

ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE

April 9, 2013

8:07 a.m.

MEMBERS PRESENT

Representative Bob Lynn, Chair
Representative Wes Keller, Vice Chair
Representative Lynn Gattis
Representative Shelley Hughes
Representative Doug Isaacson
Representative Jonathan Kreiss-Tomkins

MEMBERS ABSENT

Representative Charisse Millett

COMMITTEE CALENDAR

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 63(STA)

"An Act making contracts for the preparation of election ballots subject to the provisions of the state procurement code."

- MOVED CSSB 63(STA) OUT OF COMMITTEE

HOUSE BILL NO. 139

"An Act adding to the powers and duties of the State Commission for Human Rights; and relating to and prohibiting discrimination based on sexual orientation or gender identity or expression."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 63

SHORT TITLE: CONTRACTS FOR PREPARATION OF BALLOTS

SPONSOR(S): SENATOR(S) FAIRCLOUGH

02/22/13	(S)	READ THE FIRST TIME - REFERRALS
02/22/13	(S)	STA, FIN
03/05/13	(S)	STA AT 9:00 AM BUTROVICH 205
03/05/13	(S)	Heard & Held
03/05/13	(S)	MINUTE(STA)
03/26/13	(S)	STA AT 9:00 AM BUTROVICH 205
03/26/13	(S)	Moved CSSB 63(STA) Out of Committee
03/26/13	(S)	MINUTE(STA)

03/27/13 (S) STA RPT CS 3DP 1NR NEW TITLE
 03/27/13 (S) DP: DYSON, COGHILL, GIESSEL
 03/27/13 (S) NR: WIELECHOWSKI
 04/02/13 (S) FIN RPT CS(STA) 6DP
 04/02/13 (S) DP: KELLY, MEYER, FAIRCLOUGH, BISHOP,
 DUNLEAVY, HOFFMAN
 04/02/13 (S) FIN AT 9:00 AM SENATE FINANCE 532
 04/02/13 (S) Moved CSSB 63(STA) Out of Committee
 04/02/13 (S) MINUTE(FIN)
 04/03/13 (S) TRANSMITTED TO (H)
 04/03/13 (S) VERSION: CSSB 63(STA)
 04/04/13 (H) READ THE FIRST TIME - REFERRALS
 04/04/13 (H) STA
 04/09/13 (H) STA AT 8:00 AM CAPITOL 106

BILL: HB 139

SHORT TITLE: SEXUAL ORIENTATION DISCRIMINATION

SPONSOR(S): REPRESENTATIVE(S) KERTTULA

02/22/13 (H) READ THE FIRST TIME - REFERRALS
 02/22/13 (H) STA, JUD
 04/09/13 (H) STA AT 8:00 AM CAPITOL 106

WITNESS REGISTER

SENATOR ANNA FAIRCLOUGH
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: As sponsor, presented CSSB 63(STA).

LAURA PIERRE, Staff
 Senator Anna Fairclough
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on CSSB 63(STA), on behalf of Senator Fairclough, sponsor.

KEVIN FRALEY, Owner
 Print Works & Super Software
 Homer, Alaska

POSITION STATEMENT: Testified in opposition to CSSB 63(STA).

GAIL FENUMIAI, Director
 Division of Elections
 Office of the Lieutenant Governor
 Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on CSSB 63(STA).

REPRESENTATIVE BETH KERTTULA
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As sponsor, introduced HB 139.

ELIZABETH BOLLING, Staff
Representative Beth Kerttula
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 139 on behalf of Representative Kerttula, sponsor.

ACTION NARRATIVE

[8:07:25 AM](#)

CHAIR BOB LYNN called the House State Affairs Standing Committee meeting to order at 8:07 a.m. Representatives Isaacson, Keller, Kreiss-Tomkins, and Lynn were present at the call to order. Representatives Gattis and Hughes arrived as the meeting was in progress.

SB 63-CONTRACTS FOR PREPARATION OF BALLOTS

[8:07:45 AM](#)

CHAIR LYNN announced that the first order of business was CS FOR SENATE BILL NO. 63(STA), "An Act making contracts for the preparation of election ballots subject to the provisions of the state procurement code."

[8:08:39 AM](#)

SENATOR ANNA FAIRCLOUGH, Alaska State Legislature, as sponsor, presented CSSB 63(STA). She said the proposed legislation would bring back fairness and competition, by requiring the Alaska Division of Elections to use the state procurement code to solicit bids for the preparation of election ballots.

[8:09:59 AM](#)

REPRESENTATIVE ISAACSON said he appreciates the sponsor's bringing forward CSSB 63(STA), because printers in the Fairbanks area have complained to him that they have never had a shot at

printing [election ballots]. He indicated he would like some explanation regarding [paragraph] (10), on page 3, [lines 4-19], which read as follows [original punctuation provided]:

(10) A nonpartisan ballot shall be designed for each judicial district in which a justice or judge is seeking retention in office. The ballot shall be divided into four parts. Each [AND EACH] part must bear a heading indicating the court to which the candidate is seeking approval, and provision shall be made for marking each question "Yes" or "No."[.] Within each part, the question of whether the justice or judge shall be approved or rejected shall be set out in substantially the following manner:

(A) "Shall be retained as justice of the supreme court for 10 years?";

(B) "Shall be retained as judge of the court of appeals for eight years?";

(C) "Shall be retained as judge of the superior court for six years?"; or

(D) "Shall be retained as judge of the district court for four years?" [PROVISION SHALL BE MADE FOR MARKING EACH QUESTION "YES" OR "NO."]

[8:10:41 AM](#)

LAURA PIERRE, Staff, Senator Anna Fairclough, Alaska State Legislature, on behalf of Senator Fairclough, sponsor of CSSB 63(STA), pointed out that the change made in paragraph (10) is a technical one: the language regarding a provision for marking each question "yes" or "no" was moved by the bill drafter in Legislative Legal and Research Services from lines 18-19 [to lines 7-8].

REPRESENTATIVE ISAACSON observed that by moving the language, the intent is that it would apply to [subparagraphs (A) through (D)], rather than just to subparagraph (D).

MS. PIERRE responded that is correct.

[8:12:03 AM](#)

KEVIN FRALEY, Owner, Print Works & Super Software, testified in opposition to CSSB 63(STA). He said the proposed legislation

would "take away the appropriate decision-making power" of the Division of Elections, thus handicapping the division, which he warned would make it more difficult to ensure the accountability, security, and integrity of Alaska's elections. He talked about an exemption given to the division, which would be taken away under CSSB 63(STA), and about an "understanding of what is the highest priority." He indicated the focus of conversation has moved to printers and fair bidding, he questioned if "the outcome of an election has taken a back seat to fostering fair competition," and he asked if an election is "less important today than it was then." He said the main focus since the division was given the exemption has been on the voters and the division's ability to give the voters the tools they need to cast their votes. He asked the committee to consider what is most important: to provide fair bidding of a printing job and (indisc.) the printers or to ensure that the ballots work on Election Day.

MR. FRALEY stated that having produced the ballots for Alaska's last six elections, he knows from experience that the project is "far more than simply putting ink on paper." He opined that the division is not ordering half a million tourism brochures, but is dealing with the most critical and delicate component of state and federal elections: the ballot. He reiterated that the proposed legislation would handicap the division, potentially preventing the division from guaranteeing the integrity of future elections. He stated that making wise and prudent decisions is the responsibility of the committee, and he opined that focusing on "making a few bucks for Alaskans" and "making it ... fair for a few print shops" in the state is wrong. He said the one factor that can derail an election is if the ballots are printed incorrectly. He opined that the proposed legislation is about ballots; therefore, the conversation must stop being about "being fair and competitive to a few businesses."

MR. FRALEY asked the committee to consider the repercussions of, for example, ballots not feeding correctly through the voting units. He talked about an occurrence in Anchorage where ballots were not distributed properly, and as a result older voters could not cast a vote. He indicated that jobs were lost as a result of that incident. He said the division deserves thanks, but instead, would be penalized under CSSB 63(STA), which would take away the division's ability to make the decisions it believes need to be made. He emphasized that the division has done nothing wrong.

[8:17:37 AM](#)

CHAIR LYNN asked if there is only one printer who can print ballots accurately and get them delivered on time.

MR. FRALEY answered that there are two printers in the state who are certified to produce ballots.

[8:18:08 AM](#)

REPRESENTATIVE ISAACSON asked Mr. Fraley to confirm he had testified he is the one who has held the contract for the last six [elections].

MR. FRALEY answered that is correct.

[8:18:26 AM](#)

SENATOR FAIRCLOUGH emphasized that Mr. Farley's company is beyond reproach, and the bill is not a reflection of anything that he has done, but is just about trying to offer a fair process for all. She suggested asking Mr. Farley if he had referred to the certification process for the AccuVote System, and she offered her understanding that that process may have changed over time. She said she introduced a bill many years ago, during which discussions were held regarding the technical aspects required for certification. She said many of the printers today are much more technically savvy than they were five years ago.

[8:19:35 AM](#)

MR. FRALEY said the printer responsible [for printing ballots] must fully comply with requirements, such as registration and ink density, as well as understand what can go wrong with voting machines and how critical alignment is. He said he is not sure if the Division of Elections has "that guideline," but said he knows the division fully understands what can go wrong. He opined it is critical that the process of certification take place. He added, "There is a difficulty in that, and that is that the person that is responsible to produce those certifications is a major competitor, and they're not interested in certifying more people."

[8:21:31 AM](#)

GAIL FENUMIAI, Director, Division of Elections, Office of the Lieutenant Governor, said she does not believe there is a full-fledged certification process at the present time. Nevertheless, she said Mr. Fraley is correct that a printer must have in-depth knowledge of many factors involved with ballot printing.

[8:22:23 AM](#)

REPRESENTATIVE ISAACSON asked if it is possible that presuming more than one or two printers in Alaska could be qualified to print ballots is "rash and foolish."

[8:23:02 AM](#)

MS. FENUMIAI answered she would not call it rash and foolish. She explained that the division is not against competitive bidding and understands the sponsor's intent; however, even though the proposed legislation has been amended from low bid to full-fledged request for proposal (RFP), there are still risk factors involved in changing to an unknown printer.

REPRESENTATIVE ISAACSON indicated his previous question had been tongue-in-cheek, because he is offended at the thought that other printers in the state could not handle the precise nature of the print work. He offered his understanding that there are excellent printers who have wanted the opportunity to submit a proposal to the state but "have not yet been able to do so."

MS. FENUMIAI said she knows of one other printer in the state that has printed ballots and approached the division "at one point in time." She offered her understanding that the division has not been approached by any other printer in Alaska inquiring about ballot printing.

REPRESENTATIVE ISAACSON proffered that under CSSB 63(STA), other [printers] throughout the state would be afforded the opportunity.

MS. FENUMIAI concurred that [printers] would have the ability to provide a competitive sealed bid.

[8:24:43 AM](#)

REPRESENTATIVE KELLER asked Ms. Fenumiai to describe the risk, to which she previously referred.

MS. FENUMIAI explained that when printing ballots, the print marks and cut marks need to be exact. If the ballots are cut incorrectly, they may be misread and have to be hand counted, thereby slowing down the process and perhaps giving cause for some voters to wonder if their votes will count. She related that since Mr. Fraley's company has been printing ballots, the division has "never encountered an incident like that."

REPRESENTATIVE KELLER said he presumes there are consequences spelled out for any mistakes made by the current printer, and he asked how those consequences would differ from those given other prospective printers.

MS. FENUMIAI deferred to Vern Jones, the chief procurement officer for the State of Alaska. Notwithstanding that, she stated that a contractor that fails to fulfill an RFP bid would see ramifications; however, she said she does not know if the same kind of penalties would apply to [mistakes made by] a sole-source provider.

REPRESENTATIVE KELLER said it seems like the division would have a lot to say about the criteria that goes into a contract, irrespective of whether the contract is based on RFPs or a sole source.

[8:28:09 AM](#)

MS. FENUMIAI, in response to Chair Lynn, confirmed that the division does receive proofs from the printer; however, she said it is not possible to tell during the proofreading process whether the tiny marks are "off." The printer runs test ballots through the units to ensure that "the tiny marks are recording correctly." She said the test is required by the division. She deferred to Mr. Fraley for further explanation of the process.

[8:29:31 AM](#)

REPRESENTATIVE KELLER recalled that Mr. [Fraley] had commented that an RFP process would threaten security, and he said he would like assurance that the security process would not be adversely affected under CSSB 63(STA). He then queried which company printed the state's election ballots before Print Works & Super Software.

MS. FENUMIAI, to Representative Keller's first question, said there is an accountability factor - involving the proper numbering, sequencing, and delivery of ballots - which she does

not believe would be in jeopardy, because it could be spelled out specifically in the RFP. Regarding the second question, she relayed that prior to 2002, ballots were printed Outside. She offered her understanding that the company used was Sequoia Printing Services in California. The decision was made to move to an in-state printer in 2002.

[8:31:10 AM](#)

REPRESENTATIVE HUGHES opined that there would always be transitions and risks; therefore, she asked if the division has a "solid set of criteria and safeguards" ready to apply to an RFP. She asked if the division would consider a test ballot as part of the RFP process.

[8:32:51 AM](#)

MS. FENUMIAI answered that she thinks [having] ballot printing equipment and prior ballot printing experience is important. She named that which would be set out in an RFP: testing and proofing requirements, explanation of the numbering and "stubbing" systems, and the accountability for packaging and delivery. She opined that the testing of ballots prior to delivery is one of the most important things done to ensure properly working ballots that will work on election day.

[8:33:51 AM](#)

MS. FENUMIAI, in response to Representative Kreiss-Tomkins, stated that the division is "going to implement the law to the will of the legislature." She said the division worked with the bill sponsor in terms of changing from a low-price-only system, which the division agrees is probably not in the best interest of the state. She concluded, "We can live with the bill the way that it is written." In response to follow-up questions, she said "the exemption" has been in place since 1986, and other states have a variety of ways to address ballot printing.

[8:35:25 AM](#)

SENATOR FAIRCLOUGH proffered that about a decade ago, Alaska began counting ballots electronically, following which the state transitioned in to the AccuVote system, which required the state purchase new equipment, which made it more critical to have a printer that could work within specifications. She recollected that when the AccuVote system was first put in place, testing and certification was required to be allowed to use the

machines. She described allowing other [printers] to compete as a transition period for the state. She reiterated that Mr. Farley's company has done a great job, but said printers across the state would like the opportunity to compete for the job.

[8:36:45 AM](#)

CHAIR LYNN [closed public testimony].

[8:36:54 AM](#)

REPRESENTATIVE KELLER moved to report CSSB 63(STA) out of committee, with individual recommendations and the accompanying fiscal notes. There being no objection, CSSB 63(STA) was reported out of the House State Affairs Standing Committee.

HB 139-SEXUAL ORIENTATION DISCRIMINATION

[8:37:32 AM](#)

CHAIR LYNN announced that the last order of business was HOUSE BILL NO. 139 "An Act adding to the powers and duties of the State Commission for Human Rights; and relating to and prohibiting discrimination based on sexual orientation or gender identity or expression."

[8:38:34 AM](#)

REPRESENTATIVE BETH KERTTULA, Alaska State Legislature, as sponsor, introduced HB 139. She thanked the committee members for input they had given regarding the proposed legislation, and indicated the intent to continue working on it during the interim. She credited her staff, Elizabeth Bolling, as having done most of the work on HB 139. She noted that Skiff Lobaugh, as director of Personnel for the Legislative Affairs Agency and someone who works on issues related to human resources and employment, was present to answer questions.

[8:40:17 AM](#)

CHAIR LYNN announced that there would be no time to hear public testimony at the present time. He remarked upon the important nature of HB 139 and said there have been cultural changes in the world. He stated, "Frankly, it's a sign of the times that we're considering legislation such as this." Chair Lynn emphasized the need to consider all points. He asked the

sponsor's staff to address the sectional analysis [included in the committee packet].

[8:41:14 AM](#)

ELIZABETH BOLLING, Staff, Representative Beth Kerttula, Alaska State Legislature, presented HB 139 on behalf of Representative Kerttula, sponsor. She stated that HB 139 would protect Alaskans from overt discrimination on the basis of sexual orientation and gender identity or expression. The protection would pertain to employment, housing, public accommodations, and financing or credit. She relayed that currently those working in the executive branch are protected [from discrimination] by administrative order; however, the order does not apply to the two other branches of government in Alaska, the general public, or retired military personnel.

MS. BOLLING said employers that prefer a particular dress code have the right to put one in place; they have the right not to hire someone if they feel that person does not hold the values of their organization. For example, she said Catholics are not required to hire atheists to work in the church or women to work as priests. These exceptions would still apply under HB 139. She stated that people have a right to say if they do not think a person is a good match for their organization. For example, she said AS 18.80.230 (b) allows companies, such as the fitness organization, "Curves," to refuse to hire or accommodate persons who are not the sex of their regular clientele, thus, a female can go to Curves and expect an all-female environment.

MS. BOLLING emphasized it is important to remember that HB 139 would not only protect those who are homosexual, but also those who are heterosexual. She said people often perceive gender identity and orientation before being "told by people themselves." She added, "We can misinterpret people's expression of affection." She stated, "It shouldn't be illegal to avoid hiring someone because you think they might be different than you like." She said retired military personnel often struggle in the transition from military life, where they are protected, to civilian life, where "there is no protection," and she expressed concern that that puts those returning soldiers in a difficult position.

CHAIR LYNN offered his understanding that the Municipality of Anchorage had proposed an ordinance, which he did not pass. He asked Ms. Bolling to give a brief description of how HB 139 differs from the ordinance that was debated in Anchorage.

MS. BOLLING responded that Proposition 5 provided for gender identity and sexual orientation, but did not provide for expression. In response to Chair Lynn, she explained that the word "expression", as used in HB 139, refers to hand holding, hugging, and kissing.

[8:44:37 AM](#)

REPRESENTATIVE KELLER directed attention to the words "behavior" and "expression", on page 8, line 9, of HB 139, and he asked what the difference between the two words is under the proposed bill.

MS. BOLLING answered, "Behavior is just someone's actions or words, but expression also includes their clothing styles." She indicated that under HB 139, employers would still be allowed to enforce a dress code and "all the exceptions that are currently in place [would] still apply." She said expression includes "things that are nonverbal and verbal."

CHAIR LYNN asked if that would include manner of dress.

MS. BOLLING answered yes.

[8:45:47 AM](#)

REPRESENTATIVE KREISS-TOMKINS asked who would be affected by HB 139.

MS. BOLLING suggested that there were testifiers who could answer that question if there was enough time to hear testimony. She said HB 139 would make everyone feel safe, regardless of his/her gender identity.

CHAIR LYNN asked those who signed up to testify to submit written testimony.

[8:46:59 AM](#)

REPRESENTATIVE HUGHES remarked, "In the list of the various things, already ... it lists race, religion, color, national origin, age, and sex." She asked Ms. Bolling "why that isn't adequate and why you feel that additional item needs to be listed."

MS. BOLLING responded as follows:

I called the Human Rights Commission under the Office of the Governor, and asked them that question, and they weren't able to get back to me in time, so the truth is that I don't know, and frankly ... I see why it could protect. But since, I think, many people feel like there isn't protection, it's important to add this to make it specific, so it's clear that you really cannot discriminate against people for their sexual orientation.

[8:48:11 AM](#)

REPRESENTATIVE HUGHES asked for an example of how heterosexuals would benefit from the protection proposed under HB 139.

MS. BOLLING answered that under HB 139, a heterosexual who wanted, for example, to join a group such as Parents, Families, & Friends of Lesbians and Gays (PFLAG) or the [Juneau] Pride Chorus, could not be denied membership.

[8:48:50 AM](#)

REPRESENTATIVE ISAACSON said Ms. Bolling had said churches are allowed to not hire women as priests, and he asked why PFLAG would not be able keep anyone out of its organization who did not fit its culture.

MS. BOLLING answered, "Simply because it's not provided for in the law." In response to the chair, she added, "There's no exception for that in our statutes."

REPRESENTATIVE ISAACSON said he does not see how "this is going to provide them with that either, because ... you're adding to the list, but you're not ... specifying ... homosexual groups have to hire heterosexuals."

MS. BOLLING asked if Representative Isaacson would like that exception added to the proposed bill. She said currently there is no exception "for that sort of thing."

REPRESENTATIVE ISAACSON clarified that he is not asking for that, but said there is an inconsistency in Ms. Bolling's argument. He stated, "At this point I wouldn't be able to ... vote to go forward, you know, in that regard."

[8:50:43 AM](#)

REPRESENTATIVE HUGHES remarked that the aforementioned exception for priesthood is an exception based on sex, and if that exception is allowed, she asked, "Why could there not be an exception made for that?"

[8:51:16 AM](#)

REPRESENTATIVE KERTTULA said these are the kinds of questions she welcomes. She stated she believes the reason [for the exception regarding priesthood] is because of the First Amendment freedom of religion and right to association. She said there is a distinction in employment, which seems fundamental in this discussion, and that is that one cannot discriminate when "reasonable demands of the position do not require distinction." However, she said there are obviously certain things that would require a distinction. She indicated that clear answers to questions could be arrived at through ongoing discussion.

MS. BOLLING clarified that both the Human Rights Commission and Legislative Legal and Research Services informed her that although priests do get paychecks and are provided housing, it is considered religious office, not employment. She added, "So, that's part of the exception."

REPRESENTATIVE KERTTULA thanked the committee for its consideration of HB 139 and its willingness to "help all Alaskans no matter ... their race, creed, sex, sexual identity, or gender." She concluded, "It's an exciting and good day."

[HB 139 was held over.]

CHAIR LYNN thanked the committee for its work this session, and offered his understanding that today's meeting would be the last in-session meeting of 2013.

[8:53:20 AM](#)

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 8:53 a.m.