

SENATE BILL NO. 147

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY SENATOR COWDERY

Introduced: 3/16/01

Referred: State Affairs, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to nongovernmental activities of state departments; and providing for**
2 **an effective date."**

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

4 * **Section 1.** AS 44 is amended by adding a new chapter to read:

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

6 **Sec. 44.64.010. Annual list required.** (a) Each department shall submit to
7 the office of management and budget each fiscal year a list of the activities performed
8 by the department's employees that, in the judgment of the commissioner of the
9 department, are not inherently governmental activities.

10 (b) The director of the office of management and budget shall consult with a
11 department when the department is preparing the list under (a) of this section and shall
12 review the list.

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

14 (1) means an activity that is required by the state constitution or that is

1 so closely related to the public interest that it requires performance by state
2 government employees; the term includes an activity that

3 (A) requires either the exercise of discretion in applying state
4 governmental authority or the making of value judgments, including judgments
5 relating to monetary transactions and entitlements, and making decisions for
6 the state government; or

7 (B) involves the interpretation or execution of the laws of the
8 state

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

11 (ii) to determine, protect, or advance state economic,
12 political, territorial, property, or other interests by military action,
13 intergovernmental agreements, civil judicial proceedings, criminal
14 judicial proceedings, contract management, or another method;

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

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

19 (v) that will exert ultimate control over the acquisition,
20 use, or disposition of the real or personal property, whether tangible or
21 intangible, of the state, including the collection, control, or
22 disbursement of appropriated or other state money;

23 (2) does not include

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

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

30 **Sec. 44.64.020. Description of listed activity.** The description of a listed
31 activity must include

- 1 (1) the fiscal year when the activity first appeared on a list;
- 2 (2) the number of full-time employees that are needed to perform the
- 3 activity;
- 4 (3) the name of a department employee who is responsible for the
- 5 activity and from whom additional information about the activity may be obtained.

6 **Sec. 44.64.030. Transmittal and publication of list.** (a) The commissioner

7 of each department shall promptly transmit a copy of the list prepared by the

8 department under AS 44.64.010 to the legislature and make the list available to the

9 public.

10 (b) For each list prepared by a department, the director of the office of

11 management and budget shall promptly publish in the Alaska Administrative Journal a

12 notice that the list is available to the public.

13 (c) If, as a result of a challenge or an appeal under AS 44.64.040, a department

14 changes a list after a notice is published under (b) of this section, the state department

15 that prepared the list shall promptly

16 (1) transmit a copy of the change to the legislature and make the

17 change available to the public; and

18 (2) publish in the Alaska Administrative Journal a notice that the

19 change is available to the public.

20 **Sec. 44.64.040. Challenge and appeal.** (a) An interested person may

21 challenge the inclusion or omission of an activity on a list by filing with the

22 department that prepared the list a written notice stating the person's challenge and the

23 reasons for the challenge. A challenge must be filed with the department within 30

24 days after publication of the notice under AS 44.64.030(b) or (c)(2), as applicable.

25 (b) Within 28 days after a department receives notice of a challenge under (a)

26 of this section, a department employee appointed by the commissioner of the

27 department shall decide whether to reject or uphold the challenge and shall transmit a

28 notice of the decision to the person who filed the notice. The notice must include the

29 decision, an explanation of the reasons for the decision, and an explanation of the

30 party's right to appeal under (c) of this section.

31 (c) An interested person may appeal an adverse decision made by a

1 department under (b) of this section. The appeal must be filed with the department
2 within 10 days after the person receives the notice of the decision.

3 (d) Within 10 days after a department receives an appeal of a decision under
4 (c) of this section, the commissioner of the department shall decide the appeal and
5 shall transmit to the person who filed the appeal a notice of the decision on the appeal,
6 including an explanation of the rationale for the decision. The person who filed the
7 appeal may appeal an adverse decision to the superior court.

8 (e) A challenge under this section, an appeal to a department under this
9 section, and an appeal to the superior court under this section are not subject to
10 AS 44.62 (Administrative Procedure Act).

11 **Sec. 44.64.050. Procurement determination.** For the purpose of determining
12 whether to contract with a private person to perform a listed activity, when a
13 department compares its costs of performing the activity with the costs of contracting
14 with a private person to perform the activity, the department shall consider all of the
15 realistic and fair costs of the activity. In this section, "costs" includes the quality
16 assurance costs, the cost to technically monitor performance of the activity, liability
17 insurance costs, the cost of employee retirement and disability benefits, and other
18 overhead costs.

19 **Sec. 44.64.090. Definitions.** In this chapter, unless the context indicates
20 otherwise,

21 (1) "department" means a department listed under AS 44.17.005, but
22 does not include a public corporation located in a department;

23 (2) "interested person" means

24 (A) a private person who

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

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

30 (B) a representative of a business association or professional
31 association, if the association includes as members private persons referred to

1 in (A) of this paragraph;

2 (C) an employee of an organization within the department if the
3 employee or the organization is an actual or prospective performer of the
4 activity; or

5 (D) the head of a labor organization that includes within its
6 membership employees referred to in (C) of this paragraph; in this
7 subparagraph, "labor organization" means a nonprofit organization established
8 wholly or partly to bargain collectively or deal with employers, including the
9 state, concerning grievances, terms, or conditions of employment or other
10 mutual aid or protection in connection with employees;

11 (3) "list" means a list prepared under AS 44.64.010;

12 (4) "listed activity" means an activity included on a list prepared under
13 AS 44.64.010, including an activity added after a challenge or an appeal under
14 AS 44.64.040.

15 * **Sec. 2.** This Act takes effect immediately under AS 01.10.070(c).