

**HOUSE BILL NO. 444**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE

Introduced: 4/6/00

Referred: State Affairs, Finance

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to nongovernmental activities of state agencies, including the  
2 University of Alaska; and providing for an effective date."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 \* **Section 1.** AS 36.30.005(c) is amended to read:

5 (c) Notwithstanding other provisions of law, except to the extent that  
6 AS 44.64.050(b) directs how certain contracts are to be procured, all rights,  
7 powers, duties, and authority relating to the procurement of supplies, services,  
8 professional services, and construction and the disposal of supplies for the University  
9 of Alaska are transferred to the Board of Regents. To the maximum extent possible,  
10 authority granted under this subsection shall be exercised in accordance with this  
11 chapter. The Board of Regents shall adopt regulations under this subsection that are  
12 substantially equivalent to the regulations adopted by the commissioner of  
13 administration to implement this chapter. For the purposes of this subsection, unless  
14 the context otherwise requires, in this chapter,

- 1 (1) "agency" means a subunit of the University of Alaska;
- 2 (2) "attorney general" means the president of the University of Alaska;
- 3 (3) "chief procurement officer" means a person designated by the  
4 president of the University of Alaska whose qualifications are substantially equivalent  
5 to those provided in AS 36.30.010(a);
- 6 (4) "commissioner," "commissioner of administration," or  
7 "commissioner of transportation and public facilities" means the Board of Regents or  
8 the president of the University of Alaska if so designated by the Board of Regents by  
9 regulations adopted under this subsection; and
- 10 (5) "department" means the University of Alaska.

11 \* **Sec. 2.** AS 44 is amended by adding a new chapter to read:

12 **Chapter 64. Inventory and Procurement of Nongovernmental Activities.**

13 **Sec. 44.64.010. Annual list required.** (a) Each state agency shall submit to  
14 the office of management and budget each fiscal year a list of the activities performed  
15 by the agency's employees that, in the judgment of the state agency head, are not  
16 inherently governmental activities.

17 (b) The director of the office of management and budget shall consult with a  
18 state agency when the agency is preparing the list under (a) of this section and shall  
19 review the list.

20 (c) In this section, "inherently governmental activity"

21 (1) means an activity that is so closely related to the public interest that  
22 it requires performance by state government employees; the term includes an activity  
23 that

24 (A) requires either the exercise of discretion in applying state  
25 governmental authority or the making of value judgments, including judgments  
26 relating to monetary transactions and entitlements, and making decisions for the  
27 state government; or

28 (B) involves the interpretation or execution of the laws of the  
29 state

30 (i) to bind the state to take or not to take an action by  
31 contract, policy, regulation, authorization, order, or another method;

1 (ii) to determine, protect, or advance state economic,  
 2 political, territorial, property, or other interests by military action,  
 3 intergovernmental agreements, civil judicial proceedings, criminal  
 4 judicial proceedings, contract management, or another method;

5 (iii) that will significantly affect the life, liberty, or  
 6 property of private persons;

7 (iv) to commission, appoint, direct, or control officers  
 8 or employees of the state; or

9 (v) and will exert ultimate control over the acquisition,  
 10 use, or disposition of the real or personal property, whether tangible or  
 11 intangible, of the state, including the collection, control, or disbursement  
 12 of appropriated or other state money;

13 (2) does not include

14 (A) gathering information for or providing advice, opinions,  
 15 recommendations, or ideas to state government employees; or

16 (B) an activity that is primarily ministerial and internal in  
 17 nature, including building security, mail operations, facilities operations,  
 18 facilities maintenance, warehouse operations, motor vehicle fleet management  
 19 operations, routine electrical services, or routine mechanical services.

20 **Sec. 44.64.020. Description of listed activity.** The description of a listed  
 21 activity must include

22 (1) the fiscal year when the activity first appeared on a list;

23 (2) the number of full-time employees that are needed to perform the  
 24 activity;

25 (3) the name of a state agency employee who is responsible for the  
 26 activity and from whom additional information about the activity may be obtained.

27 **Sec. 44.64.030. Transmittal and publication of list.** (a) Each state agency  
 28 head shall promptly transmit a copy of the list prepared by the state agency under  
 29 AS 44.64.010 to the legislature and make the list available to the public.

30 (b) For each list prepared by a state agency, the director of the office of  
 31 management and budget shall promptly publish in the Alaska Administrative Journal

1 a notice that the list is available to the public.

2 (c) If, as a result of a challenge made under AS 44.64.040, a state agency  
3 changes a list after a notice is published under (b) of this section, the state agency that  
4 prepared the list shall promptly

5 (1) transmit a copy of the change to the legislature and make the  
6 change available to the public; and

7 (2) publish in the Alaska Administrative Journal a notice that the  
8 change is available to the public.

9 **Sec. 44.64.040. Challenge and appeal.** (a) An interested person may  
10 challenge the inclusion or omission of an activity on a list by filing with the state  
11 agency that prepared the list a written notice stating the person's challenge and the  
12 reasons for the challenge. A challenge must be filed with the agency within 30 days  
13 after publication of the notice under AS 44.64.030(b) or (c)(2), as applicable.

14 (b) Within 28 days after a state agency receives notice of a challenge under  
15 (a) of this section, an agency employee appointed by the state agency head shall decide  
16 whether to reject or uphold the challenge and shall transmit a notice of the decision  
17 to the person who filed the notice. The notice must include the decision, an  
18 explanation of the reasons for the decision, and an explanation of the party's right to  
19 appeal under (c) of this section.

20 (c) An interested person may appeal an adverse decision made by a state  
21 agency under (b) of this section. The appeal must be filed with the agency within 10  
22 days after the person receives the notice of the decision.

23 (d) Within 10 days after a state agency receives an appeal of a decision under  
24 (c) of this section, the state agency head shall decide the appeal and shall transmit to  
25 the person submitting the appeal a notice of the decision on the appeal, including an  
26 explanation of the rationale for the decision.

27 (e) A challenge and an appeal under this section are not subject to AS 44.62  
28 (Administrative Procedure Act).

29 **Sec. 44.64.050. Procurement of listed activity.** (a) For the purpose of  
30 determining whether to contract with a private person to perform a listed activity,  
31 when a state agency compares its costs of performing the activity with the costs of

1 contracting with a private person to perform the activity, the agency shall consider all  
 2 of the realistic and fair costs of the activity. In this subsection, "costs" includes the  
 3 quality assurance costs, the cost to technically monitor performance of the activity,  
 4 liability insurance costs, the cost of employee retirement and disability benefits, and  
 5 other overhead costs.

6 (b) When a state agency decides to obtain a private person to perform a listed  
 7 activity, the agency shall use competitive sealed bidding under AS 36.30.100 -  
 8 36.30.190 or competitive sealed proposals under AS 36.30.200 - 36.30.270 to procure  
 9 the contract with the person to perform the listed activity, unless a law other than this  
 10 chapter or AS 36.30 requires that another method be used for the procurement.

11 **Sec. 44.64.090. Definitions.** In this chapter, unless the context indicates  
 12 otherwise,

13 (1) "interested person" means

14 (A) a private person who

15 (i) is an actual or prospective bidder or offeror for a  
 16 contract to perform the activity; and

17 (ii) has a direct economic interest in performing the  
 18 activity that would be adversely affected by a determination not to  
 19 procure the performance of the activity from a private person;

20 (B) a representative of a business association or professional  
 21 association, if the association includes as members private persons referred to  
 22 in (A) of this paragraph;

23 (C) an employee of an organization within the state agency if  
 24 the employee or the organization is an actual or prospective performer of the  
 25 activity; or

26 (D) the head of a labor organization that includes within its  
 27 membership employees referred to in (C) of this paragraph; in this  
 28 subparagraph, "labor organization" means a nonprofit organization established  
 29 wholly or partly to bargain collectively or deal with employers, including the  
 30 state, concerning grievances, terms, or conditions of employments or other  
 31 mutual aid or protection in connection with employees;

- 1 (2) "list" means a list prepared under AS 44.64.010;
- 2 (3) "listed activity" means an activity included on a list prepared under
- 3 AS 44.64.010, including an activity added after a challenge under AS 44.64.040;
- 4 (4) "state agency" means the University of Alaska and a department
- 5 listed under AS 44.17.005, but does not include a public corporation located in a
- 6 department;
- 7 (5) "state agency head" means, for a state agency that is
- 8 (A) a department, the commissioner of the department; or
- 9 (B) the University of Alaska, the president of the university.

10 \* **Sec. 3.** This Act takes effect immediately under AS 01.10.070(c).