

CS FOR HOUSE BILL NO. 166(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 3/18/11

Referred: Rules

Sponsor(s): REPRESENTATIVES CHENAULT, Johnson, Costello, Feige, Gatto, Olson, Pruitt, Tammie Wilson, Millett, Guttenberg, Johansen, Gruenberg, Stoltze, Austerman, Tuck, Keller, Neuman, Thompson, Joule, Edgmon, Kerttula, Thomas, Fairclough

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."**

4 **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
10 SET OUT IN AS 44.66.020 AND 44.66.030,] and make the audit, together with a
11 written report, available to the legislature not later than the first day of the regular
12 session of the legislature convening in each year set out with reference to boards **and**
13 [.] commissions [, OR AGENCY PROGRAMS] whose activities are subject to
14 termination as prescribed in AS 44.66; the division shall notify the legislature that the

1 audit and report are available;

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

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

8 (4) [(3)] at the direction of the Legislative Budget and Audit
 9 Committee, conduct performance post-audits on any agency of state government;

10 (5) [(4)] cooperate with state agencies by offering advice and
 11 assistance as requested in establishing or improving the accounting systems used by
 12 state agencies;

13 (6) [(5)] require the assistance and cooperation of all state officials and
 14 other state employees in the inspection, examination, and audit of state agency books
 15 and accounts;

16 (7) [(6)] have access at all times to the books, accounts, reports, or
 17 other records, whether confidential or not, of every state agency;

18 (8) [(7)] ascertain, as necessary for audit verification, the amount of
 19 agency funds on deposit in any bank as shown on the books of the bank; no bank may
 20 be held liable for making information required under this paragraph available to the
 21 legislative audit division;

22 (9) [(8)] complete studies and prepare reports, memoranda, or other
 23 materials as directed by the Legislative Budget and Audit Committee;

24 (10) [(9)] have direct access to any information related to the
 25 management of the University of Alaska and have the same right of access as exists
 26 with respect to every other state agency;

27 (11) [(10)] conduct an audit every two years of information found in
 28 the annual reports required under AS 42.05.211 and AS 42.06.220 regarding
 29 compliance by the Regulatory Commission of Alaska with the requirements of
 30 AS 42.05.175(a) - (e) and of the timeline extensions made by the commission under
 31 AS 42.05.175(f), and of other performance measures adopted by the commission.

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

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

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

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

- 18 (1) Department of Corrections, 2012;
- 19 (2) Department of Law, 2013;
- 20 (3) Department of Public Safety, 2013;
- 21 (4) Alaska Court System, 2013;
- 22 (5) the Department of Health and Social Services, 2014;
- 23 (6) Department of Education and Early Development, including the
24 foundation formula, 2015;
- 25 (7) University of Alaska, 2016;
- 26 (8) Department of Transportation and Public Facilities, 2017;
- 27 (9) Department of Administration, 2018;
- 28 (10) Department of Commerce, Community, and Economic
29 Development, 2018;
- 30 (11) Department of Fish and Game, 2019;
- 31 (12) Department of Environmental Conservation, 2019;

1 (13) Department of Natural Resources, 2019;

2 (14) Department of Revenue, 2020;

3 (15) Office of the Governor, 2020;

4 (16) agencies of the legislative branch, 2020;

5 (17) Department of Military and Veterans' Affairs, 2021;

6 (18) Department of Labor and Workforce Development, 2021.

7 (b) Subject to appropriation, the legislative audit division shall hire individuals
8 and contract with individuals or firms to form a review team or teams to complete the
9 reviews under this section.

10 (c) In the year before the year designated as the year for review in (a) of this
11 section, the agency shall provide to the review team, before November 1,

12 (1) citations to the agency's authority under the Constitution of the
13 State of Alaska or the Alaska Statutes to administer its programs;

14 (2) a list of programs or elements of programs that compose at least 10
15 percent of the general funds in the agency's budget appropriated from the general fund
16 that could be reduced or eliminated; the agency shall consider first those programs or
17 elements of programs that

18 (A) do not serve a current need;

19 (B) are not authorized by the Constitution of the State of
20 Alaska or the Alaska Statutes; or

21 (C) are not essential;

22 (3) a list of active encumbrances and an explanation of the continuing
23 need for any encumbrance unsatisfied more than one year after it was incurred;

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

27 * **Sec. 4.** AS 44.66 is amended by adding a new section to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (7) recommends improvements to agency practices and procedures,
21 including means to decrease regulatory burdens or restrictions without decreasing
22 public service and safety;

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

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

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

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

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

4 (13) evaluates whether the agency priorities reported to the legislature
5 under AS 37.07.050(a)(13), and the list of programs or elements of programs provided
6 under AS 44.66.020(c)(2) are consistent with the results of the performance review;

7 (14) identifies agencies that could be terminated or consolidated,
8 reductions in costs, and potential program or cost reductions based on policy changes;

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

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

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

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

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

23 (20) identifies any other elements appropriate to a performance
24 management review.

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

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

31 * **Sec. 5.** AS 44.66.050 is amended to read:

1 **Sec. 44.66.050. Legislative oversight.** (a) Before the termination, dissolution,
 2 continuation, or reestablishment of a board or commission under AS 08.03.010 or
 3 AS 44.66.010 [, OR OF AN AGENCY PROGRAM UNDER AS 44.66.020 AND
 4 44.66.030,] a committee of reference of each house, which shall be the standing
 5 committee of legislative jurisdiction as provided in the Uniform Rules of the
 6 Legislature, shall hold one or more hearings to receive testimony from the public, the
 7 commissioner of the department having administrative responsibility for each named
 8 board or [,] commission [, OR AGENCY PROGRAM,] and the members of the board
 9 or commission involved. The hearings may be joint hearings. The committee shall also
 10 consider the proposed budget of the board or [,] commission, [OR AGENCY
 11 PROGRAM,] prepared in accordance with AS 37.07.050(f) [,] and the performance
 12 audit of the activities of the board or [,] commission, [OR AGENCY PROGRAM,]
 13 prepared by the legislative audit division as prescribed in AS 24.20.271(1). The
 14 committee may consider any other report of the activities of the board or [,]
 15 commission [OR PROGRAM], including [BUT NOT LIMITED TO] annual reports,
 16 summaries prepared by the Legislative Affairs Agency, and any evaluation or general
 17 report of the manner of conduct of activities of the board or [,] commission [, OR
 18 AGENCY PROGRAM] prepared by the office of the ombudsman.

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

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

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

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

1 budgetary, resource, and personnel matters;

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

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

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

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

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

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

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

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

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

29 (d) As to each board or [,] commission [, OR AGENCY PROGRAM]
30 assigned to it for purposes of review, the committee of reference shall, not later than
31 the 60th day of the legislative session, submit a report to the presiding officer of the

1 house. The report must contain a summary of the findings of the committee as to the
 2 compliance of the board or [,] commission [, OR PROGRAM] with the factors
 3 enumerated in (c) of this section, together with a summary or recommendations of the
 4 committee as to each of the following:

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

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

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

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

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

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

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

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

29 * **Sec. 6.** AS 44.66.060 is amended to read:

30 **Sec. 44.66.060. Existing claims.** This chapter does not cause the termination
 31 or dismissal of a claim or right of a citizen against a board, commission, or program of

1 an agency terminated **by legislative action or** under this chapter that is subject to
2 litigation. Claims and rights shall be assumed by the department to which the board or
3 commission terminated under this chapter was attached for administrative purposes.

4 * **Sec. 7.** AS 44.66 is amended by adding a new section to read:

5 **Sec. 44.66.070. Definitions.** In this chapter,

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

8 (2) "review team" means appropriate professionals hired by or under
9 contract with the legislative audit division to complete a performance review under
10 AS 44.66.020 - 44.66.040.

11 * **Sec. 8.** AS 44.66.030 is repealed.

12 * **Sec. 9.** AS 24.20.271(2); AS 44.66.020, and 44.66.040 are repealed July 1, 2022.

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