

HOUSE BILL NO. 58

IN THE LEGISLATURE OF THE STATE OF ALASKA
 THIRTY-FOURTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE FIELDS

Introduced: 1/22/25

Referred: Community and Regional Affairs, State Affairs

A BILL**FOR AN ACT ENTITLED**

1 **"An Act relating to the office of public advocacy; and relating to the public advocate."**

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

3 * **Section 1.** AS 13.26.750(a) is amended to read:

4 (a) The **public advocate** [COMMISSIONER OF ADMINISTRATION] may
 5 establish by regulation a schedule of reasonable fees for the costs of the public
 6 guardian's services. The fee schedule established may be based **on** [UPON] the ability
 7 of the ward or protected person to pay for guardian services but may not exceed the
 8 actual cost of providing public guardian services. The office of public advocacy shall
 9 charge and collect the fees established under this subsection, but may waive collection
 10 of a fee upon a finding that collection is not economically feasible or in the public
 11 interest.

12 * **Sec. 2.** AS 36.30.305(a) is amended to read:

13 (a) A construction contract under \$100,000, or a contract for supplies,
 14 services, or professional services, may be awarded without competitive sealed bidding
 15 or competitive sealed proposals, in accordance with regulations adopted by the

1 commissioner. A contract may be awarded under this section only when the chief
 2 procurement officer determines in writing that a situation exists that makes
 3 competitive sealed bidding or competitive sealed proposals impractical or contrary to
 4 the public interest, except that the attorney general, the public defender, or the **public**
 5 **advocate** [DIRECTOR OF THE OFFICE OF PUBLIC ADVOCACY] as provided in
 6 AS 36.30.015(k) may make the determination for services of legal counsel, and the
 7 commissioner of transportation and public facilities may make the determination for
 8 construction contracts under \$100,000, leases of space, or procurements for the state
 9 equipment fleet. Procurements under this section shall be made with competition that
 10 is practicable under the circumstance. Except for procurements of supplies, services,
 11 professional services, or construction that do not exceed the amount for small
 12 procurements under AS 36.30.320(a), as applicable, the authority to make a
 13 determination required by this section may not be delegated.

14 * **Sec. 3.** AS 36.30.850(b) is amended to read:

15 (b) This chapter applies to every expenditure of state money by the state,
 16 acting through an agency, under a contract, except that this chapter does not apply to

17 (1) grants;

18 (2) contracts for professional witnesses to provide for professional
 19 services or testimony relating to

20 (A) existing or probable lawsuits in which the state is or may
 21 become a party; or

22 (B) litigation in which the Public Defender Agency or the
 23 office of public advocacy has been appointed to represent a person;

24 (3) contracts of the University of Alaska where the work is to be
 25 performed substantially by students enrolled in the university;

26 (4) contracts for medical doctors and dentists;

27 (5) acquisitions or disposals of real property or interest in real
 28 property, except as provided in AS 36.30.080 and 36.30.085;

29 (6) disposals under AS 38.05;

30 (7) contracts for the transportation of ballots under AS 15;

31 (8) acquisitions or disposals of property and other contracts relating to

1 airports under AS 02.15.070, 02.15.090, 02.15.091, and AS 44.88;

2 (9) disposals of obsolete property under AS 19.05.060;

3 (10) disposals of obsolete material or equipment under AS 35.20.060;

4 (11) agreements with providers of services under AS 47.25.071 -
5 47.25.095; AS 47.07; AS 47.08; AS 47.10; AS 47.12; AS 47.14; AS 47.17; AS 47.24;
6 and AS 47.27, including contractors under AS 47.27.050;

7 (12) contracts of the Department of Fish and Game for flights that
8 involve specialized flying and piloting skills and are not point-to-point;

9 (13) purchases of income-producing assets for the state treasury or a
10 public corporation of the state;

11 (14) a contract that is a delegation, in whole or in part, of investment
12 powers held by

13 (A) the commissioner of revenue under AS 14.42.200,
14 14.42.210, AS 18.56.095, AS 37.10.070, 37.10.071, or AS 37.14;

15 (B) the Board of Regents of the University of Alaska under
16 AS 14.40.250 - 14.40.491;

17 (15) a contract that is a delegation, in whole or in part, of investment
18 powers or fiduciary duties of

19 (A) the Board of Trustees of the Alaska Permanent Fund
20 Corporation under AS 37.13;

21 (B) the Alaska Mental Health Trust Authority under
22 AS 37.14.001 - 37.14.099;

23 (16) the purchase of books, book binding services, newspapers,
24 periodicals, audio-visual materials, network information services access, approval
25 plans, professional memberships, archival materials, objects of art, and items for
26 museum or archival acquisition having cultural, historical, or archaeological
27 significance; in this paragraph

28 (A) "approval plans" means book selection services in which
29 current book titles meeting an agency's customized specifications are provided
30 to the agency subject to the right of the agency to return those books that do
31 not meet with the agency's approval;

1 (B) "archival materials" means the noncurrent records of an
2 agency that are preserved after appraisal because of their value;

3 (C) "audio-visual materials" means nonbook prerecorded
4 materials, including records, tapes, slides, transparencies, films, filmstrips,
5 cassettes, videos, compact discs, laser discs, and items that require the use of
6 equipment to render them usable;

7 (D) "network information services" means a group of resources
8 from which cataloging information, holdings records, inter-library loans,
9 acquisitions information, and other reference resources can be obtained;

10 (17) contracts for the purchase of standardized examinations for
11 licensure under AS 08;

12 (18) contracts for home health care provided under regulations adopted
13 by the Department of Health and for adult residential care services provided under
14 regulations adopted by the Department of Health or by the Department of
15 Administration;

16 (19) contracts for supplies or services for research projects funded by
17 money received from the federal government or private grants;

18 (20) guest speakers or performers for an educational or cultural
19 activity;

20 (21) contracts of the Alaska Industrial Development and Export
21 Authority for a clean coal technology demonstration project that

22 (A) is attempting to develop a coal-fired electric generation
23 project;

24 (B) uses technology that is capable of commercialization
25 during the 1990's; and

26 (C) qualifies for federal financial participation under P.L. 99-
27 190 as amended;

28 (22) operation and protection of assets or disposals of equipment and
29 supplies acquired through foreclosure or other legal proceedings relating to loans
30 issued under AS 03.10;

31 (23) purchases of curatorial and conservation services to maintain,

1 preserve, and interpret

2 (A) objects of art; and

3 (B) items having cultural, historical, or archaeological
4 significance to the state;

5 (24) acquisition of confidential seismic survey data necessary for pre-
6 sale oil and gas lease or gas only lease analyses under AS 38.05.180;

7 (25) contracts for village public safety officers;

8 (26) purchases of supplies and services to support the operations of the
9 Alaska state troopers or law enforcement officers engaged in fish and wildlife
10 protection if the procurement officer for the Department of Public Safety makes a
11 written determination that publicity of the purchases would jeopardize the safety of
12 personnel or the success of a covert operation;

13 (27) expenditures when rates are set by law or ordinance;

14 (28) construction of new vessels by the Department of Transportation
15 and Public Facilities for the Alaska marine highway system;

16 (29) contracts entered into with a regional development organization;
17 in this paragraph, "regional development organization" means a nonprofit organization
18 or nonprofit corporation formed to encourage economic development within a
19 particular region of the state that includes the entire area of each municipality within
20 that region and that has a board of directors that represents the region's economic,
21 political, and social interests;

22 (30) contracts that are to be performed in an area outside of the country
23 and that require a knowledge of the customs, procedures, rules, or laws of the area;

24 (31) contracts that are between the

25 (A) Department of Law and attorneys who are not employed by
26 the state and that are for the review or prosecution of possible violations of the
27 criminal law of the state in situations where the attorney general concludes that
28 an actual or potential conflict of interest makes it inappropriate for the
29 Department of Law to review or prosecute the possible violations; and

30 (B) Public Defender Agency or the office of public advocacy
31 and attorneys who are not employed by the state and that are for the review or

1 defense of possible violations of the criminal law of the state in situations
2 where the public defender or the public advocate [DIRECTOR OF THE
3 OFFICE OF PUBLIC ADVOCACY] concludes that an actual or potential
4 conflict of interest makes it inappropriate for the Public Defender Agency or
5 the office of public advocacy to review or defend the possible violations;

6 (32) contracts between the Department of Natural Resources and
7 contractors qualified to evaluate hydrocarbon development, production, transportation,
8 and economics, to assist the commissioner of natural resources in evaluating
9 applications for royalty increases or decreases or other royalty adjustments, and
10 evaluating the related financial and technical data, entered into under AS 38.05.180(j);

11 (33) contracts of the Alaska Industrial Development and Export
12 Authority made with the developer of an integrated transportation and port facility
13 owned by the authority;

14 (34) procurements of contracts with the media for advertising;

15 (35) contracts between the state medical examiner and a provider of
16 medical services to perform or assist in performing the duties assigned to the state
17 medical examiner in AS 12.65.020;

18 (36) contracts between the commissioner of revenue and an
19 independent contractor under AS 43.82.240;

20 (37) contracts for a convener under AS 44.62.730 or for a facilitator
21 under AS 44.62.760 related to a negotiated regulation making process under
22 AS 44.62.710 - 44.62.800;

23 (38) grants and contracts with qualified entities for services under
24 AS 47.18.330 for the foster care transition program;

25 (39) contracts for travel services, including airplane travel, hotel
26 accommodations, and travel agency services, but excluding motor vehicle rentals;

27 (40) contracts of the Alaska Commission on Postsecondary Education
28 or the Alaska Student Loan Corporation for the guarantee and disbursing of financial
29 aid money to institutions of postsecondary education under the financial aid programs
30 under AS 14.43.091 - 14.43.750 and AS 14.44.025;

31 (41) contracts for an arbitration panel to determine whether a project is

1 uneconomic under AS 43.90.240, and contracts for the development of application
2 provisions for licensure and for the evaluation of those applications under AS 43.90;

3 (42) contracts for delivery of home heating assistance under
4 AS 47.25.626;

5 (43) contracts of the Alaska Pension Obligation Bond Corporation
6 under AS 37.16.010 - 37.16.900;

7 (44) the Alaska Gasline Development Corporation (AS 31.25) and
8 subsidiaries of the Alaska Gasline Development Corporation;

9 (45) contracts for professional and technical services by the
10 Department of Natural Resources to support the development of agreements and
11 contracts under AS 38.05.020(b)(10) and (11);

12 (46) contracts of the Department of Law developed with client
13 participation for legal services related to an Alaska liquefied natural gas project as that
14 project is defined in AS 31.25.390, except that, to the extent practicable, the
15 Department of Law shall use the procurement process under AS 36.30.320 with the
16 participation of the client;

17 (47) contracts of the Department of Education and Early Development
18 for student assessments required under AS 14.03.123 and AS 14.07.020;

19 (48) a contract under AS 06.65;

20 (49) contracts of the Alaska Tax Credit Certificate Bond Corporation
21 under AS 37.18;

22 (50) overriding royalty interest agreements under AS 44.37.230;

23 (51) contracts between a registry and the Department of Natural
24 Resources under AS 38.95.400 - 38.95.499; in this paragraph, "registry" has the
25 meaning given in AS 38.95.499.

26 * **Sec. 4.** AS 44.21.400 is amended to read:

27 **Sec. 44.21.400. Public advocacy office established.** There is created in the
28 Department of Administration the office of public advocacy. **The office is**
29 **administered by the public advocate.**

30 * **Sec. 5.** AS 44.21 is amended by adding a new section to read:

31 **Sec. 44.21.405. Appointment, removal, and vacancy.** (a) The governor shall

1 appoint the public advocate from among two or more persons nominated for that
 2 position by the judicial council. The appointment is subject to confirmation by a
 3 majority of the members of the legislature in joint session. The public advocate shall
 4 serve a term of four years. If the governor decides to retain the public advocate for
 5 another term, the governor need not call for nominations from the judicial council;
 6 however, the retention must be approved by a majority of the members of the
 7 legislature in joint session.

8 (b) The public advocate is subject to removal by the governor for good cause.
 9 If the public advocate is removed, the governor shall submit a report stating the
 10 reasons for removal to the senate secretary and the chief clerk of the house of
 11 representatives and notify the legislature that the report is available. The governor
 12 shall submit the report within 10 days after the action has been taken if the legislature
 13 is in session or, if the legislature is not in session, within 10 days after the convening
 14 of the next regular or special session.

15 (c) A person is not eligible to be the public advocate unless admitted to the
 16 practice of law in this state not later than 10 months following the commencement of
 17 the person's employment by the office.

18 (d) If the position of public advocate becomes vacant for any reason, the
 19 governor may appoint an acting public advocate to serve until the regular appointment
 20 procedures under (a) of this section are complied with. The governor and the judicial
 21 council shall act under (a) of this section as soon as possible after the vacancy occurs.
 22 A person appointed under (a) of this section to fill a vacancy begins a new four-year
 23 term.

24 * **Sec. 6.** AS 44.21.410(a) is amended to read:

25 (a) The office of public advocacy shall

26 (1) perform the duties of the public guardian under AS 13.26.700 -
 27 13.26.750;

28 (2) provide guardian ad litem services to children in child protection
 29 actions under AS 47.17.030(e) and to wards and respondents in guardianship
 30 proceedings who will suffer financial hardship or become dependent on [UPON] a
 31 government agency or a private person or agency if the services are not provided at

1 state expense under AS 13.26.041;

2 (3) provide legal representation in cases involving judicial bypass
3 procedures for minors seeking abortions under AS 18.16.030, in guardianship
4 proceedings to respondents who are financially unable to employ attorneys under
5 AS 13.26.226(b), to indigent parties in cases involving child custody in which the
6 opposing party is represented by counsel provided by a public agency, and to indigent
7 parents or guardians of a minor respondent in a commitment proceeding concerning
8 the minor under AS 47.30.775;

9 (4) provide legal representation and guardian ad litem services under
10 AS 25.24.310; in cases arising under AS 47.15 (Interstate Compact for Juveniles); in
11 cases involving petitions to adopt a minor under AS 25.23.125(b) or petitions for the
12 termination of parental rights under AS 25.23.180(c)(2); in cases involving petitions to
13 remove the disabilities of a minor under AS 09.55.590; in children's proceedings under
14 AS 47.10.050(a) or under AS 47.12.090; in cases involving appointments under
15 AS 18.66.100(a) in petitions for protective orders on behalf of a minor; and in cases
16 involving indigent persons who are entitled to representation under AS 18.85.100 and
17 who cannot be represented by the public defender agency because of a conflict of
18 interests;

19 (5) develop and coordinate a program to recruit, select, train, assign,
20 and supervise volunteer guardians ad litem from local communities to aid in delivering
21 services in cases in which the office of public advocacy is appointed as guardian ad
22 litem;

23 (6) **provide** [PROVIDE] guardian ad litem services in proceedings
24 under AS 12.45.046 or AS 18.15.355 - 18.15.395;

25 (7) establish a fee schedule and collect fees for services provided by
26 the office, except as provided in AS 18.85.120 or when imposition or collection of a
27 fee is not in the public interest as defined under regulations adopted by the **public**
28 **advocate** [COMMISSIONER OF ADMINISTRATION];

29 (8) provide guardians ad litem in proceedings under AS 47.30.839;

30 (9) provide legal representation to an indigent parent of a child with a
31 disability; in this paragraph, "child with a disability" has the meaning given in

1 AS 14.30.350;

2 (10) investigate complaints and bring civil actions under
3 AS 44.21.415(a) involving fraud committed against residents of the state who are 60
4 years of age or older; in this paragraph, "fraud" has the meaning given in
5 AS 44.21.415.

6 * **Sec. 7.** AS 44.21.410(b) is amended to read:

7 (b) The **public advocate** [COMMISSIONER OF ADMINISTRATION] may

8 (1) adopt regulations that the **public advocate** [COMMISSIONER]
9 considers necessary to implement AS 44.21.400 - 44.21.470;

10 (2) report on the operation of the office of public advocacy when
11 requested by the governor or legislature or when required by law;

12 (3) solicit and accept grants of funds from governments and from
13 persons, and allocate or restrict the use of those funds as required by the grantor.

14 * **Sec. 8.** AS 44.21.415(c) is amended to read:

15 (c) In addition to the functions described under (a) and (b) of this section, the
16 office of elder fraud and assistance shall provide information, referrals, and other
17 assistance to older Alaskans who are victims of fraud and make recommendations to
18 the **public advocate** [COMMISSIONER] for regulations on eligibility for assistance
19 needed to implement this section.

20 * **Sec. 9.** AS 44.21.415(e) is amended to read:

21 (e) Subject to the discretion of the court and standards established in
22 regulation adopted by the **public advocate** [COMMISSIONER OF
23 ADMINISTRATION] and taking into consideration the financial condition of the
24 parties to a civil suit brought under this section, the office of public advocacy may
25 seek recovery of all or part of litigation costs and fees from any party, including costs
26 incurred during the investigation of the case, when the office of public advocacy is
27 found to be a prevailing party after trial or settlement negotiation. The office of public
28 advocacy shall enter into a fee agreement with a client that is consistent with this
29 section, the Alaska Rules of Court, and the Alaska Rules of Professional Conduct.

30 * **Sec. 10.** AS 44.21.420 is amended to read:

31 **Sec. 44.21.420. Employment of office personnel.** (a) The **public advocate**

1 [COMMISSIONER OF ADMINISTRATION] may employ guardians ad litem, public
2 guardians, clerical staff, and other assistants that the **public advocate**
3 [COMMISSIONER] determines are needed to perform the duties set out in
4 AS 44.21.410. Employees under this subsection are in the classified service under
5 AS 39.25.100.

6 (b) The **public advocate** [COMMISSIONER OF ADMINISTRATION] may
7 employ attorneys needed to perform the duties set out in AS 44.21.410. Attorneys
8 employed [BY THE COMMISSIONER OF ADMINISTRATION] in the office of
9 public advocacy are in the partially exempt service under AS 39.25.120.

10 (c) The **public advocate** [COMMISSIONER] may contract with attorneys to
11 provide legal representation, and with other persons to provide guardian ad litem
12 services, as needed to perform the duties set out in AS 44.21.410. The **public**
13 **advocate** [COMMISSIONER] may determine the rate of compensation for contractual
14 services, taking into account the time involved, the skill and experience required, and
15 other pertinent factors.

16 * **Sec. 11.** The uncodified law of the State of Alaska is amended by adding a new section to
17 read:

18 TRANSITION. (a) Orders and regulations issued or adopted by the commissioner of
19 administration under authority of a law amended by this Act remain in effect for the term
20 issued, or until revoked, vacated, or otherwise modified under the provisions of this Act. All
21 contracts, rights, liabilities, and obligations created by or under a law amended by this Act
22 and in effect on the effective date of this Act remain in effect notwithstanding this Act's
23 taking effect.

24 (b) Notwithstanding AS 44.21.405, enacted by sec. 5 of this Act, the individual
25 employed as the director of the office of public advocacy on the day before the effective date
26 of this Act may serve as the public advocate until the governor appoints a new public
27 advocate.