Minnesota is the one other state having such a law. Alan O. Vessey, the Director of Procurement for Minnesota, has been a leading crusader against "in-state preference" laws for many years. Mr. Vessey is currently the President of NASPO.

"In-state preference" laws are universally opposed by public purchasing officials for many reasons. Basically, such laws result in restricting competition ultimately causing prices to rise. The taxpayer is penalized in the long run. In addition, such laws invite retaliatory action by other states.

Hornbeck stated "that 'tariff walls' are being erected between states. Laws of this nature are setting trade between the states back almost 200 years when the original thirteen colonies had stringent tariff barriers between each other".

When asked to describe the anticipated reaction to his announcement, Mr. Hornbeck stated that he felt "it would be favorably accepted by the business community who generally want a healthy competitive climate free from such obstacles as 'in-state preference.' As for those states affected by the new policy, I think that they will certainly try and measure how this affects their economy both presently and for the future. Again, I state that I hope they will choose to repeal their laws".

"In the overall", Hornbeck continued, "I feel that the business climate of Pennsylvania will be improved by this move and that eventually, the business climate of the nation will improve. As each tariff wall falls, healthy competition will be restored."

R. M. Hornbeck was formerly the Vice President of Purchasing and Traffic for Westinghouse Airbrake Company before accepting his present position with the Scranton administration in January of 1963.

R. M. Hornbeck, Secretary of Property and Supplies for the Commonwealth of Pennsylvania today announced that the State of Maine would be removed from the list of nineteen states cited by Pennsylvania for their unfair in-state preference laws.

Maine was first placed on the list of states that Pennsylvania banned from selling to the Commonwealth because it was believed that a law existed giving a percentage preference for paper manufactured in Maine.

In correspondence to Secretary Hornbeck, Maine's State Purchasing Agent, John R. Dyer, submitted a copy of their revised statutes covering Purchases for the State of Maine. The revised statutes clarified Maine's policy on in-state preference and tie bids thus giving Hornbeck enough reason to reinstate Maine paper vendors to the Commonwealth's bidders list.

In reinstating Maine to do business with the Commonwealth, Hornbeck said, "It is my hope that the remaining eighteen states move rapidly to remove existing 'tariff walls.' As they do, we in Pennsylvania will immediately take the necessary steps to reinstate their manufacturers to our bidders list."

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R. M. Hornbeck, Secretary of Property and Supplies, today requested United States Senator Hugh Scott, to obtain from the United States Attorney General, Nicholas deB. Katzenbach, a legal opinion regarding the unconstitutionality of in-state preference laws.

Secretary Hornbeck banned manufacturers located in 18 states from doing business with the Commonwealth of Pennsylvania on July 1, of this year. The Secretary used as his authority in prohibiting these manufacturers from doing business, Section 523 of The Administrative Code of Pennsylvania.

In taking his latest action Secretary Hornbeck again stated that, "the move is designed to solve this un-American purchasing procedure once and for all."

Two days after the Secretary announced his position, he received correspondence from Hans A. Linde, Professor of Law, University of Oregon. Attached with the correspondence was the re-print of Section 8 of the George Washington Law Review, dated April, 1965, in which the Professor discussed the constitutionality or unconstitutionality of in-state preference purchasing. The Professor stated that in-state preference "May violate several clauses of the United States Constitution." Oregon is one of the eighteen states that Pennsylvania took action against.

Armed with this information and the support of other national purchasing officials, Secretary Hornbeck is prepared to continue his battle to tear down the unfair "tariff walls" that exist in these 18 states.

As part of the Secretary's action to remove the preference laws, he is sending a letter to the Governor in each state, who's manufacturers are banned from doing business with the Commonwealth.

In his letter, the Secretary stated his position and reasons for the steps he has taken. He also asks the support of each Governor in the interest of good American business practices to remove all existing trade barriers and tariff walls.

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Attorney General for the State of Massachusetts, Edward W. Brooke, has taken legal steps to remove all in-state preference policies, rules and regulations from the buying procedures in the State of Massachusetts.

Aug. 6th Release - Continued

R. M. Hornbeck, Secretary of Property and Supplies for the Commonwealth of Pennsylvania, in making the announcement said that Attorney General Brooke, handed down a legal opinion covering several articles of the purchasing and administrative code of Massachusetts. The legal opinion by Brooke cleared the way for Hornbeck to reinstate Massachusetts manufacturers to the bidders list in Pennsylvania.

Attorney Brooke, ordered that the rules and regulations used by Massachusetts purchasing agents over the years to give that state's manufacturers a preference edge over out of state manufacturers are invalid and should cease immediately. The rules and regulations promulgated by the Massachusetts purchasing commissioners, according to Brooke, were policies set up over the years by their purchasing officials and these rules had never been approved by a governor or the council and therefore were invalid.

Secretary Hornbeck cited the Massachusetts move as the first major break in the attempt nationally to tear down any and all tariff barriers that exist between states. The Secretary has recently reinstated Maine manufacturers to do business with the Commonwealth of Pennsylvania.

Since Secretary Hornbeck brought action against the manufacturers located in states having in-state preference laws or policies, in July 1 of this year, he has gained major national support in his stand. Leading national purchasing officials and top business people have openly supported the Secretary's move.

Several weeks after Secretary Hornbeck made the announcement, Governor Nelson Rockefeller of New York vetoed an in-state preference law presented to him by his state legislature. In vetoing the bill, Governor Rockefeller cited the stand taken by Secretary Hornbeck as a stand for free enterprise. With the reinstating of Massachusetts and Maine manufacturers to the Commonwealth's bidders list, the states having in-state preference laws or policies have been reduced to 17.

Secretary Hornbeck said he has reason to believe that several more states will take steps similar to the action taken by Massachusetts Attorney General Brooke in removing their in-state preference laws and policies in the very near future.

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Press Release - August 18, 1965

Printing manufacturers and jobbers located in the states of Connecticut and New Hampshire will be pleased to know that they will once again be permitted to bid for the Commonwealth of Pennsylvania's printing contracts.

R. M. Hornbeck, Secretary of Property and Supplies, Commonwealth of Pennsylvania, announced today that Connecticut and New Hampshire attorneys general and purchasing officials took steps necessary to clear up the questions surrounding their in-state preference laws pertaining to printing.

These were two of 19 states whose manufacturers were banned from doing business with the Commonwealth of Pennsylvania when Secretary Hornbeck, on July 1 of this year, enforced Section 523 of the State's Administrative Code. Section 523 prohibits the State's chief purchasing agent from doing business with manufacturers located in states practicing unfair in-state preference laws or policies.

Since Hornbeck's enforcement of Section 523, on July 1, state manufacturers hardest hit by the purchasing ban are from California, West Virginia, Arkansas and Oregon. The Secretary has requested manufacturers located in these states to join with him in the true American spirit and work to have these unfair in-state preference practices repealed immediately. Hardest hit of the states having a product preference is New Jersey whose printers have been banned from bidding for the Commonwealth's printing business. New Jersey has a printing preference law that states all printing done for the New Jersey State Government must be printed in New Jersey-located shops.

(Continued)



Aug. 18th - Continued

Said Hornbeck, "The greatest support we are receiving is from manufacturers located in California who have indicated to me that they shall make every attempt within their power request Governor Brown to ask for the repeal of California's in-state preference law. My office has also received written support from the California Association of Public Purchasing Officials. Officers of this organization have advised me that they will move for a resolution at their forth-coming convention requesting the repeal of California's preference law."

"I hope that the United States will see the end, within the next two years, of in-state preference laws, tariff walls, and border barriers that obstruct free enterprise," concluded Hornbeck.

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Press Release - November 9, 1965

Companies manufacturing goods and supplies in Louisiana are being informed by Pennsylvania's Department of Property and Supplies that they have been reinstated to the State bidders list, effective November 9, 1965.

Louisiana manufacturers have been prohibited from selling to the Commonwealth of Pennsylvania since July 1 of this year when R. M. Hornbeck, Secretary of Property and Supplies, enforced Section 523, Pennsylvania Administrative Code. The Code prohibits Pennsylvania departments, boards, and agencies from purchasing materials and supplies in states practicing in-state preference. Louisiana was one of nineteen states having such a law on July 1.

Secretary Hornbeck credits the move taken by Louisiana's Governor, John J. McKeithen and Attorney General, Jack P. F. Gremillion to the outstanding work and cooperation by the officers of Poloron Products, Incorporated. The Poloron Corporation, makers of folding chairs and tables, agreed with Hornbeck's belief that "in-state preference laws of any type are deterrents to free enterprise", and with this in mind went to work immediately to have Louisiana remove their policy. Poloron has manufacturing points in Louisiana, Scranton, Pennsylvania, and Rye, New York.

Since Secretary Hornbeck's action of July 1, seven states, of the original nineteen states whose manufacturers were banned from selling to Pennsylvania State government, have either repealed or removed their in-state preference law or policy.

"We are very pleased with the results to date", said Hornbeck. "One corporation that manufactures in California (Presently on the banned list) has moved a portion of its plant to Pennsylvania so that they could continue to sell us their products". "More jobs for Pennsylvania is not the result we were after when I enforced Section 523, but this does prove we have the support of the nation's businessmen".

Friden Incorporated, a subsidiary of Singer Company, has moved their major assembly and testing division for office equipment from San Leandro, California to Lewistown, Pennsylvania. California has a five percent preference law which to date has not been repealed or nullified.

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Press Release - November 18, 1965

West Virginia manufacturers are entitled to submit bids once again to the Commonwealth of Pennsylvania.

Action was taken, effective November 15, by R. M. Hornbeck, Secretary of Property and Supplies for the State of Pennsylvania, after an agreement was reached with West Virginia Governor and Attorney General.

Governor Hulett C. Smith of West Virginia said his state purchasing officials will be limited to giving in-state preference, "only in cases where bids are identical." The Governor further stated, "I will recommend in my discussion with the legislative leadership at the next Session that consideration be given to the repeal of this section of our code." (Section 7 Code of West Virginia - Preference Given State Products).

West Virginia was one of the original nineteen states whose manufacturers were prohibited from doing business with the Commonwealth of Pennsylvania under Section 523, Administrative Code, when that Section was enforced on July 1, 1965 by Secretary Hornbeck. Eight States including West Virginia have either repealed or removed their in-state preference law or policy since July 1.

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Press Release - December 10, 1965

With the announcement that an agreement was reached between Pennsylvania and California regarding California's in-state preference laws, R. M. Hornbeck, Secretary of Property and Supplies for the Commonwealth moved to reinstate California manufacturers to Pennsylvania's bidders list effective Monday, December 13, 1965.

Secretary Hornbeck advised Governor Edmund Brown of California of Pennsylvania's action by letter on December 10. In his letter, Hornbeck, stated that the decision to reinstate California was on a provisional basis. California has indicated that they would refrain from using their State's general administrative purchasing policy, that permits the favoring of in-state vendors over out-of-state vendors, until the matter can be taken up with their General Assembly in 1967. Should there be a change in California's new policy, Pennsylvania would be forced to ban California once again. California's law-making body cannot act on legislation of this nature during even numbered years. Their General Assembly had adjourned for this year prior to Secretary Hornbeck's enforcement of the Pennsylvania law.

"All companies manufacturing goods, material and equipment in California are again invited to submit bids to the Commonwealth", said Hornbeck. "We welcome them in a competitive bid."

California is the eighth state, of the original nineteen banned from doing business with the Commonwealth, to be reinstated. Still on the list are, Alaska, Arkansas, Hawaii, Montana, New Mexico, North Dakota, Oregon, Washington, Wyoming, Puerto Rico; and New Jersey (printing only).

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Press Release - January 6, 1966

Governor Daniel J. Evans of Washington State announced that his state has gone on public record dropping their In-state Preference purchasing procedures, thus giving the Commonwealth of Pennsylvania its second major victory in the past month against this unfair buying practice.

Governor Evans issued a directive to all Washington state purchasing officials instructing them to refrain from using the provision of the law regarding in-state preference. He also went on public record as saying he will ask the 1967 session of the Washington State Legislature to repeal the five per cent in-state preference law.

R. M. Hornbeck, Secretary of Property and Supplies for the Commonwealth, and a national leader against in-state preference buying in state government, immediately wired Governor Evans. In his telegram the Secretary said, "On behalf of the Commonwealth of Pennsylvania and my fellow members of the National Association of State Purchasing Officials, I wish to thank you and congratulate you for your recent stand against in-state preference. It has been our hope that the leaders of all our states would make their position against in-state preference buying a matter of public record such as you have. Washington State businessmen and manufacturers have every reason to be pleased and proud of your decision. Your state's manufacturers have been reinstated to Pennsylvania's bidders list effective January 5, 1966."

(Continued)

Secretary Hornbeck cited the action taken by Governor Evans as being similar to taken by Governor Brown of California last month. California manufacturers were removed from the banned list on December 10, 1965.

Washington is the ninth state to be reinstated to the Commonwealth bidders list since Hornbeck's enforcement of Section 523 of the Administrative Code on July 1, 1965. Still on the ban list are, Alaska, Arkansas, Hawaii, Montana, New Mexico, North Dakota, Oregon, Wyoming, and Puerto Rico. New Jersey is on the list for printing only.

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Press release - February 25, 1966

Richard M. Hornbeck, Secretary of Property and Supplies for the Commonwealth of Pennsylvania has notified Freeman Holmer, Director of the Department of Finance and Administration for the State of Oregon, that agreement has been reached officially reinstating Oregon Manufacturers to Pennsylvania's bidders list effective Thursday, February 17, 1966, at 8:30 A.M.

The return of Oregon Manufacturer's to the bidders list gives the Commonwealth of Pennsylvania its third major victory in the past month against In-state Preference buying practices. Oregon joins California and Washington recently reinstated. Oregon is the tenth state reinstated since Secretary Hornbeck's enforcement of Section 523 of the Administrative Code on July 1, 1965.

Among states still remaining on the Commonwealth's ban list are, Alaska, Arkansas, Hawaii, Montana, New Mexico, North Dakota, Wyoming, and Puerto Rico. New Jersey remains for printing only.

Secretary Hornbeck commended the leadership demonstrated by states removed since enforcement of the ban. He hoped that remaining states would take similar positions against In-State Preference buying.

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# THE NATIONAL ASSOCIATION OF STATE PURCHASING OFFICIALS

REMARKS OF R. M. HORNBECK, CHAIRMAN  
Committee on Governmental Purchasing



TO

THE 21st NASPO CONFERENCE  
SEPTEMBER 18 - 22, 1966  
SEATTLE, WASHINGTON



NATIONAL ASSOCIATION OF STATE PURCHASING OFFICIALS  
R. M. HORNBECK'S REMARKS TO NASPO OFFICIALS  
21st ANNUAL CONFERENCE AT SEATTLE  
SEPTEMBER 18 TO 22, 1966

When I submitted the Annual Report of the Committee on Competition in Governmental Purchasing for 1965 in Las Vegas, I indicated that a definitive report on In-State Preference would be made within the course of the year. In July, 1965, the NASPO report on In-State Preference was published and distributed to NASPO members with the specific request that they make available the report to other state officials, the Governor, and other legislative leaders. At the same time, it was determined that some way to dramatize the In-State Preference problem nationally, must be found. Pennsylvania's law on In-State Preference (not previously used), which forbids the Commonwealth from purchasing products made in any state that has an In-State Preference law, was to be the key for unlocking the door of competitive enterprise. The dramatic announcement on Page 1 of THE WALL STREET JOURNAL provided the stimulus and drama needed to project the problem of In-State Preference to purchasing officials, governmental agencies, legislative leaders, and sundry other personnel throughout the length and breadth of this nation. A reprint of the WALL STREET JOURNAL article is contained in my comprehensive report entitled "The In-State Preference Story", which was presented to the membership at the beginning of the conference.

On July 1, 1965, as Secretary of the Commonwealth's Department of Property and Supplies, in charge of Pennsylvania's Central Purchasing operation, I announced that Pennsylvania would stop purchasing from those states having In-State Preference laws. Section 523 of the Administrative Code of the Commonwealth of Pennsylvania, states, "it shall be unlawful for any department, board or commission to purchase any supplies, equipment, or materials manufactured in any state which" has laws favoring In-State bidders. Affected by this were the states of Alaska, Arkansas, California, Hawaii, Louisiana, Massachusetts, Mississippi, Montana, New Mexico, North Dakota, Oregon, Washington, West Virginia, Wyoming, and Puerto Rico, (not a state per se). In addition, Pennsylvania banned the purchase of printing from Connecticut, New Hampshire, New Jersey, Wisconsin, and paper from Maine. Fourteen (14) states and Puerto Rico were placed on the Commonwealth's banned list for all supplies, equipment, and materials, while five (5) states were on the list for only a specific product.

The announcement developed an appreciable amount of consternation and attention. However, after many telephone calls and extensive correspondence, only eight (8) of the original nineteen (19) remain on the Commonwealth's banned list today. In New Jersey, printing is still not purchased by the Commonwealth of Pennsylvania. With my enforcement of Section 523 on July 1, state manufacturers hardest hit by the ban were California, West Virginia, Arkansas, Washington, and Oregon. I requested Manufacturers located in these states to join with me in the true American spirit to work with me in having these In-State Preference laws repealed.

The greatest support I received was from manufacturers located in California, who have indicated to me that they would make every effort within their power to request the California Legislature to repeal the In-State Preference law. The California Association of Purchasing Officers have supported, by resolution at their convention, the repeal of California's In-State Preference law. On December 10, 1965, agreement was reached with the State of California, and I had the pleasure on that date to reinstate California provisionally. I have had the assurance from California that they would refrain from using the state's purchasing policy which permits the favoring of "in-state vendors" over "out-of-state vendors" until the matter can be taken up in their January Assembly in 1967. Should there be a change in California's new policy, Pennsylvania would be forced to ban California once again.

Governor Daniel J. Evans, of the State of Washington, demonstrated executive leadership when on January 6, 1966, he announced that his state has gone on public record dropping their In-State Preference purchasing procedures, thus giving the Commonwealth of Pennsylvania and NASPO a major victory over this unfair buying practice.

Governor Evans issued a directive to all Washington State purchasing officials instructing them to refrain from using the provision of the law regarding In-State Preference. He further announced that he will ask the 1967 session of the Washington State Legislature to repeal the five per cent In-State Preference Law.

Governor Evans notified Governor William W. Scranton of Pennsylvania regarding his action on January 5, 1966.

John N. Ayres, Supervisor, Division of Purchasing, State of Washington, was instrumental in preparing the initial research, which resulted in the reinstatement of Washington manufacturers to the Commonwealth's bidders list.

I am pleased to report to this conference today, that, of the original total, only Alaska, Arkansas, Hawaii, New Mexico, North Dakota, Wyoming, Montana, New Jersey, and Puerto Rico still remain on the Commonwealth's banned list because of In-State preference laws. It is my sincere wish and hope that the United States and the states still affected by In-State Preference tariff walls and border barriers, which obstruct free enterprise, will cause these barriers to be completely removed and that all states will be in a position to enjoy unencumbered competition by responsible manufacturers so that we can continue to enjoy the challenge of free competition and that we can buy a better product at a better price unencumbered and free.

The National Association of State Purchasing Officials at its Las Vega, Nevada Conference in November, passed a resolution IV, in which the Association reemphasized its position against In-State Preference either by statute or policy. Last year, I reported to this conference, the progress Pennsylvania has made relative to In-State Preference. At that time I also indicated that I would make available a definitive report on In-State Preference.

"The In-State Preference Story" is contained in a booklet made available to members earlier. I wanted to insure that this report be meaningful, informative, and definitive.

In August, 1966, I submitted a final questionnaire to the NASPO membership inviting specific comments on particular items regarding In-State Preference. Of the 53 questionnaires that we submitted to the membership, we have had 46 returned. Replies not received in sufficient time to be included in this report were Arizona, Arkansas, Florida, Louisiana, Ohio, Virgin Islands, and Guam. I feel that 46 out of 53, or 87%, represents an authoritative figure, and we shall have to draw conclusions from evidence presented. The results of this survey are included in the General Committee Report.

## CONCLUSIONS - IN-STATE PREFERENCE

1. The action by the Commonwealth of Pennsylvania in enforcing Article 523 of the Administrative Code, nationally dramatized the evils inherent in In-State Preference.
2. The extensive publicity disseminated by the WALL STREET JOURNAL article, provided the stimulus needed by state governments, governors, and legislators, to take a closer look at their own laws pertinent to In-State Preference.
3. States enforcing In-State Preference by virtue of Attorneys General opinions were also concerned, and reexamined their procedures.
4. Several legislatures anticipating the adoption of In-State Preference Laws scrapped their efforts after learning about Pennsylvania's action. (Pennsylvania's legislators themselves anticipated the introduction of such a law). Pennsylvania's proposed In-State Preference Law received little enthusiasm, and consequently, didn't even get off the ground.
5. Governor Rockefeller of New York cited Pennsylvania's enforcement of Article 523 of the Commonwealth's Administrative Code, when he vetoed the New York legislature's preference law. Our announcement in July of 1965, an odd numbered year, did not permit state legislatures to repeal existing In-State Preference Laws applicable to their respective states.
6. We are not aware that any In-State Preference Laws were changed since our announcement.
7. Much of the correspondence we received on In-State Preference clearly indicated that many states will introduce legislation in 1967 repealing existing In-State Preference Laws.



8. Consensus seems to indicate that government officials will take a second look at both permissive and mandatory types of preference products involved in current In-State Preference practice.
9. After the initial impact of Pennsylvania's banning of In-State Preference States, correspondence clearly indicated an attitude of reasonable discussion and interest in eliminating trade barriers and fostering national free enterprise.
10. We have learned that our two sister states, Hawaii and Alaska, because of their physical location, may have to continue In-State Preference for the present to generate their internal economy.
11. NASPO's enthusiasm, support, encouragement and continued efforts in the interest of free enterprise resulted in breaking down the barriers developed by In-State Preference Laws.
12. The National Association of State Purchasing Officials must be complimented and their enthusiasm and support must be continued until every facet and every vestige of In-State Preference is erased from the Legislative Halls of the nation.

STATEMENT OF ROWLAND OAKES  
SECRETARY-MANAGER, NEVADA CHAPTER,  
ASSOCIATED GENERAL CONTRACTORS OF AMERICA  
ON SENATE BILL NO. 7

Members of the Associated General Contractors put in place about 80% of all contract construction in the United States.

Members of A.G.C. have a great stake in how these contracts are handled by awarding agencies.

A.G.C. is the only trade association of General Contractors in the United States which has established high ethical standards for its members as set forth in its "Code of Ethical Conduct".

I would like to read a portion of that code which sets forth those rules of ethical practice for an A.G.C. Contractor in his dealings with owners and the public.

"Fair and bona fide competition is a fundamental service of our industry to which clients and owners are entitled. Any act or method in restriction thereof is a breach of faith toward this Association and a betrayal of its principles".

In March of 1960 at the National Convention of A.G.C., the following resolution was adopted.

"Local bidding advantages: The A.G.C. is of the opinion that trade barriers between states are not in the public interest, and state and local legislation which gives a percentage bidding advantage to the local contractor should be discouraged."

Our members in Nevada have reviewed Senate Bill Number Seven, and have instructed me to advise you that A.G.C. is not taking a position for or against the bill.

Many of them believe that in the matter of purchasing material and equipment by the State and its subdivisions, some recognition should be given to the local merchant who provides employment for our citizens, pays our taxes and is nearby to provide service for equipment when such service is needed.

If the legislature wishes to put this local merchant on an equal footing with some other bidder who has not paid these taxes, we suggest that Section 2 of Senate Bill Seven be amended as follows:

EXHIBIT #1

In this amendment we have used the same 5% used in Senate Bill Number Seven as a fair measure of these taxes. You gentlemen, can determine if this percentage is proper. We have also defined the local firm as one who has paid Nevada taxes for a period of two years prior to submitting a proposal. Similar language is used in the Arizona Statute.

If you wish to better serve the construction industry of Nevada and the State Agencies and Political Subdivisions who deal with our industry, we suggest you consider a different approach than a preference law for local contractors.

A.G.C. strongly urges that you consider a prequalification provision in NRS 341 and NRS 334. The former deals with the State Planning Board, and the latter with all other public awarding agencies. While the suggestions contained in Exhibits II and III would be applicable to General Contractors only, you might consider broadening the requirements so that the major mechanical portion of a building construction contract would be bid only by qualified plumbing, heating, and electrical contractors.

The language in Exhibit II is similar to that covering prequalification of bidders on highway construction projects. The few contractor failures on Nevada's multi-million dollar highway program is a testament to its effectiveness.

Exhibit III requires all political subdivisions to follow similar procedures as those proposed for the Planning Board in Exhibit II.

We would also suggest that you correct one other troublesome area of State Purchasing.

In 1954 the District Court in Ormsby County held that the Director of the State Department of Purchasing exceeded his authority when he awarded a contract involving a large percentage of on-site labor. As the State Planning Board Staff is more knowledgeable than the Purchasing Department in construction matters, we respectfully suggest you consider legislation which would limit the functions of the Purchasing Department to purchasing those items which require no on-site labor for fabricating or assembling, and such materials as require on-site labor be handled by the Planning Board.

#### EXHIBIT IV

One of the most serious competitors of the construction industry is day labor by some of the political subdivisions of our state. I recently made a guided tour of the remodeled portion of the Washoe County Court House, and was amazed at the thousands of dollars of cabinet work and carpentry work performed by day labor. Much of it was not up to the same standards required of licensed contractors.

A more recent example of shoddy workmanship by which literally millions of tax dollars are wasted is included in a recent story in the Nevada State Journal on Monday, January 30, 1967, which says:

"Sheriff's officers said that a number of county area roads that have only a 'cold topping' surface on them have been extremely hard hit by the recent series of storms.

"The Nevada Highway Patrol said last night that it had no report of any major road problems."

Why are the county roads "extremely hard hit" and the State Highways had "no major road problems"?

Because State Highways are built by competent contractors to rigid specifications after the receipt of competitive bids and the award to the lowest qualified bidder, and other roads may be built to no set of standards at all.

We respectfully suggest you consider correcting this waste of highway user funds by amending NRS 403.490 to require contract construction of all highway projects in excess of \$2500.

I would like to summarize the position of A.G.C.

1. A.G.C. believes perhaps some consideration of local merchants may be desirable in the purchase of materials by the State and its political subdivisions.
2. A.G.C. believes that bidders on public projects should be prequalified.
3. A.G.C. believes that the Planning Board should purchase all items requiring on-site labor.
4. A.G.C. believes that day labor construction should be curtailed.

Amend Senate Bill No. 7 by striking out Section 2 of the bill and inserting in place thereof the following:

Section 2 Chapter 334 of NRS is hereby amended by adding thereto a new section which shall read as follows:

1. Public officers and bodies charged with the purchase of supplies shall require out-of-state firms, submitting bids on such supplies, to add to their bids an in-lieu-tax, which shall be deemed to be equivalent to the state, county, and city taxes already paid by local firms, in the amount of five percent, unless such preference is forbidden by any applicable Federal statute or regulation.
2. For the purpose of this chapter an out-of-state firm shall be defined as a firm which has not maintained an office in the State of Nevada for two years prior to submitting a bid, or which has not paid real property taxes in Nevada for two years prior to submitting a bid.
3. In determining the low bidder the public officer or body charged with the purchase of such supplies shall include the five percent in-lieu-tax assessed against such out-of-state firm in that firm's bid in determining their total price and compare this total with the bid submitted by a local bidder.



Amend NRS 341 relating to State Planning Board by requiring prequalification of bidders.

Section 1. NRS 341 is hereby amended by adding the following new section:

341.151. Prequalification of Bidders.

(1) Before furnishing any person proposing to bid on any duly advertised work with the plans and specifications for such work, the board shall require from such person a statement, verified under oath, in the form of answers to questions contained in a standard prequalification statement, which shall include a complete statement of the person's financial ability and experience in performing public work of a similar nature.

(2) Such statement shall be filed with the board in ample time to permit an investigation of the information contained therein in advance of furnishing proposal forms, plans and specifications to any such person proposing to bid on any such duly advertised public work in accordance with rules and regulations established by the board.

(3) Whenever the board is not satisfied with the sufficiency of the answers contained in such prequalification statement they may refuse to furnish such person with plans and specifications and the official proposal forms on any such duly advertised project. Any bid of any person to whom plans and specifications and the official proposal forms have not been issued in accordance with this section must be disregarded, and the certified check, cash or undertaking of such bidder returned forthwith.

(4) Any person who may be disqualified by the board, in accordance with the provisions of this section, may request, in writing, a hearing before the board and present again his check, cash or undertaking and such further evidence with respect to his financial responsibility, organization, plant and equipment, or experience, as might tend to justify in his opinion issuance to him of the plans and specifications for such work.

## EXHIBIT III

Amend Senate Bill No. 7 by striking out Section 2 of the bill and inserting in place thereof the following:

Section 2 Chapter 334 of NRS is hereby amended by adding thereto a new section which shall read as follows:

In the award of any construction contract by public officer or body, such public officer or body shall prequalify bidders in the same manner as provided in NRS 341.151 or have such prequalification performed for them by the State Planning Board in accordance with the provisions of NRS 341.151 and the rules and regulations of the board.

Amend NRS 333.150 by adding at the end of such section the following language:

"Nothing in this Chapter shall be construed so as to permit the chief to purchase any furniture or fixtures which shall require any on-site labor to fabricate or assemble such furniture or fixtures. Any furniture or fixtures requiring on-site labor shall be handled in accordance with the provisions of Chapter 341", so that such section, as amended, shall read:

Purchases, contracts for purchases for using agencies. The chief shall be required to purchase or contract for all supplies, materials and equipment needed by any and all using agencies, unless otherwise provided by law.

Nothing in this chapter shall be construed so as to permit the chief to purchase any furniture or fixtures which shall require any on-site labor to fabricate or assemble such furniture or fixtures. Any furniture or fixtures requiring on-site labor shall be handled in accordance with the provisions of Chapter 341.

Amend NRS 403.490 by deleting the words "irrespective of the probable cost of the work" at the end of subsection 8 and adding in place thereof the words "provided, however, that the total cost of the work as determined in subsection 1 shall not exceed the sum of \$5,000"; so that such section as amended shall read:

Section 8. Nothing in this section shall prevent any county from opening, building, improving or repairing any public road or highway in the county by the employment of day labor, under the supervision of the board of county highway commissioners and by the use of its own machinery, tools and other equipment, without letting contracts to the lowest responsible bidder, (irrespective of the probable cost of the work) provided, however, that the total cost of the work as determined in section 1 shall not exceed the sum of \$2,500.

# Truckee

## Reno Area Roads Mired with Mud

Freezing and thawing temperatures, accompanied by considerable rainfall during the past several days, has taken its toll on secondary roads throughout the Truckee Meadows.

Police and highway department maintenance men report that numerous roads have become pot-holed, buckled in some instances, and mired in many places.

Minor flooding due to stopped up drains or overflows from ditches has been fairly common, although no major problems have been reported.

One lane of South Virginia Street was closed to traffic Sunday afternoon by a flooding problem near Del Monte Lane.

California Division of Highways maintenance men in Truckee reported that about seven inches of new snow fell on the Donner Summit yesterday but no major traffic problems resulted.

Some minor sliding of dirt and rocks was noticeable along the highway — but there was no disruption of traffic.

Mayberry Drive, from Reno to the subdivision of the same name, was reportedly a quagmire in spots — but residents of the area, if not exactly pleased with the situation, have become somewhat accustomed to it as a general condition that

prevails following a storm.

Sheriff's officers said that a number of county area roads that have only a "cold topping" surface on them have been extremely hard hit by the recent series of storms.

The Nevada Highway Patrol said last night that it had no report of any major road problems.

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