

ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE

February 9, 2017

3:02 p.m.

MEMBERS PRESENT

Representative Jonathan Kreiss-Tomkins, Chair
Representative Gabrielle LeDoux, Vice Chair
Representative Chris Tuck
Representative Adam Wool
Representative Chris Birch
Representative DeLena Johnson
Representative Gary Knopp

MEMBERS ABSENT

Representative Andy Josephson (alternate)
Representative Chuck Kopp (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 91

"An Act relating to fees for certain persons filing disclosure statements or other reports with the Alaska Public Offices Commission; relating to a tax on legislative lobbyists; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 50

"An Act relating to the procurement of architectural, engineering, or land surveying services for state-funded contracts."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 91

SHORT TITLE: APOC REGISTRATION FEES; LOBBYIST TAX

SPONSOR(S): REPRESENTATIVE(S) KITO

01/30/17	(H)	READ THE FIRST TIME - REFERRALS
01/30/17	(H)	STA, FIN
02/09/17	(H)	STA AT 3:00 PM GRUENBERG 120

BILL: HB 50

SHORT TITLE: PROF. SERVICES IN STATE-FUNDED CONTRACTS

SPONSOR(S): REPRESENTATIVE(S) KITO

01/18/17 (H) READ THE FIRST TIME - REFERRALS
01/18/17 (H) STA, FIN
02/09/17 (H) STA AT 3:00 PM GRUENBERG 120

WITNESS REGISTER

REPRESENTATIVE SAM KITO
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 91, as prime sponsor.

HEATHER HEBDON, Executive Director
Alaska Public Offices Commission (APOC)
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 91.

CRYSTAL KOENEMAN, Staff
Representative Sam Kito
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions on HB 91 on behalf of Representative Kito, prime sponsor.

KEN ALPER, Director
Tax Division
Department of Revenue (DOR)
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 91.

REPRESENTATIVE SAM KITO
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 50, as prime sponsor.

DALE NELSON, Chair
Legislative Liaison Committee
Alaska Professional Design Council (APDC)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 50.

ACTION NARRATIVE

[3:02:47 PM](#)

CHAIR JONATHAN KREISS-TOMKINS called the House State Affairs Standing Committee meeting to order at 3:02 p.m. Representatives LeDoux, Tuck, Wool, Birch, Knopp, and Kreiss-Tomkins were present at the call to order. Representative Johnson arrived as the meeting was in progress.

HB 91-APOC REGISTRATION FEES; LOBBYIST TAX

[3:04:21 PM](#)

CHAIR KREISS-TOMKINS announced that the first order of business would be HOUSE BILL NO. 91, "An Act relating to fees for certain persons filing disclosure statements or other reports with the Alaska Public Offices Commission; relating to a tax on legislative lobbyists; and providing for an effective date."

[3:04:37 PM](#)

REPRESENTATIVE SAM KITO, Alaska State Legislature, presented HB 91, as prime sponsor. He stated that HB 91 would establish a fee for candidates, groups, and public officials filing financial reports, as well as a 2.5 percent tax on lobbyists.

REPRESENTATIVE KITO stated that a couple of years ago the Alaska State Legislature provided additional receipt authority to the Alaska Public Offices Commission (APOC) and directed it to increase fees to address budgetary shortfalls. He said that APOC currently has statutory authority to collect a \$250 fee per lobbyist client. Representative Kito offered that since APOC has no other way to collect revenue, he looked for a legislative solution. He mentioned that he worked with the former executive director of APOC, Paul Dauphinais, to identify a means to increase program receipts and to increase staffing levels to accommodate lobbying reporting activities.

REPRESENTATIVE KITO relayed that HB 91 would raise approximately \$425,000 under the proposed 2.5 percent tax and an additional \$100,000 in registration fees. He said that the revenue would support the \$750,000 budget and allow APOC to hire additional staff in the lobbyist section of the organization. He explained that the reason HB 91 proposes taxes instead of an additional fee is that increasing the fee on the lower paying clients would

be inequitable. He maintained that a percentage [of income] tax would be graduated based on lobbying fees.

REPRESENTATIVE KITO concluded by saying that the goal of the proposed legislation is to support the activities of APOC: to ensure campaigns and lobbying activities are adequately reviewed; to ensure reports are audited in a timely fashion; and to generate enough resources to protect the public's interest in reporting lobbying activities, campaign activities, and financial disclosures.

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REPRESENTATIVE KNOPP asked why HB 91 proposes to reduce registration fees if the goal is to raise revenue. He mentioned that some of his campaign staff, who had national experience, considered Alaska's APOC reporting requirements to be among the most stringent in the country. He asked if there has been further discussion about APOC reforms.

REPRESENTATIVE KITO responded that the registration fee would be eliminated in favor of the 2.5 percent tax. He maintained that this tax would double the amount of revenue from lobbyists to APOC. He stated that the drafters of HB 91 intentionally avoided policy discussions about the operations and statutes of the commission. He added that even though Alaska has some of the most stringent campaign finance laws in the country, some Alaskans support them. He emphasized that the intent of HB 91 is to ensure there is receipt authority and resources available for APOC to do its job.

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REPRESENTATIVE BIRCH asked if Representative Kito solicited comment from anyone in the lobbying community. He said that looking at the figures, he estimates that lobbyists are spending about \$150,000 per legislator.

REPRESENTATIVE KITO stated that he had several conversations with members of the lobbying community after introduction of the bill. He reported there were no serious concerns. He added he received a few comments from lobbyists who were glad to participate and help with APOC's fiscal situation. He emphasized that the revenue would not go into the general fund but would go toward better oversight and reporting by APOC. He asserted that when APOC can conduct reviews and audits before

finances accumulate, then lobbyists, campaigns, and the public all benefit.

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REPRESENTATIVE BIRCH asked if the comments were solicited anonymously.

REPRESENTATIVE KITO answered he did not know if those commenting wanted anonymity. He maintained written or oral testimony to the committee is certainly welcome.

REPRESENTATIVE BIRCH commented that the issue could be delicate and asked what the cost would be for a candidate.

REPRESENTATIVE KITO responded that for candidates and groups, the registration fee would be \$100 and \$50 to file financial disclosures. He relayed a Department of Administration (DOA) suggestion: for a campaign spanning two years, a single registration may be more appropriate. He said his staff is working actively with DOA to identify enhancements to HB 91 that will not change the intent of the bill.

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REPRESENTATIVE LEDOUX stated that there is lobbying and there is consulting, and since there has been no tax on lobbyists previously, there would have been no incentive to characterize one's activities as one or the other. She asked if HB 91 would include consulting activities. She questioned whether income from work done outside of the capitol building, which was more in the category of strategizing, might be labeled consulting and consequently shielded from HB 91.

REPRESENTATIVE KITO said that the APOC statutes have clear definitions for what constitutes the activity of lobbying, including the amount of time in direct contact with legislators and payment for activities that involve influencing legislators. He asserted that whether one calls oneself a lobbyist or a consultant, the APOC lobbying definition would still apply and the category of people required to pay the registration fee would not change. He added that HB 91 wouldn't change the definitions for lobbying, only the mechanism for paying the fee.

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REPRESENTATIVE LEDOUX asked, "Since this is a tax on only one professional category, is there any thought that this might run into First Amendment problems?" She suggested that lobbyists may "petition" their government, which is considered free speech. She offered that because free speech is a fundamental right, it receives the greatest amount of scrutiny by a court. She asked if there has been any legal analysis of that aspect.

REPRESENTATIVE KITO answered that his staff has had conversations with Legislative Legal and Research Services regarding this concern. He said it was less of an issue with the "lobbying side" of the proposed legislation and more of an issue with the "campaign side." He offered that with the \$100 and \$50 fees on the campaign side of the proposed legislation, the restriction on speech would not be as much of a concern because campaigns are already paying \$100 for the brochure. A \$100 or \$50 registration fee does not constitute a barrier to registration. Lobbyists already pay the \$250 fee, so are already paying to participate in their chosen profession of lobbying. He said HB 91 would adjust the fee by using a different mechanism for collecting revenue. He opined that a 2.5 percent tax would not be a barrier to any client hiring a lobbyist to come to Juneau to lobby.

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REPRESENTATIVE WOOL asked how much candidates pay now to run for office.

REPRESENTATIVE KITO said currently candidates pay the Division of Elections (DOE) a \$30 filing fee. Each candidate pays \$100 to have his/her information appear in the election pamphlet.

REPRESENTATIVE WOOL offered that the \$100 for the election pamphlet was not mandatory. He added one could run for office and not appear in the election pamphlet.

REPRESENTATIVE KITO responded yes, but the \$30 filing fee to DOE is mandatory. He added that the \$30 fee would cover DOE administrative costs, and there are no fees to support APOC activities.

REPRESENTATIVE WOOL stated that currently it costs a minimum of \$30 to run for office, and HB 91 would increase that cost fivefold to \$150.

REPRESENTATIVE KITO responded that HB 91 would raise the cost by \$100 per candidate. He said that the mandatory fee would comprise the \$100 [APOC registration fee] and the \$30 [DOE filing fee], and the \$100 for inclusion in the election pamphlet would be voluntary. He said the cost for groups would also be \$100. He mentioned there would be a separate fee of \$50 for filing financial disclosures.

REPRESENTATIVE WOOL offered that the total cost would be \$180: a \$30 filing fee; a \$100 registration fee; and a \$50 fee for filing financial disclosures.

REPRESENTATIVE KITO said correct. He added that an exempt campaign, one that does not raise money, would not be required to pay the registration fee.

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REPRESENTATIVE WOOL asked if Representative Kito considered raising the lobbyist registration fee but keeping it a flat fee, as opposed to charging a percentage of the revenue earned through lobbying.

REPRESENTATIVE KITO responded yes. He relayed his concern that if the registration fee was doubled from \$250 to \$500, it would create a burden for those clients who are paying lesser amounts to a lobbyist. He opined that making the fee a percentage of income allows the clients who pay less in lobbyist fees to incur less of the expense of APOC's fees.

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REPRESENTATIVE BIRCH asked for the number of registered lobbyists. He offered that there are thresholds for time spent meeting with legislators for registered lobbyists.

REPRESENTATIVE KITO responded that there are different classes of lobbyists - representational, volunteer, and those employed by an organization - and they all count their hours differently. He said that MS. Hebdon would be able to provide that information. He said that there are classifications for which one doesn't have to register, but once one receives compensation as a lobbyist, one must register oneself as a lobbyist and each client that one has.

[3:27:46 PM](#)

HEATHER HEBDON, Executive Director, Alaska Public Offices Commission (APOC), said that based on registration receipts, she estimates there are between 450-500 registered lobbyists per year. She confirmed for Representative Kreiss-Tomkins that this number represents lobbyists who receive payment for services.

REPRESENTATIVE BIRCH referred to Section 9 on page 4 of HB 91 and noted that the proposed new section of statute, AS 43.98.020, specifies an income tax, not a fee. He expressed his concern that most boards and commissions operate on a fee basis, and this would be Alaska's only income tax. He suggested that charging \$500 per lobbyist would get APOC the needed revenue.

REPRESENTATIVE KITO replied that the 500 registered "actions" are actually 500 registered clients. He added that since lobbyists have multiple clients, the lobbyists would be paying that fee multiple times. He conjectured that there are not 500 individual registered lobbyists. He conceded that the tax does single out lobbying, just as a tax on mining activities or fishing activities singles out those industries to raise revenue.

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CHAIR KREISS-TOMKINS requested clarification of the 450-500 statistic. He asked if that number refers to a discrete number of clients who have retained lobbyists or to the number of individuals receiving payment for lobbying services.

MS. HEBDON clarified that there are 450-500 registrations for lobbyist clients. She reiterated that it is not the number of lobbyists, since lobbyists often have more than one client.

CHAIR KREISS-TOMKINS asked how many professional lobbyists were registered with APOC.

MS. HEBDON responded that she did not know, but would provide that information to the committee.

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REPRESENTATIVE BIRCH said he is trying to get an idea of how many lobbyists would be contributing to the 2.5 percent tax and what the fee per lobbyist would have to be in order to yield the quarter of a million dollars needed to support APOC activities.

REPRESENTATIVE KITO said that was one of the options his staff looked at. He offered the example of a lobbyist with 10 clients - one of those clients paying \$10,000 for lobbying services and another paying \$60,000. He attested that if the lobbyist pays \$500 in registration fees for each of those clients, then the amount of money paid is not commensurate with the amount of money received from each client. He said the lobbyist, in that example, would be taking a greater portion out of the smaller client's payment than the larger client's payment to cover APOC activities.

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REPRESENTATIVE LEDOUX asked why not make the tax a sales tax rather than an income tax. She offered that "income" - referred to in HB 91 - appears to be net income. She suggested it would be simpler to tax the gross income, rather than the net income.

REPRESENTATIVE KITO replied that each client pays the lobbyist the contract amount to do the work. He added that the lobbyist takes his/her expenses out of that contract amount. He stated that the contract amount, or gross payment, would be subject to the tax under HB 91. He offered that taxing net income would be a much more complicated method of collecting revenue, because expenses would have to be identified and the net profit assessed for each client.

REPRESENTATIVE LEDOUX read from Section 9, subsection (a) of HB 91, which would require payment of "a tax of 2.5 percent of the person's income earned from lobbying activities". She suggested that the language should instead read "2.5 percent of the fee earned from each client". She offered that "fee" suggests the amount after expenses were deducted and may be what Representative Kito intended.

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CRYSTAL KOENEMAN, Staff, Representative Sam Kito, Alaska State Legislature, on behalf of Representative Kito, prime sponsor of HB 91, clarified that "income," in Section 9 of HB 91, does refer to the fee, or gross amount, paid by the client to the lobbyist.

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KEN ALPER, Director, Tax Division, Department of Revenue (DOR), said that he interprets "income earned from lobbying" as being

broad enough to include the gross income. He mentioned that some lobbyists are earning fees and some are salaried employees. He suggested that if Section 9 of HB 91 were to be reworded, it should include the employee lobbyists as well as contract lobbyists.

REPRESENTATIVE LEDOUX asked if "2.5 percent of the person's income" in HB 91 means "2.5 percent of the fees earned, before deductions." She suggested that this interpretation would differ from the federal income tax code's definition of income.

MR. ALPER responded that there is gross income, and there is taxable income after deductions. He said although it is not altogether clear, if he were writing regulations based on HB 91 as currently written, he would interpret it as being gross income.

CHAIR KREISS-TOMKINS asked what the intent of the bill was in the phrase cited.

REPRESENTATIVE KITO replied that the intent was to capture 2.5 percent of the gross client fee, and that was the direction given to Legislative Legal and Research Services in drafting the proposed legislation. He mentioned that he has been in contact with Ms. Hebdon regarding employee or other non-group entities that could be included in HB 91.

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REPRESENTATIVE BIRCH referred to the section titled, "Revenue Estimate," on page 2 of the fiscal note prepared by DOR. He cited the approximately \$17 million average total fees paid to lobbyists for the three-year period, 2013-2015, and the estimated \$425,000 annual revenue that would be generated by the 2.5 percent tax. He asked why the estimated revenue listed in the HB 91 sponsor statement, which is \$244,150, differs from that on the bill analysis.

REPRESENTATIVE KITO responded that the sponsor statement was based on information from prior years and the fiscal note reflects more recent information.

MS. KOENEMAN responded that the fiscal note was prepared by DOR. She maintained that the initial estimates were based on prior conversations with Mr. Dauphinais, the former executive director of APOC, at the time staff began working on the proposed legislation. She asserted that after HB 91 was introduced, DOR

was able to make estimates based on "official" numbers. She relayed that the sponsor statement will be updated to reflect the estimates in the fiscal note.

REPRESENTATIVE BIRCH asked about APOC's use of the excess revenue.

MS. KOENEMAN responded that the intent of the legislation is to offset some of the general fund revenue currently provided to APOC, thus, making it more self-sustaining. She offered that any additional revenue that would make APOC self-sufficient would be good for the State of Alaska.

REPRESENTATIVE BIRCH expressed his concern with the large amount of money that would go to APOC and said he still supports an increased fee over a percent tax.

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MR. ALPER commented that he has a conflict of interest in regard to HB 91, as he is a public official and would be subject to the \$50 registration fee proposed under HB 91. He stated that the fiscal note drafted by DOR was specific to the tax impact of Section 9 of the proposed legislation. He offered that since the tax would replace the existing \$250 administration fee, the net fiscal impact would not be a positive \$425,000. He added that perhaps Ms. Hebdon or Ms. Koeneman could speak to the total value of the reduction of funds due to the elimination of the \$250 per client administration fee. He attested that he does not know the source of the data in the original sponsor statement. He asserted that when preparing the fiscal note, he used APOC's lobbying reports and its database of billings by companies to the lobbyists. He said he arrived at the \$16-17 million figure through that data.

CHAIR KREISS-TOMKINS requested that a reconciliation of the two amounts be done before the next hearing of HB 91.

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REPRESENTATIVE JOHNSON asked if consideration of HB 91, which would levy an income tax on a special group of people, is premature in light of the anticipated introduction of a larger income tax bill.

REPRESENTATIVE KITO responded that the purpose of the revenue raised through HB 91 is to support APOC. He opined that a

general income tax would go into the general fund and would not be designated to specific components of state government. He reiterated that his goal in introducing HB 91 was: to allow APOC to take advantage of the receipt authority that the legislature had granted it; to provide additional revenue to replace a position in Juneau that was lost to budget cuts; and to make the reporting and auditing of lobbying activities more transparent and efficient.

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REPRESENTATIVE JOHNSON asked if the fee would be prorated for a lobbyist who did not perform lobbying activities all months of the year but was employed in another job.

REPRESENTATIVE KITO claimed that APOC currently requests that a lobbyist who is an employee of an organization identify the amount of salary he/she receives for lobbying activities.

[3:49:44 PM](#)

REPRESENTATIVE WOOL asked if the \$250 fee is per lobbyist and not per client.

REPRESENTATIVE KITO answered no, the current \$250 registration fee is per client represented by a lobbyist.

REPRESENTATIVE WOOL commented that midwives pay \$4,000 for a license. He offered that lobbyists are passing the fees onto their clients. He restated Representative Kito's concern that a flat rate fee is inequitable among clients charging very different amounts. He mentioned that he is also interested in finding out how many lobbyists are registered in Alaska.

[3:51:13 PM](#)

CHAIR KREISS-TOMKINS asked Ms. Hebdon to provide his office the number of individual professional lobbyists registered with APOC.

[3:51:35 PM](#)

REPRESENTATIVE LEDOUX offered that there would be no requirement for the revenue generated through HB 91 to be designated for APOC.

REPRESENTATIVE KITO responded that technically that is correct except the candidate fees proposed under HB 91 would go directly to APOC. He added that it would be more of a challenge to ensure the income tax was designated for APOC.

[HB 91 was held over.]

[3:52:30 PM](#)

The committee took an at-ease from 3:52 p.m. to 3:59 p.m.

HB 50-PROF. SERVICES IN STATE-FUNDED CONTRACTS

[3:59:49 PM](#)

CHAIR KREISS-TOMKINS announced that the final order of business would be HOUSE BILL NO. 50, "An Act relating to the procurement of architectural, engineering, or land surveying services for state-funded contracts."

[4:00:16 PM](#)

REPRESENTATIVE SAM KITO, Alaska State Legislature, presented HB 50, as prime sponsor. He stated that the concept behind HB 50 is championed by the Alaska Professional Design Council (APDC), a coalition of professional organizations that represent members of the design community. He mentioned that he is professionally affiliated with the council through his membership in the Alaska Section of American Society of Civil Engineers (ASCE). He relayed that through the proposed legislation, the predominant factor for selection of design services for a construction project would be the qualifications of those services rather than cost. He asserted that the Department of Transportation & Public Facilities (DOT&PF) already uses this selection process for projects it funds directly, and HB 50 would extend that requirement to projects funded by the State of Alaska through grants to municipal governments.

REPRESENTATIVE KITO attested that the goal of HB 50 would be to ensure that projects funded by the State of Alaska are the most efficient and cost effective. He relayed that the activities performed by architects, engineers, land surveyors, and landscape architects are not cost-based. He asserted that these professionals would not be competing based on their ability to minimize the cost of their services, but on their knowledge and experience in their area of expertise. He said for most design projects, design services constitute about six to eight percent

of the cost of a project. He offered that HB 50 would allow the hire of a design professional who could provide the service most efficiently and who has the best experience for the work.

REPRESENTATIVE KITO said that when an owner has identified a short list of candidates, he/she can work directly with the number one scoring individual or firm to negotiate a fee for doing the work. If the owner is not able to negotiate an acceptable fee, then those negotiations can be terminated, and the owner can negotiate with the number two scoring company or individual. He said in that way, the State of Alaska can ensure that the people doing this state-funded work are the most qualified.

[4:05:23 PM](#)

DALE NELSON, Chair, Legislative Liaison Committee, Alaska Professional Design Council (APDC), testified in support of HB 50 on behalf of the APDC Legislative Liaison Committee. He said that he also represents the American Society of Civil Engineers Region 8, which includes nine states and soon will include two territories and two provinces of Canada. He mentioned that he also sits on the board of the American Society of Engineers (ASCE). He directed the committee's attention to the APDC position statement in the committee packet. He stated that APDC represents the Alaska Society of Professional Engineers (ASPE), the Alaska Society of Professional Land Surveyors (ASPLS), the American Institute of Architects (AIA) Alaska Chapter, the American Society of Civil Engineers (ASCE) Alaska Section, the American Society of Landscape Architects (ASLA) Alaska Chapter, and the American Council of Engineering Companies of Alaska (ACEC-Alaska).

MR. NELSON relayed that the State of Alaska requires that design professionals for state-funded projects be selected using qualifications based criteria, and HB 50 would implement that requirement at the community level. He explained that Qualifications Based Selection (QBS) procedures are specified by the U.S. Brooks Architect-Engineers Act [of 1972] ("the Brooks Act"), more than 40 mini Brooks Acts, and the American Bar Association's (ABA's) Model Procurement Code for State and Local Governments.

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MR. NELSON paraphrased from the ASCE policy statement in the committee packet, which read [original punctuation provided]:

Often a contracting entity "owner" may believe that the pivotal issue in the selection of a professional engineer is the cost of the necessary services. Also, an owner may perceive that accepting the low price to perform the work produces the project with the lowest total cost. In this case, the owner is of the belief that the required engineering services are completely described and the qualifications of all engineers are equal.

MR. NELSON went on to say that it is impossible to completely describe the scope for required professional services. He continued paraphrasing from the ASCE policy statement, which read [original punctuation provided]:

A poorly defined scope of services can result in numerous change orders. Lacking specifics, each firm may be compelled to, in order to be competitive, submit a price for the least amount of work reasonably envisioned.

MR. NELSON concluded by saying, "APDC strongly believes that it is in the public's interest to utilize QBS for all public projects while allowing for subsequent fee negotiations." He contended that HB 50 would do this.

[4:12:10 PM](#)

REPRESENTATIVE TUCK asked where QBS is located in HB 50.

REPRESENTATIVE KITO replied that a new statute, AS 36.90.110, proposed in Section 1 of HB 50, discusses how procurement of engineering services would be performed and the use of qualifications as the selection criteria for design services.

REPRESENTATIVE TUCK asked if there was a standard for the qualifications used for selection criteria.

REPRESENTATIVE KITO explained that a typical project would be advertised with a request for proposal (RFP). He said that qualified candidates would then submit proposals for providing the services designated in the scope. He relayed that the proposals would be reviewed according to identified criteria in the [RFP] notice. He added that the criteria typically would include the individual resumes, the corporate experience, the team experience, and the workload of the designer. These are

all qualifications of the firm or individual providing the service. He mentioned that the RFP may also include local selection as a criteria. He stated that all of these criteria components are assigned a certain number of points based on their importance as determined by the project owner. A team of reviewers then would review and score the proposals according to the criteria set forth. He reiterated that the highest scoring proposer would be the first to be offered the opportunity to negotiate a fee. If that fee negotiation fails, then the next highest scoring proposer would be engaged to negotiate a fee.

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REPRESENTATIVE TUCK expressed his irritation with design people who "don't know what they are talking about," which he experienced in his street lighting and traffic control work for DOT&PF. He offered that it is a huge process to try to resolve any design flaws "in the field." He stated that he sees the need to "qualify" the bid with experience and workload, rather than using the low bid as a qualifier. He opined that HB 50 does not state how selection is made but appears to leave that up to the judgement of the contracting person. He suggested that the criteria components, mentioned by Representative Kito, should be stated in the proposed legislation. He asked, "What in our procurement codes right now prevents you from doing this already?"

REPRESENTATIVE KITO responded that the language in HB 50 is language copied from DOT&PF statutes, and that language is what provides DOT&PF the [procurement] flexibility. In response to Representative Tuck's first question, he opined that it would be difficult for the legislature to anticipate all of the types of projects that would be advertised. He added that providing direction on certain criteria could create limitations for the procurement officer issuing an RFP. He said that DOT&PF is already required by Alaska's mini-Brooks Act to select designers based on qualification. He offered that HB 50 would require municipalities receiving public money through the legislature to use QBS. He added that many municipalities already have ordinances with this requirement but offered that since some don't, HB 50 would "even the playing field" for municipalities receiving state money.

[4:18:48 PM](#)

REPRESENTATIVE TUCK asked if HB 50 could have prevented "what happened with the Port of Anchorage," if that had been a state-

funded project. He mentioned that the Port of Anchorage was a design flaw; many consultants were involved; much of the work was sole sourced; there were many judgement calls; and there were warnings from engineers. He offered that a project such as that gives a great deal of responsibility to the contracting person.

REPRESENTATIVE KITO offered that he believes the [Port of Anchorage] situation to have been unique. He said he doesn't know enough about that project to say if HB 50 would have helped in that situation.

4:20:01 PM

MR. NELSON responded that "sole source" is the key in Representative Tuck's testimony regarding the Port of Anchorage project. He said that sole source procurement is not included in HB 50; instead, HB 50 represents a process to be followed. He suggested that following the mini-Brooks Act might have prevented what happened with the Port of Anchorage project.

REPRESENTATIVE TUCK expressed his concern that there be a process and stated that he doesn't see one in HB 50. He cited language in Section 1 of HB 50, on page 1, beginning on line 7, which read as follows:

The contracting person shall, when selecting the contractor, negotiate with the most qualified and suitable professional person of demonstrated competence to perform the services. The contracting person shall award the contract for those services at fair and reasonable compensation as determined by the contracting person.

REPRESENTATIVE TUCK attested that HB 50 doesn't identify the criteria; it is too subjective; and it is all determined by one person. He asked if there was any way a design engineer could appeal if he/she saw a design flaw in another engineering firm's proposal.

REPRESENTATIVE KITO said that different projects are administered in different ways. He relayed that very large projects will often budget for value engineering, in which an engineer or architect will complete a design and forward it to another engineering or architecture firm to review. He mentioned that this probably wouldn't be done for a simple project, but might be for a major international airport or port

project. He said it would be at the discretion of the procurement officer. He explained that if HB 50 becomes law, the procurement officer would not make all of the decisions. When selecting a designer, the procurement officer would write the RFP and assemble the selection team with the knowledge, experience, and responsibility to review the proposals and select the most qualified offeror.

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REPRESENTATIVE JOHNSON asked if HB 50 would preclude awarding a contract based on low bid.

REPRESENTATIVE KITO explained that there are two components to a construction project: the actual construction activities, which are generally awarded based on low bid; and the design work, which through HB 50 would be awarded based on the qualifications and experience of the designer.

REPRESENTATIVE JOHNSON commented that she has seen some amazing design work portfolios, but unfortunately the firms were from out of state. She offered that the larger cities already follow QBS practices and asked how HB 50 would benefit smaller cities.

REPRESENTATIVE KITO asserted that QBS would actually help in regard to smaller cities. He mentioned his experience with the Department of Education and Early Development (DEED), in which a district requested proposals to be submitted based on cost of services. He suggested that time drives the cost of an engineering project: lower cost engineers may take more time to complete a project and higher cost engineers less time. The discrepancy between engineers is based on experience and knowledge, not cost.

[HB 50 was held over.]

[4:27:22 PM](#)

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 4:27 p.m.