

ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE

April 14, 2009

8:04 a.m.

MEMBERS PRESENT

Representative Bob Lynn, Chair
Representative Paul Seaton, Vice Chair
Representative Craig Johnson
Representative Peggy Wilson
Representative Max Gruenberg
Representative Pete Petersen

MEMBERS ABSENT

Representative Carl Gatto

COMMITTEE CALENDAR

HOUSE BILL NO. 225

"An Act relating to the State Procurement Code; relating to the procurement of supplies, services, professional services, construction services, state fisheries products, state agricultural products, state timber, and state lumber; relating to procurement preferences; relating to procurement by the office of the ombudsman, the Alaska Industrial Development and Export Authority, the Alaska Energy Authority, and other state agencies and public corporations; and providing for an effective date."

- MOVED CSHB 225(STA) OUT OF COMMITTEE

HOUSE BILL NO. 205

"An Act relating to the permanent fund dividend of an otherwise qualified individual who dies during the qualifying year; and providing for an effective date."

- MOVED CSHB 205(STA) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 225

SHORT TITLE: STATE PROCUREMENT CODE

SPONSOR(S): REPRESENTATIVE(S) FAIRCLOUGH

04/10/09 (H) READ THE FIRST TIME - REFERRALS
04/10/09 (H) STA, FIN
04/14/09 (H) STA AT 8:00 AM CAPITOL 106

BILL: HB 205

SHORT TITLE: PERMANENT FUND DIVIDEND FOR DECEASED
SPONSOR(S): REPRESENTATIVE(S) CRAWFORD

03/25/09 (H) READ THE FIRST TIME - REFERRALS
03/25/09 (H) STA, FIN
04/14/09 (H) STA AT 8:00 AM CAPITOL 106

WITNESS REGISTER

ANNA FAIRCLOUGH
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Introduced HB 225 as prime sponsor.

CRYSTAL KOENEMAN, Staff
Representative Anna Fairclough
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearing on HB 225, answered questions on behalf of Representative Fairclough, prime sponsor.

VERN JONES, Chief Procurement Officer
Division of General Services
Department of Administration
Juneau, Alaska

POSITION STATEMENT: Presented a sectional analysis to HB 225.

PAUL GRASSI, Staff
Representative Harry Crawford
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 205 on behalf of Representative Crawford, prime sponsor.

CHRIS POAG, Assistant Attorney General
Civil Division
Commercial & Fair Business Section
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: During the hearing on HB 205, answered questions.

CHRISTINE MARASIGAN, Staff
Representative Kevin Meyer
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered a question on behalf of Representative Meyer during the hearing on HB 205.

ACTION NARRATIVE

[8:04:08 AM](#)

CHAIR BOB LYNN called the House State Affairs Standing Committee meeting to order at 8:04 a.m. Representatives Seaton, Wilson, Petersen, and Lynn were present at the call to order. Representatives Johnson and Gruenberg arrived as the meeting was in progress.

HB 225-STATE PROCUREMENT CODE

[8:04:59 AM](#)

CHAIR LYNN announced that the first order of business was HOUSE BILL NO. 225, "An Act relating to the State Procurement Code; relating to the procurement of supplies, services, professional services, construction services, state fisheries products, state agricultural products, state timber, and state lumber; relating to procurement preferences; relating to procurement by the office of the ombudsman, the Alaska Industrial Development and Export Authority, the Alaska Energy Authority, and other state agencies and public corporations; and providing for an effective date."

[8:05:12 AM](#)

ANNA FAIRCLOUGH, Alaska State Legislature, stated that the proposed legislation would change procurement procedures for the State of Alaska. She related that last summer she began working to make changes regarding veterans' preference [bidding], which is when she found there were inconsistencies in the state's procurement code. She discovered from the state's chief procurement officer that many challenges were faced by state employees every time a bid came forward that dealt with a preference. For example, sometimes bids had to be re-bid. Furthermore, the formulas were calculated differently on each bid, which required additional training.

8:06:42 AM

CRYSTAL KOENEMAN, Staff, Representative Anna Fairclough, Alaska State Legislature, added that the bill sponsor had been approached by the state's chief procurement officer who had been keeping track of inconsistencies within the procurement code for a number of years. She said the sponsor believes that [HB 225] is something that needs to happen.

8:07:56 AM

VERN JONES, Chief Procurement Officer, Division of General Services, Department of Administration, presented the sectional analysis for HB 225. He stated that many of the proposed changes would reorganize and streamline preferences. He said Section 1 would update a citation because of "the renumbering of a preference." Section 2 would amend the local agricultural preference to grant bid preference based on the qualifying bid price, rather than lowest price. In response to Representative Seaton, he clarified that the bill would "make the preference apply directly to the qualifying bid." He offered further details. In response to Representative Gruenberg, he confirmed that the term "applied to" means "deducted from."

8:11:12 AM

MR. JONES said Section 3 would make the same change, but for the local fisheries preference. Section 4 would amend the local agricultural and fisheries product preference to disallow a bidder from being granted both that preference and the Alaska product preference. He noted that there is some overlap, so the change would allow one or the other, but not both. Section 5 would update a citation regarding renumbering.

8:12:12 AM

REPRESENTATIVE GRUENBERG returned to Section 4 and asked if, under current law, the two preferences can be "stacked."

MR. JONES answered yes. He explained the policy reason for that change is that the preferences achieve "the same thing" - they are for the same product. He said he does not think when the legislature originally passed the preference it was intended to overlap or be duplicative. In response to a follow-up question from Representative Gruenberg, he said the department is happy to be working with the bill sponsor. The discussion began

around procurement preferences and expanded to other changes that the department has been desiring over the past years.

REPRESENTATIVE GRUENBERG said he wants the record to show that the bill has been carefully prepared and has the backing of the administration.

MR. JONES responded, "It's been many years in the making."

[8:13:51 AM](#)

REPRESENTATIVE SEATON, regarding Section 4, said the committee recently dealt with a veterans' [bidder] preference with a \$5,000, but he said he does not remember where that was scheduled. He asked, "Is that in this same non-stackable group?" He recollected that that preference could be applied in addition to the Alaska bidders' preference.

MR. JONES replied, "The language in this bill is identical to HB 24, which passed out of this committee, and it is one of the preferences that can be combined with other preferences."

REPRESENTATIVE GRUENBERG offered his understanding that if [HB 225] moves, it will subsume [HB 24].

CHAIR LYNN and MR. JONES confirmed that is correct.

[8:15:30 AM](#)

MR. JONES continued with the sectional analysis. He stated that Section 6 would add the Alaska Industrial Development and Export Authority (AIDEA) and the Alaska Energy Authority (AEA) to an existing list of agencies that are exempt from the procurement code, and it would update citation to reflect the renumbering of preferences. Both AIDEA and AEA would be required to adopt regulations that comport with competitive bidding principles and provide reasonable and equitable access and the chance for all to compete for business. He said both the Department of Administration and those agencies believe that due to their unique nature, they do not meet the typical state agency profile and the procurement code is cumbersome and does not make sense much of the time, given the nature of their business.

[8:16:04 AM](#)

REPRESENTATIVE SEATON asked Mr. Jones to confirm that "this doesn't have anything to do with the ... competitive grants that

are being given under the AEA for renewable energy projects around the state."

MR. JONES responded that is correct.

[8:16:33 AM](#)

REPRESENTATIVE GRUENBERG asked Mr. Jones to confirm that Section 5 would eliminate 36.30.170(b), because the bill would repeal and reenact 36.30.170 in Section 13, but without a subsection (b).

Mr. JONES answered that is correct, and said he would explain why it was eliminated when he gets to Section 13.

[8:17:00 AM](#)

MR. JONES turned to Sections 7, 8, and 9, which he said are all technical changes that would update citations after the combining and renumbering of preferences. Section 10, he noted, would amend the small procurement threshold limit specific to leases from 3,000 square feet to 7,000 square feet. Section 11 would clarify the Alaska business license requirements for competitive sealed bids, as well as qualifications for the Alaska bidder preference. It is a change that has been recommended by the Division of Legislative Audit, and is intended to address a problem with the current process wherein - especially with large, complex, high-dollar procurements - competitors are routinely tossed out for having failed to get an Alaska bidder license prior to the bid opening or Request for Proposal (RFP) closing date. These bidders have otherwise viable proposals. Section 11 would not change the preference requirements; it would simply allow the bidder time to get the license in order to qualify for an award. In response to Representative Wilson, he clarified that the intent is that bidders will have to have a license in order to submit an offer and receive a preference; without the license, the preference will not be given, but the entity doing the submitting will still be evaluated, as long as that entity can get a license prior to award.

[8:21:04 AM](#)

REPRESENTATIVE GRUENBERG questioned why a bidder without a license should be prevented from getting the preference, as long as that bidder gets the license prior to the award of the bid.

MR. JONES explained that part of the requirement for the Alaska bidder preference and other preferences is that a bidder must have a license and have been in the state six months prior to the bid opening.

[8:21:59 AM](#)

REPRESENTATIVE SEATON offered his understanding that the contract award does not happen at bid opening, but later, and only if the bidder is licensed to do bidding in Alaska.

MR. JONES confirmed that is correct. He said there is an evaluation process, and sometimes there is a discussion, a negotiation, and a "best and final offer," all of which can take several weeks.

[8:22:43 AM](#)

MR. JONES, in response to Representative Wilson, said most businesses already have a business license, because that is a requirement. He continued as follows:

So, most of these are ... the large, complex, systems replacements and ... multi-million dollar procurements, when a lot of the time we're talking about all outside vendors competing against one another. ... The law wouldn't discriminate, but logic would dictate that people doing business in the state already have a business license.

MR. JONES, in response to Representative Wilson, said in Alaska, as well as Outside, the license fee is the same: \$200 for two years.

[8:23:51 AM](#)

MR. JONES, in response to Representative Petersen, confirmed that the department accepts those bidders [for preferences] that have applied and paid for a license, but have not yet received it.

[8:24:30 AM](#)

MR. JONES continued with the sectional analysis. He stated that Section 12 would eliminate the reference to a procurement officer's use of vendor lists, "reflecting the repeal of that statute in the repealer section." Currently law requires a

vendor list to be maintained, but that list has become useless since businesses now make notices online. Section 13, he reiterated, would update a citation to reflect renumbering. It relates to the Alaska bidder preference. In response to a question from Representative Gruenberg regarding Section 13, he said the Alaska bidder preference language has been moved [to Section 13] so that "all of the preferences in AS 36.30 are in the same place and have consistent language.

CHAIR LYNN recollected what a complicated process procurements were when he served in the military.

8:26:50 AM

MR. JONES said Section 14 would add new language allowing multi-step, revised sealed bidding. He explained that this is a new technique that a few states and the private sector are using, and the department thinks it could help save Alaska money. He stated, "It doesn't stop when the bid's received; there's a refinement and process we go through to get a better and better success of rounds of bids in this case." He said the process is not clearly called out in statute; therefore, regulations would need to be established. In response to Representative Wilson, he offered an example of how the new technique might be used.

REPRESENTATIVE WILSON asked if it would be possible to divide bids so that different vendors were doing different parts of the project.

MR. JONES responded that that would be difficult because of "the principle of technical transference." He explained, "We're not supposed to be taking the best of each proposal and trying to combine them into one bid." He said the language of the bid would dictate "how we move forward in the future." He stated, "What we're talking about here really is giving everyone a chance in successive rounds to give us a better price." He added that there is another section that addresses competitive sealed proposals, which is "more typical for the use of this tool."

8:31:00 AM

REPRESENTATIVE JOHNSON said it seems like a person would offer less in the first proposal, knowing there could be a series of steps to "sweeten up one part of it." A bid, on the other hand, must be the best possible offer up front.

MR. JONES said Alaska plans to model the process after Oregon's successful model. He said this practice is more common in the private sector. He said, "There's competition, and you don't know that you'd be selected for that second round, unless you put your best foot forward to begin with." Furthermore, he noted this would be an optional process. After looking at the bids, the division might determine that there is no way anyone could do better; therefore, there would never be a guarantee of a successive round.

[8:33:43 AM](#)

REPRESENTATIVE JOHNSON suggested that in the case of a procurement, if the party involved does not put forward the best initially, thinking that there is a possibility for a second round, but the division decides there is not going to be a second round, there may be grounds for a lawsuit.

MR. JONES responded that he does not think that argument would be successful. He said, "The one experience that we do have in this right now is in the proposal arena, not the bidding arena." He stated that proposals can be evaluated and negotiated. Currently, he said, the division has the ability to bring forward a select few for discussion and submittal of a best and final offer, which he said is "basically what we would be doing here." He indicated that the division has not been challenged by someone wanting to submit a best and final offer; it is known that it is in the state's discretion whether or not to accept those.

REPRESENTATIVE JOHNSON asked Mr. Jones if the division has ever experienced a situation in which it receives six proposals and says "we're done," and never invites "anyone to have a conversation."

MR. JONES answered that that is probably the most common result currently. He said he is trying to change that, but "that's where we're at now." He stated, "This tool is much more common, and people are more comfortable with it in the proposal arena than in the bidding arena."

REPRESENTATIVE JOHNSON responded, "It would seem like we're almost creating a hybrid that ... from the other side of it makes me a little uncomfortable. I wouldn't know how to bid it."

[8:36:16 AM](#)

REPRESENTATIVE SEATON asked if this multi-step technique would permit reevaluation or rebidding, and in what type of situations it would be used.

MR. JONES answered that there are two parts to the concept of successive rounds of refinement. One is in Section 18, which addresses proposals. He specified that in the bid process, the low bidder wins, while in proposals, there is an evaluation and selection of the best provider, considering price and "everything else," and there is more negotiation involved. He said, "We would see that, and this could apply, if both provisions in the bill pass, to virtually any kind of formal procurement, whether it be a bid or proposal. And the key here is: the instance that you do this is when the procurement officer believes that there's money on the table, [and] that they can go another round and get a better price or better product or service."

[8:38:16 AM](#)

REPRESENTATIVE GRUENBERG opined that this would be a significant change with a lot of merit. He mentioned a [bill] by Senator McGuire which included a provision for future evaluation.

MR. JONES clarified that Representative Gruenberg was talking about a bill by Senator McGuire which established a procurement pilot, whereby an agency's procurement would be outsourced to a private business. He offered further details

[8:40:33 AM](#)

REPRESENTATIVES WILSON and JOHNSON briefly discussed the issues related to the aforementioned bill by Senator McGuire.

REPRESENTATIVE GRUENBERG explained he had not intended for the committee to discuss the merits or demerits of that program, but had merely been suggesting that the committee consider imposing a sunset on [HB 225].

[8:43:23 AM](#)

MR. JONES returned to the sectional analysis. He noted that Section 16 would clarify construction contractor registration requirements. Section 17 would clarify the Alaska business license requirements for competitive sealed proposals and qualifications for the Alaska bidder preference, which would be

consistent with Section 11. Section 18 would add a new section to the state's procurement code, which would allow for multi-step negotiations for competitive sealed proposals. Mr. Jones noted that Section 18 is the companion section to Section 14. Section 14 deals with low-bid situations, while Section 18 deals with RFPs where more evaluation takes place. Section 19 would update a citation to reflect the renumbering of a preference.

MR. JONES said Section 20 would direct procurement officers to consider only the preferences listed in statute when applying preference under the competitive sealed proposal process. It would instruct procurement officers to apply the preferences only to the price portion of a proposal. Mr. Jones explained that preferences are complicated enough, but are more difficult when applied to a proposal, because proposals do not relate solely to price, but also relate to "a number of things" and are done on a point system. He noted that this preference would effectively eliminate the Alaska "offerors'" preference, which is the only preference that is only in regulation - it is not contained in statute. It is also the only preference that applies to RFPs, and it is a points-based preference. Mr. Jones explained the reason that the division is trying to do this is because it believes that in many instances, the Alaska offerors' preference makes the state's procurements noncompetitive. He continued:

When you get a 10 point overall preference - 10 points out of 100 - you combine that with [an] Alaska bidder preference [and] maybe a product preference if you're disabled or a veteran [and] these things add up. ... In many instances, especially in these large, complicated procurements that we sometimes do, 10 points is more than the difference than anyone in the industry, and I think causes people not to be interested in submitting a proposal, because they see that and they know their competitor, for example, may have opened up a business six months prior, just to achieve this very large, valuable preference. They see that, they say, "Well, there's no way we can win, there's not that much difference between us; we can't compete with that." And that's another reason why we think this encourages people to ... open up a tiny sliver of an office and have an employee there with a shingle out ... in hopes of getting ten points off of a ... \$30-\$40 million project six months later. We've seen that happen.

[8:47:23 AM](#)

REPRESENTATIVE JOHNSON said it concerns him when he hears that preference will be applied only to a price portion of a proposal. He questioned if the issue of quality is considered in this determination.

MR. JONES responded that in an RFP there is "a price section" with a formula in which the lowest price gets the highest number of points; however, there are also many evaluation criteria in an RFP in addition to price. He clarified, "Well all we're saying here is that when you apply the preference, the preference is only applied to the price; it has nothing to do with the evaluation criteria for anything else in that proposal."

[8:48:44 AM](#)

MR. JONES continued with the sectional analysis. He said Section 21 would add language that would allow an agency to accept electronic bids and proposals, thus modernizing the state's code and getting it out of the business of having to collect paper signatures, which will improve efficiency. Section 22 would revise the approval process for innovative procurements. He said alternate procurement types are very seldom used, so this would not be a substantive change. Section 23 would revise statute related to emergency procurements. It would clarify that the commissioner of administration shall adopt regulations defining emergency conditions, as well as outlining who is responsible for written determinations. The section would clarify that the commissioner of Department of Transportation & Public Facilities (DOT&PF) would approve any emergency having to do with construction, while the chief procurement officer would approve any emergency related to non-construction.

MR. JONES said Section 24 would increase the small procurement threshold limit from \$50,000 to \$100,000, the construction limit from \$100,000 to \$200,000, and the lease of office space limit from 3,000 square feet to 7,000 square feet. In response to Representative Johnson, he offered his understanding that this has been changed once since the code was enacted in 1988. He said two reasons for the change are inflation and the desire to spend more time on "higher-dollar procurements."

[8:51:26 AM](#)

MR. JONES said Section 25 would add a new section that would consolidate the Alaska bidder and related preferences formerly in [AS 36.30.170(b)], simplify the qualification for the disability and employment program preferences, eliminate the seldom used "employers of people with disabilities preference," and establish the Alaska [veteran] preference. Mr. Jones explained that currently the disabled preference has only two qualifying firms, both of which are in the business of offering the state lease space in buildings. He stated, "We believe that when the legislature passed these preferences, it probably didn't think that they would be applied to the lease of office space. ... We strongly believe that preferences ought not to be applied to lease space." He noted that this section would also make changes to how the disability and employment program preferences are evaluated in Vocational Rehabilitation. It would allow multiple, third-party programs to certify people. He offered an example. He said the people at Vocational Rehabilitation are not doctors and have a higher level of comfort with this third-party certification.

[8:54:12 AM](#)

REPRESENTATIVE JOHNSON said he wanted to know if there is "anything in here that relates to permanent disability." After comments from Mr. Jones and an inaudible aside from Representative Seaton, he noted that the word "permanent" is used in the language.

[CHAIR LYNN handed the gavel over to Vice Chair Seaton.]

[8:55:22 AM](#)

MR. JONES noted that Section 26 would modify the use of a local forest products statute to grant a 7 percent cost preference to the qualifying bid rather than to the low bid. Section 27 would clarify which preferences are cumulative and which may not be combined. For example, a bidder cannot claim both an employment program preference and disabled bidder preference, because those two overlap and are essentially for "the same type of condition." Section 28, he said, would add a new section which would allow the chief procurement officer to renegotiate a contract without additional competitive process, subject to several conditions ensuring that the renegotiated contract is at least as favorable to the state as the original contract. The extension would capped at five years. Mr. Jones said this section may be controversial. He stated, "We have some good experience with this in leasing. Right now our leasing statute,

[AS] 36.30.083, allows us to negotiate an extension to a lease if certain conditions are met." He offered further details. He said, "This would apply that same kind of a principle to any other type of contract, not just leases, so we would have to do some due diligence, figure out what market rate is, [and] if we feel like we can get a good deal, we could extend the contract rather than putting it out to bid again."

8:57:40 AM

REPRESENTATIVE JOHNSON, regarding leases in particular, asked if a Request for Information (RFI) would be done before extending five years.

MR. JONES answered that for leases the division currently uses one of two tools: an appraisal or a broker's assessment of value (AOV). He continued:

So, we get an ... independent, third-party snapshot of what we think the market is for that space, and then we have to come in 10 percent under that in order to get the extension under the leasing law. We would propose maybe not a brokerage-type tool here, but we would have to build in something that would guarantee that this is ... a better price than the market out there and what percent under we would need to write [regulations] around that.

MR. JONES, in response to Vice Chair Seaton, stated:

To get some comfort with that, we'd need to write some fairly stringent regulations around ... what will help you determine if it's in the state's best interest.... Market rate isn't going to do it, because you could get that -- ... there has to be a compelling reason why you would not want to go and issue a new procurement and let the market determine... So, you'd have to overcome that inclination, I guess, in the code compelling you to go and get competition.

REPRESENTATIVE JOHNSON recommended keeping "a close eye on that [regulation]." He indicated that one individual broker may not know about someone who is willing to release property for little money.

9:00:09 AM

MR. JONES, in response to Representative Wilson, clarified that typically when the division does a lease extension, it does so after all the optional renewals have been exhausted. At that point, the option would be either to "go through this process and extend it through the unique allowance in statute," or "put it out to bid."

REPRESENTATIVE WILSON opined that "we need to watch that very carefully."

MR. JONES concurred. He reiterated that currently there is an "independent third look" on the leases. He said, "This would be for other contracts, and I agree this is somewhat controversial and we're going to have to be very careful to depart from the normal, you know, put it out to bid again."

[9:02:19 AM](#)

MR. JONES, in response to Vice Chair Seaton, said there is no provision proposed in HB 225 for the division to report back to the legislature regarding new policy initiative; however, he said the division does currently report regarding how much has been saved as a result of the existing statute for leases. He indicated that having to report on the new policy would not be particularly onerous, since the division already does a lot of reporting currently. He added:

This is a modern tool that's developed over the last several years. This, along with several of the others that ... give the state procurement folks the same tools and techniques that ... have been successful in the private sector. The number one spin management or strategic sourcing cost-savings tool out there right now is ... [renegotiating] existing contracts, and this falls in line with that.

VICE CHAIR SEATON said he thinks it would be advisable that reports be made to the legislature from the division to ensure checks and balances.

[9:04:20 AM](#)

MS. KOENEMAN said she believes the bill sponsor would be open to having an amendment offered to that effect.

MR. JONES continued to Section 29, which he said would clarify a timeframe for the filing of a protest. Section 30 would clarify

existing statute which would allow the division to consider late protests "if they show good cause." The section would clarify the meaning of "good cause". Section 31 is new section that would require a protest filing to be accompanied by a \$250 filing fee. He said this is a modest fee compared to the fee that some other states require.

MR. JONES, in response to Representative Gruenberg, said protests must be filed within 10 days.

[9:06:28 AM](#)

MS. KOENEMAN read statute related to that 10-day filing limit.

MR. JONES clarified that a protest based on the specification must be filed 10 days before the due date, while a protest of the award must be filed within 10 days after the award decision has been noted. In response to Representative Gruenberg, he said he does not have the discretion to grant extensions, and he offered his belief that that "hard deadline" has not proved problematic. In response to Representative Petersen, he said the 10 days means calendar days, not business days. In response to Representative Gruenberg, he said if the tenth day falls on a weekend or holiday, an extension is made to the end of "the first next business day." In response to a follow-up, said currently the filing is done either by signed letter or facsimile; however, he said he supposes that with the bill's proposed allowance of electronic signatures, filing electronically may be a possibility.

REPRESENTATIVE GRUENBERG said he would like that clarified, and he asked if that would require an amendment to the bill or if the division could "do that under the bill as written."

MR. JONES responded that the bill contains a definition of "electronic signature" and "that would take care of that."

[9:09:04 AM](#)

MR. JONES returned to the sectional analysis. He said Section 32 would add a new section to temporarily delay award of a contract in order to address a protest, rather than issue a stay of award. He explained that to "stay an award" is formal and "puts the procurement on ice," because reactivation cannot take place until all appeals are addressed. Section 32 is merely a request for an interim measure wherein the division can "put a hold on the thing in order to get enough time to address the

protest," while still having the ability to decide to proceed with the process. In response to Vice Chair Seaton, he said this would not affect the 10-day period during which a protest can be filed. In response to Representative Wilson, he clarified that a stay of award prevents an award being made and buys time to examine the process and consider the protest. If the award is not stayed, after the 10-day protest period is over, the award can be delayed and then made, a contract can be signed, and work can begin, all the while the protester is appealing the decision. In response to a follow-up question, he offered further details.

[9:14:35 AM](#)

REPRESENTATIVE GRUENBERG said it is helpful to know the interplay of the applicable statutes. He directed attention to page 14, lines 16-17, which read as follows:

(c) A temporary delay of a contract award under this section does not constitute a stay of award under AS 36.30.575.

REPRESENTATIVE GRUENBERG noted that AS 36.30.375 read as follows:

Sec. 36.30.575. Stay of award.
If a protest is filed the award may be made unless the procurement officer of the contracting agency determines in writing that a
(1) reasonable probability exists that the protest will be sustained; or
(2) stay of the award is not contrary to the best interests of the state.

REPRESENTATIVE GRUENBERG said he thinks Mr. Jones is referring to [AS 36.30.600], which read as follows:

Sec. 36.30.600. Stay of award during protest appeal.
If a protest appeal is filed before a contract is awarded and the award was stayed under AS 36.30.575, the filing of the appeal automatically continues the stay until the commissioner of administration or the commissioner of transportation and public facilities, as appropriate, makes a written determination that the award of the contract without further delay is necessary to protect substantial interests of the state.

REPRESENTATIVE GRUENBERG stated, "I think the purpose of this is to allow a lower officer a briefer time to temporarily delay, and you have to understand how Section 600 works."

MR. JONES confirmed that Representative Gruenberg is correct.

[9:16:40 AM](#)

MR. JONES proceeded with the sectional analysis. Section 33, he said, would eliminate the reference to removal of debarred or suspended persons from vendor lists, which would reflect the repeal of a law establishing the vendor lists. Section 34 would add language to the cooperative purchasing section, which would allow the state to more effectively use contracts established by other public procurement units.

VICE CHAIR SEATON asked if this section relates to the fuel contract with the ferry system.

MR. JONES answered no. He clarified that the intergovernmental relation section of statute addresses the state's participation with other governmental entities in cooperation to establish joint contracts. He said the situation Vice Chair Seaton referenced was a state contract which is used in varying degrees by other state agencies; it does not stem from the authority granted in the intergovernmental relation section. In response to a follow-up question, he clarified that "public procurement unit" - as seen on page 15, line 3 - means a city or another state, not the state internally.

VICE CHAIR SEATON asked if there are any clarifications that need to be made in procurement statute so "it's much easier and quicker for something like the fuel contract ... with the ferry system so that the other agencies of the state could participate in that contract."

MR. JONES answered no. He said the division is already authorized to do statewide contracts, which are, in most cases, available to all state agencies.

[9:19:39 AM](#)

REPRESENTATIVE GRUENBERG, regarding Section 33, asked where in statute the criterion for debarring or suspending someone is set out.

MR. JONES responded that that language is found in AS 36.30.635. He said [Section 33] would not impact the debarment or suspension process.

REPRESENTATIVE GRUENBERG described [HB 225] as an omnibus bill designed to help the Division of General Services. He directed attention to the language in AS 36.30.635 subsections (a) and (b), which read as follows:

Sec. 36.30.635. Authority to debar or suspend.

(a) After consultation with the using agency and the attorney general and after a hearing conducted according to AS 36.30.670 and, to the extent they do not conflict with regulations adopted under AS 44.64.060, regulations adopted by the commissioner of administration, the commissioner of administration or the commissioner of transportation and public facilities may debar a person for cause from consideration for award of contracts. Notice of a debarment hearing shall be provided in writing at least seven days before the hearing. The debarment may not be for a period of more than three years.

(b) The commissioner of administration or the commissioner of transportation and public facilities, after consultation with the using agency and the attorney general, may suspend a person from consideration for award of contracts if there is probable cause for debarment and compelling reasons require suspension to protect state interests. The suspension may not be for a period exceeding three months.

REPRESENTATIVE GRUENBERG highlighted the timing - no more than three years for debarment and no more than three months for suspension - and urged Mr. Jones to consider whether the division needs more discretion.

[9:21:36 AM](#)

MR. JONES responded that a suspension is an interim measure contemplated to take somebody "out of the picture" while the division goes through the debarment process. He said that process takes attorney time and the division does not enter into it lightly. He related that he has been chief procurement officer since 1993, and in that time there have been only two or three debarments; therefore, he said he is not sure "it is really worth examining much, just because it's so seldom used."

REPRESENTATIVE GRUENBERG explained that he wants to avoid an ex post facto situation where "you can't do it retroactively."

MR. JONES reiterated that this issue has not been identified as a problem.

[9:23:35 AM](#)

MR. JONES moved on to Section 35, which he said would add a new section explicitly authorizing the state to participate in cooperative procurements with other governments, and would waive procurement preferences that would otherwise prevent the division from leading a procurement. He explained that if the division is leading a cooperative procurement that involves other states, those other states will not want to participate if the Alaska bidder preference is applied. Without Section 35, the division is bound to use the Alaska bidder preference.

MR. JONES said Section 36 would add new exemptions for the following: contracts for lease space located outside of the state; contracts for investigative services entered into by the department for the Alaska personnel board, the Office of Public Advocacy, and the Alaska Public Offices Commission; for commodities used in the prisoner employment program; and for professional training. Section 37 would move the definition for "Alaska bidder" from [36.30.170(b)] into the definition section, and would add new definitions for "electronic signature", "in writing", "signature", and "written". He said this would help the division implement the changes proposed in previous sections.

MR. JONES said Sections 38 and 39 update citations to reflect renumbering of preferences. Section 40 would add language to clarify that the Administrative Procedure Act does not apply to meetings with "offerors" under the multi-step negotiation process [contained in Section 18] or to renegotiation of contracts [as contained in Section 29]. Section 41 proposes a technical change regarding the application of the Administrative Procedure Act to AIDEA, and it would comport with the change made in Section 6.

[9:26:49 AM](#)

REPRESENTATIVE WILSON, regarding the new definitions proposed in Section 37, questioned where "electronic [signatures]" are mentioned.

MS. KOENEMAN responded that "electronic signature" is referenced [on page 16, line 10, paragraph 27], within the definition of "signature". She noted that the bill drafter had said there is no need to give "electronic signature" its own [paragraph].

[9:27:38 AM](#)

MR. JONES returned to the sectional analysis. He said Section 42 would repeal statutes establishing the aforementioned vendor list, Section 43 would clarify the application of "the procurement act" to pending solicitations during the transition period, Section 44 would change a title [of AS 36.30.360] from "Determination of responsibility" to "Determination of nonresponsibility", and Section 45 would provide an immediate effective date.

[9:28:17 AM](#)

REPRESENTATIVE GRUENBERG suggested that not having an immediate effective date might provide more time for the division to give the public notice about any changes to the law via HB 225.

MR. JONES said the time it will take for the bill process and public hearings will be sufficient. He said he is anxious to see some of the provisions adopted for the sake of proficiency.

[9:29:27 AM](#)

VICE CHAIR SEATON asked Mr. Jones to confirm that all the provisions that would require the division to write new regulations are optional; therefore, those sections would not be employed until the division has the regulations written and promulgated.

MR. JONES responded that is correct.

[9:30:08 AM](#)

VICE CHAIR SEATON directed attention to language in Section 17, on page 7, lines 8-15, which states that the "offeror" shall have a business license in order to qualify for the Alaska bidder preference. He asked if that was intentional or if the other sections needed to be cited as well.

MR. JONES responded that some of the preferences "act on the business and whether the business qualifies," while other preferences are actually "applied to the product."

[9:31:35 AM](#)

VICE CHAIR SEATON said, "I think I saw three: one was an agricultural product, one was a fisheries' product, and one was the forestry product"

MR. JONES responded:

There's a fourth category; there's the Alaska product preferences, as well. There are three categories of Alaska products in addition to those three.

[9:31:55 AM](#)

MR. JONES, in response to Vice Chair Seaton, said fuel would qualify under the Alaska product preference. He stated that there are three levels of Alaska products: 3, 5, and 7 percent preferences depending on the percentage of the product that is manufactured in the state. He offered further details. He noted that fuel refined in Alaska qualifies for the Alaska product preference now.

VICE CHAIR SEATON asked if fuel delivered to the Bush at \$4-\$5 a gallon at a 7 preference would amount to a bidder preference of 49-50 cents a gallon.

MR. JONES responded that the only limitation on a preference is contained "in this section" and in HB 24, which is in regard to the Alaska veteran preference. He said, "So, no other preferences have limitations placed on them, so it could be any number."

VICE CHAIR SEATON said he is trying to understand the impact on rural communities and fuel prices.

MR. JONES replied that generally speaking, these preference do not apply to local government - they only apply when the state is buying fuel. He said, "Unless the state's out there buying fuel, there wouldn't be these preferences, but when the state is, they do apply."

VICE CHAIR SEATON asked Mr. Jones if "giving that large of a preference on ... liquid energy to instate production" is "increasing price" in rural Alaska.

[9:34:46 AM](#)

MR. JONES answered that these preferences are not without cost. He said he thinks the legislature and the governor who signed those preferences into law made a policy call that the state is willing to pay more to foster in-state business. He said he would not be opposed to a limitation on how great a preference can be, but reiterated that that is the purview of the legislature.

VICE CHAIR SEATON remarked that the problem had not been indentified until recent hikes in fuel prices.

MR. JONES reiterated that even so, it only applies to state procurements, where the state is bound to apply these preferences where local governments are not so bound.

VICE CHAIR SEATON, after ascertaining that there was no one else who wished to testify, closed public testimony.

[9:36:18 AM](#)

VICE CHAIR SEATON directed attention to Section 14 on page 6, regarding the multi-step revised sealed bid, and Section 28 on pages 12 and 13, regarding renegotiation and getting a report back on the effectiveness and effect of policies. He asked Mr. Jones what he, as a procurement officer, thinks would be a reasonable time frame in which to report back to the legislature.

MR. JONES estimated it would take a couple of years to obtain "some real historical information." He said the division is required by law to publish a procurement report to the legislature every two years, and he proposed that that timing would work well for the proposed reporting requirements.

[9:38:20 AM](#)

MS. KOENEMAN, in response to Vice Chair Seaton, said the bill sponsor does not expect the bill to pass through both bodies by the end of this year's session, but would like to see it pass through one body this year.

VICE CHAIR SEATON suggested that an update regarding the two aforementioned sections could realistically be required two years after the effective date of the bill.

[9:39:03 AM](#)

MR. JONES responded, "If we included this in the next report, we would ... likely have maybe a year's worth of experience, and thereafter every two years."

VICE CHAIR SEATON indicated there could be two successive biennial reports.

MR. JONES said he thinks that would be reasonable and the allow the division the time to put forward the required information.

[9:39:50 AM](#)

MS. KOENEMAN surmised that would mean a preliminary report in 2011 and another report in 2013.

MR. JONES indicated that that schedule would work for the division.

[9:40:46 AM](#)

VICE CHAIR SEATON moved to adopt Conceptual Amendment 1, to require a report to the legislature on Sections 14 and 28, to be included in the two successive biennial reports after the effective date of the bill. There being no objection, Conceptual Amendment 1 was adopted.

[9:41:25 AM](#)

REPRESENTATIVE GRUENBERG directed attention to the repealer clauses in Section 42 on page 19. He said there is a repealer of AS 36.30.250(b), which read as follows:

(b) In determining whether a proposal is advantageous to the state, the procurement officer shall take into account, in accordance with regulations of the commissioner, whether the offeror qualifies as an Alaska bidder under AS 36.30.170(b), is offering the service of an employment program, or qualifies for a preference under AS 36.30.170(e) or (f).

REPRESENTATIVE GRUENBERG asked Mr. Jones what the reason is for that repealer.

[9:42:30 AM](#)

MR. JONES answered that that section is contained in HB 225 in language that specifically addresses how preferences are applied to a request for proposals or competitive sealed proposals - that they only apply to the price portion of the proposals.

REPRESENTATIVE GRUENBERG said he understands that subsections (b), (e), and (f) are preferences, but questioned why "is offering the services of an employment program" is being removed when it is not a preference.

MR. JONES responded that the employment program is a preference.

[9:43:53 AM](#)

REPRESENTATIVE GRUENBERG next asked about the repealer of AS 36.30.362, which read as follows:

Sec. 36.30.362. Award of a contract to a nonresident. Except for awards made under AS 36.30.170, if the procurement officer awards a contract to a person who does not reside or maintain a place of business in the state and if the supplies, services, professional services, or construction that is the subject of the contract could have been obtained from sources in the state, the procurement officer shall issue a written statement explaining the basis of the award. The statement required under this section shall be kept in the contract file.

[9:44:14 AM](#)

MR JONES explained that currently the procurement officer has to write a determination as to the basis of the award to a nonresident. He called this a formality, explaining that the division is bound by the bidding process. He offered further details. He said, "Writing the determination doesn't, frankly, serve any purpose, because you're just following the competitive procurement rules in the award. And to be honest, a lot of folks don't comply with this statute, because it's overlooked and it's unnecessary. They're awarding based on the award criteria, and there's no discretion there."

The committee took an at-ease from 9:45 a.m. to 9:46 a.m.

[9:46:59 AM](#)

REPRESENTATIVE GRUENBERG moved to report HB 225, as amended, with individual recommendations and attached fiscal notes. There being no objection, CSHB 225(STA) was reported out of the House State Affairs Standing Committee.

HB 205-PERMANENT FUND DIVIDEND FOR DECEASED

[9:47:47 AM](#)

VICE CHAIR SEATON announced that the last order of business was HOUSE BILL NO. 205, "An Act relating to the permanent fund dividend of an otherwise qualified individual who dies during the qualifying year; and providing for an effective date."

REPRESENTATIVE GRUENBERG moved to adopt the proposed committee substitute (CS) for HB 205, Version 26-LS0780\R, Cook, 4/11/09, as a work draft.

VICE CHAIR SEATON objected for discussion purposes.

[9:49:13 AM](#)

PAUL GRASSI, Staff, Representative Harry Crawford, Alaska State Legislature, on behalf of Representative Crawford, prime sponsor of HB 205, described the changes proposed in Version R. He said the first change was language added stipulating that the person who dies during the qualifying year would also have to have qualified for a dividend for the year immediately preceding the qualifying year. The second change stipulates that the person must have been a resident of Alaska for at least 180 days prior to his/her death. Mr. Grossi continued as follows:

The third change is a requirement that they be physically present in the state or ... exempted from the requirement under [AS] 43.23, I believe it's 008.

[9:50:36 AM](#)

REPRESENTATIVE WILSON directed attention to the language on page 2, line 4, which read, "Notwithstanding AS 43.23.011". She asked whether that statute allows an Alaska resident a medical absence.

VICE CHAIR SEATON requested the committee focus on the three changes that would be made through Version R.

[9:52:46 AM](#)

REPRESENTATIVE GRUENBERG noted that in a letter [included in the committee packet], Mr. Grossi writes that on page 1, line 14, "and (a)(5)" was inserted; however, Version R shows "and (a)(6)".

MR. GROSSI said the notation in his letter is a typographical error and the correct notation is "and (a)(6)".

[9:53:31 AM](#)

MR. GROSSI reviewed the intent of Version R. He said the idea for the bill was brought to the attention of the bill sponsor by two widows whose husbands died in November and did not qualify. He said it turns out there are others who have experienced similar situations, and Senator Meyers is presenting a bill which mirrors HB 205.

[9:54:42 AM](#)

REPRESENTATIVE PETERSEN, regarding the 180 days, asked Mr. Grossi to confirm that a person who dies just after the 180 days - "if they make it until the end of June" - would qualify for the dividend.

MR. GROSSI responded, "I believe that is correct."

[9:55:25 AM](#)

VICE CHAIR SEATON noted that the person would not have to have been in the state for 180 days, because the language states that he/she must maintain residency - it does not say he/she must be physically located in the state.

MR. GROSSI responded as follows:

No, ... section 3 does require [the person to be] physically ... present in the state. So, ... I'm sorry, that third change in the ... CS does require them to be physically [present] unless otherwise exempted.

MR. GROSSI, in response to Vice Chair Seaton, offered his understanding that that is shown in the language on page 2, line 2.

[9:56:21 AM](#)

REPRESENTATIVE PETERSEN stated his belief that it is an allowable absence for an Alaska resident to be in the Lower 48 to receive medical care.

MR. GROSSI confirmed that is correct.

[9:56:51 AM](#)

VICE CHAIR SEATON noted that the bill merely states that the person has to have been a resident for at least 180 days; it does not say the person had to be present in the state during that time.

MR. GRASSI offered his understanding that any exception that previously exists would be an exception under HB 205.

[9:59:55 AM](#)

REPRESENTATIVE PETERSEN said he thinks the intent of the proposed bill is to qualify the deceased person who had remained a qualified resident, with or without exemptions, for at least 180 days before his/her death.

MR. GROSSI said he believes that is correct.

VICE CHAIR SEATON interpreted that under HB 205, the person would not have to have been "physically present in the state any of the time" before his/her death for that entire year, "because that's an allowable absence."

[10:02:08 AM](#)

CHRIS POAG, Assistant Attorney General, Civil Division, Commercial & Fair Business Section, Department of Law (DOL), clarified the issue as follows:

Eligibility requirements are found in [AS 43.23.005], and ... there's a variety of eligibility requirements. And this is s test to determine whether or not you're a bonafide Alaskan resident for purposes of the dividend. We're creating them because a deceased

person couldn't apply to the department ..., they couldn't be a state resident on the date of application, and because the allowable absence provisions say you have to be absent with intent to remain, we've created exemptions from those requirements, and what exists is a requirement that you be a state resident - as state resident is defined in the statutes and the regulations - for 180 days prior to your death. So, ... state residence doesn't itself require physical presence; it says you have to be here with an intent to remain or, if you leave, you have to be absent with the intent to return. And we do have a regulation that further defines what it is to be a state resident and to maintain your state residency.

So, you're correct, Representative Seaton: in theory a person could be gone for that 180 days, die outside of Alaska, and still qualify under this bill. And certainly, whatever the will of the committee is, we can draft it so that's not an intended consequence, but as I read this provision, that's how it could be interpreted.

REPRESENTATIVE WILSON said she thinks that is okay, because that is not different than the exemptions allow currently. Many times the reason a resident is Outside is because he/she is ill and is getting treatment unavailable in Alaska.

[10:04:32 AM](#)

MR. POAG, in response to Representative Gruenberg, confirmed that [HB 205] stipulates that the otherwise qualified resident would have to have lived for at least 180 days of the year before dying in order to qualify for that year's dividend.

REPRESENTATIVE GRUENBERG said he tends to support that.

[10:05:12 AM](#)

MR. POAG, in response to a question from Representative Petersen, said a death certificate is proof positive of the date of death.

VICE CHAIR SEATON remarked that he thinks the wording [in Version R] has changed significantly from the purported need of the bill.

REPRESENTATIVE GRUENBERG said someone could be on a cruise beginning January 1, for five months, and could be planning to return to Alaska, but dies on the cruise. He said he thinks HB 205 is humane and is "intended to cover those people, too."

[10:08:32 AM](#)

MR. POAG stated that there are fairly rigorous requirements in regulation related to maintaining residency, which the Permanent Fund Dividend Division takes seriously. If any steps are taken that "severs the residency," the person would not be eligible. He said there is also statute which includes what is known as "the touch-down requirement," which requires the person to have spent at least 72 hours in the state in the last two years. A physical presence requirement is currently not in HB 205, but could be added by the committee; however, there currently are provisions in existence to require the individual to maintain his/her state residency.

[10:09:21 AM](#)

VICE CHAIR SEATON asked what it takes for a person to remove his/her state residency.

MR. POAG replied that the answer to that is found in 15 A.C.C. 23 143, which has a general provision as to guidelines for maintaining residency. Some reasons for losing that residency include: claiming a nonresident motor vehicle tax exemption; accepting full-time employment in another state; filing for a part-year resident income for property tax returns in another state; naming a claim of homestead property tax exemption in another state; receiving an education from another state; disclosure in a court proceeding an affidavit indicating that the person is resident in [another] state; and executing a will of residency in another state.

VICE CHAIR SEATON concluded that basically, a person has to declare that he/she has permanently changed residency. He asked how many people would have qualified under this provision this last year.

[10:11:17 AM](#)

MR. POAG offered his understanding that the fiscal note discloses the annual number of deaths during the qualifying year, and projects a number of anticipated participants who

would qualify, which he said he thinks is "in the realm of 1,700."

VICE CHAIR SEATON confirmed that the fiscal note shows that approximately 1,700 people would qualify per year.

[10:12:07 AM](#)

REPRESENTATIVE GRUENBERG asked if Version R conforms to "the bill that is hopefully going to be on the floor today."

CHRISTINE MARASIGAN, Staff, Representative Kevin Meyer, Alaska State Legislature, confirmed that is correct.

VICE CHAIR SEATON, after ascertaining that there was no one who wished to testify, closed public testimony.

[10:13:22 AM](#)

VICE CHAIR SEATON removed his objection to the motion to adopt the proposed committee substitute (CS) for HB 205, Version 26-LS0780\R, Cook, 4/11/09, as a work draft. There being no further objection, Version R was before the committee.

[10:13:44 AM](#)

VICE CHAIR SEATON stated that he has a problem with [Version R] because it would "tremendously" expand the bill from its original intent. He reiterated his previous points.

REPRESENTATIVE WILSON said she feels that qualifications should be the same whether a person is alive or has died, and she said she likes the bill.

[10:15:41 AM](#)

VICE CHAIR SEATON clarified that the problem with the bill is that "you don't know whether these people would have qualified or not, ... because they could have been gone for 185 days - they only had to be here for 180 days - that doesn't qualify you for a permanent fund dividend."

REPRESENTATIVE WILSON pointed out that that is a five-day difference.

VICE CHAIR SEATON continued:

That is if you were just starting from the beginning of the year. I mean, you could have been here a month and have left ... - or two months and left - and then ... four ... or six months later not having been here. But you still maintained that residency because you didn't declare a residency in another state. So, you could have left in February and never returned and died ... six months later, and that still qualifies for a permanent fund dividend.

[10:17:20 AM](#)

MR. GROSSI said he thinks that one indicator that residency had been established would be whether or not the individual in question had received a dividend in "the year immediately before the qualifying year."

REPRESENTATIVE GRUENBERG commented that when dealing with people who die, the people who are helped are their widows and orphans.

[10:18:23 AM](#)

REPRESENTATIVE WILSON moved to report the proposed committee substitute (CS) for HB 205, Version 26-LS0780\R, Cook, 4/11/09, out of committee, with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 205(STA) was reported from the House State Affairs Standing Committee.

[VICE CHAIR SEATON handed the gavel back to Chair Lynn.]

[10:18:58 AM](#)

CHAIR LYNN made some committee announcements.

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 10:19 a.m.