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~~2/18~~3/14/11**CS FOR HOUSE BILL NO. 166(FIN)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

~~BY REPRESENTATIVES CHENAULT, Johnson, Costello, Feige, Gatto, Olson, Pruitt, Tammie Wilson~~~~Introduced~~**BY THE HOUSE FINANCE COMMITTEE****Offered:****Referred:****Sponsor(s): REPRESENTATIVES CHENAULT, Johnson, Costello, Feige, Gatto, Olson, Pruitt, Tammie Wilson, Millett, Guttenberg, Johansen, Gruenberg, Stoltze, Austerman, Tuck, Keller, Neuman, Thompson, Joule****A BILL****FOR AN ACT ENTITLED**

1 "An Act relating to performance reviews and audits of executive and legislative branch
2 agencies, the University of Alaska, and the Alaska Court System; and providing for an
3 effective date."

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

5 * **Section 1.** AS 24.20.271 is amended to read:

6 **Sec. 24.20.271. Powers and duties.** The legislative audit division shall

7 (1) conduct a performance post-audit of boards and commissions
8 designated in AS 44.66.010 [AND OF THOSE PROGRAMS AND ACTIVITIES OF
9 AGENCIES] ~~subject to termination as determined in the manner set out in~~ SUBJECT
10 TO TERMINATION AS DETERMINED IN THE MANNER SET OUT IN
11 AS 44.66.020 ~~[AND 44.66.030],.]~~ and make the audit, together with a written report,
12 available to the legislature not later than the first day of the regular session of the
13 legislature convening in each year set out with reference to boards **and** [.]

commissions [, OR AGENCY PROGRAMS] whose activities are subject to termination as prescribed in AS 44.66; the division shall notify the legislature that the audit and report are available;

~~(2)~~ conduct a performance review of the agencies listed in AS 44.66.020(a) and make the final review report available to the legislature not later than the first day of the regular session convening in the year after the year designated for each agency performance review in AS 44.66.020(a);

(3) audit at least once every three years the books and accounts of all custodians of public funds and all disbursing officers of the state;

(4) ~~[(3)]~~ at the direction of the Legislative Budget and Audit Committee, conduct performance post-audits on any agency of state government;

(5) ~~[(4)]~~ cooperate with state agencies by offering advice and assistance as requested in establishing or improving the accounting systems used by state agencies;

(6) ~~[(5)]~~ require the assistance and cooperation of all state officials and other state employees in the inspection, examination, and audit of state agency books and accounts;

(7) ~~[(6)]~~ have access at all times to the books, accounts, reports, or other records, whether confidential or not, of every state agency;

(8) ~~[(7)]~~ ascertain, as necessary for audit verification, the amount of agency funds on deposit in any bank as shown on the books of the bank; no bank may be held liable for making information required under this paragraph available to the legislative audit division;

(9) ~~[(8)]~~ complete studies and prepare reports, memoranda, or other materials as directed by the Legislative Budget and Audit Committee;

(10) ~~[(9)]~~ have direct access to any information related to the management of the University of Alaska and have the same right of access as exists with respect to every other state agency;

(11) ~~[(10)]~~ conduct an audit every two years of information found in the annual reports required under AS 42.05.211 and AS 42.06.220 regarding compliance by the Regulatory Commission of Alaska with the requirements of

AS 42.05.175(a) - (e) and of the timeline extensions made by the commission under AS 42.05.175(f), and of other performance measures adopted by the commission.

* **Sec. 2.** AS 24.20.301(a) is amended to read:

(a) The legislative audit division shall keep a complete file of all audit reports and other reports or releases issued by the division, and a complete file of audit work papers and other related supportive material. The division shall also keep a complete and accurate record of all fiscal transactions involving the division. Audit records are confidential and audit reports and performance review reports are confidential unless the report has been approved for release under AS 24.20.311.

* **Sec. 3.** AS 44.66.020 is repealed and reenacted to read:

Sec. 44.66.020. Agency programs. (a) Every year, the ~~Legislative Budget and Audit Committee~~ legislative audit division shall ensure that the review team conducts a performance review of the ~~appropriate~~ programs of the agencies listed in this subsection. Programs that are administered by more than one agency shall be reviewed with the agency that the Legislative Budget and Audit Committee designates. Reviews may be conducted before the dates set out in this subsection at the discretion of the Legislative Budget and Audit Committee. The first review shall occur in the calendar year set out after each agency's name, as follows, and subsequent reviews of each agency, or part of an agency, shall occur every 10 years:

- (1) Department of Corrections, 2012;
- (2) Department of ~~Military and Veterans' Affairs~~ Law, 2013;
- (3) Department of ~~Revenue~~ Public Safety, 2013;
- (4) Alaska Court System, 2013;
- (5) the ~~divisions in the~~ Department of Health and Social Services ~~responsible for health care services~~, 2014;
- (6) Department of ~~Health and Social Services, all programs other than those administered by the divisions in the department responsible for health care services, 2015;~~
- ~~(7) Department of~~ Education and Early Development, ~~2016;~~ including the foundation formula, 2015;
- ~~(8)~~ 7 University of Alaska, 2016;

- (8) Department of Transportation and Public Facilities, 2017;
- (9) Department of Administration, ~~2017~~2018;
- (10) Department of Commerce, Community, and Economic Development, ~~2017~~2018;
- (11) Department of Fish and Game, ~~2018~~2019;
- (12) Department of Environmental Conservation, ~~2018~~2019;
- (13) Department of Natural Resources, ~~2018~~2019;
- (14) Department of ~~Transportation and Public Facilities, 2019~~Revenue, 2020;
- (15) ~~Department~~Office of ~~Law~~the Governor, 2020;
- (16) ~~Department~~agencies of ~~Public Safety~~the legislative branch, 2020;
- (17) Department of Military and Veterans' Affairs, 2021;
- (18) Department of Labor and Workforce Development, 2021.
- (b) Subject to appropriation, the ~~Legislative Budget and Audit Committee~~legislative audit division shall hire ~~or individuals and~~ contract with individuals or firms to form a review team or teams to complete the reviews under this section.
- (c) In the year before the year designated as the year for review in (a) of this section, the agency shall;
- ~~(1) before February 1,~~ provide to the review team, before November 1,
- (1) citations to the agency's authority under the Constitution of the State of Alaska or the Alaska Statutes to administer its programs;
- ~~(2) before April 1, provide to the review team~~ a list of programs or elements of programs, ~~comprising that compose~~ at least 10 percent of the general funds in the agency's budget appropriated from the general fund that could be reduced or eliminated; the agency shall consider first those programs or elements of programs that
- (A) do not serve a current need;
- (B) are not authorized by the Constitution of the State of Alaska or the Alaska Statutes; or
- (C) are not essential;

~~(3) before April 1, provide to the review team~~(3) a list of active encumbrances and an explanation of the continuing need for any encumbrance unsatisfied more than ~~four years~~one year after it was incurred;

(4) all information submitted to the legislature in the agency's most recent submission under AS 37.07.050, including agency proposed programs and financial plans and agency priorities from the most important to the least important.

* **Sec. 34.** AS 44.66 is amended by adding a new section to read:

Sec. 44.66.040. Duties of the review team. (a) During a review year set out in AS 44.66.020(a), the ~~review team shall~~legislative audit division shall determine the scope of the performance review subject to approval by the Legislative Budget and Audit Committee, and the review team shall

(1) collaborate with the legislative audit division and the legislative finance division to identify any earlier audit findings or budgetary issues for the agency;

(2) through the Legislative Budget and Audit committee or the senate or house finance committees of the state legislature, schedule public hearings in Juneau, Anchorage, ~~and~~ Fairbanks, and other locations as determined by the committees to review agency activities and identify problems or concerns; ~~and~~

(3) consult with other states and appropriate public policy organizations to establish best practices for the agency;

(4) analyze the agency priorities reported to the legislature under AS 37.07.050(a)(13); and

(5) evaluate the agency process for development of capital projects.

(b) The review team shall analyze~~all~~ materials relevant to the performance of the agency, including

(1) a 10-year growth history and a 10-year projection of agency expenses by funding source, prepared by the office of management and budget;

(2) organizational charts, personnel charts by location that show the number of positions and the functions of each position, and a list of transfers of personal services funding to or from other line items within the agency during the preceding 10 years, prepared by the office of management and budget;

(3) audit information, including a list of agency audit recommendations, prepared by the legislative audit division;

(4) a list of any financial issues relating to the agency's operating or capital expenditures, prepared by the legislative finance division;

(5) an explanation of the function and procedure for dedicated funds or any other special funds in the agency, prepared by the legislative finance division;

(6) a 10-year history of any budget ratifications or supplemental budget requests, prepared by the legislative finance division; and

(7) analysis and summary of confidential information that the review team may request, through the Legislative Budget and Audit Committee, from the legislative audit division, if necessary to complete the team's review.

(c) Before December 16 of the review year set out in AS 44.66.020(a), the review team shall provide a confidential preliminary report to the Legislative Budget and Audit Committee.

~~(d) Before January 6 of~~ (d) One week before the first day of the regular session of the legislature in the year following the review year set out in AS 44.66.020(a), the review team shall provide to the chairs or cochairs of the senate and house finance committees a final report that

(1) evaluates the efficiency and effectiveness of the agency's programs;

(2) evaluates the appropriateness of the budget reductions proposed under AS 44.66.020(c);

(3) determines if the agency acted in good faith to correct problems identified in any previous audit or review;

(4) evaluates the success of the agency in achieving its mission, goals, and objectives and recommends appropriate changes to the agency's missions and measures;

(5) lists agency programs or actions not authorized by statute and identifies other authority for those actions;

(6) identifies agency authority to collect fees, conduct inspections, enforce state law, or impose penalties;

(7) recommends improvements to agency practices and procedures,

including means to decrease regulatory burdens or restrictions without decreasing public service and safety;

(8) identifies areas in which programs and jurisdiction of agencies overlap and assesses the quality of interagency cooperation in those areas;

(9) evaluates whether the agency promptly and effectively addresses complaints;

(10) evaluates to what extent the agency encourages and uses public participation in rulemaking and other decision making;

~~(11) analyzes how the review team's recommendation to terminate the agency or to terminate any program within the agency would affect federal funding or instigate federal intervention;~~

~~(12)~~(11) evaluates the agency's process for implementing technology and recommends new types or uses of technology to improve agency efficiency and effectiveness;

~~(13)~~(12) identifies programs and functions duplicated by another government agency or private entity and recommends a single entity to perform those programs and functions;

~~(14) recommends a reduction in appropriations for~~(13) evaluates whether the agency based on priorities reported to the review legislature under this section AS 37.07.050(a)(13), and the agency's participation in list of programs or elements of programs provided under AS 44.66.020(c)(2) are consistent with the review process, including results of the agency's responses to requests for information performance review;

~~(14) identifies agencies that could be terminated or consolidated, reductions in costs, and the agency's timely implementation of previous recommendations~~potential program or cost reductions based on policy changes;

(15) identifies reductions recommended as a result of a review conducted under this section;

(16) identifies the extent to which statutory, regulatory, budgetary, or other changes are necessary to enable the agency to better serve the interests of the public and to correct problems identified during the review;

~~(17)~~ (17) analyzes how the review team's recommendation to terminate the agency or to terminate any program within the agency would affect federal funding or instigate federal intervention;

(18) includes draft legislation to correct problems identified in the report that shall be introduced by the senate and house finance committees of the state legislature during the current legislative session;

(19) identifies areas that need in-depth review in order to provide complete information to the Legislative Budget and Audit Committee for consideration in the audit process; and

~~(18)~~ (20) identifies any other elements appropriate to a performance management review.

(e) The Legislative Budget and Audit Committee shall track annually and publish in its annual report under AS 24.20.311 actual reductions in state expenditures as a result of a review conducted under this section.

(f) The senate and house finance committee chairs, cochair, and subcommittees may incorporate the recommendations of a report submitted under (d) of this section into the budget for the fiscal year following the report.

* **Sec. 45.** AS 44.66.050 is amended to read:

Sec. 44.66.050. Legislative oversight. (a) Before the termination, dissolution, continuation, or reestablishment of a board or commission under AS 08.03.010 or AS 44.66.010 [, OR OF AN AGENCY PROGRAM UNDER AS 44.66.020 AND 44.66.030,] a committee of reference of each house, which shall be the standing committee of legislative jurisdiction as provided in the Uniform Rules of the Legislature, shall hold one or more hearings to receive testimony from the public, the commissioner of the department having administrative responsibility for each named board or [,] commission [, OR AGENCY PROGRAM,] and the members of the board or commission involved. The hearings may be joint hearings. The committee shall also consider the proposed budget of the board or [,] commission, [OR AGENCY PROGRAM,] prepared in accordance with AS 37.07.050(f) [,] and the performance audit of the activities of the board or [,] commission, [OR AGENCY PROGRAM,] prepared by the legislative audit division as prescribed in AS 24.20.271(1). The

committee may consider any other report of the activities of the board or [,] commission [OR PROGRAM], including [BUT NOT LIMITED TO] annual reports, summaries prepared by the Legislative Affairs Agency, and any evaluation or general report of the manner of conduct of activities of the board or [,] commission [, OR AGENCY PROGRAM] prepared by the office of the ombudsman.

(b) During a public hearing, the board or [,] commission [OR AGENCY] shall have the burden of demonstrating a public need for its continued existence or the continuation of the program, and the extent to which any change in the manner of exercise of its functions or activities may increase efficiency of administration or operation consistent with the public interest.

(c) A determination as to whether a board or commission [OR AGENCY PROGRAM] has demonstrated a public need for its continued existence must take into consideration the following factors:

(1) the extent to which the board or [,] commission [, OR PROGRAM] has operated in the public interest;

(2) the extent to which the operation of the board or [,] commission [, OR AGENCY PROGRAM] has been impeded or enhanced by existing statutes, procedures, and practices that it has adopted, and any other matter, including budgetary, resource, and personnel matters;

(3) the extent to which the board or [,] commission [, OR AGENCY] has recommended statutory changes that are generally of benefit to the public interest;

(4) the extent to which the board or [,] commission [, OR AGENCY] has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service that it has provided;

(5) the extent to which the board or [,] commission [, OR AGENCY] has encouraged public participation in the making of its regulations and decisions;

(6) the efficiency with which public inquiries or complaints regarding the activities of the board or [,] commission [, OR AGENCY] filed with it, with the department to which a board or commission is administratively assigned, or with the office of victims' rights or the office of the ombudsman have been processed and

resolved;

(7) the extent to which a board or commission that regulates entry into an occupation or profession has presented qualified applicants to serve the public;

(8) the extent to which state personnel practices, including affirmative action requirements, have been complied with by the board or [,] commission in [, OR AGENCY TO] its own activities and in the area of activity or interest;

(9) the extent to which statutory, regulatory, budgetary [BUDGETING], or other changes are necessary to enable the [AGENCY,] board or [,] or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection;

(10) the extent to which the board or [,] commission [, OR AGENCY] has effectively attained its objectives and purposes and the efficiency with which the board or [,] commission [, OR AGENCY] has operated; and

(11) the extent to which the board or [,] commission [, OR AGENCY] duplicates the activities of another governmental agency or the private sector.

(d) As to each board or [,] commission [, OR AGENCY PROGRAM] assigned to it for purposes of review, the committee of reference shall, not later than the 60th day of the legislative session, submit a report to the presiding officer of the house. The report must contain a summary of the findings of the committee as to the compliance of the board or [,] commission [, OR PROGRAM] with the factors enumerated in (c) of this section, together with a summary or recommendations of the committee as to each of the following:

(1) an identification of the problems or the needs that the programs and activities of the board or [,] commission [, OR AGENCY] are intended to address;

(2) a statement, to the extent practicable, of the objectives of the program of the board or [,] commission [, OR AGENCY PROGRAM,] and its anticipated accomplishments;

(3) an identification of any other programs having similar, conflicting, or duplicate objectives;

(4) an assessment of alternative methods of achieving the purposes of the program;

(5) an assessment of the consequences of eliminating the board or [,] commission [, OR PROGRAM] and consolidating its activities with another program, or of funding it at a lower level;

(6) a justification for the recommended continuation or extension of the board or [,] commission [, OR PROGRAM,] and an explanation of the manner in which it avoids duplication of or conflict with other efforts; and

(7) any other information that, in the opinion of the committee, would improve the performance of the board or [,] commission [, OR AGENCY] with respect to its representation of and responsiveness to the public interest.

(e) The committee of reference may introduce a bill providing for the reorganization or continuation of the board or [,] commission. Not [, OR AGENCY PROGRAM. NO] more than one board or [,] commission [, OR AGENCY PROGRAM] may be continued or reestablished in any legislative bill, and the board or [,] commission [, OR AGENCY PROGRAM] must be mentioned in the title of the bill.

* **Sec. 56.** AS 44.66.060 is amended to read:

Sec. 44.66.060. Existing claims. This chapter does not cause the termination or dismissal of a claim or right of a citizen against a board, commission, or program of an agency terminated by legislative action or under this chapter that is subject to litigation. Claims and rights shall be assumed by the department to which the board or commission terminated under this chapter was attached for administrative purposes.

* **Sec. 67.** AS 44.66 is amended by adding a new section to read:

Sec. 44.66.070. Definitions. In this chapter,

(1) "agency" means a state department or agency, whether in the legislative, judicial, or executive branch, and includes the University of Alaska;

(2) "review team" means appropriate professionals hired by or under contract with the ~~Legislative Budget and Audit Committee~~legislative audit division to complete a performance review under AS 44.66.020 - 44.66.040.

* **Sec. 78.** AS 44.66.030 is repealed.

* **Sec. 89.** AS 24.20.271(2); AS 44.66.020, and 44.66.040 are repealed July 1, 2022.

* **Sec. 10.** This Act takes effect July 1, 2011.