

ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE

April 5, 2005

1:38 p.m.

MEMBERS PRESENT

Senator Con Bunde, Chair
Senator Ralph Seekins, Vice Chair
Senator Ben Stevens
Senator Johnny Ellis
Senator Bettye Davis

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 139

"An Act relating to termination and oversight of boards, commissions, and agency programs; extending the termination date of the Board of Marital and Family Therapy; and providing for an effective date."

HEARD AND HELD

SENATE JOINT RESOLUTION NO. 11

Urging the United States Congress to amend the tax code to repeal the federal excise tax on communications.

MOVED SJR 11 OUT OF COMMITTEE

SENATE BILL NO. 142

"An Act relating to ownership of land, buildings, and other structures by regional school boards; and providing for an effective date."

MOVED CSSB 142(L&C) OUT OF COMMITTEE

SENATE BILL NO. 160

"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

PREVIOUS COMMITTEE ACTION

BILL: SB 139

SHORT TITLE: EXTENSIONS OF OCCUPATIONAL BDS/AGENCIES

SPONSOR(s): RULES BY REQUEST OF LEG BUDGET & AUDIT

03/09/05 (S) READ THE FIRST TIME - REFERRALS
03/09/05 (S) L&C, FIN
03/31/05 (S) L&C AT 1:30 PM BELTZ 211
03/31/05 (S) Scheduled But Not Heard
04/05/05 (S) L&C AT 1:30 PM BELTZ 211

BILL: SJR 11

SHORT TITLE: REPEAL TELECOMMUNICATIONS TAX

SPONSOR(s): SENATOR(s) THERRIAULT

03/03/05 (S) READ THE FIRST TIME - REFERRALS
03/03/05 (S) L&C, FIN
03/29/05 (S) L&C AT 1:30 PM BELTZ 211
03/29/05 (S) -- Meeting Canceled --
03/31/05 (S) L&C AT 1:30 PM BELTZ 211
03/31/05 (S) Scheduled But Not Heard
04/05/05 (S) L&C AT 1:30 PM BELTZ 211

BILL: SB 142

SHORT TITLE: REGIONAL SCHOOL BD LAND/BLDG OWNERSHIP

SPONSOR(s): LABOR & COMMERCE

03/16/05 (S) READ THE FIRST TIME - REFERRALS
03/16/05 (S) L&C, FIN
03/31/05 (S) L&C AT 1:30 PM BELTZ 211
03/31/05 (S) Heard & Held
03/31/05 (S) MINUTE(L&C)
04/05/05 (S) L&C AT 1:30 PM BELTZ 211

BILL: SB 160

SHORT TITLE: STATE PROCUREMENT ELECTRONIC TOOLS

SPONSOR(s): LABOR & COMMERCE

04/01/05 (S) READ THE FIRST TIME - REFERRALS
04/01/05 (S) L&C, FIN
04/05/05 (S) L&C AT 1:30 PM BELTZ 211

WITNESS REGISTER

BILL MAHER, staff to Senator Therriault
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Commented on SB 139 for the sponsor.

PAT DAVIDSON

Division of Legislative Audit
PO Box 113200
Juneau AK 99811
POSITION STATEMENT: Supported SB 139.

NONA WILSON, Legislative Liaison
Department of Transportation &
Public Facilities
3132 Channel Dr.
Juneau, AK 99801-7898
POSITION STATEMENT: Commented on SB 160.

KIP KNUDSEN, Deputy Commissioner of Aviation
Department of Transportation &
Public Facilities
3132 Channel Dr.
Juneau, AK 99801-7898
POSITION STATEMENT: Commented on SB 160.

SCOTT HAWKINS
Alaska Supply Chain Integrators
Anchorage AK
POSITION STATEMENT: Supported SB 160.

JIM DUNCAN, Business Manager
Alaska State Employees Association
POSITION STATEMENT: Opposed SB 160.

BEAU GRANT, President
Beau Geste Enterprises
Tampa FL
POSITION STATEMENT: Opposed SB 160.

KENNETH BROWN
Anchorage AK
POSITION STATEMENT: Opposed SB 160.

BARRY JACKSON
Anchorage AK
POSITION STATEMENT: Supported SB 160.

BEN MILAM
Anchorage AK
POSITION STATEMENT: Opposed SB 160.

ACTION NARRATIVE

CHAIR CON BUNDE called the Senate Labor and Commerce Standing Committee meeting to order at [1:38:16 PM](#). Present were Senators, Ellis, Davis, Seekins and Chair Bunde.

SB 139-EXTENSIONS OF OCCUPATIONAL BDS/AGENCIES

CHAIR CON BUNDE announced SB 139 to be up for consideration.

TOM MAHER, staff to Senator Therriault, sponsor, explained the provisions in SB 139 stem from two audit reports prepared by the Division of Legislative Audit.

MR. MAHER explained that SB 139 extends the sunset date for Board of Marital and Family Therapy from June 30, 2005 to June 30, 2010 as per the audit. It also incorporates recommendations contained in an audit of the sunset process itself. Section 2 clarifies for boards that are terminated that their authority for regulatory and disciplinary powers is transferred to the Department of Community & Economic Development (DCED). Currently this happens, but statutes don't give the department the authority to those activities.

Sections 3 and 4 change the standard sunset period for occupational boards in AS 08.03.020(c) and non occupational boards in AS 44.66.010(c) from not to exceed four years to not to exceed eight years. Increasing the standard sunset period allows for better use of audit staff and make the sunset process less consuming for the legislature, the boards and regulatory agencies.

Finally, section 5 adds two criteria that must be considered in the course of a sunset review by the auditors. They are the extent to which the board, commission or agency has effectively attained its objectives and the efficiency with which it has operated and the extent to which the board, commission or agency duplicates activities of another governmental agency or the private sector. Expanding the criteria will assure that auditors will measure the efficiency and effectiveness of boards, commissions and the agencies under review.

[1:40:39 PM](#)

SENATOR BEN STEVENS joined the committee.

[1:42:11 PM](#)

PAT DAVIDSON, Division of Legislative Audit, said she recommends extension of the Board of Marital and Family Therapy. During the

course of her review she looked at whether it should be combined with other behavioral health boards. But if they continue on separately as they are, she recommends a five-year extension.

The audit looks at efficiency and the effectiveness of the Alaska sunset process, a process that came to Alaska in 1977 when a lot of other states started using it also. Since then, six states have suspended their sunset process and six have outright repealed it. Alaska has a standard four-year extension, another group are at six years and another is at ten years. Given the times the boards and commission have come under review, it really isn't a question any more that they be continued. She is now looking more at efficiency and effectiveness issues.

[1:45:20 PM](#)

RICK URION, Director, Division of Occupational Licensing, said he was a legislator when the 1977 sunset law was passed and he supported SB 139 now. He noted that the Board of Opticians is scheduled to sunset and sooner or later the law will need to be clarified about what the department does in that case.

[1:46:44 PM](#)

CHAIR BUNDE moved Amendment 1 as follows for discussion purposes:

Delete section 2 and insert:

Sec. 2. AS 08.02.020(a) is amended to read:

(a) Upon termination, each board listed in AS 08.03.010 shall continue in existence until June 30 of the next succeeding year for the purpose of concluding its affairs. During this period, termination does not reduce or otherwise limit the powers or authority of each board. One year after the date of termination, a board not continued shall cease all activities, and all statutory authority of the board is transferred to the department.

MR. URION explained that it clearly establishes that all the board's statutory authority is transferred to the department. A new section (4) makes it clear that any litigation, investigations and licenses that have been issued are in place until changes are made.

CHAIR BUNDE said there were no objections and Amendment 1 was adopted.

[1:48:14 PM](#)

CHAIR BUNDE moved Amendment 2 as follows for discussion purposes:

Add a new section to the bill:

Sect. 4. AS 08.03.020 is amended by adding a new subsection to read:

(d) The department shall carry out the functions of a board that has been terminated and ceased all activities. Litigation, hearings, investigations and other proceedings pending at the time the board ceased activities continue in effect and may be continued or completed by the department. Licenses, certificates, orders and regulations issued or adopted by the board and in effect at the time the board ceased activities, remain in effect for the term issued, or until revoked amended, vacated or repealed by the department.

[1:48:59 PM](#)

SENATOR BEN STEVENS asked if the legislature allows the board to sunset, does that automatically confer its authority to the department.

MR. URION replied that is correct. For example, if the Board of Opticians sunsets, the department would continue to license and follow the criteria in the law. He added, "We license a whole lot of people in the state without boards."

[1:50:30 PM](#)

MS. DAVIDSON explained that two legal opinions, one from the Department of Law and one from Legislative Legal, address what happens when a board sunsets. One opinion said that from the time the board sunset, no one can be issued a license, but those licenses don't go away. But nothing can move forward in terms of licensing. The second opinion was that if a board goes away, then the regulations that refer to it are moot. In which case, if you have no regulations to carry out the function of the statute, there is no process for people that are licensed to continue with the license or it goes into a limbo.

Last year she recommended allowing the Board of Opticians to sunset and starting up a registration process that would allow

for individuals who want to call themselves registered dispensing opticians to meet certain qualifications and criteria.

MS. DAVIDSON said if any board is going to sunset, it goes into a wind-down year. But boards don't want to wind down; they really hope for an extension. This bill lets the department step into that space providing for an orderly process.

[1:53:24 PM](#)

SENATOR BEN STEVENS said the decision to shut down comes from the legislature and he asked if the department could manage without further input from it.

MS. DAVIDSON replied that the legislature would have to take further actions by eliminating all the statutes if it wanted the whole licensing function to go away. Eliminating the board would be a first step in that process.

SENATOR BEN STEVENS asked if the department would continue licensing under regulation until that happened.

MS. DAVIDSON replied, "Yes, it would."

[1:55:48 PM](#)

CHAIR BUNDE assumed that the boards are charging enough to be self-supporting, but if the departments have to issue licenses, he thought a fiscal note might be necessary.

MS. DAVIDSON replied that the statute says any occupations being regulated by the division have to be self-supporting.

[1:56:19 PM](#)

SENATOR STEVENS asked what other boards would fall under provision.

MR. URION replied about 20 more licensing boards.

CHAIR BUNDE said he thought it was an administrative goal to eliminate some of the boards, but he didn't see a lot of movement in that direction.

[1:56:59 PM](#)

CHAIR BUNDE said there was no further objection to Amendment 2 and it was adopted. He said he would hold CSSB 139(L&C) for another hearing.

SJR 11-REPEAL TELECOMMUNICATIONS TAX

CHAIR CON BUNDE announced SJR 11 to be up for consideration.

DAVE STANCLIFF, staff to Senator Therriault, explained the resolution and that there is a bipartisan effort to eliminate it. Originally, he said the telecommunications tax was put in place to support the Spanish American War.

[2:00:06 PM](#)

CHAIR BUNDE stated his concern about eliminating the tax and asked how much doing that would decrease the state's revenues.

SENATOR ELLIS in an aside noted that President Clinton supported repeal of the tax.

[2:01:45 PM](#)

SENATOR SEEKINS moved to pass SJR 11 from committee with individual recommendations and attached fiscal note. Senators Seekins, Ellis, Davis, Ben Stevens and Chair Bunde vote yea; and SJR 11 moved from committee.

SB 142-REGIONAL SCHOOL BD LAND/BLDG OWNERSHIP

CHAIR CON BUNDE announced SB 142 to be up for consideration.

NONA WILSON, Legislative Liaison, Department of Transportation and Public Facilities (DOTPF), said there were questions about SB 142 in the last meeting and the department wanted to address those.

KIP KNUDSEN, Deputy Commissioner of Aviation, Department of Transportation and Public Facilities (DOTPF), explained:

Our lawyers were trying to do us a favor and give us some power and influence over buildings that school districts might also want to claim. We don't have any event where a school district is leasing a building, a DOT building. So, giving us the power to deny their request would be silly. So, really all we're focused on is land. All we really care about is title to the land and, hopefully, this amendment strips the bill down to the barest essential.

CHAIR BUNDE moved Amendment 1 and objected for discussion purposes. There were no questions and Amendment 1 was adopted.

[2:06:11 PM](#)

CHAIR BUNDE closed public testimony.

SENATOR SEEKINS moved CSSB 142(L&C) from committee with individual recommendations and attached zero fiscal note. Senators Seekins, Davis, Ben Stevens, Ellis and Chair Bunde voted yea; and CSSB 142(L&C) moved from committee.

SB 160-STATE PROCUREMENT ELECTRONIC TOOLS

CHAIR CON BUNDE announced SB 160 to be up for consideration.

SENATOR SEEKINS moved to adopt CSSB 160(L&C), version X. There were no objections and it was so ordered.

CHAIR BUNDE explained that the committee substitute adds the Alaska bidder preference that was deleted from the original bill.

SENATOR ELLIS said previous legislatures had debated about the extra preference to in-state bidders and disabled folks. He asked if a preference for disabled business owners was still included in the CS.

CHAIR BUNDE replied that he understands the CS replicates what is in existing statute. He went on to explain how the bill came about. Internet technology has created ways to increase efficiency and lower costs in state procurement. So, the state had a pilot program to show if that was possible.

KEVIN BROOKS, Deputy Commissioner, Department of Administration (DOA), said the genesis of this project occurred two years ago in HB 313, which established a pilot project that included up to two state departments and two instrumentalities of the state and provided for a sunset date for the pilot. SB 160 eliminates the sunset date and the restriction on the number of departments. It enables him to go forward with analyzing the benefits of the efforts that were undertaken.

In this day and age, we are looking for opportunities to streamline and make government more efficient. Certainly E-commerce tools and procurement tools have come a long way and the state's method for procuring goods and services is a bit antiquated in that regard - a very paper driven process. And so, we certainly share the interest in trying to make that process more efficient. Currently, there has only been one state

agency, the Department of Transportation, and more specifically, the Southeast Region, that has been involved in the pilot. That has really only been during the current fiscal year.

We started last summer and the successful contractor...Alaska Supply Chain Integrators, Inc. began working with DOT.... The contractor has done a great deal of work in bringing his system into the state agency. There is a lot of groundwork that has been laid. We have done some analysis of the first quarter of the fiscal year. We're finishing a review of second quarter procurements and now we just completed the third quarter.... Currently, at this point, from the administration's perspective, the jury is still out. We don't have enough data to say it's been a success or a failure, but it's certainly worth continuing the process to see how this is going to work out and so this bill would allow us to continue that....

[2:13:22 PM](#)

CHAIR BUNDE asked if he thought the state might need a larger sample to be able to judge if this is effective or not.

MR. BROOKS replied that he personally thinks the department needs 2nd and 3rd quarter data from the fiscal year. That will provide a basis in expanding the sample size. It must go through a feasibility process, which includes documenting cost savings on paper before proceeding. There is also a notification process.

[2:15:54 PM](#)

SENATOR ELLIS asked since the jury is still out, how does that square with extending the model to all state agencies.

MR. BROOKS answered that all departments wouldn't necessarily participate; it would make more sense for some than others. The Department of Law, for instance, doesn't deal with a lot of commodities.

[2:17:32 PM](#)

CHAIR BUNDE said Mr. Brooks mentioned there is a procedure where some savings are possible before this could go forward and asked if this bill passes, would those procedures stay in effect. If a department would qualify, it could move forward.

MR. BROOKS replied that is correct.

[2:17:50 PM](#)

SENATOR ELLIS said it's been reported to him that state employees in the affected agency wanted to bid on some sort of change in the procurement system and the administration decided to preclude them from getting together and making a proposal to compete with the private contractors. He asked him what happened.

MR. BROOKS replied that he didn't have personal knowledge of that, but would get back to committee. He disclosed that he came into his position just last summer.

SENATOR ELLIS said that he believes competition is good and leads to efficiencies and further:

If state employees wanted to come up with a new system that was equal or superior to the private contractor, we ought to have a contest of ideas and see who comes out on top and provides the state with the best service.

MR. BROOKS responded that automating the state's procurement process is a good idea and the pilot uses a private contractor that might do it more effectively. He said he would look into Senator Ellis' question.

SENATOR ELLIS said he was told that the state employees were precluded from even trying to do that.

MR. BROOKS said that he would check into that. He also wanted to comment that he supported the preferences amendment. Often they are clumsy and awkward and asked if he could provide language that would not change the preferences, but make them more efficient and straight-forward within the bill.

[2:21:02 PM](#)

SENATOR ELLIS said he wanted to make sure that existing preferences were included in the committee substitute.

MR. BROOKS said that is the case, specifically the disabilities preference.

Another item he mentioned was on page 1, line 10, that says the contract would be awarded under AS 36.31.100 through AS 36.31.190. Expanding the reference from AS 36.30.100 through AS

36.30.265 was recommended. This would give the state the ability to award this contract via competitive sealed proposal process. And now the statutory reference stops short of that.

[2:22:20 PM](#)

SENATOR SEEKINS said he has no objection to an Alaska preference, but has concern about extending a preference to disabled people unless they are the actual operators of a business. He has seen several contracts awarded to people with a disability preference and they were just a subcontractor to one of the other people that bid on the project in the first place.

CHAIR BUNDE asked him to work on language with Mr. Brooks.

MR. BROOKS responded:

We are certainly interested in the appropriate implementation of these preferences and share your concern that they be afforded to people who genuinely deserve them and not any body else.

CHAIR BUNDE said that Scott Hawkins is the contractor who is discussed and he owns a business within his Senate district.

[2:23:48 PM](#)

SCOTT HAWKINS, Alaska Supply Chain Integrators (ASCI), said he won the contract for the procurement pilot project. ASCI was founded in 1999 to provide purchasing, warehousing and other aspects of procurement and material operations to the North Slope oil fields and gradually to other clients. It has grown to 150 employees and has developed a suite of E-commerce tools to help clients. It is up against national competitors who have a lot of capital behind them. He sees a future in back-office business process operation in both public and private sectors. He has delivered substantial, documentable savings to his clients.

[2:25:59 PM](#)

He explained that his business model doesn't buy and resell goods. It operates the administrative processes on behalf of the customer.

Our vision is that the back-office overhead that does these types of administrative services is a necessary function you have to have in order to operate. But the more money that can be saved in those types of activities, the more can be poured directly into

program expenditures - things that really meet the needs of constituents and stakeholders.

2:28:57 PM

He said a memorandum, written by Suzanne Dallimore to Beau Grant, opponents of the program, had been circulated that reflected on the program and him as a contractor. It alluded to cases of outsourcing programs gone awry, even one item on the current program. It contained unsubstantiated allegations that are primarily scare tactics. Some of the issues did not even concern the pilot project and there seemed to be an incomplete understanding as to how the program works.

The memo erroneously says that the bill prematurely privatizes 100 percent of Alaska procurement without economic justification. In reality, the bill does not set forth a schedule and doesn't require any further privatization whatsoever if the administration is not so inclined. However, the bill does authorize expansion at the discretion of the administration and only if feasibility can be shown. Union bargaining agreements require that feasibility be shown. The agreements have a tremendous amount of due process that enforce that requirement.

MR. HAWKINS said the memo suggests that the savings are illusory and he referred the committee to the feasibility study and to a subsequent compliance audit conducted by the Office of Management and Budget to reassure and verify members that the savings are quite real and significant.

He said the bill is alleged to not mandate competition in procurement and gives the contractor carte blanche over procurement, which it doesn't do. On the contrary, he said the program does mandate competition and, much like the current procurement code, it requires a certain amount of competition at certain levels of "spend."

MR. HAWKINS said the rules in his contract are similar in spirit to the current procurement code, but there is a lot of excessive red tape in the procurement code that he is not bound by. His contract requires competition at different levels of spend; it does not eliminate competition and preserves bidder's preference.

The memo says that privatization favors a few large firms headquartered elsewhere and he admitted that his firm is headquartered in Anchorage. It also alleges that the bill favors

a single firm, but he said the expansion and extension of the pilot does not guarantee his company any business. He has a current contract for a current scope of work that is very limited and it expires on June 30, 2006. The administration will then have three options. It can renew the contract for one renewal term, it can choose to rebid or it can choose to not renew it and replace his contract service with state employees.

[2:35:20 PM](#)

CHAIR BUNDE said he assumed if the state employees wanted a competitive bid, they wouldn't be treated any different than any private firm. He asked Mr. Hawkins if he supported that competition.

MR. HAWKINS replied that he wouldn't be in any position to oppose it. He understands that collective bargaining agreements allow a period of time for affected unions to respond and that response is entirely out of his hands.

[2:35:55 PM](#)

SENATOR ELLIS asked if the state precluded state employees from putting their proposal forward.

MR. HAWKINS replied no.

SENATOR SEEKINS said if the state employee were to use his position or the knowledge of any privileged information within his position to try to compete for a contract like that, he might run into severe ethics problems.

[2:36:40 PM](#)

CHAIR BUNDE said collective bargaining agreements allow it.

MR. HAWKINS returned to commenting on the memo that accuses the bill of mandating a one-size-fits-all privatization model that might not be appropriate for all agencies. However, he said the feasibility assessment would determine if the model was appropriate for all agencies. The memo sites specific federal requirements for the use of federal funds in procurement and those are a factor that could be worked through on an agency-by-agency basis. It could be a limiting factor in terms of the scope of the pilot.

The memo also accuses the bill of raising constitutional concerns in terms of allowing the contractor to set the rules. However, these concerns have come from the Arizona Center for Alaska Constitutional Studies. But, HB 313 didn't appear to

raise any constitutional issues and he doesn't get to set the procurement rules. He has to follow them.

Another section claims that the bill will expose the state to litigation because it might impair existing contracts that other vendors would have with the state.

[2:38:16 PM](#)

MR. HAWKINS said his model does not have him contracting directly with vendors or contractors. His company performs administrative functions; the contracts are state contracts. When he takes over an office, as with DOTPF Southeast Region, he inherits a portfolio of contracts to administer under their existing terms and conditions. That administration and subsequent actions have to be consistent with the contracts, but also have to occur under the state's procurement code.

The contractor is accused of having an economic relationship with a government official, but he wanted to put on the record that no one associated with ASCI has any relations with anyone in the Alaska government.

[2:41:36 PM](#)

MR. HAWKINS said there are several reasons to privatize this function. These activities have become more system-oriented with web tools and management specialization and the cost of the overhead infrastructure can be shared across other entities. He brings exposure to other ways of doing things in doing this type of activity for multiple clients. Another benefit is elimination of long-term retirement obligations as procurement and supply chain personnel are moved to private sector employment.

[2:44:29 PM](#)

He said this program is very new, but the major milestones have been met. The operation is on schedule. "We have delivered significant personnel cost savings. We've achieved some significant historical firsts in E-commerce...."

However, he said the engagement was way too small to be able to bring the full resources of what he could bring to the table. He can offer value in pooling volume of several state agencies and get better pricing. It's hard to show the value of the program using such a small corner of business.

[2:48:30 PM](#)

The Office of Management and Budget (OMB) contract compliance report says the contract has been complied with. He went on to

explain that in a previous position he used to spend time promoting Anchorage as a supply chain and logistics hub. Some years ago he formed a company that is attempting to do that in the private sector.

[2:52:43 PM](#)

CHAIR BUNDE said that the pilot program displaced 10 state workers and asked if he was obligated to try to provide employment for those workers.

MR. HAWKINS said he tried, although he did not have a contractual obligation. He scheduled assumption of duties and schedules in such way as to minimize impacts on impending retirements. He spent a fair amount of time in the preparatory month interviewing and working with the affected staff members who were being eliminated. Every single one in the procurement office was offered a job at comparable pay. None accepted it. They were able to find similar positions in other agencies.

[2:55:14 PM](#)

JIM DUNCAN, Business Manager, Alaska State Employees Association (ASEA), opposed this legislation. He represents a significant number of people who would be impacted by this project as well as those who lost their jobs. He is concerned about the long-term impacts on his members.

Procurement of goods and services for state governments is an important issue and must be handled carefully to maintain public trust and the integrity of the system. He applauded adding bidder preferences on page 2, but he asked the committee to look at page 1, line 14 that says "a procurement conducted by the person selected under (a) of this section is not subject to this chapter or to AS 36.15." That means that any procurement that is conducted by the contractor who is selected under this project is exempted from the Procurement Code.

[2:58:36 PM](#)

The Procurement Code was not just thrown together lightly or quickly. It was done with much forethought and study to ensure that the public trust was being maintained. In 1986, the Legislature adopted the Model Procurement Code (MPC) and it was endorsed by the American Bar Association. He thought it should be strengthened to make sure the public trust was maintained to the fullest. He was concerned that one sentence on page 1, line 1, would say that the contractor is not subject to the Procurement Code that has been in place since 1986.

[3:02:27 PM](#)

As a commissioner of the Department of Administration, Mr. Duncan said he oversaw the procurement process and he thought it worked well.

[3:03:14 PM](#)

He pointedly thought this is premature and there is no clear indication that the pilot project is successful or not. His best information indicates first quarter cost of goods increased 20 percent and the audit on the next quarter isn't complete. He was confused with the language on the Alaska bid preferences, the competitive bid process and request for RFP. The jury is really out on the pilot project.

[3:04:38 PM](#)

He responded to Mr. Hawkins' comment about rules and asked if the negotiated rules would be identical to the procurement code. Could employees have a high level of trust in them? Is the integrity of the procurement process protected?

[3:06:07 PM](#)

He asked why the legislature would want to give up its responsibility to set the procurement process in statute to an administration that would negotiate different rules for every contract. "That's not where the rules in procurement should be!"

[3:06:43 PM](#)

MR. DUNCAN applauded the legislature for wanting to look for ways to bring about more efficient government. His union wants to bring about more efficient government. He said the union did not have a chance to respond when the pilot project was originally let. It did not have an initial chance and has a grievance filed that will probably go to arbitration.

On February 11, 2004, ASEA received a letter from Commissioner Miller, DOA, giving notice of the results of a feasibility study to determine the potential cost and benefits of the pilot project in the Southeast Region. The study stated that there would be a project savings of more than \$260,000 and a projected approximate \$200,000 each year after that. He requested further information on March 3 relating to the detailed cost analysis ASCI performed in building their budgets and operation plans and that analysis was referred to in the ASCI bid document.

On March 5, the state refused to provide a copy of that detailed cost analysis stating it was an internal document prepared by ASEA. It was not a requirement of

the RFP and the cost analysis was not received by the state. The state said they couldn't provide it to us, because they didn't get it.

On March 12 ASEA did submit an alternate plan and the commissioner rejected it on March 19. He was told at that time the cost analysis was not available. ASCI's cost analysis was not provided to the union and it had no way to determine it was correct and neither could the state.

3:10:05 PM

BEAU GRANT, President, Beau Geste Enterprises, said he specializes in procurement management and is here on behalf of the unions. He has over 30 years of experience in government procurement at the federal, state and local levels. He specializes in general procurement management and strategic planning, investigative consulting, expert witness work and he is also a certified mediator and arbitrator with AAA.

He handed out a new response. He said that government business is not the same as private business. Government procurement consumes approximately 23 percent of the nation's gross national product and services, which translates to approximately \$1.7 trillion per year. It is the biggest company on the planet.

The first difference is the law. In the private sector he can do whatever the law does not explicitly prohibit him from doing. But in the public sector, people can only do what the law specifically allows them to do. Because of the legislature's fiduciary authority it must have enabling legislation to receive the authority to spend public dollars. You can't just give that to a company and excuse them from the code. If there is no law, if there are no guidelines assurances as to how the money is spent, then whoever is spending it has no authority. The market is different, the customer is different.

3:16:58 PM

He did not think that all the impacts of privatizing procurement had been thought through and identified. ASCI has already indicated that things had happened that weren't planned, because they were doing business in the private sector. He also pointed out that no one else bid for the project and he thought some would have if privatization had been successful somewhere else.

MR. GRANT said that 85 percent of all privatization is contracting out and that is what public procurement professionals are trained to do.

The reality is [privatization] hasn't been successful.... Unfortunately, 45 out of 50 states have suffered severe deficit budgets and we have found a direct relationship between those budgets and the over-expenditures caused by [indisc.] procurement and no contract management. If you don't manage it; if you don't measure it; don't expect it to succeed....

[3:18:12 PM](#)

He said there are good examples of what can be done in-house with having to pay someone else to do what you could do.

[3:20:58 PM](#)

SENATOR BEN STEVENS asked him where he is located.

MR. GRANT answered in Tampa, Florida.

SENATOR BEN STEVENS noted that page 16 of Mr. Grant's memo says, "History teaches us that if anything, privatized systems - the only cost savings a state receives - is by the elimination of employees."

He asked Mr. Grant if he thought the only way to achieve efficiency is to hire more people.

MR. GRANT replied that the only way to achieve real savings that will reduce the need for people is to use E-commerce, but you don't need to go outside to get that done.

[3:23:06 PM](#)

SENATOR BEN STEVENS said the conclusion at the bottom of page 25-26 says, "There is no immediate budget crisis in Alaska and there is time to reflect." He hadn't seen any entity put that in writing before.

[3:25:09 PM](#)

SENATOR SEEKINS asked Mr. Grant for a brief about the comment on page 21 that this bill could have US Constitution issues.

[3:25:57 PM](#)

KENNETH BROWN, Anchorage, said he is a 30-year state employee and his is one of the positions ASCI tried to outsource. He was involved in the union response to the RFP. He said:

I'm here today to ask you not to break two contracts. Passing this bill will. Section 2 repeals the previous

statute that created the pilot project and changes the sunset date and the way I read it, it breaks the contract that the Department of Administration has with Alaska's Supply Chain Integrators. Secondly, it would break a more important contract - the Constitution - the contract between the people and their government....

He said the pilot project was an enormous disruption to his business and he said that costs money that was not allowed to be included in the studies.

MR. BROWN said he wrote most of the counter proposal for ASEA. In it, he assumed a fair and equal basis of comparison would be allowed and that the union would be allowed to deviate from the Procurement Code the same way ASCI was allowed. He proposed viable alternatives including a process that preserved the use of Alaska preferences and it was rejected. Additional costs were even added to his proposal. But, ASCI's cost projections were accepted without verification including \$120,485 in start-up expenses, which he thought was an unethical manipulation.

[3:31:59 PM](#)

He also stated that ASCI could not prevail upon the legislature to break or alter their agreement with the administration.

BARRY JACKSON, retired state employee, said he served as the Acting Director of the Division of General Services in the Department of Administration, as a Deputy Director and a Contracting Manager for decades. He is currently employed by Resources Data as a programmer analyst, a project manager and a procurement consultant. Resources Data performs services for ASCI and he has helped prepare the documents for this contract. He said:

In the mid-80s, when I was still a state employee, we were faced with a catastrophic reduction in our staffing capabilities. My staff in Anchorage at that time was cut literally in half. The only way we were able to cope with that was through attempted automation efforts.... I wrote programs that were used from 85' until almost 1998 or so. It was only through the use of these automation tools that we were able to successfully carry on. Otherwise we would have had a crash and burn in our capacity to do the business of the state.

[3:34:28 PM](#)

CHAIR BUNDE handed the gavel to Senator Seekins.

MR. BROWN continued:

What ASCI is offering to do here is to give the legislature the opportunity to see that coming again as it certainly appears to be. The time will come when there will be a need to cut state employees, including in the procurement function. There will be no way to cope with the work that is generated by the departments to accomplish their missions without some form of continued automation. ASCI has the tools. I've seen them; I've trained on them. They are very useful tools. They fit Alaska's state government very well. So, I'm very enthusiastic about the use of those tools and I believe that they will make a big difference when that day comes that the legislature has to face it and start cutting positions.

[3:36:49 PM](#)

BEN MILAM, Anchorage, said he has 30 years of contracting experience, four professional certifications and has worked with Alaska businesses helping them to get government contracts. He has also worked as a private contractor. He understands the philosophy of government contracting and public purchasing better than most. "My only comment on this is this is just really poor public policy - to contract out purchasing in the first place."

MR. MILAM said he belongs to a news clipping service and sees many ethics violations by government officials in purchasing and contracting who have let contracts to their friends, have rigged contracts and those kinds of things. In government, that kind of thing is illegal, although it's not in the private sector.

If a private business wants to give business to his best friend, that's okay. It's his money and he can spend it the way he wants to. But if you're spending public money as we are, you can't do that. That's the reason, as Mr. Duncan said, that we have a Procurement Code.

CHAIR BUNDE announced that the bill would held and adjourned the meeting at [3:40:53 PM](#).