

**ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE**

March 13, 2012

8:07 a.m.

MEMBERS PRESENT

Representative Bob Lynn, Chair
Representative Wes Keller, Vice Chair
Representative Paul Seaton
Representative Max Gruenberg
Representative Pete Petersen
Representative Kyle Johansen

MEMBERS ABSENT

Representative Peggy Wilson

COMMITTEE CALENDAR

HOUSE BILL NO. 212

"An Act relating to requirements for persons holding provisional drivers' licenses."

- MOVED CSHB 212(STA) OUT OF COMMITTEE

HOUSE BILL NO. 239

"An Act relating to the procurement of architectural, engineering, or land surveying contracts funded by money from the state."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 212

SHORT TITLE: PROVISIONAL DRIVER'S LICENSE STICKER

SPONSOR(S): REPRESENTATIVE(S) MILLETT BY REQUEST

03/29/11	(H)	READ THE FIRST TIME - REFERRALS
03/29/11	(H)	STA, TRA, FIN
03/13/12	(H)	STA AT 8:00 AM CAPITOL 106

BILL: HB 239

SHORT TITLE: PROF. SERVICES IN STATE-FUNDED CONTRACTS

SPONSOR(S): REPRESENTATIVE(S) HOLMES

04/16/11 (H) READ THE FIRST TIME - REFERRALS
04/16/11 (H) STA, L&C
03/13/12 (H) STA AT 8:00 AM CAPITOL 106

WITNESS REGISTER

JEFF TURNER, Staff
Representative Charisse Millett
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 212 on behalf of Representative Millett, sponsor.

JESSICA LUIKEN
Anchorage, Alaska

POSITION STATEMENT: Testifying on behalf of herself, offered a PowerPoint presentation in support of HB 212.

WHITNEY BREWSTER, Director
Division of Motor Vehicles
Department of Administration
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 212.

LIEUTENANT RODNEY DIAL, Deputy Commander
A Detachment
Division of Alaska State Troopers
Department of Public Safety

POSITION STATEMENT: Answered questions during the hearing on HB 212.

JOSEPH MASTERS, Commissioner
Department of Public Safety
Anchorage, Alaska

POSITION STATEMENT: Responded to discussion during the hearing on HB 212.

REPRESENTATIVE LINDSEY HOLMES
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As sponsor, presented HB 239.

MIKE COUMBE, Staff
Representative Lindsey Holmes
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Offered a summary of HB 239 on behalf of Representative Holmes, sponsor.

MARK O'BRIEN, Chief Contracts Officer
Contracting and Appeals
Office of the Commissioner
Department of Transportation & Public Facilities
Juneau, Alaska

POSITION STATEMENT: Offered information regarding the state's selection process and responded to questions during the hearing on HB 239.

KATHIE WASSERMAN, Legislative Director
Alaska Municipal League
Juneau, Alaska

POSITION STATEMENT: Testified during the hearing on HB 239.

ACTION NARRATIVE

[8:07:04 AM](#)

CHAIR BOB LYNN called the House State Affairs Standing Committee meeting to order at 8:07 a.m. Representatives Keller, Seaton, Johansen, Petersen, Gruenberg, and Lynn were present at the call to order.

HB 212-PROVISIONAL DRIVER'S LICENSE STICKER

[8:07:38 AM](#)

CHAIR LYNN announced that the first order of business was HOUSE BILL NO. 212, "An Act relating to requirements for persons holding provisional drivers' licenses."

[8:07:46 AM](#)

JEFF TURNER, Staff, Representative Charisse Millett, Alaska State Legislature, presented HB 212 on behalf of Representative Millett, sponsor. He said Alaska's current provisional driver's license law places restrictions on young drivers until they get more experience behind the wheel. For example, the holder of a provisional driver's license cannot operate a vehicle between the hours of 1 a.m. and 5 a.m. unless someone over the age of 21 is in the vehicle. He said the restrictions are being ignored, which puts other drivers at risk. He stated that under HB 212, a driver with a provisional driver's license would be required to display a sticker issued by the Division of Motor Vehicles

(DMV). He explained that the sticker would identify others drivers and the police that the driver is a holder of a provisional license. He said the bill is being introduced at the request of a young constituent named, Jessica Luiken.

8:09:50 AM

JESSICA LUIKEN testified that she took part in Close Up, in preparation for which she had to present a project or idea to a state representative and senator. She said the product of that project is HB 212.

MS. LUIKEN offered a PowerPoint presentation in support of HB 212. She directed attention to slide 2, which shows the cause of death among teenagers from 1999-2006, and she stated that out of the 48 percent of deaths that were caused by unintentional injury, 73 percent of those were caused by motor vehicle traffic accidents.

8:11:08 AM

The committee took an at-ease from 8:11 a.m. to 8:12 a.m.

8:12:31 AM

MS. LUIKEN directed attention to slide 3, which shows 2004-2008 statistics for Alaska drivers ages 14-16, and noted that the numbers for fatal crashes and fatal injuries were highest in 2008. She turned to slide 4, which she said shows Alaska statistics for drivers ages 16-17, from 2002-2011, but said the statistics do not reflect the effects crashes had on the occupants and passengers of the vehicles or "the effects that it would have on the public." As shown on slide 5, she listed the following reasons that drivers with provisional licenses are hazardous: apprehension, lack of experience, weather conditions, no driver education requirement, and Alaska's diversity from other states. Regarding the latter, she said Alaska has "one of the most dangerous roads in America, midnight fishing runs," and is "constantly on the lookout for wildlife."

8:14:53 AM

MS. LUIKEN directed attention to slides 6-8, which show a solution and reasons to support it. The solution, she explained, would be to require each driver with a provisional license to display a sticker issued by the DMV in the rear window of each vehicle he/she drives. The reasons, she

outlined, are that displaying the sticker: is a simple solution to benefit Alaska drivers; will impress other driver's to be more cautious driving around the novice teen driver; will provide other drivers the information necessary to understand the provisional licensee's position; and will assist law enforcement officers in implementing the law.

[8:16:23 AM](#)

MS. LUIKEN directed attention to slide 9, which suggests enforcement be a fine of not more than \$300 for failure to display the sticker. She stated that the enforcement will impress upon young drivers the importance of displaying the sticker. Ms. Luiken directed attention to slide 10, which shows the procedures that would take place under HB 212: The State of Alaska would supply the [division] with stickers to distribute to those persons acquiring a provisional license; those acquiring the provisional license would pay for the sticker as part of the permitting process; and the sticker would be placed on the rear window of the operating vehicle. Referencing slide 11, Ms. Luiken offered a summary of the previously stated points, proffering that HB 212 would help save Alaskan lives.

[8:18:24 AM](#)

MS. LUIKEN, in response to Representative Seaton, said she does not know when Alaska instituted the provisional driver's license. She offered her understanding that other states have the graduated license program.

MR. TURNER offered his understanding that the original legislation that brought about Alaska's provisional driver's license was sponsored by then Representative Bruce Weyhrauch in 2001.

REPRESENTATIVE GRUENBERG said he thinks it was 2003 or 2004.

REPRESENTATIVE SEATON said he thinks it could have been 2005 or 2006, and he noted that the statistics in Ms. Luiken's PowerPoint presentation begin in 1999; therefore, he ventured that not having a provisional driver's license may not be the cause of the number of teenage deaths from motor vehicle accidents.

[8:20:23 AM](#)

REPRESENTATIVE KELLER suggested a magnet would be better than a sticker.

MS. LUIKEN responded that a magnetic sign was considered but discounted, because it could too easily fall off a car during winter or in a car wash. She said her research shows that stickers that are affixed for the six-month provisional license period are not difficult to remove.

CHAIR LYNN remarked that young people may drive their parents' automobile.

MS. LUIKEN indicated that six months is a short period of time. She said in a case where there are two cars owned by one family, she would recommend that each car display a sticker.

[8:22:41 AM](#)

MS. LUIKEN, in response to Representative Johansen, imparted that she is homeschooled and is a senior.

REPRESENTATIVE JOHANSEN praised Ms. Luiken's professionalism and thoroughness.

[8:25:08 AM](#)

MS. LUIKEN, in response to Representative Gruenberg, offered her understanding that the provisional driver's license is valid for two years, but the young person to whom it has been issued is required to have it for only six months.

REPRESENTATIVE GRUENBERG echoed the praise of Ms. Luiken previously expressed by Representative Johansen. He said he would like to see Alaska require driver's education, because it would reduce the number of automobile accidents. He expressed appreciation of HB 212.

[8:28:03 AM](#)

MS. LUIKEN agreed that Alaska should implement a driver's education requirement. She said implementing a requirement for those with provisional driver's licenses to display a sticker might reduce the cost of insurance for Alaskans.

REPRESENTATIVE GRUENBERG asked if anyone had spoken with the insurance industry in that regard.

MS. LUIKEN answered that she has not, but could get that information.

[8:29:08 AM](#)

MS. LUIKEN, in response to Representative Petersen, reiterated that the intent of having the sticker displayed is so that both law enforcement and other drivers can see them.

[8:30:49 AM](#)

REPRESENTATIVE SEATON described a situation in which there are multiple children in a family and a sticker on the family car, and police may stop a driver who has passengers in the car, thinking that he/she is the provisional licensee who should not be driving in that situation. He asked Ms. Luiken if she has asked police officers if they have concerns about this kind of thing happening.

[8:31:52 AM](#)

MS. LUIKEN said she has considered that, but has no answer other than to advise officers to use good judgment. She added that she intends to speak with law enforcement to find out if they have any suggestions for the proposed legislation.

[8:32:38 AM](#)

MR. TURNER said he discussed HB 212 with a legislative liaison from the Department of Public Safety, who raised no concerns.

[8:33:00 AM](#)

REPRESENTATIVE GRUENBERG recalled that in the past, when the committee heard a bill about a seatbelt requirement, concern was expressed about unnecessary stops by police, and the first seatbelt law that resulted from that debate allowed only a secondary stop. Subsequently, he said, it was changed to a primary stop. He asked if consideration had been given to include a primary stop provision in HB 212. In response to the chair, he explained the difference between a primary and secondary stop.

[8:35:53 AM](#)

MS. LUIKEN said the intent was that a stop related to the provisional licensee would be a primary one; however, she said

she could understand the reasons for changing it to secondary stop.

CHAIR LYNN ventured that it may be difficult for a police officer to tell how old a driver is, which may result in the police officer pulling over a driver he/she thinks should be displaying a provisional driver's license sticker only to find out the driver is past the age that would, under HB 212, require a sticker.

[8:37:07 AM](#)

MS. LUIKEN, in response to Representative Seaton, said she does not know what the current fine is for violating a provisional license, and she deferred to Whitney Brewster, the director of the DMV.

REPRESENTATIVE SEATON directed attention to page 1, lines [9-14] of the proposed bill, which read as follows:

However, a person charged with violating this section may not be convicted if the person

- (1) has not previously been arrested, charged, or cited for a violation of this section; and
- (2) produces in court proof that the person has obtained and affixed the sticker required by this subsection.

REPRESENTATIVE SEATON asked if the intent of the bill is to allow a "free pass," by which a person could be let off of a first violation if he/she subsequently bought a sticker and displayed it.

MS. LUIKEN answered that she does not think that is the intent of the bill.

REPRESENTATIVE SEATON offered his understanding that the language of the bill would allow that.

[8:40:03 AM](#)

MR. TURNER told Representative Seaton that "the provisions you pointed out are correct."

[8:40:21 AM](#)

CHAIR LYNN said he has a problem with the concept of the sticker when there could be multiple vehicles. He expressed a wish that something more removable could be used, such as the handicap driver permit that is hung in the rear view mirror. He remarked that it may be difficult for some people to access the back window in the vehicle.

[8:41:26 AM](#)

REPRESENTATIVE JOHANSEN offered his understanding that in other countries, the stickers used are unique in that they are static and can be affixed, removed, and reattached multiple times. He asked if that is what Ms. Luiken found in her research.

MS. LUIKEN replied that she had researched both magnetic and static stickers, but ultimately chose a more permanent sticker for reasons previously stated.

[8:42:32 AM](#)

REPRESENTATIVE KELLER ventured that if he were of the age to get a provisional license, he would figure out a way to get more than one sticker to maximize the opportunity to drive.

[8:43:02 AM](#)

REPRESENTATIVE PETERSEN surmised that an older sibling might remove the sticker belonging to a younger sibling, because he/she would not want to be seen driving with it.

[8:43:36 AM](#)

REPRESENTATIVE GRUENBERG described a situation in which someone opens a hatchback door and the sticker on the window might fall off. He expressed concern that the driver may not be aware that that has happened, and he/she could incur a fine of \$300.

[8:44:29 AM](#)

MS. LUIKEN offered her understanding that the sticker would be on the outside of the car.

REPRESENTATIVE GRUENBERG then expressed concern about maintaining the life of the sticker when ice is scraped.

CHAIR LYNN added another challenge may be the windshield wiper.

[8:44:46 AM](#)

MR. TURNER said the bill simply says "sticker". He suggested that it may be the best option to allow the DMV or the committees hearing the bill to work out the details.

[8:45:36 AM](#)

WHITNEY BREWSTER, Director, Division of Motor Vehicles, Department of Administration, responded to questions from the committee. Regarding the effective date of the provisional law, she said the bill passed in 2004 and was put into effect on 1/1/2005. Regarding the type of sticker, she said the DMV had contemplated the static cling type of sticker, but said she appreciates the comments of the committee in determining the best way to adhere the sticker. Regarding the operation of a vehicle without a provisional license, she said the fine is \$200 and a 2-point ticket. Regarding the life of a provisional license, she said the life of the license is five years, but expires when the holder of it turns 18; however, the driver is not required to come in to change out the license. Ms. Brewster relayed that there are 6,251 unexpired provisional licenses on the street today.

[8:48:25 AM](#)

MS. BREWSTER, in response to Representative Johansen, said the word "sticker" would allow the DMV to issue a static cling sticker or a sticker that adheres to the window.

[8:48:54 AM](#)

MS. BREWSTER, in response to Representative Gruenberg, said she is not aware of any insurance ramifications for a provisional driver, but deferred to the Division of Insurance.

[8:49:31 AM](#)

MR. BREWSTER, in response to Chair Lynn, said the DMV is neutral on HB 212; however, she noted that the proposed legislation would be fairly easy and inexpensive to implement.

[8:49:53 AM](#)

MS. BREWSTER, in response to Representative Seaton, said she could not think offhand of a term better than sticker, but ventured that the DMV could come up with one fairly easily. In

response to a follow-up question, she said the approximate cost of each static cling sticker would be 20 cents, and the total cost to the DMV would be less than \$1,200, which is why the division has submitted a zero fiscal note.

[8:51:21 AM](#)

MS. BREWSTER, in response to Representative Petersen, offered her understanding that a person could obtain more than one sticker. In response to Representative Seaton, she said the earliest age at which a person qualifies for a provisional driver's license is 16, at which point, he/she is required to have that provision license for six months, during which time he/she must remain infraction-free. Under that scenario, she relayed, it would be possible for a person to obtain a regular driver's license by the age of 16 and a half.

[8:53:26 AM](#)

LIEUTENANT RODNEY DIAL, Deputy Commander, A Detachment, Division of Alaska State Troopers, stated that the department is neutral on HB 212. In response to the previous expressed concern regarding stops made by officers, he stated, "We would expect that law enforcement officers would use discretion in the application, and attempt to make visual determinations of the operator to determine if they appear to be within the 16- to 18-year range bound by the requirements." He said generally violations of the provisional driver's license law are identified as a result of other traffic violations or through contact by a concerned parent or citizen.

[8:54:31 AM](#)

REPRESENTATIVE PETERSEN offered a hypothetical situation in which a provisional driver - with teenage passengers who were not relatives - was pulled over by law enforcement, and there was no sticker displayed. He asked if, [under HB 212], that driver would be subject to both a \$200 and \$300 fine, totaling \$500.

LIEUTENANT DIAL answered that that is possible. He said fines are set by the Alaska Supreme Court, and he offered his understanding that the language of HB 212 states that the fine could be up to \$300, so it could be less. He further interpreted HB 212 as setting up the first violation of the law as a correctable citation, such as is a citation for a nonworking headlight or taillight.

[8:55:43 AM](#)

REPRESENTATIVE GRUENBERG offered a hypothetical situation in which a sticker has fallen off because of weather, and the driver is pulled over but finds the sticker and shows it. He asked if the person would be subject to prosecution if the same thing happened twice.

LIEUTENANT DIAL responded that technically Representative Gruenberg is correct, although he said officers do have discretion. He offered his belief that officers would not issue a citation under those circumstances if it was apparent that the person was attempting to comply with the law.

[8:57:21 AM](#)

JOSEPH MASTERS, Commissioner, Department of Public Safety, pointed out how unusual it is for a young person to see a need for a bill, do the research, and come up with a solution. He stated that although the department holds a neutral stance on HB 212, his presence at the bill hearing is in support of people, especially young people, getting involved in the process of creating laws.

[8:59:34 AM](#)

MS. LUIKEN directed attention back to slide 6 of the PowerPoint presentation, which shows another option to designate a provisional driver, used by New Jersey, which is: a red sticker placed on the license plate. She said she would research answers to the questions that had been asked. In response to the chair, she confirmed that she would like to see the bill pass out of committee.

[9:01:43 AM](#)

CHAIR LYNN closed public testimony.

[9:01:51 AM](#)

REPRESENTATIVE SEATON moved to adopt Conceptual Amendment 1, as follows:

Page 1, line 5:
Delete "a sticker"
Insert "an identification tag"

[9:02:37 AM](#)

CHAIR LYNN objected for the purpose of discussion.

REPRESENTATIVE SEATON spoke to Conceptual Amendment 1. He offered his understanding that concern had been expressed regarding a sticker that once affixed, would not be moveable from one vehicle to another, and there may be other options. He said he would like to give the DMV a broader scope in the design and designation of the tag.

REPRESENTATIVE GRUENBERG indicated concerned about the same issue.

[9:04:05 AM](#)

CHAIR LYNN removed his objection.

REPRESENTATIVE JOHANSEN objected to Conceptual Amendment 1. He said the director of the DMV told the committee that the current language offers enough leeway, and he stated a preference to figure out something concrete, rather than offering a conceptual change in this regard.

[9:05:01 AM](#)

REPRESENTATIVE KELLER concurred with Representative Johansen. He said, "If we leave it open, there's a danger of getting it too broad."

[9:05:29 AM](#)

MS. BREWSTER, in response to Representative Gruenberg, stated her belief that the language indicating a sticker is "relatively broad" and "could encompass both a sticker in the traditional sense, as well as a static cling sticker - anything that would allow for the ... identification to be somehow adhered to the window."

REPRESENTATIVE GRUENBERG stated opposition to Amendment 1, with the understanding that as bill goes through the committee process, Ms. Brewster would let other committees know if she thinks of any language that the DMV would prefer.

MS. BREWSTER said that would be acceptable.

[9:07:03 AM](#)

REPRESENTATIVE PETERSEN said when he hears the word "tags" he thinks of tags on license plates. He offered his understanding that it is not the intent of the sponsor to issue tags that would be put on license plates, and he opined that the word "sticker" would be broad enough.

[9:07:27 AM](#)

REPRESENTATIVE SEATON withdrew Conceptual Amendment 1.

[9:07:38 AM](#)

REPRESENTATIVE GRUENBERG expressed concerned about "this being a primary stop." In response to Chair Lynn, he offered his understanding that under HB 212, a law enforcement officer could pull a person over after visually observing that the driver appeared to be within the age range of a provisional driver but did not have a sticker displayed.

[9:08:44 AM](#)

REPRESENTATIVE GRUENBERG moved Conceptual Amendment 2, such that the failure to have a sticker would not be a primary [infraction].

CHAIR LYNN objected for the purpose of discussion.

[9:09:14 AM](#)

REPRESENTATIVE KELLER stated support for Conceptual Amendment 2.

REPRESENTATIVE GRUENBERG said similar language was used to address a seatbelt law.

[9:09:46 AM](#)

REPRESENTATIVE GRUENBERG, in response to Representative Petersen, explained that by law, every stop is a primary one unless there is specific language stating that it must be a secondary stop.

[9:10:33 AM](#)

CHAIR LYNN withdrew his objection. There being no further objection, Conceptual Amendment 2 was adopted.

[9:10:57 AM](#)

REPRESENTATIVE JOHANSEN, regarding the concern that stickers could fall off, stated that driving is a privilege, and a young driver might learn a lesson in responsibility if he/she has to pay \$300 because a sticker has fallen off the vehicle.

[9:11:36 AM](#)

CHAIR LYNN remarked that he has a lot of faith in young drivers. He said they may not have experience, but they have quick reflexes.

[9:12:49 AM](#)

REPRESENTATIVE GRUENBERG directed attention to the phrase, "in the rear window", on page 1, lines 4-5, and he asked Ms. Brewster if she would like the phrase eliminated to allow the division to determine where the sticker should be placed.

[9:13:27 AM](#)

MS. BREWSTER replied that the DMV had contemplated that [the sticker] would be in the rear window of the vehicle. She agreed with Ms. Luiken that in Alaska's climate it would be difficult to keep a magnet on the vehicle. She said she thinks the rear window is the most appropriate place for the sticker; therefore, she said she is fine with the language as is.

[9:14:07 AM](#)

REPRESENTATIVE KELLER moved to report HB 212, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 212(STA) was reported out of the House State Affairs Standing Committee.

[9:14:39 AM](#)

The committee took an at-ease from 9:15 to 9:16 a.m.

[9:16:44 AM](#)

HB 239-PROF. SERVICES IN STATE-FUNDED CONTRACTS

[9:16:45 AM](#)

CHAIR LYNN announced that the final order of business was HOUSE BILL NO. 239, "An Act relating to the procurement of architectural, engineering, or land surveying contracts funded by money from the state."

[9:17:00 AM](#)

REPRESENTATIVE LINDSEY HOLMES, Alaska State Legislature, as sponsor, presented HB 239. She said currently the State of Alaska uses a qualifications based selection process when using its own money for state projects; the federal government similarly requires qualification based criteria when federal grants or other money are involved. Under HB 239, the process would be extended to state grants being used [for architectural, engineering, and land surveying] projects.

REPRESENTATIVE HOLMES said when consumers search for a physician or lawyer, or when they shop for a vehicle, the first consideration is not price, it is experience and value. In the example of buying a car, she said a price is negotiated only after a vehicle with the necessary features has been found. Representative Holmes suggested the same process should happen when the state bids; once the state chooses the best company based on qualifications, it would then negotiate for price with that company. If that company will not give a price that is acceptable, then the state would go to the next company on the qualification-based list.

[9:20:47 AM](#)

CHAIR LYNN commented that the information in resumes can be selective, and choosing from them subjective.

[9:21:28 AM](#)

REPRESENTATIVE JOHANSEN asked if the ultimate focus of the proposed legislation is quality of work or cost savings.

REPRESENTATIVE HOLMES answered it is both.

CHAIR LYNN suggested that it is the responsibility of the state to include its expectation for a project in its request for proposals (RFPs).

REPRESENTATIVE HOLMES said, "That depends."

[9:23:17 AM](#)

MIKE COUMBE, Staff, Representative Lindsey Holmes, Alaska State Legislature, on behalf of Representative Holmes, sponsor, offered a summary of HB 239, as follows:

It requires that state funded contracts be negotiated with the most qualified and suitable professional of demonstrated competence, also considering proximity to the project site. If those negotiations fail, the state funded contractor will negotiate with the next qualified professional, in order of ranking. Proposals may be rejected by the state contractor. Situations of public necessity are excluded from these requirements. Price can be considered, as long as the project evaluators are registered professionals. And this does not apply to contracts incorporating both design and construction work.

[9:27:06 AM](#)

MR. COUMBE, in response to Representative Johansen, clarified that the bill addresses all contracts in which the state invests.

REPRESENTATIVE JOHANSEN said if the intent is to include anything engineered in the state, then that will raise a lot of questions.

[9:28:50 AM](#)

REPRESENTATIVE HOLMES said she would research that issue.

[9:29:01 AM](#)

REPRESENTATIVE SEATON expressed concern about including land surveying, because "it's done for numerous things." He directed attention to a sentence beginning on page 1, line 6, which read as follows:

If a contracting person procures architectural, engineering, or land surveying services for a state-funded contract, the contracting person shall, when selecting the contractor, negotiate with the most qualified and suitable professional person of demonstrated competence to perform the services.

REPRESENTATIVE SEATON said that sounds like the RFP process would not even be used.

REPRESENTATIVE HOLMES deferred to Mark O'Brien for an answer regarding RFPs. She said licensing is still very important.

[9:32:05 AM](#)

REPRESENTATIVE SEATON said it does not sound like there would be any real cost constraint, as long as negotiations are made and there is enough money from the state for the project.

REPRESENTATIVE HOLMES responded that "this language" is the same language as that which applies to fully state-funded projects. She deferred again to Mark O'Brien.

[9:33:41 AM](#)

CHAIR LYNN questioned whether the system is broken and, thus, needs to be fixed.

MS. HOLMES recommended that the committee hear from those waiting to testify. In response to a follow-up question from the chair, she said she does not think the proposed legislation would either decrease or increase competition.

[9:34:57 AM](#)

REPRESENTATIVE JOHANSEN directed attention to language on page 2, lines 22-23, which read as follows:

(f) This section does not apply to a contract that incorporates both design services and construction.

REPRESENTATIVE JOHANSEN asked why that language is in the bill.

REPRESENTATIVE HOLMES said she believes the language aligns with current state practice.

REPRESENTATIVE JOHANSEN indicated that within DOT&PF, there is a movement towards "design build and cost savings."

[9:36:11 AM](#)

MR. COUMBE, in response to Representative Johansen, said the idea for HB 239 originated from the Alaska Professional Design Council (APDC).

[9:36:40 AM](#)

MARK O'BRIEN, Chief Contracts Officer, Contracting and Appeals, Office of the Commissioner, Department of Transportation & Public Facilities, offered a review of the state's selection process. He said since the state procurement code was enacted in 1986, the department has been using a qualification-based selection process, which has been required for every federal-based contract since 1972. Currently, grant recipients in state and local governments who receive any federal aid are required to perform a qualification-based selection. Some use price as a factor and some do not, he said. Mr. O'Brien offered his understanding that there are 42 states that currently have a qualification-based selection process. Of those 42, 21 currently require what is proposed in HB 239.

[9:39:44 AM](#)

MR. O'BRIEN said in a low-price selection process, any potential design savings may be offset by higher construction or operating costs from a less than optimal design consideration. He relayed that a life-cycle cost or lifespan of a building engineered is typically about 40 years, and negotiated design fees are usually less than 1 percent of that, while the other 99 percent fall in the category of maintenance and operation costs. He said it can be short-sighted to try to save money on the 1 percent, while the other 99 percent is "expensed out over the life of the building because additional design considerations were not taken into effect." Mr. O'Brien said when design decisions are driven by low price, the emphasis of the design professional changes from being able to take advantage of the full range of design opportunities, which may affect the efficiency of the building over time, to having to focus solely on managing costs.

[9:41:51 AM](#)

MR. O'BRIEN, in response to a request for clarification, explained that the purpose of HB 239 is to change the process by which all state and local governments acquire their architectural, land surveying, and engineering services: price would no longer be a factor in the selection of the most qualified firm; it becomes a factor later on. He continued as follows:

The state, when we go out to ... acquire an architect or an engineer, we send out a request for proposal, we get in proposals from those interested firms, we evaluate them ... only on their qualifications, we take the highest ranked firm, and we enter into negotiations for the actual scope of services that we're trying to acquire. That's the process; and that's the process that this bill then imposes on local jurisdictions for state money that's handed down. So, ... the comments that I made about low price were relative to the process that may be going on out there and why it may be worthwhile to consider a qualification-based requirement.

[9:45:01 AM](#)

MR. O'BRIEN, in response to Chair Lynn, said cost containment is a project management issue rather than a selection process.

[9:46:34 AM](#)

REPRESENTATIVE SEATON offered his understanding that the proposed legislation would require [a contractor using state awarded funds] to negotiate with the most qualified entities, but would not require RFPs.

[9:48:14 AM](#)

MR. O'BRIEN said AS 36.30.270 - statute applying to architects, engineers, and land surveyors - falls under the competitive sealed proposal section of the procurement code. He said, "That issue is addressed in ... procurement code and statute and regulation for us, pointing to an RFP process in advance of that, and that is absent from this." He noted that there is one reference to rejection on page 2, line 7, which read, "The contracting person may reject all or part of a proposal submitted under this section." He said that implies that there is a proposal process.

[9:50:41 AM](#)

REPRESENTATIVE KELLER said it is obvious that Mr. O'Brien has faith in the quality selection process. He ventured, "It seems like ... you could preclude in that process the contractor that may, in fact, be the one that can give you the best product for the best price." He pointed to the word "proximity" [on page 2,

line 1], and noted that the language does not specify whether near or far is better. He expressed concern that "using criteria like that could ... prevent you from cost containment in step two."

9:52:10 AM

MR. O'BRIEN said a professional's experience and ability to provide a desired design is not necessarily tied to that professional's hourly price. He explained that a firm with a higher hourly rate may have done so many iterations of a project that it is more time efficient in carrying out the project than a firm with a lower hourly rate that has not had the same experience. He continued:

Does price tell you how much you're going to get in terms of value from that contractor? And for a professional, I would argue no. It's the same reason you wouldn't select a doctor by price, you wouldn't select an attorney by price. There are factors other than that that are more important in terms of their qualifications and their ability to perform for you the product that you're looking for.

9:54:00 AM

REPRESENTATIVE JOHANSEN offered his understanding that Mr. O'Brien said this process already takes place when federal money is being used. He asked, "We're just talking about strictly state money and some other source, and not federal money, is that correct?"

MR. O'BRIEN answered that is correct.

REPRESENTATIVE JOHANSEN asked, "Would it be fair to say that ... most every project we do has some sort of federal money involved, and that all of those are already under this umbrella, [vis-à-vis] this language?"

MR. O'BRIEN said that is correct.

REPRESENTATIVE JOHANSEN gave an example of a \$10 million dollar library project taking place in Ketchikan, using a local \$5 million municipal bond and a state appropriation for \$5 million, and asked if, under HB 239, "we would be able to do the project under these statutes."

MR. O'BRIEN replied that if HB 239 passes and that project is partially state funded, then he believes the answer is yes. He said he would have to read the law to recollect whether the distinction is partially or fully state funded.

[9:55:59 AM](#)

REPRESENTATIVE JOHANSEN questioned whether municipalities and local entities have the expertise, time, and energy to "go through this process."

MR. O'BRIEN responded, "If they're currently receiving any federal aid funds - directly or passed through to the state - they're already doing it."

[9:56:47 AM](#)

KATHIE WASSERMAN, Legislative Director, Alaska Municipal League, said AML members discussed HB 239 at AML's legislative conference last month and no one could figure out what the problem was that necessitated the proposed legislation. She said she has never heard that the procurement rules are an issue. She said a few years ago, when she was the mayor of Pelican, Alaska, the state turned over its harbors to the municipalities, and the amount of money she received to restore Pelican's harbor was very small. She said that "it's all about money," and to not be able to make decisions based on cost would "tie up everything." She mentioned the proximity requirement under HB 239, and she said although she agrees with the bill sponsor that she would not necessarily choose a doctor based on cost, she said proximity would not enter into her decision either; she would fly to Seattle to see a doctor if she had to do so. Conversely, she said she would consider cost when buying a vehicle. She said as former mayor she has received federal money many times, but has never gone through the process described by "the gentleman from DOT." She expressed doubt that what works for DOT will also work for small communities that are doing all they can with few resources.

[9:59:40 AM](#)

MS. WASSERMAN, in response to Representative Johansen, said she does not remember ever going through an RFP process any differently with federal money than with state money. In response to Representative Seaton, she offered her understanding that most municipalities have a set amount under their ordinances under which they do not require RFPs, but that amount

is usually very small. She reemphasized the relationship between a low budget and consideration of cost. In response to a follow-up question, she stated her belief that AML's problem with HB 239 is that it does not believe there is a need for it.

[10:02:07 AM](#)

REPRESENTATIVE JOHANSEN encouraged Ms. Wasserman to speak with the other municipalities about considerations of larger versus smaller communities.

[10:03:45 AM](#)

CHAIR LYNN noted that there were several people left to testify, with no time left.

[10:04:14 AM](#)

CHAIR LYNN announced that HB 239 was held over.

[10:04:52 AM](#)

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 10:05 a.m.