

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS STANDING COMMITTEE

April 8, 2010

9:06 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. 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

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 24(MLV)

"An Act relating to a public procurement preference for Alaska veterans."

- MOVED CSHB 24(MLV) OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 251(JUD)

"An Act relating to liens on vehicles and to towing, transporting, and storage of vehicles; and providing for an effective date."

- MOVED CSHB 251(JUD) 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 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)
04/06/10 (S) Heard & Held
04/06/10 (S) MINUTE(STA)
04/08/10 (S) STA AT 9:00 AM BELTZ 105 (TSBldg)

BILL: HB 24

SHORT TITLE: PROCUREMENT PREFERENCE FOR VETERANS

SPONSOR(s): REPRESENTATIVE(s) FAIRCLOUGH, GATTO, LYNN

01/20/09 (H) PREFILE RELEASED 1/9/09
 01/20/09 (H) READ THE FIRST TIME - REFERRALS
 01/20/09 (H) MLV, STA
 03/31/09 (H) MLV AT 1:00 PM BARNES 124
 03/31/09 (H) Moved CSHB 24(MLV) Out of Committee
 03/31/09 (H) MINUTE(MLV)
 04/01/09 (H) MLV RPT CS(MLV) 2DP 2NR
 04/01/09 (H) DP: LYNN, GATTO
 04/01/09 (H) NR: RAMRAS, BUCH
 04/07/09 (H) STA AT 8:00 AM CAPITOL 106
 04/07/09 (H) Heard & Held
 04/07/09 (H) MINUTE(STA)
 04/09/09 (H) STA AT 8:00 AM CAPITOL 106
 04/09/09 (H) Moved CSHB 24(MLV) Out of Committee
 04/09/09 (H) MINUTE(STA)
 04/10/09 (H) STA RPT CS(MLV) 5DP
 04/10/09 (H) DP: JOHNSON, GATTO, SEATON, PETERSEN,
 LYNN
 04/16/09 (H) TRANSMITTED TO (S)
 04/16/09 (H) VERSION: CSHB 24(MLV)
 04/17/09 (S) READ THE FIRST TIME - REFERRALS
 04/17/09 (S) STA
 03/25/10 (S) STA AT 9:00 AM BELTZ 105 (TSBldg)
 03/25/10 (S) <Bill Hearing Canceled>

BILL: HB 251

SHORT TITLE: VEHICLE LIENS/TOWING/STORAGE/TRANSPORT
 SPONSOR(s): REPRESENTATIVE(s) RAMRAS

01/08/10 (H) PREFILE RELEASED 1/8/10
 01/19/10 (H) READ THE FIRST TIME - REFERRALS
 01/19/10 (H) STA, JUD
 03/09/10 (H) STA AT 8:00 AM CAPITOL 106
 03/09/10 (H) Heard & Held
 03/09/10 (H) MINUTE(STA)
 03/11/10 (H) STA RPT 1DP 4NR
 03/11/10 (H) DP: LYNN
 03/11/10 (H) NR: JOHNSON, GATTO, GRUENBERG, PETERSEN
 03/11/10 (H) STA AT 8:00 AM CAPITOL 106
 03/11/10 (H) Moved Out of Committee
 03/11/10 (H) MINUTE(STA)
 03/25/10 (H) JUD AT 1:00 PM CAPITOL 120
 03/25/10 (H) Moved CSHB 251(JUD) Out of Committee
 03/25/10 (H) MINUTE(JUD)
 03/26/10 (H) JUD RPT CS(JUD) NT 2DP 3NR 1AM
 03/26/10 (H) DP: LYNN, RAMRAS

03/26/10 (H) NR: HERRON, DAHLSTROM, HOLMES
03/26/10 (H) AM: GATTO
04/01/10 (H) TRANSMITTED TO (S)
04/01/10 (H) VERSION: CSHB 251(JUD)
04/02/10 (S) READ THE FIRST TIME - REFERRALS
04/02/10 (S) STA, JUD
04/08/10 (S) STA AT 9:00 AM BELTZ 105 (TSBldg)

WITNESS REGISTER

CRYSTAL KINEMAN

Aide to Representative Fairclough
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Presented HB 225 and HB 24 for the sponsor.

SCOTT THORSON

Network Business Systems Today
Anchorage, AK

POSITION STATEMENT: Testified that the Alaska bidder's preference should be in statute.

DENNIS MEINERS

Intelligent Energy System,
Anchorage, AK

POSITION STATEMENT: Testified in support of taking Section 6 out of HB 225.

TOM WICKWIRE, attorney,

Power Corps Alaska
Fairbanks, AK

POSITION STATEMENT: Testified that there is pending litigation against AIDEA.

VERN JONES, chief procurement officer

Division of General Services
Department of Administration
Juneau, AK

POSITION STATEMENT: Testified in support of HB 24 but noted it does not fix any problems with the procurement system.

REPRESENTATIVE RAMRAS

Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Sponsor of HB 251.

DON HABBIGER

Aide to REPRESENTATIVE RAMRAS
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Provided information for HB 251.

SHAWN HESS
S&S Towing and Recovery
Fairbanks, AK

POSITION STATEMENT: Testified in support of HB 251.

MARK DAVIS, owner
Interior Towing and Salvage Inc.
Fairbanks, AK

POSITION STATEMENT: Testified in support of HB 251.

MARGARET RABY
Alaska Towing Association
Fairbanks, AK

POSITION STATEMENT: Testified that most members support HB 251.

ELIZABETH GRISWOLD, owner
Gabe's Towing
Fairbanks, AK

POSITION STATEMENT: Testified in support of HB 251.

JEFF VANEYCH
Dirty Deeds Towing and Recovery
Fairbanks, AK

POSITION STATEMENT: Testified in support of HB 251.

ACTION NARRATIVE

[9:06:28 AM](#)

CHAIR LINDA MENARD called the Senate State Affairs Standing Committee meeting to order at 9:06 a.m. Present at the call to order were Senators Meyer, Paskvan, Kookesh, French and Menard.

HB 225-STATE PROCUREMENT CODE

[9:06:59 AM](#)

CHAIR MENARD announced the first order of business to come before the committee would be HB 225. [CSHB 225(FIN)(CORRECTED) was before the committee. It was heard previously.]

SENATOR MEYER moved to adopt the work draft committee substitute (CS) for HB 225, labeled 26-LS0791\C, as the working document. Senator French objected for the purposes of discussion.

CRYSTAL KINEMAN, staff to Representative Anna Fairclough, noted that Version P [CSHB 225(FIN)(Corrected)] exempted Alaska Industrial Development and Export Authority (AIDEA) and Alaska Energy Authority (AEA) from the procurement code. The new committee substitute, Version C, [CSHB 225(STA)] eliminates that wording leaving AIDEA and AEA under the procurement code. Technical changes were made to Section 36 of Version P [amending AS 36.30.999(1)] which referred to AIDEA and AEA as agencies. Section 19 of Version P was taken out of Version C for purposes of clarity; the offerors preference is left in regulation.

[9:10:53 AM](#)

SENATOR FRENCH said the committee wrestled with two provisions at the last hearing: whether to put AEA and AIDEA under the procurement code and whether to eliminate the Alaska offerors preference. He asked if [Version C] does that or not.

MS. KINEMAN said Version C takes AEA and AIDEA out of the equation and leaves the offerors preference as it exists in regulation.

SENATOR FRENCH clarified that Version C leaves the offerors preference as it is right now, untouched.

MS. KINEMAN responded that was correct.

SENATOR PASKVAN said he sensed a major problem in the system and would like to hear from Mr. Jones. He asked about the sponsor's position on Version C, Version P or the original legislation of a \$5,000 veterans preference.

[9:12:51 AM](#)

MS. KINEMAN replied that the Alaska Veterans Preference is still important to Representative Fairclough. Questions about Version C remain, but the sponsor will adapt to the will of the committee.

SENATOR PASKVAN questioned how objective criteria are determined if they do not come from statutory authority. Perhaps a preference should not be maintained if it can skew a bid result, has no basis in statute and may not have an objective standard.

MS. KINEMAN replied that the sponsor holds the same concern and the chair may decide whether that is addressed today or not.

[9:15:57 AM](#)

CHAIR MENARD said the legislation is very confusing and she wants to give it due diligence. She opened public testimony.

SCOTT THORSON, Network Business Systems, said that he would like to see the Alaska bidder's preference clarified in statute. The state should support locally owned businesses because the vast majority of Alaskans work for Alaskan small businesses.

[9:18:37 AM](#)

DENNIS MEINERS, Intelligent Energy System, Anchorage, supports the committee's decision to take Section 6 [amending AS 36.30.015(f)] out of HB 225, Version P. Legislative Audit 08-30048-08 found that procurement policies and procedures for the AEA Rural Energy Group Projects need to be rewritten. Procurements for the Rural Power Systems Upgrade (RPSU) projects were not consistently made in compliance with the rural energy group, bulk fuel upgrade program, rural power system upgrade program project reference manual guidelines or the underlying federal regulations. Section 6 of Version P strengthens the agencies' ability to create their own procurement provisions in spite of past problems. They are a small section, maybe 3 or 4 people, who have managed about \$300 million worth of projects over the last eight years. Very few of those have been bid out.

[9:21:05 AM](#)

AEA has accumulated traditions or ways of doing things over the years, surrounding the way bids are put together. Procurement procedures may exist but projects are directed to particular contractors; innovation and competition is restricted. He gave an example of a 2007 multiple-year software contract going to the son of one of the workers at the agency. It was not advertised; his company and others did not have the opportunity to bid. The complexity and lack of public information about the procurement practices at AEA eliminate some contractors from even understanding the bids. The lack of oversight is harmful.

CHAIR MENARD asked Mr. Meiners to wrap up.

MR. MEINERS summarized that it is not appropriate to strengthen the procurement abilities of the agency without a management review.

[9:24:10 AM](#)

TOM WICKWIRE, attorney, Power Corps Alaska, Fairbanks, said Power Corps Alaska is a plaintiff in pending litigation against AIDEA and one of its employees. HB 225 would amend AS 36.30.015(f), effectively allowing AEA to draft its own regulations and adding AIDEA to the list of agencies that are excluded from the state procurement code. In pending litigation, Power Corps, has proven that AIDEA, acting through one of its employees, has succeeding in giving over \$1 million worth of contracts to an out of state corporation.

CHAIR MENARD interjected and said a committee substitute [Version C] is currently before the committee.

MR. WICKWIRE asked if Version C allows AEA to draft its own procurement regulations.

CHAIR MENARD replied no.

MR. WICKWIRE asked if Version C excludes AEA from the state procurement code.

CHAIR MENARD replied no.

MR. WICKWIRE asked if AEA will be subject to the state procurement code.

CHAIR MENARD replied yes.

MR. WICKWIRE said if AEA is excluded from the procurement code, this change will occur while litigation is pending against AEA. Trans Power has alleged, and submitted proof to the AG, that a certain AEA employee has intentionally violated the procurement code. It looks like the AEA has drafted this provision of HB 225 to get itself out of a difficult box. It is inappropriate for an agency to try to amend a law while litigation is pending.

9:28:00 AM

CHAIR MENARD closed public testimony.

SENATOR PASKVAN said he is uncomfortable rewriting legislation without more information and would like Mr. Jones to weigh in.

SENATOR MEYER said the legislation is attempting to fix certain areas of the procurement code. Version C deletes Section 20 and Section 6, which puts AIDEA and AEA back under procurement code and leaves the offerors preference the way it was. Some testimony supports this, however, the procurement officer

remains frustrated with the number of accumulative preferences. He suggested getting rid of the offerors preference and increasing the Alaska bidders preference. He also believes the criteria, six months, for Alaska business residency, is not enough.

[9:30:20 AM](#)

CHAIR MENARD asked if Mr. Meyer would suggest a year.

SENATOR MEYER said a year requirement should be considered as that is consistent with other Alaska residence requirements. He has also heard concern about Sections 33 and 34 which allow the procurement officer to go outside the procurement code and join up with a cooperative made up of several western states in attempt to get a better rate for the state. AEA and AIDEA also want to be outside the procurement code. He reiterated that the state needs to be able to keep better track of money spent with an automated and centralized system. His inclination is to leave the procurement code as it is and take more time to find a comprehensive solution.

CHAIR MENARD said that is why she would like to hold Version C and go back to HB 24 which deals with the veterans' preference. The procurement code needs more work and discussion.

SENATOR KOOKESH said he has no problem with Chair Menard's plan as long as we have some control over AEA and AIDEA. He said he is not willing to let them have state money and not be subject to the procurement code.

CHAIR MENARD said she appreciated his argument that it is all state money. [HB 225 was held in committee.]

At Ease from 9:33 a.m. to 9:34 a.m.

HB 24-PROCUREMENT PREFERENCE FOR VETERANS

[9:34:32 AM](#)

CHAIR MENARD said the next order of business to come before the committee would be HB 24. [CSHB 24(MLV) was before the committee.]

MS. KINEMAN said HB 24 sets out a 5 percent preference for Alaska veterans up to \$5,000. Most procurements would be under \$100,000 so the \$5,000 limit would rarely be applied. Statute currently contains several other preferences and the sponsor

believes that veterans need to be taken care of by giving them a push into starting their own businesses.

[9:37:04 AM](#)

VERN JONES, chief procurement officer, said he certainly is not opposed to HB 24. However, HB 24 does nothing to solve the problems with the procurement code, but adds yet another preference. That makes a total of 11 or 13 preferences. HB 24 will not be difficult or expensive to implement but HB 225 attempted to streamline and solve practical problems.

CHAIR MENARD said the committee recognizes that Mr. Jones is in a big dilemma but more work and time is needed.

SENATOR MEYER said a more comprehensive approach could take place over the interim working with the state Chamber of Commerce and businesses. He thinks the procurement code can be made less confusing, lawsuits might be eliminated and numerous groups will not need to be excluded. He recognized that HB 24 does not solve any problems.

SENATOR PASKVAN said he understands that something that appears to make sense, as applied, is actually anti-competitive.

[9:41:34 AM](#)

He said HB 24 is easy to support but a global analysis of our procurement code is needed to ensure a competitive process, based on objective standards, and to track spending in each preference category.

CHAIR MENARD commented that the state's lack of electronic tracking is disappointing. She told Mr. Jones the committee is not against revamping the procurement code.

SENATOR FRENCH thanked Mr. Jones for providing him with examples of how the offerors preference works. That information made it clear that something the offerors preference is resulting in the state spending millions of dollars for projects with only a tenuous connection to Alaskan employees and companies.

CHAIR MENARD said we are looking for a streamlined tracking system and what to do with the offerors preference.

[9:44:01 AM](#)

CHAIR MENARD closed public testimony.

SENATOR MEYER moved to report HB 24, [26-LS0135\S], from committee with individual recommendations and accompanying fiscal notes.

CHAIR MENARD announced that without objection CSHB 24(MLV) moved from the Senate State Affairs Standing Committee.

At Ease from 9:45 a.m. to 9:48 a.m.

HB 251-VEHICLE LIENS/TOWING/STORAGE/TRANSPORT

9:48:26 AM

CHAIR MENARD announced the next order of business to come before the committee would be HB 251. [CSHB 251(JUD), 26-LS0786\S, was before the committee.]

REPRESENTATIVE JAY RAMRAS, sponsor of HB 251, said the bill is helpful to both tow truck operators and to consumers who have had a vehicle impounded. A tow truck operator incurs a fee for towing and storage of an impounded vehicle. The bank can then recover the vehicle, leaving the tow truck company without a means to recover their costs because they stand behind the lien holder or lender. HB 251 also states that tow truck companies must notify consumers that their vehicles have been impounded within five days. Currently, up to 60 days elapse while the fees add up, leaving the consumer stunned by the amount owed to the impound yard.

Section 1 of HB 251 [amending AS 28.10.391(a)] is helpful to the tow truck operators and Section 2 [amending AS 28.10.502(b)] requires the tow truck company to notify the owner and lien holder of the towing, transporting and storage of a vehicle by certified letter. This is a consumer protection.

9:51:09 AM

CHAIR MENARD asked if other states have similar rules.

REPRESENTATIVE RAMRAS said he does not know. He noted that state troopers or local municipalities will keep different tow truck companies on a rotation index to call to an accident or DUI.

SENATOR KOOKESH said HB 251 looks clear and asked if any objection exists.

REPRESENTATIVE RAMRAS replied that Representative Fairclough, who previously served as the presiding officer of the Anchorage municipal assembly, had consumers complain about fees that

accrue while a vehicle is in an impound yard. Some people do not pay attention or cannot afford to get their vehicle out of the impound yard. He told Representative Fairclough that HB 251 is proactively improving existing statutes by requiring a certified letter from the tow truck company within five days of the impoundment.

DON HABBIGER, aide to Representative Ramras, clarified that five days was changed to seven days in committee on the house side. Tow truck companies sometimes have to go out of state to local DMV's and five days was a bit tight.

SENATOR PASKVAN clarified that it is seven working days.

REPRESENTATIVE RAMRAS said Bill Satterberg, attorney, previously testified and suggested that seven days, not including weekends, amounts to about ten days.

[9:55:34 AM](#)

SENATOR FRENCH said some towing charges in Anchorage are outrageous. While people who perform the work should get paid, there could be an opportunity to address "predatory practices" in the future.

REPRESENTATIVE RAMRAS said HB 251 focuses on notification so that consumers know where their vehicles are and how long they have been there. Tow truck operators will tell you they are struggling as small businesses to make ends meet.

SENATOR PASKVAN asked how a consumer finds out what happened or where an impounded car is. He asked how a proactive owner finds out about his or her car.

[9:58:39 AM](#)

REPRESENTATIVE RAMRAS said he cannot answer that question. He noted he would welcome a conceptual amendment to improve consumer protection in that regard.

SHAWN HESS, S&S Towing and Recovery, Fairbanks, said he supports HB 251. He noted that his company calls plate numbers in to local law enforcement when the impound request did not come from law enforcement. The owner can call the local police department and find out which company has the vehicle.

[10:01:04 AM](#)

MARK DAVIS, owner, Interior Towing and Salvage Inc., said he has to do many things when impounding a car not at the direction of

a police officer. HB 251 corrects a problem so that the towing company can get paid; the lending institution cannot walk in and take the car without paying any kind of a bill. He said he is in full support of HB 251.

MARGARET RABY, Alaska Towing Association, said most members of the Towing Association are in full support of HB 251. HB 251 fixes a problem whereby towers may perform their services without getting paid. Most members also support the section about notification because that does eliminate what could be considered predatory towing. Legitimate towers want to make sure that owners get their vehicles back.

SENATOR PASKVAN asked if the Alaska Towing Association has a policy that plate numbers be called in upon towing.

MS. RABY said Alaska Towing Association does not set policy but that practice is generally regulated by municipalities. Both Anchorage and Fairbanks municipal code require any towing within city limits to be called in. Most towers, and the state troopers, consider it standard operating procedure though it is not required. If a tower does not call in a plate, law enforcement generally gets involved and suggests the tow was illegal.

[10:04:14 AM](#)

SENATOR PASKVAN suggested that adopting a consumer-friendly policy, such as providing notice promptly, would keep government off the industry's back.

MS. RABY said the Alaska Towing Association is a fledgling association and is growing to that point.

ELIZABETH GRISWOLD, owner, Gabe's Towing, said she and Mark Davis brought this problem to the attention of Representative Ramras to get the loophole in the statutes fixed. A credit union found the loophole; they have the perfected lien over the possessory lien. She summarized an incident in which the credit union took possession of a vehicle without paying for the tow bill. She noted that her company and others are on the towing ordinance committee and must follow local ordinances and can be audited at any time.

[10:07:23 AM](#)

She pointed out that Alaska does not have a stipulation that some other states have: if a tow bill is not paid, it counts against one's driver's license.

JEFF VANEYCH, Dirty Deeds Towing and Recovery, Fairbanks, said he supports HB 251. He just wants to get paid for the work he does. Once the bank comes in and takes the vehicle, he has no way to recoup his costs.

[10:08:46 AM](#)

CHAIR MENARD closed public testimony.

SENATOR MEYER moved to report HB 251, from committee with individual recommendations and accompanying fiscal notes.

CHAIR MENARD announced that without objection CSHB 251(JUD) moved from Senate State Affairs Standing Committee.

HB 225-STATE PROCUREMENT CODE

[10:09:42 AM](#)

SENATOR KOOKESH asked Chair Menard not to adjourn before stating for the record what she would like to do with HB 225.

CHAIR MENARD replied that HB 225 is being held in committee.

[10:10:22 AM](#)

SENATOR PASKVAN wanted to recognize Representative Ramras on the record. Senator Paskvan commended Representative Ramras, who is in the final weeks of representing his district to the state legislature, for his service to Alaska and Fairbanks.

CHAIR MENARD said Representative Ramras is a good legislator and business man.

SENATOR MEYER said he appreciated all the bills Representative Ramras has brought forth and his effort to present the bills himself.

SENATOR KOOKESH said he and Senator French agree.

[10:12:26 AM](#)

CHAIR MENARD, seeing no further business to come before the committee, adjourned at 10:12 a.m.