

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

April 18, 2005

1:20 p.m.

**MEMBERS PRESENT**

Representative Lesil McGuire, Chair  
Representative Tom Anderson  
Representative John Coghill  
Representative Nancy Dahlstrom  
Representative Les Gara  
Representative Max Gruenberg

**MEMBERS ABSENT**

Representative Pete Kott

**COMMITTEE CALENDAR**

CONFIRMATION HEARING(S)

Attorney General of Alaska [Continued from 4/13/05 meeting that occurred jointly with the Senate Judiciary Standing Committee]

David W. Marquez - Anchorage

- CONFIRMATION(S) ADVANCED

Board of Governors of the Alaska Bar

Joseph N. Faulhaber - Fairbanks

- CONFIRMATION(S) HEARD AND HELD [Confirmation addressed again on 4/27/05]

HOUSE BILL NO. 257

"An Act relating to a procurement and electronic commerce tools program for state departments and instrumentalities of the state; and providing for an effective date."

- HEARD AND HELD

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 133

"An Act relating to incorporation of boroughs and to regulations of the Local Boundary Commission to provide standards and procedures for municipal incorporation, reclassification,

dissolution, and certain municipal boundary changes; and providing for an effective date."

- MOVED CSSSHB 133(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 92

"An Act relating to the purchase of interests in corporations, including limited liability companies, by the University of Alaska."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 177

"An Act relating to employee and employer contributions to the teachers' retirement system and the public employees' retirement system; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 257

SHORT TITLE: STATE PROCUREMENT ELECTRONIC TOOLS

SPONSOR(S): JUDICIARY

|          |     |                                    |
|----------|-----|------------------------------------|
| 04/06/05 | (H) | READ THE FIRST TIME - REFERRALS    |
| 04/06/05 | (H) | JUD, FIN                           |
| 04/11/05 | (H) | JUD AT 1:00 PM CAPITOL 120         |
| 04/11/05 | (H) | <Bill Hearing Rescheduled to 4/13> |
| 04/13/05 | (H) | JUD AT 1:00 PM CAPITOL 120         |
| 04/13/05 | (H) | Heard & Held                       |
| 04/13/05 | (H) | MINUTE(JUD)                        |
| 04/18/05 | (H) | JUD AT 1:00 PM CAPITOL 120         |

BILL: HB 133

SHORT TITLE: LOCAL BOUNDARY COMMISSION REGS & POWERS

SPONSOR(S): REPRESENTATIVE(S) COGHILL

|          |     |                                 |
|----------|-----|---------------------------------|
| 02/09/05 | (H) | READ THE FIRST TIME - REFERRALS |
| 02/09/05 | (H) | CRA, STA                        |
| 02/16/05 | (H) | SPONSOR SUBSTITUTE INTRODUCED   |
| 02/16/05 | (H) | READ THE FIRST TIME - REFERRALS |
| 02/16/05 | (H) | CRA, STA                        |
| 02/24/05 | (H) | CRA AT 8:00 AM CAPITOL 124      |
| 02/24/05 | (H) | Heard & Held                    |
| 02/24/05 | (H) | MINUTE(CRA)                     |
| 03/03/05 | (H) | CRA AT 8:00 AM CAPITOL 124      |

03/03/05 (H) Moved CSSSHB 133(CRA) Out of Committee  
03/03/05 (H) MINUTE(CRA)  
03/04/05 (H) CRA RPT CS(CRA) 5DP 2NR  
03/04/05 (H) DP: SALMON, NEUMAN, KOTT, THOMAS,  
OLSON;  
03/04/05 (H) NR: LEDOUX, CISSNA  
04/02/05 (H) STA AT 10:00 AM CAPITOL 106  
04/02/05 (H) Moved CSSSHB 133(STA) Out of Committee  
04/02/05 (H) MINUTE(STA)  
04/04/05 (H) STA RPT CS(STA) NT 3DP 2NR  
04/04/05 (H) DP: LYNN, ELKINS, SEATON;  
04/04/05 (H) NR: GARDNER, GRUENBERG  
04/04/05 (H) JUD REFERRAL ADDED  
04/13/05 (H) JUD AT 1:00 PM CAPITOL 120  
04/13/05 (H) <Bill Hearing Postponed to 4/18>  
04/18/05 (H) JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

JOSEPH N. FAULHABER, Appointee  
to the Board of Governors of the Alaska Bar  
Fairbanks, Alaska  
POSITION STATEMENT: Testified as appointee to the Board of  
Governors of the Alaska Bar.

VERN JONES, Chief Procurement Officer  
Central Office  
Division of General Services (DGS)  
Department of Administration (DOA)  
Juneau, Alaska  
POSITION STATEMENT: During discussion of HB 257 and proposed  
Amendment 1, provided comments and responded to questions.

SCOTT HAWKINS, General Manager  
Material Services  
Alaska Supply Chain Integrators, LLC (ASCI)  
Anchorage, Alaska  
POSITION STATEMENT: Testified in support of HB 257 and  
responded to questions.

JIM DUNCAN, Business Manager  
Alaska State Employees Association (ASEA)  
Anchorage, Alaska  
POSITION STATEMENT: Provided comments during discussion of  
HB 257 and responded to questions and comments.

BARRY JACKSON, Procurement Analyst; Project Manager; Programmer Analyst  
Resource Data, Inc. (RDI)  
Anchorage, Alaska  
POSITION STATEMENT: Provided comments during discussion of  
HB 257.

LAURA LAWRENCE  
Anchorage, Alaska  
POSITION STATEMENT: Testified in opposition to HB 257 and  
SB 160.

GAIL KOZLOWSKI  
Anchorage, Alaska  
POSITION STATEMENT: Provided comments during discussion of  
HB 257.

ELLEN KUBIAK  
Anchorage, Alaska  
POSITION STATEMENT: Provided comments during discussion of  
HB 257.

DONNA SCHELIN  
Anchorage, Alaska  
POSITION STATEMENT: During discussion of HB 257, relayed that  
she would be faxing some information to the committee.

KEN BROWN  
Anchorage, Alaska  
POSITION STATEMENT: Provided comments during discussion of  
HB 257.

RYNNIEVA MOSS, Staff  
to Representative Coghill  
Alaska State Legislature  
Juneau, Alaska  
POSITION STATEMENT: Presented SSHB 133 on behalf of the  
sponsor, Representative Coghill.

SARAH FELIX, Assistant Attorney General  
Labor and State Affairs Section  
Civil Division (Juneau)  
Department of Law (DOL)  
Juneau, Alaska  
POSITION STATEMENT: Expressed concerns on behalf of Marjorie  
Vandor, Department of Law, during discussion of SSHB 133.

EDGAR BLATCHFORD, Commissioner  
Department of Commerce, Community, & Economic Development  
(DCCED)  
Juneau, Alaska  
POSITION STATEMENT: Expressed concerns during discussion of  
SSHB 133.

DEBBIE THOMPSON  
Union Bay, Alaska  
POSITION STATEMENT: Provided comments during discussion of  
SSHB 133.

VIOLA JERREL, Ph.D.  
Alaskans Opposed to Annexation  
Homer, Alaska  
POSITION STATEMENT: Testified in support of SSHB 133.

#### **ACTION NARRATIVE**

**CHAIR LESIL McGUIRE** called the House Judiciary Standing Committee meeting to order at [1:20:12 PM](#). Representatives McGuire, Anderson, Coghill, and Gara were present at the call to order. Representatives Dahlstrom and Gruenberg arrived as the meeting was in progress.

#### CONFIRMATION HEARING(S)

##### Attorney General of Alaska

CHAIR McGUIRE announced that the committee would first consider the appointment of David W. Marquez to the position of Attorney General of Alaska. [Mr. Marquez had provided testimony during a joint meeting of the House Judiciary Standing Committee and the Senate Judiciary Standing Committee on 4/13/05.]

[1:20:54 PM](#)

REPRESENTATIVE COGHILL made a motion to advance from committee the nomination of David W. Marquez as appointee to the position of Attorney General of Alaska. He reminded members that signing the reports regarding appointments to boards and commissions in no way reflects individual members' approval or disapproval of the appointees, and that the nominations are merely forwarded to the full legislature for confirmation or rejection.

CHAIR McGUIRE reiterated that signing the reports regarding appointments to boards and commissions in no way reflects

individual members' approval or disapproval of the appointees, and that the nominations are merely forwarded to the full legislature for confirmation or rejection.

CHAIR McGUIRE asked whether there were any objections to the motion to advance from committee the nomination of David W. Marquez as appointee to the position of Attorney General of Alaska. There being no objection, the confirmation was advanced.

Board of Governors of the Alaska Bar

[1:22:05 PM](#)

CHAIR McGUIRE announced that the committee would next consider the appointment of Joseph N. Faulhaber to the Board of Governors of the Alaska Bar.

The committee took an at-ease from 1:23 p.m. to 1:26 p.m.

[1:26:06 PM](#)

JOSEPH N. FAULHABER, Appointee to the Board of Governors of the Alaska Bar, in response to the question of why he wishes to continue serving on the Board of Governors of the Alaska Bar, relayed that he enjoys the work, and feels that he adds a unique perspective, perhaps more of a pragmatic view, to the proceedings. He relayed that during his time on the Board of Governors, he succeeded in getting the Alaska Bar Association to accept credit cards.

REPRESENTATIVE GRUENBERG opined that the Alaska Bar Association should mandate continuing legal education for its members.

MR. FAULHABER explained that the Board of Governors [adopted] mandatory continuing legal education requirements, but the [Alaska] Supreme Court overturned them.

REPRESENTATIVE GRUENBERG opined that it is also time for the Alaska Bar Association to allow legal specialization, as is done in some other states, via examination; for example, he is a member of the American Academy of Matrimonial Lawyers.

MR. FAULHABER said he would be in favor of such. He offered his understanding that one of the Alaska Bar Association's goals is to advance the science of jurisprudence, and opined that since the Alaska Bar Association benefits from occupational licensing,

the public should be able to expect a certain standard of expertise from its members.

1:31:20 PM

CHAIR McGUIRE thanked Mr. Faulhaber, and concurred that public members are able to offer a different perspective to the Board of Governors. She referred to an issue raised at Mr. Faulhaber's last confirmation hearing, that of establishing a different membership fee for those that volunteer their legal services or those that serve in the legislature. She also raised the issue that Alaska is one of the highest in the nation with regard to Bar dues and Bar examination fees. She asked Mr. Faulhaber to comment on those issues.

[Technical difficulties with the teleconference equipment occurred, resulting in the confirmation hearing being set aside until 4/27/05.]

HB 257 - STATE PROCUREMENT ELECTRONIC TOOLS

[Contains testimony in opposition to SB 160, companion bill to HB 257.]

1:34:21 PM

CHAIR McGUIRE announced that the next order of business would be HOUSE BILL NO. 257, "An Act relating to a procurement and electronic commerce tools program for state departments and instrumentalities of the state; and providing for an effective date."

The committee took an at-ease from 1:34 p.m. to 1:35 p.m.

CHAIR McGUIRE, speaking as chair of the House Judiciary Standing Committee, sponsor of HB 257, asked Vern Jones, Department of Administration (DOA), for an explanation of the DOA's proposed language change [later referred to as Conceptual Amendment 1], which read [original punctuation provided]:

**A BILL  
FOR AN ACT ENTITLED  
"An Act relating to a procurement and electronic  
commerce tools program for state departments and  
instrumentalities of the state; and providing for an  
effective date."**

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

**\* Section 1.** AS 36.30 is amended by adding a new section to article 1 to read:

**Sec. 36.30.093. State procurement and electronic commerce tools program.**

(a) The department may enter into a program under which the department contracts with a person from the private sector to provide procurement services and to provide for the delivery and use of electronic commerce tools. Notwithstanding any other provision of this chapter, the contract shall be awarded under AS 36.30.100 - 36.30.265.

(b) Notwithstanding any other provision of this chapter, all state departments and instrumentalities of the state may participate in the program authorized by (a) of this section.

(c) A procurement conducted by the person selected under (a) of this section is not subject to this chapter or to AS 36.15. However, the procurement is subject to (d) - (u) of this section.

(d) A contract based on solicited bids shall be awarded to the lowest responsive and responsible bidder after an Alaska bidder preference of five percent has been applied for evaluation purposes.

(e) If a bidder qualifies as an Alaska bidder and is offering services through an employment program, a 15 percent cost preference will be applied during evaluation.

(f) If a bidder is an Alaska bidder and is a qualifying entity, a ten percent cost preference will be applied during evaluation.

(g) If a bidder is an Alaska bidder and if 50 percent or more of the bidder's employees at the time the bid is submitted are persons with disabilities, a ten percent cost preference will be applied during evaluation. The contract must contain a promise by the bidder that the percentage of the bidder's employees who are persons with disabilities will remain at 50 percent or more during the contract term.

(h) Insurance-related contracts shall be awarded to the lowest responsive and responsible bidder after an Alaska bidder preference of five percent has been applied during evaluation. In this subsection, "Alaska bidder" means a person who is an Alaska bidder and an Alaska domestic insurer.

(f) Alaska products shall be used whenever practicable in procurements for a state agency. Recycled Alaska products shall be used when they are of comparable quality, of equivalent price, and appropriate for the intended use.

(g) If a bid indicates that the product(s) being purchased will be recycled Alaska products, a cost preference of five percent will be applied during evaluation.

(h) In a project financed by state money in which the use of timber, lumber, and manufactured lumber products is required, only timber, lumber, and manufactured lumber products originating in this state from local forests shall be used wherever practicable.

(i) When agricultural products are purchased, a seven percent cost preference will be applied during evaluation to agricultural products harvested in the state.

(j) When fisheries products are purchased, a seven percent cost preference will be applied during evaluation to fisheries products harvested or processed within the jurisdiction of the state.

(k) If a bid or offer designates the use of an Alaska product that is identified in the contract specifications and designated as a Class I, Class II, Class III state product under AS 36.30.332, a cost preference equal to the percentage established for the class under AS 36.30.332(c) will be applied to the product during evaluation. The program contractor shall use the Alaska product preference list, as described in 3 AAC 92.090(a), as the basis for establishing the percentage of Alaska product preference.

(l) If a contractor designates the use of an Alaska product in a bid or proposal and fails to use the designated product for a reason within their control, each payment under the contract shall be reduced according to the schedule set forth in AS 36.30.330(a).

(m) Except as provided under (q) of this section, all preferences are cumulative and shall be applied in the order referenced under (d) - (n) of this section.

(n) A bidder may not receive a preference under this section under both (d) and (e), (d) and (f), or (e) and (f) for the same contract.

(o) In order to qualify for a preference under (e), (f), or (g) of this section, a bidder shall add

value by actually performing, controlling, managing, and supervising the services provided, or a bidder shall have sold supplies of the general nature solicited to other state agencies, governments, or the general public.

(p) When awarding a contract under competitive sealed proposals, the program contractor shall consider the preferences described in this section. Applicable preferences shall be applied solely to the cost portion of the proposals during evaluation.

(q) Informal procurements conducted by the program contractor are subject to the preferences described in this section.

(r) In this section,

(1) "agency" has the meaning given in AS 36.30.990(1);

(2) "agricultural products" has the meaning given in AS 36.15.050(g)(1);

(3) "Alaska bidder" has the meaning given in AS 36.30.170(b);

(4) "Alaska products" has the meaning given in AS 36.30.338(1);

(5) "contract" has the meaning given in AS 36.30.990(7);

(6) "employment program" has the meaning given in AS 36.30.990(11);

(7) "instrumentalities of the state" means a state public corporation, a state enterprise, or another administrative unit of state government that handles its procurement and supply management in a manner that is separate from a department of the state;

(8) "qualifying entity" has the meaning given in AS 36.30.170(e)(1)-(4);

(9) "person" has the meaning given in AS 36.30.990(16);

(10) "person with a disability" has the meaning given in AS 36.30.170(k);

(11) "program contractor" means the contractor selected by the department to manage the program;

(12) "recycled Alaska product" has the meaning given in AS 36.30.338(4).

**\* Sec. 2.** The uncodified law of the State of Alaska enacted in secs. 2 and 3, ch. 51, SLA 2003, are repealed.

\* **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. Nothing in this Act affects the validity of actions taken by the Department of Administration under ch. 51, SLA 2003, before the effective date of this Act.

\* **Sec. 4.** This Act takes effect immediately under AS 01.10.070(c).

[1:35:14 PM](#)

VERN JONES, Chief Procurement Officer, Central Office, Division of General Services (DGS), Department of Administration (DOA), explained that the two changes for which he'd provided a written explanation during the bill's last hearing include replacing the reference to AS 36.30.190 with a reference to AS 36.30.265, and revamping the preferences sections of the bill such that the preferences will "act consistently" and involve taking a percentage from the price that a qualifying entity is offering.

[1:38:54 PM](#)

CHAIR McGUIRE made a motion to adopt Conceptual Amendment 1, to replace the wording in the original bill with the language suggested by the DOA.

REPRESENTATIVE GRUENBERG drew attention to the language in Conceptual Amendment 1 regarding proposed AS 36.36.093(c), and noted that the reference to subsections (d)-(u) ought to instead be a reference to subsections (d)-(r).

CHAIR McGUIRE made a motion to amend Conceptual Amendment 1 such that the subsections referenced in proposed AS 36.36.093(c) would be (d)-(r). There being no objection, Conceptual Amendment 1 was amended. [Conceptual Amendment 1, as amended, was then treated as adopted.]

CHAIR McGUIRE, noting that the bill eliminates the sunset provision of the pilot project and allows the administration to expand the use of e-commerce procurement tools, asked Mr. Jones for his thoughts regarding how the pilot project has worked thus far and how it can be improved.

[1:41:29 PM](#)

MR. JONES explained that the pilot project has only been up and running for nine months, and that the DOA is still analyzing the results and so hasn't come to any conclusions thus far.

CHAIR McGUIRE said she is trying to understand whether the pilot project is working for the employees, and whether any of her goals are being achieved at all. Has the pilot project resulted in savings to the state, and is it proving to be a rewarding, productive partnership between private and public enterprise?

MR. JONES surmised that at the heart of the originating legislation and at the heart of HB 257 is the outsourcing of jobs and a shifting from state employees doing procurement under the state procurement code to contractors doing the state's procurement under a contract rather than under the code. With the aforementioned outsourcing comes electronic tools that are well suited to the application. This outsourcing, however, raises the policy question of whether the work should actually be done under the state procurement code by state employees. The DOA thinks of the pilot project as an experiment, he indicated, and so is waiting to see whether the results warrant expansion of the project.

CHAIR McGUIRE acknowledged that creating efficiencies is bound to result in some job loss, and suggested that changing the current methodology would not be something to undertake if it weren't for the belief that doing so will result in more centralization and efficiency. She pointed out that there is still the need for those in state government to be in partnership with those that contract with the state to do the work. She asked Mr. Jones to comment.

[1:47:22 PM](#)

MR. JONES said that the DOA merely wants to be sure that the methodology employed by the pilot project is successful and is resulting in efficiencies and improvements before it gets instituted more widely. He surmised that there are those who would like to see the existing pilot program utilized fully, but the DOA has taken a more cautious approach, deploying the pilot project in a narrow scope and monitoring it. He said that if HB 257 were to pass, he wouldn't be able to say what changes would be made, particularly given that the pilot project itself has not yet been used to the fullest extent. He acknowledged that it would be hard for anyone to argue that bringing a modern procurement system into state government wouldn't bring improvements. The question, then, merely becomes a policy

choice regarding how the legislature wants procurements to take place.

CHAIR McGUIRE asked why it was so difficult to get the pilot project going and what was the resistance to it. If the very people who's cooperation is required to let a project go forward won't cooperate, then how can the state ever determine whether a project can be a success?

MR. JONES explained that the state was bound by union bargaining agreements to first conduct a feasibility study, which in turn required that the state hire a contractor to map the agency - describe all the procurement work being done by state employees, and calculate the cost of that work; only after the results of that study were gathered was a procurement issued for the actual outsourcing contractor, which turned out to be Alaska Supply Chain Integrators, LLC (ASCI). He noted that this entire process took a lot of time and involved a lot of work, with each step being subject to challenge. In response to another question, he relayed that 10 positions were ultimately outsourced, though some of the people holding those positions found work elsewhere in state government. He opined that it would not be accurate to say that the state delayed instituting the pilot project.

[1:54:28 PM](#)

REPRESENTATIVE GRUENBERG asked how many jobs will be lost/outsourced if the pilot project is expanded.

MR. JONES offered that there are approximately 200 procurement positions that could be outsourced. In response to a further question, he relayed that with regard to the aforementioned 10 outsourced state procurement positions, the contractor had six fulltime employees doing the same work.

[1:56:11 PM](#)

MR. JONES, in response to questions regarding audits, relayed that several audits of the pilot project have been conducted, including one by the Office of Management & Budget (OMB) regarding contract compliance; that the DGS has been performing quarterly benchmark audits; that the DGS's first quarter audit is concluded; that the only results available from the second quarter pertain to the cost of goods; that the DGS's benchmark audits investigate the cost of goods - comparing the cost of goods purchased by the contractor with the cost of goods

purchased by the state - the time used to process orders, the utilization of Alaska vendors, and the mistakes made by the contractor; and that it is anticipated that the final audit for the pilot project's contract should be available after June of 2006.

CHAIR McGUIRE noted that one of the problems with the pilot project is that under its current sunset date, it is now too late to institute the project fully.

[Following was a brief discussion regarding what material members' packets should contain.]

[2:02:29 PM](#)

SCOTT HAWKINS, General Manager, Material Services, Alaska Supply Chain Integrators, LLC (ASCI), relayed that ASCI was founded in 1999 to provide purchasing, warehousing, and other aspects of supply chain management to the Alaska North Slope (ANS) oil fields; has since grown to about 150 employees; has developed a full suite of e-commerce tools here in Alaska that compete with some of the best e-commerce tools available nation- and world-wide; and uses those tools to transact business on behalf of its customers, and to deliver streamlining, automation, and cost savings. Remarking on the ability of ASCI to specialize in procurement, he added that ASCI sees a future in "back office process operation" in both the public and private sectors, since procurement is typically not the primary business of most organizations.

MR. HAWKINS explained that after the pilot project's originating legislation, House Bill 313, passed the legislature, ASCI - one of the two proposers to engage in the resulting "request for proposals" (RFP) process - was selected as the contractor to operate the pilot project and has been operating that project since July 2004. He said that ASCI supports HB 257, adding that the bill will eliminate the pilot project's current sunset date, will expand the administration's authorization to institute such a system in other departments, and will provide the administration more flexibility in which to find the project's optimal value. He said that from the perspective of the contractor - ASCI - the cost savings that were promised have been delivered, both through a decrease in personnel costs and through a decrease in the cost of catalog purchases.

MR. HAWKINS relayed that the estimate of savings in personnel costs is based on a state feasibility study and on what ASCI's

contract will pay [its employees] compared to what state employees were getting paid. The estimate of savings for the cost of goods - catalog purchases - is based on a recent report using catalog data involving nearly 1,000 transactions that occurred over the first six months using the e-commerce web tools. He indicated that to the degree that ASCI is allowed to operate the project as it was envisioned, ASCI will be able to deliver the cost savings as promised. Referring to a handout in members' packets, he predicted that there will be a savings of nearly \$200,000 "over the first term of the agreement."

CHAIR McGUIRE asked Mr. Hawkins to describe the basic concept behind what ASCI does.

MR. HAWKINS said:

We don't actually buy the goods and take ownership of them and resell them; we simply operate the processes on behalf of the customer. So a purchase order for "BP," for example, goes out as a BP purchase order. A purchase order for the State of Alaska, or our contract for the State of Alaska, is written on State of Alaska procurement forms.

But what we do is we come in and - through the use of these web tools, through the use [of a] very intensive process of measuring and metrics and those types things - process control by specializing and taking it seriously and managing this process very intensively on a day-to-day basis; we're typically able to deliver cost savings of 25-40 percent in the overhead of actually just operating the administrative processes.

The cost of goods are over and above that, and that depends a lot on ... where a customer is, how good a job do they do of managing their current (indisc.). But with our tools, tools like "reverse auctions," tools like getting catalog agreements set up and getting competitive situations in place, we can deliver cost-of-goods savings going forward too. And ... how much of that there is really just kind of depends on what you experience as you go forward.

[2:10:09 PM](#)

REPRESENTATIVE GARA asked whether ASCI's conclusions regarding cost savings are based on the DGS's quarterly benchmark audits.

MR. HAWKINS said the ASCI's conclusions are not based on the DGS's audits, which he characterized as not being based on statistically valid samples. The handout in members' packets, in comparison, provides statistics based on 972 transactions and shows a decline of 3 percent for the cost of goods. He posited that this decline is the result of using e-commerce tools, which facilitate the purchasing of goods at the best price available to the state.

[2:14:31 PM](#)

MR. HAWKINS, in response to a comment, clarified that reverse auction is merely one tool by which to set up agreements, whereas the process of going into the "smart catalog" tool ensures that the best pricing under the state's existing contracts is available.

CHAIR MCGUIRE offered her understanding that many state and local government entities have chosen to privatize their procurement process. She relayed that in spite of the fact that the state's current procurement code has some great provisions, such as preferences for Alaskan-owned, women-owned, or minority-owned businesses or for Alaskan made products, she disagrees with statements she's heard that the entire procurement code is a great one. She asked Mr. Hawkins to explain whether the bill has incorporated the aforementioned preferences, and whether such preferences are being utilized by ASCI. She also asked Mr. Hawkins to address the issues of integrity and corruption.

[2:17:45 PM](#)

MR. HAWKINS opined that the latter question goes to the heart of the policy issue. He offered:

Pretty much everything that's contracted out to the private sector by government, at one time along the way, was considered controversial. ... Procurement is a perfect candidate for this type of thing because it's very "back office" and administrative. As the agent for the state, we don't make a decision to spend any money. The requisition comes to us, the budget authority comes to us, and our job is to simply carry that out. If there's a significant amount of money involved, there's always a committee of end users - ... a proposal evaluation review committee - that

makes the final decision, and what we end up doing is really performing clerical administrative services.

In terms of the inherent integrity, I would submit to you that ... corruption happens everywhere and [that] governments are not immune [and] government employees are not immune. You can see examples in history of government employees having committed those types of things. In the case of a private contractor, there's a great deal to lose. This is our business. If we were ever found to be steering business to a crony, or anything like that, it would hurt the entire company, it would hurt the value of the entire company. I would submit to you that we have a great deal more to lose, and a great deal more incentive to keep it pristine.

Governments are not the only institutions that are concerned with this type of thing; the other big clients of our, such as the oil companies, are also very concerned with that type of thing - they have shareholders that care a great deal about that type of thing. And, again, the standards of conduct are very, very high, and there, as well, if we were ever ... found to be doing anything like that, it would be devastating to the company. And so we are extremely vigilant and extremely concerned and watch that type of thing very carefully, because, [as] in all business, if we aspire to grow and really turn this into a much larger Alaska success story than it already is, our reputation has got to be very, very clean.

MR. HAWKINS then noted that there were no preferences in the original legislation authorizing the pilot project, but relayed that the ASCI does not have any objections to, and in fact supports, abiding by the preferences currently in Alaska's procurement code. He pointed out that the ASCI's contract contains a requirement that the ASCI take a proactive stance with regard to "buy Alaskan," but surmised that adhering to such preferences does not alter things statistically; rather, where it really matters is in the creation of the specifications and the framework for procurement, in order to ensure that those specifications and framework won't inherently exclude Alaska businesses or inherently advantage out of state businesses.

[2:22:15 PM](#)

REPRESENTATIVE GARA noted that the DGS's audit information and the ASCI's statistics appear to conflict with each other with regard to whether there has been any cost savings to date.

MR. HAWKINS opined that the DGS's audits are not designed to provide an answer to the question of whether the cost of goods has decreased, particularly given that those audits are based on extremely small samples and non-cataloged data. He added:

The best data we have, that I'm submitting to you, is the 972 transactions that are based on the catalog where you have a very high likelihood of an apples to apples comparison, [where] you have a very large number of transactions. And [I] would submit to you that if you look at the two data sets, one will support conclusions, the other one will not.

REPRESENTATIVE GARA asked why the legislature is not simply waiting for the pilot project to run its course.

[2:24:12 PM](#)

MR. HAWKINS explained that the sunset is fast approaching on a project that is only being tried on an extremely small scale, a scale, he opined, that is too small to really demonstrate the system's full value and capabilities. He remarked that the project will continue to be in transition for sometime, and so the full value of it will only emerge over a period of years. He offered belief that it is very important to allow the project more time and more flexibility so as to be able to find its optimal application.

[2:26:05 PM](#)

REPRESENTATIVE GARA said he is concerned that it is premature to make a decision on this issue before the final audit is available.

MR. HAWKINS opined that one would be hard pressed to find a program anywhere in state government that's more carefully scrutinized and audited than the pilot project. He reiterated his belief that the legislature ought to move forward and gradually, responsibly, build the program out to its full potential.

CHAIR McGUIRE indicated agreement with Mr. Hawkins's comments regarding the pilot project's sunset, adding that her concern is that there are some other departments that would like to use the aforementioned tools but can't. She said she would almost go so far as to say that the pilot project is being sabotaged because it might pose a direct threat to the very people who are required, for the project's success, to comply with it. She noted that the City of Anchorage has recently instituted the use of e-commerce procurement tools.

[2:30:46 PM](#)

REPRESENTATIVE GARA said there is a jump between saying that the state should engage in "e-procurement" and saying that procurement should be outsourced. "If we need to modify the state law so the state can do much more vigorous e-procurement like the City [of Anchorage] is, that's one thing, but ... I don't understand why we have to outsource that function," he added.

REPRESENTATIVE ANDERSON offered his belief that Mr. Hawkins has been innovative, and noted that some members of the legislature, during the last election, ran on a platform promoting outsourcing as a way of realizing efficiencies. He indicated a preference for moving forward with [the bill] and simply continuing to assess the project's efficiency and provide ASCI the tools with which to expand.

[2:32:39 PM](#)

REPRESENTATIVE GRUENBERG said that according to the aforementioned chart, it appears that the majority of the cost savings is the result of the loss of people's jobs.

MR. HAWKINS concurred, reiterating that six ASCI employees are now doing the work that was previously done by 10 state employees.

REPRESENTATIVE GRUENBERG opined that that is simply another way of saying that by automating the way things are done and thus eliminating people's jobs, things can be done more cheaply.

MR. HAWKINS concurred, but remarked that the premise of the project is "this rigor (ph) and catalog and system framework. He predicted that if ASCI can deliver even just a 3 percent reduction in costs, that equates to a savings of between \$15 million and \$20 million per year.

REPRESENTATIVE GRUENBERG asked how many jobs would be lost.

MR. HAWKINS said that is not known, but offered his belief that state procurement officers will always be needed for the types of procurement that are more suitable for state employees to perform, such as construction procurement, which he characterized as "large-dollar/high-risk" procurement. He added:

It's hard to say, at the end of the day, how many would be affected, but [that] ... comes to the point of why the expansion is important, ... that in any given agency, you may not take on the entire piece. This is really about more the low-dollar repetitive types of things that lend themselves to streamlining and automation. And finding that economic sweet spot, across several agencies, is probably more feasible than trying to fully implement a smaller number of agencies.

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REPRESENTATIVE GRUENBERG said he is concerned about the potential job losses, particularly for those living in his district. He pointed out that downsizing and making things more efficient will have an impact on jobs, and surmised that some of the questions raised by downsizing include: "How do we redirect their employability? What do we do [for] the people who lose their jobs? How do we keep them employed?" He opined that the state has a responsibility to ensure - though of course not through keeping everyone employed at governmental expense - to have a healthy economy; "governmental efficiency" and "people losing their jobs" are simply two ways of saying the same thing - it is the same issue regardless of how its termed.

[2:37:41 PM](#)

MR. HAWKINS remarked that affecting the employment of existing state employees is ASCI's least favorite part of "this whole proposition." He offered his understanding that some of the employees whose positions were affected during the first phase of the pilot project were due to retire anyway and so took the opportunity to do so, and that the rest of the employees whose positions were affected have since filled other positions in state government. He relayed that ASCI would be very supportive of anything that would provide some transition assistance to

those whose positions are affected by the expansion of the pilot project, and noted that ASCI had in fact made job offers to all of the aforementioned non-retiring procurement staff, but none accepted a position with ASCI. He surmised that this was probably due to their preferring to maintain employment within the state's retirement system. He offered:

But as we me move forward, I would expect that to change, particularly if there's a perception that the political will exists within this body, and that this is an ongoing, long-term program. I believe employees would be more inclined to join our company or a company like ours; they would have an opportunity to be part of a technology-driven enterprise - that option would be there. But for those that want to do something else and change careers, we would [be] very positive on transition assistance ... because ... we don't relish that aspect of this, this process of ... - [as] economists call it - "creative destruction." That process has winners and losers, and we sympathize with that.

[2:39:38 PM](#)

REPRESENTATIVE COGHILL remarked that although the advent of computers has drastically changed the employment scene, it has never stopped anyone from being employed. An improved system always raises problems regarding employment, he added, but noted that he is predisposed to privatization. He offered his belief that Conceptual Amendment 1 will result in a better procurement system and will allow the state the flexibility to make use of a private procurement system. He offered his understanding that the bill requires compliance with the state's procurement code.

[2:42:27 PM](#)

JIM DUNCAN, Business Manager, Alaska State Employees Association (ASEA), provided members with a copy of a portion of the DGS's second quarter audit of the pilot project, and noted that it contains a chart which illustrates that the cost of goods, when purchased by ASCI, increased by 3.308 percent in one table and increased by 70.409 percent in another table; taking the average of those two tables, the total increase in the cost of goods when purchased by ASCI is 16.348 percent.

REPRESENTATIVE GRUENBERG surmised, then, that that chart illustrates that under the pilot project, there haven't been any

savings except for what was saved because of the loss of positions.

MR. DUNCAN concurred. In response to comments, he pointed out that the current state procurement code doesn't need to be changed in order to allow for e-procurement; all that is needed is for the administration to have the correct tools. It was not necessary for e-procurement to be outsourced; furthermore, no other local or state government entity has ever outsourced procurement. He assured the committee that if a system can be employed whereby things can be done more efficiently, the ASEA would work with the legislature to implement that system notwithstanding the potential for job loss.

MR. DUNCAN referred to a federal document entitled, "OMB Circular No. A-76", which gives direction to the heads of departments and establishments to be very careful with regard to what gets privatized, and which also indicates that some activities are inherently governmental and so should only be performed by government employees. He relayed that the aforementioned document says in part:

An inherently governmental activity is an activity that is so intimately related to the public interest as to mandate performance by government personnel. These activities require the exercise of substantial discretion in applying government authority and/or making decisions for the government. Inherently governmental activities normally fall into two categories: the exercise of sovereign government authority or the establishment of procedures and processes related to the oversight of monetary transactions or entitlements. An inherently governmental activity involves: ... [e]xercising ultimate control over the acquisition, use, or disposition of United States property (real or personal, tangible or intangible), including establishing policies or procedures for the collection, control, or disbursement of appropriated and other federal funds.

MR. DUNCAN surmised that via this document, the [current] "Bush Administration" is saying that [governmental] procurement doesn't lend itself to privatization, adding his belief that the public should be able to trust that the procurement process is being handled in a professional manner under strict guidelines.

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REPRESENTATIVE GRUENBERG asked about possible constitutional problems.

MR. DUNCAN relayed that a memorandum - dated April 8, 2005 - that he provided to the committee during the bill's last hearing says that HB 257 would deny Alaska businesses and individuals equal protection under the law because it sets one contractor above the others and does not necessarily provide equal access to businesses. He characterized this as a serious constitutional question that should be addressed by the House Judiciary Standing Committee.

[2:52:04 PM](#)

CHAIR McGUIRE pointed out that Title [36] - the state's procurement code - already contains 47 exemptions, including an exemption for the university.

MR. DUNCAN explained that the current procurement code was put in place in 1985 and was a model code at that time, endorsed by the American Bar Association (ABA); since that time, various groups have come before the legislature and asked to be exempted from the code. He added that he is not suggesting that granting all those exemptions was the correct thing to do, but is merely acknowledging that they did get adopted through the legislative process.

MR. DUNCAN offered his belief that contrary to Representative Coghill's understanding, HB 257 will not require the contractor to comply with the state's procurement code. Under the current procurement code, the public knows what the rules are - rules that were established by the legislature - but under HB 257, the legislature would no longer set the rules. Instead a private contractor and the administration would set the rules. This will result in a loss of transparency; the public would not be aware of what those rules were, and the legislature would no longer be assured that those rules would include competitive procedures or give vendors the right to appeal or protest an award.

MR. DUNCAN, in response to comments, clarified that he is merely saying that HB 257 would not provide transparency.

[2:56:46 PM](#)

REPRESENTATIVE GRUENBERG offered his recollection that when the university came before the legislature asking to be exempted from Title 36, the testimony was that the university already had it's own procurement system in place.

[2:57:27 PM](#)

BARRY JACKSON - Procurement Analyst; Project Manager; Programmer Analyst - Resource Data, Inc. (RDI), on the subject of how many positions are currently doing procurement-related work, he said his research indicates that there are between 200-300 positions spread out among the departments - with 6 of those positions being in the DOA's DGS, and characterized the current system as strongly decentralized. He opined that a decentralized procurement system diminishes savings, fairness, and expertise. Furthermore, operational pressures, personal preferences, and differing operational standards reduce the diligence with which the rules of fairness are applied. The inability to recognize and consolidate repetitive purchases of goods and services diminishes significant opportunities to save money, and similar procurement problems are resolved differently from department to department.

MR. JACKSON said that in comparison, in a centralized environment, the rules of fairness are better enforced, and consolidation opportunities are recognized and more dependable; as a result, cost savings are also more dependable. Furthermore, expertise in subject matter is fostered and developed, and "best practices" can be identified, resulting in more satisfactory transactions between the state and its suppliers. He offered his belief that the current pilot project offers [the state] an opportunity to realize the benefits of an appropriate degree of centralized procurement without the usual disadvantages.

MR. JACKSON went on to say:

In a mature application of ASCI's e-commerce tools, the user virtually eliminates paper pushing from the procurement process. The tools allow instantaneous orders for commodities and services found in the customized catalog, the user gets instant feedback [and] instant accountability with regard to receipt of goods, red tape is cut, and it provides for corporate delivery. All of these things add up to the potential for increased savings. It also means that through the e-commerce tools ... there's an ability to analyze

procurements across departmental lines to identify consolidation opportunities and target them for additional savings. Subject matter experts are developed in a centralized procurement setting, which [allows] us to address procurement issues across departmental lines. In competitive scenarios, e-commerce procurement processes can give access to all qualified interested bidders and virtually eliminate the burdensome waiting periods that now characterize the manual process.

Regarding the subject of the potential for corruption, I'd simply like to point out that currently the departments can spend up to \$50,000 at a crack without meeting formal bidding requirements. It's my belief [that] right now, under the current laws and regulations, that somewhere between 50 and 80 percent of all procurement dollars can be spent by the departments without [them] being required to follow the formal bidding procedures encapsulated in the procurement code. I [haven't] ... seen any recent analysis of how much the state ... spends through procurement procedures, but if it's anything like the past, that 50 to 80 percent amounts to hundreds of millions of dollars per year.

The point is that this money is spent with little or no competition. The reality is, there's not much difference between professionally administered public and private purchasing practices except for mountains of red tape, institutionalized delay, antiquated systems, and huge performance and efficiency gaps. Routine monitoring by [the DGS] ... for procurement code violations in the operating departments is nonexistent, and violations are only investigated when some form of bad conduct is alleged by an interested party or someone in the department stumbles upon a problem and reports it to [the DGS].

MR. JACKSON continued:

I suggest that an independent contractor with preservation of its investment as its most potent motivation has an unbiased primary interest in simply doing the job as efficiently and economically as possible for the state. In fact, I would argue that an independent contractor is in a stronger position

to resist pressures to commit bad practices. Such pressures do exist and are difficult for state employees to resist, because their jobs or careers can be put in jeopardy. These pressures and consequences are not idle speculation on my part. They are real. I know from long and challenging personal experience. I argue that coupled with independent oversight, such as this contract has with the [DGS], an independent contractor with its own enlightened self-interest at heart is in a far better position to rebuff pressures to use bad practices than are rank and file state employees.

3:04:20 PM

MR. JACKSON, speaking on the issue of audits, said he hasn't ever seen scrutiny at the level being applied to ASCI, and predicted that such a level of scrutiny, were it applied to state procurement operations, would reveal numerous purchasing violations and bad practices. He opined that as a former senior manager of the state's procurement system, the e-commerce tools that ASCI is providing are well-tailored to the job; will create efficiencies, which will in turn increase user productivity; and are the best tools he's ever seen for bringing e-commerce to Alaska's state government.

MR. JACKSON expressed his belief that the union has one main argument and one goal, and characterized them as defective and historically unattainable, respectively. He elaborated:

[With regard to the union's] argument ... that the union could do same thing as the contractor if they were just given the tools and they'd do it cheaper, if the union believes in fair play, ... then no one is going to give the union the necessary e-commerce tools free of charge and yet require their competitors to build their own tools at their own expense. [If] the unions want to compete to provide e-commerce tools and services, they better fire up their venture capitalist and create the capacity to develop software technology and service systems to get the job done.

And they better have started a few years ago because the need is in front of us today. If we were to speculate, and were it possible to turn back the clock and provide for the unions to act as a joint venture proposer in the pilot project RFP, is it the union's

position that they could have won the RFP as a straight up competitor to the other proposers and preserve every one of those jobs that were lost? The only way the RFP services could possibly be performed at a lower cost than the state's is to save costs by employing technological solutions that allow fewer employees to accomplish the work.

This is because the source of funding for the contract is the staffing budget for the procurement function of the Southeast Region of [Department of Transportation & Public Facilities (DOT&PF)]. To put it bluntly, unions would need to have an e-commerce system at least the equal of [ASCI's], and they would have to have ... cut even more jobs if they wanted to win by being a competitor. For the unions to deliver similar results, you have to accept the notion that they would deploy technology effectively and then deliver the staff reductions made possible.

I would submit to you that this is unlikely. Therefore, the only likely outcome is more cost for technology but no savings delivered. We can see an example of this in the state's current use [of] ... procurement technology - the Buyspeed program; [the DOT&PF] implemented this several years ago, but it is implemented poorly and serves only to require re-input of paper records and absorb tens of thousands annually in licensing costs. The number of people who are capable of using it fully can probably be counted on the fingers of one hand.

MR. JACKSON added:

Second is the union's goal of preserving every job regardless of the march of ... progress. This battle has been lost over and over by unions all over the world. The goal can't be reached in the long run. In industry, including the industry of government, technological progress usually reduces or transforms staffing requirements. Instead, enlightened unions have found another perspective, one which is ultimately much more valuable to union members. That perspective is not to oppose the adoption and advancement of technology, but to bargain for ways to retrain, reeducate, and reequip their members to

compete anew in the working world, whether with the same employer or a new one.

Attempting to block the march of progress because it might cost jobs of members is a classic union tactic which hasn't worked in the past 100 years and won't work here, now. I would like to remind the committee that I say this as a former president of [the Alaska Public Employees Association (APEA)] and a founding member of the group that created the [ASEA]. Regardless of who implements it, including the union itself, e-commerce technology will result in staff reductions, or at least it will if [it] successfully delivers efficiencies. Helping those who will be affected to prepare for and find other desirable employment is the correct role for the unions to pursue.

[3:09:35 PM](#)

MR. JACKSON concluded by saying that HB 257 presents an opportunity to look into the future in search of improvements. Passage of HB 257 will allow the state to avoid an unnecessary expenditure of public funds while saving the state significant amounts of money, increasing efficiency, and incrementally extending the use of e-commerce tools throughout state government over the next few years. He offered his belief that the introduction into state procurement of e-commerce tools and services, specifically the tools and services created and provided by ASCI, is an unalloyed good. The technology is available now, the capacity to implement it is present, and the cost reduction is real; all that is needed is the resolve to do the obvious.

[3:11:02 PM](#)

LAURA LAWRENCE - after noting that she has been employed by the DOT&PF for 24 years, specifically in the field of procurement for [the last] 21 of those years - said she would be speaking in opposition to HB 257 and SB 160. She indicated that those in the field of procurement are required to sign numerous agreements [of compliance with] the rules and regulations dictated by the state to control purchasing; violating those agreements would make one guilty of a class C felony. The current procurement policies, codes, and statutes were put in place to stop unorthodox purchasing and garner the public's trust.

MS. LAWRENCE offered her understanding that ASCI has readily admitted to doing business with one of their own companies and then admitted that doing so was a mistake. How many such mistakes will be allowed, she asked, given that ASCI is not required to follow the state's procurement code. How much business and money will be diverted to only particular groups or ASCI's favorite vendors? She characterized "this" as a disservice to the entire state's business community as well as to local taxpayers. To illustrate her point, she offered a hypothetical example wherein a small-to-average Alaskan business finds itself having to compete with a national corporation that is exempt from the procurement rules which the Alaskan company must follow. She likened such a scenario to taking on Mohamed Ali with one's hands tied behind one's back. How could one expect the local company to follow the state's rules and become low bidder while the company that's operating the pilot project is exempt from the same rules?

MS. LAWRENCE relayed that many Alaska vendors look forward to the yearly bids for commodities in excess of \$5,000, and make yearly inquiries as to when those bids are due to come out. If the state were to provide for and allow the state's purchasing departments the infrastructure to purchase statewide requirements electronically in the international marketplace, is it likely that ASCI could remain the low bidder? She opined not. She asked whether the committee is aware that the DOT&PF already has an electronic [procurement] system in place but has been prevented from fully utilizing it. "Untie our hands," she said, "and we can provide all the supplies and services at a rate equal [to] or better than the outsource company while keeping the jobs and tax base within the state."

MS. LAWRENCE went on to say:

I feel the state set the rules on using instate vendors to help stimulate local economies and ensure local employment. This ends up being more effective. The money returns to the local economies and the state of Alaska instead of out-of-state stockholders. We have a fiduciary responsibility to the people of this state. These bills appear to be moving entirely too fast in regard to outsourcing procurement. The pilot program with ASCI [has] ... undergone only nine months of a trial period; that's not long enough for a thorough audit to take place. [Only] time will ...

determine the success of such a pilot as suggested in the original bill.

Purchasing for the [Department of Transportation & Public Facilities] in itself is a vast undertaking, given the logistics, needs, and local services that are required to fulfill many of the demands needed to operate our highways and airports safely. I'm confident that an outsource company will not be able to take on these responsibilities in a fair manner that will be just to our local companies, nor will they be aware of the ... local logistical problems that are innate to the individual areas.

MS. LAWRENCE concluded:

Furthermore, ASCI is using State of Alaska office space, office equipment, and a warehouse to operate their purchasing automation. Are these costs being taken into consideration when audits are being ... [conducted]? Their lack of infrastructure ... shows in itself that they are not in a position to take on such a vast responsibility. They were not prepared to handle two more entities. How can we expect them to handle the entire state of Alaska procurement function. ... Thank you for letting me speak.

[3:17:09 PM](#)

GAIL KOZLOWSKI said that in her job with an Alaskan-owned business and office supply company, she works with the Department of Public Safety (DPS), the Department of Natural Resources (DNR), and the DOA, and sees a lot of competitive bidding and employees attempting to manage their state funds appropriately. She added:

Our customers can go to our web site or our competitor's web site [and] look right at their contract pricing. The supplies can be delivered in a 24-hour turnaround [period] without any paperwork if they so choose or they can get a hard copy. But this is e-commerce at its best. The state employees have the option to use their state contract or go to bid. They've done this effectively without going through a third party.

How many of you have campaigned on increasing jobs in Alaska? I agree with [Representative] Gruenberg about losing jobs locally. Who has the best interest of state funds at heart? Employees who are paid by the state, or a nonstate employee who has no vested interest?

Our Alaskan prisons are making furniture for state offices. It may not be the cheapest to purchase, or it may be, I don't know the pricing on that, but the point is, we are utilizing our prison inmates and teaching them a viable job skill to help make them a more productive member of society when they finish their term in prison. Do we want to eliminate this type of job skill and training as well? Thank you for letting me share my thoughts.

[3:19:12 PM](#)

ELLEN KUBIAK - noting that she works for an Alaskan owned and operated company - said she can't believe that the state is even considering outsourcing procurement. She relayed that the company she is employed with is keeping its head above water, trying to keep the big box stores from getting all the procurement business in her area, and has done very well for itself and the state. For example, by utilizing the company she works for, the [the DOT&PF] saved the state \$600 on a bid for basic supplies.

CHAIR McGUIRE offered her understanding that under the bill, everyone will have to comply with the bidding preferences regarding "made in Alaska" and Alaskan-owned companies.

MS. KUBIAK said she merely wants to offer her support to the state's professional procurement officers, and remarked that they are doing a great job and that she resents the possibility that those people could lose their jobs.

[3:20:55 PM](#)

DONNA SCHELIN simply relayed that she would be faxing some information to the committee.

[3:21:12 PM](#)

KEN BROWN mentioned that he has worked for the state in the field of construction procurement for the last 20 of his 30

years of state employment. He opined that if HB 257 moves forward, it will result in the loss of approximately 200 state positions, and that such should not be the way to run a pilot project, especially given that the goal of the original bill was to take advantage of the benefits provided by e-procurement. The union's response to ASCI's proposal was to merely look at the comparison between state salaries and the contract amount, he remarked, and suggested that outsourcing is not something that should be treated with callous indifference.

MR. BROWN offered his belief that the issue of outsourcing state functions was addressed in the 1994 Alaska Supreme Court case, Moore v. Alaska Department of Transportation, wherein the concern was that privatization can be used as a means of subverting state requirements regarding worker qualifications, conditions of employment, and employment benefits. He opined that privatization violates public policy by allowing the state to avoid employment costs which it would otherwise normally bear, and suggested that those benefits are intended to ensure that public employees, especially in the area of procurement, are above the fray and won't be easily manipulated, that those employees will be working for the common good and benefit of all Alaskans.

MR. BROWN relayed that although the court in Moore supported the legitimacy of outsourcing, that view rests on the fact that there are protections under the law; specifically the court said in part: "... to the extent that privatization creates a risk of exposing state workers to political influence, that risk is largely obviated by provisions of the State Personnel Act and state personnel rules dealing with layoffs and by provisions of the State Procurement Code and the rules promulgated thereunder dealing with state contracts.". He opined that HB 257 throws out the state's current procurement code, which, he surmised, is there for a reason. Furthermore, the procurement code is referenced in other statutes, by reference adopts the [Uniform Commercial Code (UCC)], and provides criminal penalties for misrepresentation and for anticompetitive practices.

MR. BROWN relayed that Oregon, with the help of firms similar to ASCI, has instituted a "Buysmart" e-commerce [system] within state government, thus eliminating the need to outsource people's jobs. He predicted that moving forward with HB 257 will engender a fight, since there are various forms of protection for state employees, and mentioned that the pilot project's contract allows ASCI to raise the current limit on counterproposals but state procurement officers were not given

the same advantage. In conclusion, he offered his belief that in the RFP for the pilot project, certain costs were not included.

CHAIR McGUIRE closed public testimony and relayed that HB 257 [as amended] would be held over.

HB 133 - LOCAL BOUNDARY COMMISSION REGS & POWERS

[3:28:36 PM](#)

CHAIR McGUIRE announced that the final order of business would be SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 133, "An Act relating to incorporation of boroughs and to regulations of the Local Boundary Commission to provide standards and procedures for municipal incorporation, reclassification, dissolution, and certain municipal boundary changes; and providing for an effective date." [Before the committee was CSSHB 133(STA).]

RYNNIEVA MOSS, Staff to Representative Coghill, Alaska State Legislature, sponsor of SSHB 133, said on behalf of Representative Coghill that the bill originally did one thing, which was to say that any regulations that are adopted by the Local Boundary Commission have to be consistent with state statute. This concept was engendered by the discovery of a regulation that allowed for an aggregate vote to be used to annex land into a borough. State law, however, requires the annexation of land into a borough to be decided at an election of the voters living in the area to be annexed, and it must pass by a majority vote. She explained that the aggregate vote allows all the residents, both of the area to be annexed as well as of the existing borough, to vote, and if, via that combined vote, it is approved, the area could then be annexed. She clarified that SSHB 133 says that both the area to be annexed and the area of the existing municipality each have to approve annexation by a majority vote; this will eliminate the possibility of a "hostile takeover" of an un-annexed area by an existing municipality.

MS. MOSS pointed out that Section 1 says that the Local Boundary Commission may not amend a petition or impose conditions on the incorporation, which, she said, is a change in statutory language, but noted that the constitution clearly says that the Local Boundary Commission will do "this" as prescribed by law, that being statutory law passed by the legislature. She turned attention to Section 2, and said that under current constitutional authority, the Local Boundary Commission can take

a proposal to the legislature for its approval without a vote of the people; Section 2, in contrast, says that there needs to be at least two public hearings and that there should be a vote of the people. Ms. Moss noted that Legislative Legal and Research Services told her that Section 2 probably would not survive a constitutional challenge. She said that she had an amendment prepared that would take out the election provision so that the bill could withstand such a challenge.

REPRESENTATIVE GRUENBERG commented that he had asked that this bill be referred to this committee specifically to deal with the constitutionality of the bill. He suggested that the language on page 2, line 5, "and shall notify the director of elections of the incorporation proposal", be deleted from the bill.

REPRESENTATIVE COGHILL, speaking as the sponsor, said he would prefer to delete the language rather than approaching it from a severability issue because of the costs associated with trying to defend it. He said:

I appreciate the severability issue, but I don't want the rest of the bill to get put in a place where a court can put the whole thing under a cloud when all I wanted was a simple, little fix. ... Under this bill we're testing the legislative authority against the boundary commission authority, and I'm asserting, rather strongly, legislative authority here. However, there [are] ... some real constitutional reasons for the boundary commission, and when we go back and we've studied it in the different committees that we've been in, I would be satisfied in taking this portion out because it still then allows two public hearings in a community, which, to me, ... kicks a door open for more public process. And then the vote wouldn't be required.

3:35:00 PM

REPRESENTATIVE GRUENBERG agreed with Representative Coghill and therefore announced that he would not offer his amendment labeled 24-LS0512\Y.1, Cook, 4/13/05, which read:

Page 3, following line 22:

Insert a new bill section to read:

**\* Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to read:

SEVERABILITY. Under AS 01.10.030, if any provision of this Act or the application of it to any person or circumstance is held invalid, the remainder of this Act and the application to other persons or circumstances are not affected."

Renumber the following bill section accordingly.

REPRESENTATIVE GRUENBERG commented that he didn't see any serious problem with requiring the Local Boundary Commission to hold two public hearings.

REPRESENTATIVE COGHILL noted that the Local Boundary Commission was amenable to having two hearings, but [language on page 2, line 5] became problematic.

MS. MOSS relayed that former Lieutenant Governor Jack Coghill testified at a House State Affairs Standing Committee hearing during which he was asked about Section 1. She said that he offered his belief that the bill put into statute what the intent was of the constitutional convention. She commented, "I think those are some very strong words that support Representative Coghill's desire for the legislature to make sure that the Local Boundary Commission is not stepping out of ... [its] bounds."

REPRESENTATIVE GRUENBERG explained that his [un-offered] amendment really just calls attention to the general severability statute, but it really doesn't add anything. He reiterated his belief that the committee should instead adopt Representative Coghill's suggested change.

3:37:00 PM

REPRESENTATIVE GRUENBERG asked whether the Department of Law (DOL) would have any problem defending Section 1 of the bill.

SARAH FELIX, Assistant Attorney General, Labor and State Affairs Section, Civil Division (Juneau), Department of Law (DOL), stated that she was attending the meeting on behalf of Marjorie Vandor, who is assigned to the Local Boundary Commission's work and who would be back in Juneau tomorrow. Ms. Felix stated that Ms. Vandor had said that she is concerned about Section 1 of the bill. Ms. Felix continued:

[Ms. Vandor] indicated that the Local Boundary Commission is one of the few constitutionally created

commissions, and that the framers expressed an intent that boundary decisions be made at a statewide rather than a local level because of the statewide interests in the municipal organization of Alaska. Case law, interpreting the Local Boundary Commission authority, has found that the commission has discretion to alter boundaries presented in incorporation petitions. ... Case law has also recognized the Local Boundary Commission's constitutionally-based authority. ... However, we know that not every issue has been decided. I mean, there has been some litigation concerning the authority of the Local Boundary Commission but there are still a lot of unanswered questions.

The line dividing the Local Boundary Commission's constitutional authority and the legislature's authority to enact laws restricting the Local Boundary Commission's authority is not entirely clear. Existing precedent suggests that removing the Local Boundary Commission's authority to change boundaries in incorporation petitions raises a constitutional issue.

MS. FELIX added:

Ms. Vandor wanted me to stress that her reading of the constitutional debate indicates that the framers intended that the concept behind adopting the constitutional provision authorizing the [Local Boundary Commission] was that political decisions don't usually create proper boundaries and that boundaries should be established at the state level, and that the advantage of the method proposed in the constitution for the Local Boundary Commission lies in placing the process at a level where areawide or statewide needs can be taken into account, and that by placing that authority in this third party - the commission - the arguments for and against boundary changes can be analyzed objectively.

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MS. MOSS noted that the case law is based on a state statute that this bill would change. She also pointed out that the constitution says that the [Local Boundary Commission] may consider any proposed local government boundary changes, but

doesn't say that the commission can amend or alter it. She opined, "I think the legislature definitely, under the constitution, has the authority to change this statute and direct the Local Boundary Commission." She stated that Article XII, Section 11, [of the Alaska State Constitution] says that "by law" and "by the legislature" can be used interchangeably with regard to law-making powers; therefore, she concluded, "prescribed by law" doesn't mean the constitution or the Local Boundary Commission, but instead means statutes that are passed by the legislature.

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EDGAR BLATCHFORD, Commissioner, Department of Commerce, Community, & Economic Development (DCCED), offered his apology for not advising the bill sponsor of the department's concerns sooner. He stated:

The department has this obligation to be the advocate for the unorganized borough and to promote municipalities, whether they're cities or boroughs. And our concerns are that [the bill] reverses the Local Boundary Commission's authority to amend and impose conditions on the petition. We're concerned that the voters must first approve this annexation or detachment before the legislature can take action. We are also concerned that proposals for legislative review must first be approved by residents of the area. And we're concerned also that the annexation into existing boroughs and cities would be almost impossible or probably improbable without support of the annexed areas.

As it is, it's unlikely that there would be any more organized governments in the unorganized borough, and the unorganized borough, we believe, can remain confident that until they decide to incorporate, an existing borough or city would not be able to attach them to their boundaries. And looking at the bill as it is ..., we believe this could impede development of natural resources. We believe too that as the bill ... stands now, ... it would hinder the assumption of the local responsibilities by local people. And we also believe ... that the bill could prevent local people from seizing the opportunities that come with local government.

COMMISSIONER BLATCHFORD noted that he had not seen any of the proposed [amendments].

REPRESENTATIVE COGHILL relayed that the following language in Section 2 will be removed if the committee agrees:

and shall notify the director of elections of the incorporation proposal. Within 30 days after notification, the director of elections shall order an election in the proposed borough area to determine whether the voters desire incorporation. Only if the voters approve the incorporation may the Local Boundary Commission submit the proposal to the legislature

REPRESENTATIVE COGHILL went on to say:

I think we need to organize in Alaska. We need to organize in boroughs. But the [Alaska State] Constitution has allowed for unorganized and organized boroughs. It also said that as we begin to populate and become an economy, that we are to be considered organization along several different criteria. And so we set up a boundary commission to help us figure those things out. But at the end of the day, it's going to be based on the law that we put together that respects the right of the individual voter. And it's our job to protect that. It's the administration's job to administer. So I can recognize their reluctance because they're going to advocate for a particular style that they've been doing.

[The DCCED is] going to bring their proposals to us and here's the action that we have: ... that the only action that the legislature can do is disapprove something. That's a huge negative vote. Almost everything else we do in the legislature is affirmative with the exception of this one issue. So it gives the Local Boundary Commission a huge authority. And so the authority then has to be carefully crafted by law. And so I understand that [the DCCED is] concerned about it, but ... [our] constitutional duty is to make sure that the individual voters in those areas are not forced into a government that they don't want. ... We want a larger agency looking at the need to organize.

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DEBBIE THOMPSON stated that she is a concerned resident of a subdivision in Union Bay, near Meyers Chuck. She stated that she strongly believes that the best way to reflect the desires of the community is to be able to let the people of the communities vote on the issues rather than just bypassing them to go to the legislature.

[3:49:56 PM](#)

VIOLA JERREL, Ph.D., Alaskans Opposed to Annexation, stated that she was also speaking for Doris Cabana. She testified in support of SSHB 133 and said: "Regarding any attachments or annexations, we want a vote of the people only in the area that a city or another group is trying to annex. We do not want a combined vote; we do not want an aggregate vote." She noted that she and Doris Cabana hired Attorney Robert C. Erwin, who is a former Alaska Supreme Court justice, to oppose annexation by the City of Homer. She further noted that a superior court judge in Anchorage remanded the Homer annexation case back to the Local Boundary Commission to consider the effect that the Homer annexation of 4.58 square miles had on the Kachemak Emergency Service Area of 214 miles.

DR. JERREL referred to a meeting of the Local Boundary Commission on January 5, 2005, during which the City of Homer Annexation Remand was on the agenda, and offered the following as a statement purportedly made at that meeting by Commissioner Robert Harcharek:

I strongly believe that the judicial system was totally out of line in remanding us to rehear this action. It is not in the administrative code, it's not a part of our legislative procedures. ... I feel that if we're going to send a message, it's to tell the judges to stay the hell out of it because it has nothing for them to do with it.

DR. JERREL opined that this statement by Commissioner Harcharek was illegal and inappropriate.

DR. JERREL expressed her belief that the current Local Boundary Commission is not following the order of the court and therefore the members need to be replaced. She continued: "Public money cannot be used to deny people the due process of law. The United States Constitution is the supreme law of the land and

everyone has to go by it, including the judges. The Local Boundary Commission has to go by it. They have to be replaced."

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CHAIR McGUIRE closed public testimony on SSHB 133.

REPRESENTATIVE COGHILL made a motion to adopt Amendment 1, which read [original punctuation provided]:

Page 2, line 5:

After the word "incorporation"

Delete all language through line 9, except the period.

REPRESENTATIVE COGHILL said that Amendment 1 "takes the election out of it but leaves the public comment hearing in it."

CHAIR McGUIRE asked whether there were any objections to Amendment 1. There being none, Amendment 1 was adopted.

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REPRESENTATIVE GRUENBERG moved to report CSSH 133(STA), as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSSH 133(JUD) was reported from the House Judiciary Standing Committee.

#### **ADJOURNMENT**

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The House Judiciary Standing Committee was recessed at 3:55 p.m. to a call of the chair. [The meeting was never reconvened.]