

**ALASKA STATE LEGISLATURE**  
**SENATE STATE AFFAIRS STANDING COMMITTEE**

April 6, 2010

9:04 a.m.

**MEMBERS PRESENT**

Senator Linda Menard, Chair  
Senator Kevin Meyer, Vice Chair  
Senator Hollis French  
Senator Albert Kookesh  
Senator Joe Paskvan

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 73(FIN)

"An Act relating to special fire fighter and emergency medical service provider license plates; and providing for an effective date."

- MOVED CSHB 73(FIN) OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 53

Urging the United States Congress to pass H.R. 1034, designating the Honor and Remember Flag as an official symbol to recognize and honor members of the armed forces of the United States who died in the line of duty.

- MOVED HJR 53 OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 225(FIN)(CORRECTED)

"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."

- HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 73

SHORT TITLE: FIREFIGHTER/EMT LICENSE PLATES

SPONSOR(S): REPRESENTATIVE(S) LYNN

01/20/09 (H) PREFILE RELEASED 1/16/09  
01/20/09 (H) READ THE FIRST TIME - REFERRALS  
01/20/09 (H) STA, FIN  
03/12/09 (H) STA AT 8:00 AM CAPITOL 106  
03/12/09 (H) <Bill Hearing Canceled>  
03/24/09 (H) STA AT 8:00 AM CAPITOL 106  
03/24/09 (H) Moved CSHB 73(STA) Out of Committee  
03/24/09 (H) MINUTE(STA)  
03/25/09 (H) STA RPT CS(STA) NT 6DP  
03/25/09 (H) DP: JOHNSON, SEATON, GRUENBERG, WILSON,  
PETERSEN, LYNN  
03/12/10 (H) FIN AT 9:00 AM HOUSE FINANCE 519  
03/12/10 (H) Moved CSHB 73(FIN) Out of Committee  
03/12/10 (H) MINUTE(FIN)  
03/15/10 (H) FIN RPT CS(FIN) NT 11DP  
03/15/10 (H) DP: THOMAS, GARA, DOOGAN, JOULE,  
AUSTERMAN, SALMON, KELLY, FAIRCLOUGH,  
03/15/10 (H) N.FOSTER, STOLTZE, HAWKER  
03/19/10 (H) TRANSMITTED TO (S)  
03/19/10 (H) VERSION: CSHB 73(FIN)  
03/22/10 (S) READ THE FIRST TIME - REFERRALS  
03/22/10 (S) STA, FIN  
04/01/10 (S) STA AT 9:00 AM BELTZ 105 (TSBldg)  
04/01/10 (S) -- MEETING CANCELED --  
04/06/10 (S) STA AT 9:00 AM BELTZ 105 (TSBldg)

BILL: HJR 53

SHORT TITLE: HONOR AND REMEMBER FLAG

SPONSOR(S): RULES BY REQUEST OF MILITARY & VETERANS' AFFAIRS

03/10/10 (H) READ THE FIRST TIME - REFERRALS  
03/10/10 (H) MLV  
03/16/10 (H) MLV AT 1:00 PM BARNES 124  
03/16/10 (H) -- MEETING CANCELED --  
03/23/10 (H) MLV AT 1:00 PM BARNES 124  
03/23/10 (H) Moved Out of Committee  
03/23/10 (H) MINUTE(MLV)  
03/24/10 (H) MLV RPT 4DP 1NR  
03/24/10 (H) DP: LYNN, BUCH, RAMRAS, HARRIS

03/24/10 (H) NR: KAWASAKI  
03/29/10 (H) TRANSMITTED TO (S)  
03/29/10 (H) VERSION: HJR 53  
03/30/10 (S) READ THE FIRST TIME - REFERRALS  
03/30/10 (S) STA  
04/06/10 (S) STA AT 9:00 AM BELTZ 105 (TSBldg)

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 RPT CS(STA) 4DP  
04/14/09 (H) DP: GRUENBERG, WILSON, PETERSEN, SEATON  
04/14/09 (H) STA AT 8:00 AM CAPITOL 106  
04/14/09 (H) Moved CSHB 225(STA) Out of Committee  
04/14/09 (H) MINUTE(STA)  
04/16/09 (H) FIN AT 8:30 AM HOUSE FINANCE 519  
04/16/09 (H) <Bill Held Over to 1:30 Meeting>  
04/16/09 (H) FIN AT 1:30 PM HOUSE FINANCE 519  
04/16/09 (H) Scheduled But Not Heard  
02/08/10 (H) FIN AT 1:30 PM HOUSE FINANCE 519  
02/08/10 (H) Heard & Held  
02/08/10 (H) MINUTE(FIN)  
03/11/10 (H) FIN AT 9:00 AM HOUSE FINANCE 519  
03/11/10 (H) Heard & Held  
03/11/10 (H) MINUTE(FIN)  
03/17/10 (H) FIN RPT CS(STA) 9DP  
03/17/10 (H) DP: THOMAS, GARA, DOOGAN, JOULE, KELLY,  
AUSTERMAN, N.FOSTER, FAIRCLOUGH,  
03/17/10 (H) STOLTZE  
03/17/10 (H) FIN AT 9:00 AM HOUSE FINANCE 519  
03/17/10 (H) Moved CSHB 225(STA) Out of Committee  
03/17/10 (H) MINUTE(FIN)  
03/19/10 (H) CORRECTED FIN RPT CS(FIN) 8DP 1NR  
03/19/10 (H) DP: JOULE, AUSTERMAN, DOOGAN, N.FOSTER,  
THOMAS, FAIRCLOUGH, KELLY, STOLTZE  
03/19/10 (H) NR: GARA  
03/22/10 (H) CS(FIN)(CORRECTED) RECEIVED  
03/22/10 (H) TRANSMITTED TO (S)  
03/22/10 (H) VERSION: CSHB 225(FIN)(CORRECTED)  
03/23/10 (S) READ THE FIRST TIME - REFERRALS  
03/23/10 (S) STA, FIN  
04/01/10 (S) STA AT 9:00 AM BELTZ 105 (TSBldg)  
04/01/10 (S) -- MEETING CANCELED --

04/06/10

(S)

STA AT 9:00 AM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

REPRESENTATIVE BOB LYNN  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Sponsor of HB 73.

NANCY MANLY  
Staff to Representative Lynn  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Provided information for HB 73.

SUZIE KOKLICH  
Alaska State Firefighters Association and  
Alaska Director, National Volunteer Fire Council  
Valdez, AK

**POSITION STATEMENT:** Testified in support of HB 73.

KAREN SAWYER  
Staff to Representative Carl Gatto  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Presented HJR 53 for the sponsor.

DAVID CASWELL, director  
Honor and Remember - Alaska  
Sterling, AK

**POSITION STATEMENT:** Testified in support of HJR 53.

CRYSTAL KINEMAN  
Staff to Representative Anna Fairclough  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Presented HB 225 for the sponsor.

VERN JONES, chief procurement officer  
Division of General Services  
Department of Administration  
Juneau, AK

**POSITION STATEMENT:** Testified in support of HB 225.

STEVE BOYD  
National Electrical Contractors Association  
Anchorage, AK

**POSITION STATEMENT:** Testified with concern about exemption AIDEA and AEA from the state procurement code.

CHRIS RUTZ, procurement officer  
AIDEA and AEA  
Anchorage, AK

**POSITION STATEMENT:** Testified in support of HB 225.

RALPH KIBBY, president  
Chatham Electric  
Juneau, AK

**POSITION STATEMENT:** Testified in opposition to Section 6 and Section 20 of HB 225.

WAYNE STEVENS, president and CEO  
Alaska State Chamber of Commerce  
Juneau, AK

**POSITION STATEMENT:** Testified in support of HB 225, with one suggested amendment to put the offerors preference in statute.

SHELLY WRIGHT, executive director  
Southeast Conference  
Juneau

**POSITION STATEMENT:** Testified against the removal of the Alaska offerors preference from the procurement code.

#### **ACTION NARRATIVE**

[9:04:06 AM](#)

**CHAIR LINDA MENARD** called the Senate State Affairs Standing Committee meeting to order at 9:04 a.m. Present at the call to order were Senators French, Paskvan, Meyer, and Menard.

#### **HB 73-FIREFIGHTER/EMT LICENSE PLATES**

[9:04:54 AM](#)

**CHAIR MENARD** announced the first order of business to come before the committee was HB 73 [CSHB 73(FIN)].

**REPRESENTATIVE BOB LYNN**, sponsor of HB 73, said the purpose of the bill is to recognize and thank volunteer and paid firefighters and emergency services persons. A "side effect" of HB 73 is to encourage volunteerism.

**CHAIR MENARD** recognized Senator Kookesh as joining the meeting.

REPRESENTATIVE LYNN said the bill packet includes petitions signed by over 200 supporters.

[9:07:29 AM](#)

CHAIR MENARD asked if this had been effective in recruiting more firefighters.

REPRESENTATIVE LYNN has heard that is the case anecdotally.

NANCY MANLY, staff to Representative Lynn, said that the Firefighters Association thinks the license plate will work for them.

CHAIR MENARD said she was curious about how many other states have done something similar.

SUZIE KOKLICH, Alaska State Firefighters Association and the National Volunteer Fire Council, said recruitment and retention has been a big problem nationwide. People want to belong to something good and be proud of it; a perk like a license plate does help. HB 73 is a feel good bill to help people feel better about what they are doing. A license plate is a small gesture for people who give their lives or take time away from their families in training.

[9:10:16 AM](#)

SENATOR PASKVAN said he likes the idea of public recognition. He noted that volunteers are also first responders in rural Alaska and identification on their vehicles can provide the easier access to the scene.

REPRESENTATIVE LYNN said he believes Senator Paskvan is correct.

SENATOR MEYER asked what kind of proof a person must present to get the license plate.

MS. KOKLICH replied a form will be available at the fire department or possibly from the Division of Motor Vehicles (DMV). The fire chief or EMS director will verify that the applicant is an active member or is retired. She noted that supporter plates will also be available and don't require proof.

[9:12:45 AM](#)

SENATOR MEYER asked commented that he was sure the DMV would administer the program but he wonders how difficult it will be. He commented that the plate costs a little extra which balances the DMV's extra time; the fiscal note is zero.

REPRESENTATIVE LYNN said Whitney Brewster, with the DMV, has testified in HB 73's previous hearings.

CHAIR MENARD said it would be helpful to hear from the DMV.

SENATOR MEYER said he will take the sponsor's word for it that the DMV has testified favorably previously.

CHAIR MENARD said she would do so as well.

SENATOR KOOKESH said HB 73 is a feel-good bill. He appreciates the bill and has no objection to it.

[9:15:04 AM](#)

CHAIR MENARD closed public testimony.

SENATOR MEYER moved to report HB 73 from committee with individual recommendations and attached fiscal note(s). There being no objection, CSHB 73(FIN).

At Ease from 9:16 a.m. to 9:18 a.m.

#### **HJR 53-HONOR AND REMEMBER FLAG**

[9:18:03 AM](#)

CHAIR MENARD announced the next order of business to come before the committee would be HJR 53.

KAREN SAWYER, staff to Representative Gatto, said HJR urges Congress to move forward a bill that designates the Honor and Remember flag as an official symbol recognizing members of the armed forces who have died in the line of duty. The flag was conceived by George Lutz, whose son died in Iraq. Mr. Lutz and other families who lost a loved one realized that an official, national symbol honoring those who died in service does not exist.

MS. SAWYER held up a depiction of the flag and said the committee packets explain the meaning of the design and colors. Mr. Lutz's congressman introduced the bill into Congress but it is sitting in committee. Thousands of flags have been given out by Mr. Lutz's organization and he would like to see states pick up the Honor and Remember Flag as an official emblem. Representative Gatto is hoping to put in a bill to make the Honor and Remember Flag an official symbol in Alaska; two other states and several cities have already done so. Veterans groups

have endorsed the flag and it is made in the USA. She pointed out that many people think the American flag honors those that have fallen but it is a symbol of freedom and America's history.

[9:21:06 AM](#)

The bill in Congress says the Honor and Remember Flag will be flown under the American flag on certain days of the year like Memorial Day and Veterans Day.

CHAIR MENARD asked if the bill in Congress is H.R. 1034.

MS. SAWYER replied yes.

CHAIR MENARD asked about support in other states.

MS. SAWYER replied that other states have similar legislation. Mr. Lutz's organization is going to every state to push this movement. Alaska has an instate chapter.

SENATOR KOOKESH asked if Representative Gatto has any problem changing history and making history. Senator Kookesh said he was referring to Representative Gatto's comments about not wanting to change history but preferring to keep things the same in reference to a bill that Senator Kookesh feels strongly about. He asked Ms. Sawyer to pass the question on to Representative Gatto. He said he supports HJR 53.

[9:23:41 AM](#)

SENATOR FRENCH said he is curious about the interplay between a non-profit corporation and government. He wonders if any members of Congress are concerned about putting a flag developed by a non-profit on a flag pole under the American flag.

MS. SAWYER responded that after doing research and speaking to Mr. Lutz, she is certain this movement is not about money. She is unsure why the bill is stalled in Congress.

SENATOR FRENCH said he does not want to stall HJR 53 nor is he assuming that profit is a motive. He said, "It just seems a little funny" to put a non-profit's flag with the American flag even though he supports the concept.

SENATOR PASKVAN said he is somewhat troubled by flying a flag over the nation and the capitol other than nation's flag. Doing so could potentially be divisive as not all wars have been supported by all people.

MS. SAWYER clarified that Senator Paskvan meant flying the Honor and Remember flag in addition to the nation's flag.

SENATOR PASKVAN replied yes.

MS. SAWYER noted that other flags are flown under the American flag, including the state flag and the POW MIA flag. She is not sure there is cause for concern and noted that the Honor and Remember flag would be flown only on certain memorial occasions.

SENATOR PASKVAN noted that the private group is advancing an honorable and appropriate cause. But whether or not to elevate the flag to a national symbol is the question.

[9:28:25 AM](#)

CHAIR MENARD asked how Ms. Sawyer envisions the flags laid out.

MS. SAWYER replied that the flag would be third down.

SENATOR KOOKESH said everyone who dies in the line of duty receives an American Flag. He asked if this flag would be in lieu of or in addition to the American flag.

MS. SAWYER replied that the Honor and Remember Flag would be given in addition to the American flag.

DAVID CASWELL, director, Honor and Remember - Alaska, said three states have adopted the Honor and Remember flag as a symbol recognizing the sacrifice of military personnel that have died in the line of duty. Several cities and local organizations are also participating. The Honor and Remember flag would fly underneath the American flag. If the POW MIA flag is flying, it would fly directly underneath that flag. He noted that the Honor and Remember campaign started in 2008 and is quickly spreading. The POW MIA flag took 18 years to be accepted nationally.

While many think the U.S. flag honors and remembers fallen heroes; however, it stands for what we believe, the unity of the people and the diversity of the nation. The 13 stripes represent the original colonies. The stars represent the 50 states. Red symbolizes heartiness and valor. White symbolizes purity and innocence. Blue represents vigilance, perseverance and justice.

[9:32:25 AM](#)

The 1.6 million service men and women that have died in military service should be honored and remembered with a nationally recognized symbol designed and intended for that single purpose.

[9:33:57 AM](#)

CHAIR MENARD closed public testimony.

SENATOR MEYER moved to report HJR 53 from committee with individual recommendations and attached fiscal note(s). There being no objection, the motion carried.

At Ease from 9:34 a.m. to 9:36 a.m.

**HB 225-STATE PROCUREMENT CODE**

[9:36:29 AM](#)

CHAIR MENARD announced the next order of business to come before the committee would be HB 225 [CSHB 225(FIN)(Corrected)].

CRYSTAL KINEMAN, aide to Representative Fairclough, said HB 225 makes numerous changes to the procurement code, allowing for more consistency and efficiency. HB 225 streamlines the application of the bidder preferences and eliminates the vendor list as everything is accessed online. HB 225 adds in language allowing for multi-step revised sealed bidding process which is done mainly in the private sector. The House State Affairs committee added a section for reporting language to see the cost savings to the state. HB 225 exempts construction from multi-step bidding and adds conforming language for the (Alaska Energy Authority) AEA and Alaska Industrial Development and Export Authority (AIDEA) exemption. HB 225 directs procurement officers to consider only preferences in statute, essentially eliminating the Alaska offerors preference which is set out in regulation. Vendors and bidders who qualify for the Alaska bidder preference also qualify for the Alaska offerors preference which gives them an additional 10 percent preference. HB 225 increases the threshold for the informal procurement process from \$50,000 to \$100,000 for goods and services and from \$100,000 to \$200,000 for construction and increases lease space procurements from 3,000 to 7,000 square feet. HB 225 consolidates the Alaska bidder preference and other related preferences into one section. HB 225 includes a 5 percent preference for Alaskan veterans up to \$5,000.

[9:40:15 AM](#)

HB 225 eliminates the preference for employers of persons with disabilities. HB 225 adds in a \$250 protest filing fee and adds a provision for the procurement officer to temporarily delay the award of a contract due to a protest. HB 225 adds in a definition for electronic signature for electronic filing.

CHAIR MENARD asked about the renegotiation section, [page 12, Section 27 of HB 225 amending AS 36.30 by adding a new section] which states the procurement officer can go back and renegotiate the conditions.

MS. KINEMAN replied that this section has been added and Vern Jones, chief procurement officer, can explain the reasoning.

CHAIR MENARD referred to Page 1, Section 1 [amending AS 24.55.275], line 13, and the 5 percent preferences for bidders and said that getting preferences to Alaska companies is of utmost importance.

SENATOR MEYER asked if the sponsor's bill was originally a simple veteran's preference.

MS. KINEMAN said the sponsor introduced HB 24, the veterans preference, was then approached by Mr. Jones, and thought that updating the procurement code would be a good piece of legislation to carry.

SENATOR MEYER agreed that the procurement code needs to be cleaned up and noted some preferences have been abused. He asked how the \$5,000 cap for the veteran's preference was settled on.

MS. KINEMAN replied that a good balance is needed: to help veterans without burdening the state. Current preferences are "stackable" and a qualified bidder could be awarded several preferences up to about 25 percent.

CHAIR MENARD commented that would be ok with her.

MS. KINEMAN said the cost to the state has to be rationalized and so a cap of \$5,000 was chosen. Projects up to \$100,000 would qualify for the full 5 percent.

[9:45:21 AM](#)

SENATOR MEYER asked if the sponsor favors the cap of \$5,000 even though HB 225 gets rid of the offerors and other preferences.

MS. KINEMAN replied that the sponsor favors the \$5,000 cap.

SENATOR MEYER confirmed this was true even with other preferences being eliminated.

MS. KINEMAN answered yes but noted it is the will of the committee.

VERN JONES, chief procurement officer, Division of General Services, Department of Administration, said a lot of discussion went into the \$5,000 cap for the veteran's preference. He explained that most procurements are less than \$100,000 and the cap will not come into play for 80 - 90 percent of procurements. The sponsor is sensitive to the cost to the state.

[9:48:39 AM](#)

SENATOR MEYER asked if preferences are nullified when federal money is involved.

MR. JONES answered yes and said that federal requirements, which come with some federal grants, prevent the implementation of state preferences. The veteran's preferences would only apply when state funds are involved.

SENATOR MEYER noted that procurement also entails services, such as road building or hiring a consultant. He confirmed that Alaska preferences apply when doing big projects with state funds.

MR. JONES confirmed this and noted that Alaska will still have ten accumulative preferences even if HB 225 passes. He noted that HB 225 eliminates one of the three disability preferences.

[9:52:13 AM](#)

CHAIR MENARD asked if Mr. Jones likes HB 225.

MR. JONES responded that he had a big hand in drafting HB 225 and it is a compellation of things that need to be fixed. HB 225 simplifies, streamlines and de-mystifies procurement; it will be good for government and businesses.

CHAIR MENARD asked if Mr. Jones feels he's had adequate time to work on HB 225 or if another year would see more changes.

MR. JONES answered that he has kept track of needed changes and the procurement code has not been updated in many years. He saw the current code enacted in 1987 and watched it develop. HB 225 has everything needed to modernize and simplify procurement.

SENATOR PASKVAN asked for Mr. Jones' thoughts on preferences discouraging competitive bidding.

MR. JONES responded that preferences can create a non-competitive situation. HB 225 eliminates the Employers of the Disabled preference, leaving two disability related preferences. The Employers of the Disabled preference, which gives a ten point break on price if 50 percent or more of a workforce is disabled, has benefitted only two individuals who have taken advantage of it.

[9:56:02 AM](#)

HB 225 also eliminates the Alaska offerors preference which is in regulation but not statute. The offerors preference applies to Request for Proposals (RFP) situations when cost and several other factors are being evaluated. Ten points out of 100 is reserved for the offerors preference and generally 60 percent is allocated to cost. That leaves only 30 percent to evaluate the qualifications, experience, quality of the proposal and other factors while picking the best offer for procurements.

The Alaska offerors and bidder preferences can be achieved when a place of business, staffed by the bidder at least 6 months before the RFP issuing date, is in Alaska. Companies man an office in Alaska for six months to get the ten point preference. The original intent of the bidder's preference was to level the playing field for Alaskan businesses as costs are higher here; HB 225 does not affect the Alaska bidder's preference of 5 percent on price. However, the offerors preference goes beyond that and has nothing to do with price.

[9:59:29 AM](#)

Several firms have told Mr. Jones that they did not submit a bid because a competitor opened an office in Alaska and will get a 10 point preference. The Alaskan preferences are not being used as intended. He noted that Legislature never had a say in the offerors preference because it was enacted by the executive branch.

SENATOR PASKVAN said preferences by price or rating structure adjust the order of who wins and an imputed price is created that is lower than the bid price. He asked what the difference is between bid prices and imputed prices and how much the state is subsidizing.

MR. JONES said the procurement system is not automated and most procurements happen outside his organization, in the agencies. He does not have a mechanism that tracks that information but can say preferences obviously cost the state money.

[10:02:14 AM](#)

SENATOR PASKVAN he asked for the "magnitude of the dollars" that the state might be losing due to some companies saying they cannot compete with those that get Alaska preferences.

MR. JONES responded that a statewide systems placement procurement is coming up that has been estimated between \$35 and \$100 million. Firms have told him they will not compete if this preference stays in. Firms spend a lot of money and time to submit a proposal and the stakes are high knowing that your competitor has a ten percent overall advantage plus a five percent cost advantage. The net result is a non-competitive situation.

[10:05:08 AM](#)

SENATOR PASKVAN said the state is spending potentially millions more than it needs to as the current structure effectively bars bidders from entering a bid. The amount that the state is subsidizing is currently unknown due to lack of a tracking method.

MR. JONES responded that Senator Paskvan is right. Some firms don't compete because of the preferences which allow an opportunity to charge more and still win.

SENATOR FRENCH asked if the state Chamber of Commerce supports the HB 225.

MS. KINEMAN replied that she thinks the state chamber is neutral. She said she has put out emails and phone calls and has been waiting to hear from those who may be affected; pushback has only come in the last couple of days.

SENATOR FRENCH said it would be helpful to see a one page break down of how preferences add up and affect the state on a \$10 million road project, for example. Seeing how HB 225 would reshape that breakdown and result in better work and prices would be helpful.

MR. JONES said he can do that but noted that a road project is a poor example because many receive federal money.

SENATOR FRENCH suggested any other sizeable contract.

MR. JONES said he can do that.

[10:08:40 AM](#)

SENATOR MEYER asked the difference between an offerors preference and a bidder preference.

MR. JONES answered that the Alaska bidder preference was established in statute and is currently in AS 36.30.170. The qualification for the 5 percent cost preference is six months of operation prior to a bid. The Alaska offerors preference has no basis in statute but was enacted in regulation. It only applies to competitive, sealed proposals or RFP's. The preference is 10 points out of 100, or 10 percent, of evaluation criteria. He reiterated that with RFP's, price and a number of other factors are being evaluated.

SENATOR MEYER suggested that some bidders might find it too hard to understand the preferences and not submit a bid.

MR. JONES replied that the higher the stakes, the more sophisticated the firms are, the more they understand the preferences and are able to take advantage of them. That has become somewhat of a problem.

[10:11:16 AM](#)

SENATOR MEYER said he feels that the complicated procurement code has eliminated some small businesses. The procurement department needs to be updated and centralized. Purchase recs and orders should be done electronically and tracked. Prices cannot be negotiated because the dollar value that the state has spent with various firms is unknown. The procurement department does more leasing than procurement. The education department wants to hire their own procurement officer but that should be done from a centralized place. He asked if the same preferences come into play with leasing.

MR. JONES replied yes. He noted that his department has a central purchasing section and a leasing section with five contract buyers in each versus 200 out in the agencies. Lease procurements apply all preferences. HB 225 would exempt leases from these preferences because the residency or disability status of the owner of a building is not relevant.

[10:14:23 AM](#)

SENATOR MEYER noted that the Legislature is looking at leasing or buying the Chevron Texaco building. He asked if they are considered an Alaskan company.

MR. JONES replied that the code applies for office space lease procurements but not when buying a piece of real estate.

SENATOR MEYER asked if the company would be considered Alaskan if the building was being leased.

MR. JONES replied yes, that building would qualify. Its owners have an operation in Alaska.

SENATOR MEYER noted that the Legislature is currently leasing the building on 4th Street. He commented that people have asked why AIDEA and AEA are exempt from the procurement code.

MR. JONES replied that procurement is unduly complicated for those entities because they procure goods and services under his authority and construction under Department of Transportation (DOT) authority. They buy and procure on behalf of the Denali Commission under federal process. They have four different sets of rules. In many instances they are buying investment instruments and looking at opportunities for development in Alaska and those do not always lend themselves to the competitive process. If HB 225 passes and they are exempted, they will have to, through a public process, develop regulations to govern their procurement. They would have one consistent set of rules to follow.

[10:18:05 AM](#)

SENATOR MEYER said we should track how they [AEA and AIDEA] are spending because it is state money. That information could be leverage against various lenders and suppliers to get the best rates.

MR. JONES said he hopes that his administrative systems replacement project will facilitate an automated procurement system to help capture the volume and be a smart consumer.

SENATOR PASKVAN reiterated that some reporting or tracking on what we are "giving away by preference" would facilitate accountability.

MR. JONES replied "certainly".

[10:20:35 AM](#)

CHAIR MENARD opened public testimony.

STEVE BOYD, National Electrical Contractors Association, said he is concerned with Section 6 and its interface with Section 36 of HB 225 which seem to exempt AIDEA and AEA from the procurement code. He does not see a compelling reason to exempt AIDEA and

AEA; they already have some exemptions and should continue to be defined as agencies, following the rules in place. He suggested [the offeror preference] should be in statute if it is not already. He also felt six months should not be enough to qualify for the Alaska preferences.

[10:23:56 AM](#)

CHRIS RUTZ, procurement officer, AIDEA and AEA, said AIDEA and AEA are not asking to be exempt from the procurement code but to develop regulations like other public corporations in the state that are distinct, separate, legal entities.

SENATOR FRENCH asked for examples of how the regulations that Mr. Rutz would adopt would differ from state law.

MR. RUTZ noted that the procurements on behalf of the Denali Commission were exempt from the procurement code and his organization developed internal policies to conduct those procurements. An audit found that his organization should follow something comparable to the procurement code. His organization began establishing internal procedures and he does not see a lot of difference potential regulations, such as these, and the current procurement code.

He noted that now, as a public corporation, subject to a board of directors, his organization has statutes to comply with and two different governing entities: DOT governing construction and DOA governing the non-construction. In addition, his organization also has exceptions when doing things on behalf of other entities.

[10:27:45 AM](#)

He said his organization would develop procedures similar to those used by DOT for construction and DOA for non-construction, with the primary difference being under protests, claims and disputes which would come back to the board instead of DOA.

RALPH KIBBY, president, Chatham Electric, said he is opposed to Section 6 and Section 20 of HB 225. He is opposed to anything that would make it difficult to put local people to work. A big portion of the projects that come within his reach in Southeast Alaska and in the bush communities have competition from others outside of those regions and outside the state. He asked the committee to remove Sections 6 and 20 until he has more time to review them; they were not part of the original legislation. The legislation should be no less stringent than [AS] 36 and [AEA and AIDEA] should not be exempt.

10:31:34 AM

SENATOR PASKVAN asked how the offerors preference of 10 percent affects his business and how Mr. Kibby's business would be hurt if that preference were removed. He assumed Mr. Kibby agrees with Mr. Boyd who wants to incorporate the offerors preference into statute.

MR. KIBBY said he is not prepared to speak to that. He felt that HB 225 is nebulous and did not realize the issue was there until digging deeper into it in the last few days. He does not have an opinion to share, only that there is cause for concern.

WAYNE STEVENS, president and CEO, Alaska State Chamber of Commerce, said the procurement officer is recommending a number of changes to clean up issues and conflicts in the state's procurement process. His one concern is that 2 AAC 12.260(e) [offerors preference] is a regulation but is not backed up in statute. The preference should be statutorily in place.

SENATOR FRENCH asked if Mr. Stevens had seen the letter, dated April 3, that Mr. Baldwin had drafted on the topic.

MR. STEVENS said has seen it but is not prepared to comment.

10:34:14 AM

SHELLY WRIGHT, executive director, Southeast Conference, said her organization is a private membership organization that works to advance the collective interests of the people and communities of Southeast Alaska. Southeast Conference believes that hiring within the state is necessary for the survival of communities. The state's procurement preferences exist to provide advantages to Alaska businesses over competing outside interests. The removal of the Alaska offerors preference will put Alaska companies at a huge disadvantage in competing against outside firms. She noted that some smaller companies are aware of Alaska preferences and take advantage of them to get procurements and create jobs.

10:37:00 AM

CHAIR MENARD closed public testimony. She announced she would hold HB 225 until Thursday and encouraged the bill sponsor to get together with the state Chamber of Commerce and see if an amendment can be made.

SENATOR MEYER apologized to the sponsor because the original legislation was a simple veteran preference bill. He said

putting the offerors preference in statute is something he is consistently hearing. He suggested the sponsor talk with Mr. Jones about that.

10:38:16 AM

CHAIR MENARD, seeing no further business to come before the committee, adjourned at 10:38 a.m.