

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS STANDING COMMITTEE

March 5, 2013

9:06 a.m.

MEMBERS PRESENT

Senator Fred Dyson, Chair
Senator Cathy Giessel, Vice Chair
Senator John Coghill

MEMBERS ABSENT

Senator Bert Stedman
Senator Bill Wielechowski

COMMITTEE CALENDAR

SENATE BILL NO. 63

"An Act relating to contracts for the preparation of election ballots."

- 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

WITNESS REGISTER

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

POSITION STATEMENT: Presented information on SB 63 on behalf of the sponsor.

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

POSITION STATEMENT: Voiced concerns regarding SB 63.

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

POSITION STATEMENT: Testified in opposition to SB 63.

PATRICK FOSTER, Sales Representative
A.T. Publishing & Printing, Inc.
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 63.

ACTION NARRATIVE

[9:06:47 AM](#)

CHAIR FRED DYSON called the Senate State Affairs Standing Committee meeting to order at 9:06 a.m. Present at the call to order were Senators Giessel, Coghill, and Chair Dyson.

SB 63-CONTRACTS FOR PREPARATION OF BALLOTS

[9:07:20 AM](#)

CHAIR DYSON stated that SB 63 was before the committee.

LAURA PIERRE, staff, Senator Anna Fairclough, presented SB 63 on behalf of the sponsor. She related that SB 63 requires the Division of Elections to go out to bid for the preparation of ballots for state elections. The Division of Elections offers a sole-sourced contract to whomever they wish. The company that is currently printing the ballots has had the contract for about 12 years. The price is just under \$600,000 a year.

She reported that the SB 63 would require the division to go out to bid for the preparation of ballots. It does not put the process under the procurement code, but under the director of the division, which would provide for more flexibility when writing the bid and determining the best company. The division would have to issue the contract to the lowest bidder, with discretion as to the bidder's qualifications.

[9:09:03 AM](#)

SENATOR GIESSEL questioned the statement that the bid process lies outside the procurement process. She referred to Section 2 (b) where the consideration of the Alaska bidder preference of 5 percent and the Alaska product preference of 7 percent are mentioned.

MS. PIERRE clarified that the bidders could still qualify for those two preferences. She explained that the bidding process would not be handled by the State Procurement Office in General Services, which usually handles multi-agency procurements. Senate Bill 63 would require the Division of Elections to handle the competitive proposal process.

SENATOR GIESSEL asked why the percentages are specified in (b). She questioned what would happen if those preferences change.

MS. PIERRE replied that the percentages in (b) are what are currently found in statute. The legislature can choose to change them in the future and Section 2 would be amended to comply.

SENATOR GIESSEL suggested it would be better to say just "Alaska bidder preference" and "Alaska product preference" rather than include actual percentages.

CHAIR DYSON asked if the amounts of both preferences are established in code somewhere else.

MS. PIERRE said yes. She said the same language is found in procurement statutes. The maximum percentage deduction that an Alaska bidder/product preference could receive is 12 percent.

CHAIR DYSON said the awarding of the contract for preparation of election ballots does not fall under the procurement code, but some preferences found in the code would still apply.

MS. PIERRE said yes; only the two preferences would apply.

CHAIR DYSON thought it meant an Alaska bidder qualifies for the deduction under state contracts.

9:12:00 AM

MS. PIERRE explained the sections of the bill. Section 1 changes current language when preparing for bids and makes technical changes. The drafting attorney chose to update some of the words used. On line 11, "assure" was changed to "ensure," and on line 14, "may" was changed to "shall."

CHAIR DYSON asked the difference between "assure" and "ensure."

MS. PIERRE thought ensure was more of a guarantee.

MS. PIERRE continued to explain Section 1. She said that page 2 of the bill is current statute. Page 3 has drafting changes.

Lines 4 and 5 on page 3, "and provisions shall be made for marking each question 'yes' or 'no'" are moved from lines 15 and 16.

She explained that new Section 2 is on page 4 and outlines for the division the process for going out to bid and includes the Alaska bidder and Alaska product preferences.

[9:15:05 AM](#)

CHAIR DYSON asked if there were preferences for women-owned or Native-owned bidders.

MS. PIERRE did not think any other preferences applied to Section 2.

CHAIR DYSON agreed.

MS. PIERRE related that Section 3 is found on page 5 and deals with applicability; the bill would apply to the printing of ballots for elections conducted on or after January 1, 2014.

CHAIR DYSON expressed Senator Fairclough's wish to give the department time to prepare for the changes.

[9:16:17 AM](#)

SENATOR COGHILL asked how a "responsible" bidder is determined, as stated in Section 2 (b).

MS. PIERRE said the RFP provides the director of the division some flexibility in determining and evaluating "responsible."

SENATOR COGHILL guessed that the RFP determines the responsibility.

MS. PIERRE said yes.

CHAIR DYSON said his experience with bidding on state work is that the state wants to see a positive track record from the bidder and criteria is clearly stated in the RFP.

MS. PIERRE explained a previous concern of the sponsor with issues of changing a printing company. She emphasized that the sponsor understands that the division tests ballots prior to elections to ensure that everything runs smoothly.

[9:18:54 AM](#)

GAIL FENUMIAI, Director, Division of Elections, Office of the Lieutenant Governor, answered questions related to SB 63. She addressed impacts the bill would have on the division. She provided the history of ballot printing. Prior to 2002 the division changed from the ballot vendor in California to an instate printer who had the appropriate equipment and had been through the training in order to produce ballots. She said that has been a successful relationship ever since.

She shared her opinion that, though the division likes the idea of competition, the low bidder is not practical or feasible when printing ballots. She stressed the importance of having a correctly printed ballot.

[9:22:13 AM](#)

MS. FENUMIAI emphasized that the division needs a measure of certainty when it comes to ballots. She spoke of the political environment, public scrutiny, and challenges from political parties. She said the rapport and trust of the vendor has to be considered. A vendor has to be able to take ownership in their product and stick with the division when things go bad, which the current vendor does. She did not think the low bid award would give the division the best value. She said the bill does allow for Alaska bidder product preferences, but the other preferences that are contained in AS 36.30, such as minority business owners, disabled bidders, or Alaska veteran preferences, are not considered in this bill.

MS. FENUMIAI stated that she would like to see a competitive process that includes additional evaluating criteria, such as prior experience and ability to meet a contract on time. She thought that SB 63 would not allow for that; instead, the division must go with the lowest bid. She said she would hate to take such a risk when choosing a printer.

She maintained if the division is required to "outbid" ballots, the best way would be to do a competitive field proposal. The advantages of an RFP would include things like being able to evaluate factors other than cost. She concluded that an RFP could possibly work if the process was started early enough, although it would not be ideal under the division's timeline.

[9:25:22 AM](#)

SENATOR COGHILL said he shared the same concern. He asked if the "responsible" language would give the division the ability to write criteria into the RFP.

MS. FENUMIAI did not think the bill allowed for the full competitive field bid process. She did not know what restrictions were involved.

CHAIR DYSON said he appreciates Ms. Fenumiai's dedication to getting a satisfactory product in a very timely fashion. He requested information about the division's time restraints.

MS. FENUMIAI recalled the 2012 primary election when the division had 22 days between the date the ballot were certified for printing and the date the ballots were required to be in the various offices. There were only 7 days between the date the ballots were certified and the date the test ballots were needed in the offices in order to perform testing. It was a very tight timeline. In 2004 there was a court challenge which required general election ballots to be reprinted due to ballot measure initiative language. She added that it was a very time-compressed printing process and not simple.

[9:28:24 AM](#)

CHAIR DYSON requested information about printing local elections.

MS. FENUMIAI said they do not handle local election ballots.

CHAIR DYSON asked if Ms. Fenumiai had any suggestions for providing more flexibility with criteria. He assumed reliable performance was primary and cost was secondary.

MS. FENUMIAI agreed that experience and reliability are the most important factors in the confidence of the division and in voters knowing that their ballots will work. She said that she is not a procurement expert, but she wished to see those two factors included in the evaluation criteria of a RFP.

CHAIR DYSON asked if her office could consider suggestions for changes to the bill, if given more time.

MS. FENUMIAI said she would be glad to do so. She offered to work with Senator Fairclough's office.

[9:31:16 AM](#)

CHAIR DYSON voiced concern that the division could be locked into a vendor situation that takes advantage of their contract.

MS. FENUMIAI replied that the current vendor has kept prices steady. She understood that his prices are lower than prices of

ballot printing companies in the Lower 48. She thought Ms. Pierre had a spreadsheet that lists the amount the division has spent on ballots over the years.

CHAIR DYSON concluded that reliability and dependability should be included as high criteria at the division's request after discussing it further.

MS. FENUMIAI said she would be very interested in working with the sponsor, her staff, and the procurement officer in order to get a successful product to put out to competitive bid that would meet the desire of the legislature and the sponsor.

CHAIR DYSON agreed with Senator Coghill that the bill does allow the division to make the evaluation with respect to requirements and criteria set out in it, and to look for a vendor that is responsible and responsive. He said he would hold the bill over in order to allow the division to work on criteria which will result in getting accurate ballots out on time.

9:34:48 AM

KEVIN FRALEY, Owner, Print Works and Super Software, related that he is the vendor that has produced ballots for the state of Alaska since 2002. He testified in opposition to SB 63 because it would take away the division's ability to insure a secure and trouble-free viable election. He said the most troubling part of the bill is on page 4, "the director shall award a contract for preparation of election ballots to the lowest responsible and responsive bidder." He voiced opposition to the bill because of the risky nature of giving the most critical part of Alaska's election process to the lowest bidder. The bill will tie the hands of the division because it will take away their ability to choose the best and surest option.

MR. FRALEY maintained that SB 63 does not take into account the care needed to produce ballots. He shared details about ballot preparation and delivery. He noted in 2004 the ballots had to be reprinted, and his company delivered the ballots in 4 days. He stressed that the division must have confidence in the ballot printer and the election must proceed without incident every time.

He requested that the committee allow the director to retain her ability to ensure a quality election. The division was given an exemption from the bid process because of the sensitivity and importance of statewide and national elections.

He spoke of the reference to the testing of ballots before elections. He said a set of test ballots are made, but not every ballot can be tested to see that the database works and the printing works. If the process is mishandled it would be very easy for wrong ballots to be produced. It is critical that the division maintain control of how and who produces ballots.

[9:40:48 AM](#)

SENATOR COGHILL thanked Mr. Fraley for a job well done. He wondered how a new entrant would ever qualify for this job.

MR. FRALEY imagined the division would use the same process they used to choose Print Works. He described the battery of tests to ensure they could deliver and could understand the ballot process. He said they also did multiple site inspections and used Print Works on small elections at first. He compared printing ballots to printing currency.

SENATOR COGHILL agreed that it is like printing currency. He suggested reliability should be included in the bidding process.

CHAIR DYSON thanked Mr. Fraley for his testimony.

[9:43:27 AM](#)

PATRICK FOSTER, Sales Representative, A.T. Publishing & Printing, Inc., testified in support of SB 63 because he thought it was unfair to continue to sole source the printing of Alaska's election ballots. He thought it reasonable to think that other printing companies could benefit by the contract. He maintained that the job is not that difficult. There are many companies that are fully capable of handling the work, and the work is not beyond the scope of printing companies.

He related that A.T. Publishing printed the ballots for Anchorage from 2004 to 2006 and it intends to bid on them again in 2014. He noted that Anchorage saved money and received a quality ballot.

He suggested that the state create a performance renewal process that would take place every four years. He said the division is currently prevented from having to seek competitive bids for ballot printing. He encouraged a level playing field and spoke of advantages of not relying on one company to print ballots. He urged passage of SB 63.

[9:48:33 AM](#)

SENATOR COGHILL asked how Mr. Foster envisioned a performance expectation included in an RFP. He wondered if it was reasonable for a company to prove it could meet a performance schedule.

MR. FOSTER said there are a number of ways that performance can be written into an RFP. He spoke of other companies such as Chugach Electric that have ballot printing, use the lowest bidder process, and require detailed criteria. He said there are many companies in the printing community that could handle the ballot printing process.

SENATOR COGHILL said the big question is whether "responsible" could be included in an RFP and not be out of line.

MR. FOSTER thought it would be reasonable.

[9:51:44 AM](#)

CHAIR DYSON asked how long the original contract was.

MS. PIERRE thought the current contract was for 12 years.

CHAIR DYSON asked how long Print Work's first contract was. He asked Mr. Foster how long a contract should be.

MR. FRALEY suggested that four years would be sufficient. Currently, there is a year-by-year contract; there is no standing contract. Every year the division has asked for pricing information.

CHAIR DYSON stated he would hold SB 63 in committee.

[9:54:32 AM](#)

There being no further business to come before the committee, Chair Dyson adjourned the Senate State Affairs Standing Committee at 9:54 a.m.