

SENATE

Introduced: 1/11/93
 Referred: TRA, STA, FIN

HOUSE

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EXECUTIVE ORDER NO. 87

1 Under the authority of art. III, sec. 23, of the Alaska Constitution, and in accordance
 2 with AS 24.08.210, I order the following:

3 * **Section 1. FINDINGS.** As governor, I find that it would be in the best interests of
 4 efficient administration to move state facility leasing and management functions from the
 5 Department of Administration and other agencies to the Department of Transportation and
 6 Public Facilities. The functions of state government have grown without a coordinated
 7 program adopted to carry out the procurement and maintenance functions for state facilities.
 8 Because of the fragmentation of facility procurement and management, many state agencies
 9 are housed in poorly maintained and inefficient buildings inadequate to meet the needs of the
 10 agencies and the people of the state. Integrating the state's facility leasing and management
 11 activities into its facilities' planning, design, and construction activities, with one agency
 12 having responsibility for the procurement and management of state facilities, whether through
 13 leasing or state construction, will result in protection of the state's assets, increased cost
 14 effectiveness, and efficient management of those assets.

15 * **Sec. 2.** AS 33.32.015(b) is amended to read:

16 (b) The commissioner of corrections may

17 (1) subject to AS 36.30 (State Procurement Code), use, purchase, lease,
 18 equip, and maintain [BUILDINGS,] machinery[,] and other equipment, and through
 19 the Department of Transportation and Public Facilities, use, purchase, lease, and
 20 maintain buildings, and may purchase materials and enter into contracts, which may
 21 be necessary for the correctional industries program;

22 (2) provide for prisoners to be employed in rendering services and
 23 producing articles, materials, and supplies needed by a state agency, a political

1 subdivision of the state, an agency of the federal government, other states or their
2 political subdivisions, or for use by nonprofit organizations;

3 (3) if the Correctional Industries Commission established in
4 AS 33.32.070 approves, employ prisoners to provide services or products as needed
5 by private industry if the services or products have potential for contributing to the
6 economy of the state and will have minimal negative impact on an existing private
7 industry or labor force in the state;

8 (4) authorize a prisoner to engage in productive employment within
9 or outside a correctional facility or enter into a contract under AS 33.30.191 for the
10 employment of a prisoner if the Correctional Industries Commission determines that
11 the employment will have minimal negative impact on an existing private industry or
12 labor force in the state; and

13 (5) subject to the provisions of AS 36.30 (State Procurement Code),
14 enter into joint cooperative ventures with private industry for the establishment and
15 operation of "Free Venture" industries under AS 33.32.017, if the Correctional
16 Industries Commission determines at the time of inception that the "Free Venture"
17 industry will not compete with an existing private industry or labor force in the state.

18 * Sec. 3. AS 35.05.010 is amended to read:

19 Sec. 35.05.010. PLANNING AND PROCUREMENT [CONSTRUCTION].

20 The department is responsible for the planning and procurement, through
21 construction or leasing, of public works except as provided for court facilities in
22 AS 22.05.025. Contracts for planning and procurement [CONSTRUCTION] of
23 public works are governed by AS 36.30 (State Procurement Code).

24 * Sec. 4. AS 35.05.040 is amended to read:

25 Sec. 35.05.040. POWERS OF DEPARTMENT. The department may

- 26 (1) acquire property;
- 27 (2) exercise the power of eminent domain;
- 28 (3) take immediate possession of real property, or any interest in it
29 under a declaration of taking or by other lawful means;
- 30 (4) acquire rights-of-way for present or future use;
- 31 (5) dispose of excess property or property rights;

1 (6) accept and dispose of federal funds or property available for public
2 works construction, maintenance, or equipment;

3 (7) enter into contracts or agreements relating to public works with the
4 federal government and political subdivisions, and also enter into contracts with a
5 foreign government if approved by the federal government;

6 (8) exercise any other power necessary to carry out the purpose of this
7 title;

8 (9) lease or grant land or any interest in land to the Alaska Housing
9 Finance Corporation for a purpose set out in AS 18.55.100 - 18.55.960 on terms and
10 conditions prescribed by the department;

11 (10) procure directly materials, labor and contractual services for
12 planning, designing and constructing public facilities of the state;

13 (11) by lease under AS 36.30, procure public facilities for state use.

14 * Sec. 5. AS 35.10.015(a) is amended to read:

15 (a) The department shall prepare, adopt, and enforce regulations governing the
16 leasing or construction of public buildings and facilities by or for the state, including
17 the University of Alaska, and its political subdivisions, whether financed in whole or
18 in part by federal funds, to ensure that public buildings and facilities are accessible
19 to, and usable by, the physically handicapped, aged, or infirm. The regulations of the
20 department must conform to a standard comparable to applicable provisions of federal
21 law, regulations, and standards.

22 * Sec. 6. AS 35.10.160 is amended to read:

23 Sec. 35.10.160. FINDINGS AND PURPOSE. The legislature finds that since
24 the needs of the state for physical facilities of all kinds are diverse, the planning,
25 design, and procurement [CONSTRUCTION] of public facilities through leasing or
26 construction should be executed in accordance with facility procurement policies
27 developed by the department and reviewed annually by the legislature.

28 * Sec. 7. AS 35.10.170 is amended to read:

29 Sec. 35.10.170. DUTIES OF DEPARTMENT. In addition to other duties
30 prescribed by statute, the department shall

31 (1) develop facility procurement policies for the planning, design,

1 construction, leasing, maintenance, and operation of public facilities of the state;

2 (2) develop and maintain an inventory of physical facilities currently
3 owned or occupied by the state;

4 (3) make projections of future public facility needs of the state,
5 analyze facilities needed, and establish methodology for program planning and
6 facilities project planning, design, and construction, based upon

7 (A) a justification of the level of service anticipated by the
8 program agency, utilizing population projections and estimates approved by the
9 governor,

10 (B) consideration of the geographical area to be served by the
11 facility and relevant data concerning the agency's existing public facilities in
12 that area,

13 (C) the date by which the services are to be provided,

14 (D) alternative program methods for providing the services, and

15 (E) pertinent data requested by the department in accordance
16 with procedures developed under AS 35.10.180;

17 (4) engage in experimental projects as necessary relating to any
18 available or future method of facility procurement, design, or construction and any
19 method of improving existing design, planning, and construction techniques;

20 (5) develop life cycle costs of public facilities of the state;

21 (6) develop life cycle costing methodologies for the following special
22 purposes:

23 (A) budget forecasting to support facility program planning and
24 analysis,

25 (B) systematic cost estimating to forecast planning, design, and
26 procurement through leasing or construction,

27 (C) budget forecasting to support development of annual
28 maintenance and operating strategies and life cycle cost plans,

29 (D) alternative methods of space acquisition and space
30 equalization that [WHICH] will maximize the effectiveness of public funds;

31 (7) apply for and accept, on behalf of the state, grants from the federal

1 government or an agency of it or from another state foundation, corporation,
2 association, or individual for any of the functions or purposes of the department and
3 may expend any of the money received under this section for any of the functions or
4 purposes.

5 * Sec. 8. AS 35.10.190(a) is amended to read:

6 (a) The department shall coordinate the procurement of physical facilities
7 through leasing or construction for the state to insure the greatest cost savings of
8 planning, design, and contractual techniques.

9 * Sec. 9. AS 35.10.195 is amended to read:

10 Sec. 35.10.195. CONFORMANCE WITH AS 36.30. The contractual
11 techniques for the procurement of labor, materials, and contractual services, including
12 facility procurement through either leasing or construction, under the policies
13 developed under this chapter must conform to the requirements of AS 36.30 (State
14 Procurement Code).

15 * Sec. 10. AS 35.10.200(1) is amended to read:

16 (1) "life cycle costs" means analytic techniques that [WHICH] provide
17 data to describe the first cost of procurement of public facilities through leasing or
18 construction and the maintenance cost, operation cost, and occupancy cost of the
19 facilities;

20 * Sec. 11. AS 36.30.005(b) is amended to read:

21 (b) Except as otherwise provided, all rights, powers, duties, and authority
22 relating to the procurement of construction and procurements of equipment or services
23 for the state equipment fleet and the control over construction of state facilities and
24 the state equipment fleet vested in or exercised by an agency on January 1, 1988, are
25 transferred to the commissioner of transportation and public facilities, subject to
26 regulations adopted by the commissioner of administration. Notwithstanding
27 AS 44.68.110, authority relating to disposals from the state equipment fleet is vested
28 in the commissioner of transportation and public facilities, subject to regulations
29 adopted by the commissioner of administration. Effective July 1, 1993, all rights,
30 powers, duties, and authority relating to the lease of space for the executive
31 branch of state government are transferred to the commissioner of transportation

1 ~~and public facilities, subject to regulations adopted by the commissioner of~~
2 ~~administration.~~ Authority granted under this subsection shall be exercised in
3 accordance with this chapter.

4 * Sec. 12. AS 36.30.015(a) is amended to read:

5 (a) The commissioner of transportation and public facilities may delegate to
6 another agency the authority to lease space or contract for construction. Before
7 delegating authority to an agency under this subsection, the commissioner of
8 transportation and public facilities shall make a written determination that the agency
9 is capable of implementing the delegated authority. Notwithstanding delegation of
10 authority under this subsection, contracts for construction are governed by this chapter
11 and regulations adopted by the commissioner of administration under this chapter.

12 * Sec. 13. AS 36.30.080(a) is amended to read:

13 (a) The Department of Transportation and Public Facilities
14 [DEPARTMENT] shall lease space for the use of the state or an agency wherever it
15 is necessary and feasible, subject to compliance with the requirements of this section
16 [CHAPTER]. A lease may not provide for a period of occupancy greater than 40
17 years. An agency requiring office, warehouse, or other space shall lease the space
18 through the Department of Transportation and Public Facilities [DEPARTMENT].

19 * Sec. 14. AS 36.30.080(d) is amended to read:

20 (d) When the Department of Transportation and Public Facilities
21 [DEPARTMENT] is evaluating proposals for a lease of space, the department shall
22 consider, in addition to lease costs, the life cycle costs, function, indoor environment,
23 public convenience, planning, design, appearance, and location of the proposed
24 building.

25 * Sec. 15. AS 36.30.080(e) is amended to read:

26 (e) When the Department of Transportation and Public Facilities
27 [DEPARTMENT] is considering leasing space, that [THE] department should
28 consider whether leasing is likely to be the least costly means to provide the space.

29 * Sec. 16. AS 36.30.080 is amended by adding a new subsection to read:

30 (f) In this section, "department" means the Department of Administration,
31 except that "department" means the Department of Transportation and Public Facilities

1 for leases of space for the executive branch of state government.

2 • **Sec. 17.** AS 36.30.150(b) is amended to read:

3 (b) A contract based on total or life cycle costs may be awarded only when
4 the chief procurement officer or, for construction contracts, leases of space, or
5 procurements for the state equipment fleet, the commissioner of transportation and
6 public facilities, determines in writing at the time of contract solicitation that the
7 contract promotes overall economy for the purposes intended, encourages competition,
8 is not unduly restrictive, and is in the best interests of the state.

9 • **Sec. 18.** AS 36.30.200(b) is amended to read:

10 (b) The commissioner may provide by regulation that it is either not
11 practicable or not advantageous to the state to procure specified types of supplies,
12 services, or construction by competitive sealed bidding that would otherwise be
13 procured by that method. When the chief procurement officer, or for construction
14 contracts, leases of space, or procurements for the state equipment fleet, the
15 commissioner of transportation and public facilities, determines in writing that the use
16 of competitive sealed bidding is either not practicable or not advantageous to the state,
17 a contract may be entered into by competitive sealed proposals in accordance with the
18 regulations. When it is determined that it is practicable but not advantageous to use
19 competitive sealed bidding, the chief procurement officer or commissioner of
20 transportation and public facilities shall specify with particularity the basis for the
21 determination.

22 • **Sec. 19.** AS 36.30.300(a) is amended to read:

23 (a) A contract may be awarded for supplies, services, professional services,
24 or construction without competitive sealed bidding, competitive sealed proposals, or
25 other competition in accordance with regulations adopted by the commissioner. A
26 contract may be awarded under this section only when the chief procurement officer
27 or, for construction contracts, leases of space, or procurements for the state equipment
28 fleet, the commissioner of transportation and public facilities determines in writing
29 that there is only one source for the required procurement or construction. A sole
30 source procurement may not be awarded if a reasonable alternative source exists. The
31 written determination must include findings of fact that support by clear and

1 convincing evidence the determination that only one source exists. Except for
2 procurements of supplies, services, or construction that do not exceed the amount for
3 small procurements under AS 36.30.320(a), the authority to make the determination
4 required by this subsection may not be delegated.

5 • **Sec. 20.** AS 36.30.305(a) is amended to read:

6 (a) A contract for supplies, services, professional services, or a construction
7 contract under \$100,000, may be awarded without competitive sealed bidding or
8 competitive sealed proposals, in accordance with regulations adopted by the
9 commissioner. A contract may be awarded under this section only when the
10 commissioner, or, for construction contracts under \$100,000, leases of space, or
11 procurements for the state equipment fleet, the commissioner of transportation and
12 public facilities, determines in writing that a situation exists that makes competitive
13 sealed bidding or competitive sealed proposals impractical or contrary to the public
14 interest. Procurements under this section shall be made with competition that is
15 practicable under the circumstance. Except for procurements of supplies, services, or
16 construction that do not exceed the amount for small procurements under
17 AS 36.30.320(a), the authority to make a determination required by this section may
18 not be delegated.

19 • **Sec. 21.** AS 36.30.580(b) is amended to read:

20 (b) The time for a decision may be extended up to 26 days for good cause by
21 the commissioner of administration, or for protests involving construction, leases of
22 space, or procurements for the state equipment fleet, the commissioner of
23 transportation and public facilities. If an extension is granted, the procurement officer
24 shall notify the protester in writing of the date of the decision is due.

25 • **Sec. 22.** AS 36.30.590(a) is amended to read:

26 (a) An appeal from a decision of a procurement officer on a protest may be
27 filed by the protester with the commissioner of administration, or for protests
28 involving construction, leases of space, or procurements for the state equipment fleet,
29 the commissioner of transportation and public facilities. An appeal shall be filed
30 within 10 days after the decision is received by the protester. The protester shall file
31 a copy of the appeal with the procurement officer.

1 * **Sec. 23.** AS 36.30.620(c) is amended to read:

2 (c) The time for issuing a decision under (b) of this section may be extended
3 for good cause by the commissioner of administration, or for a controversy involving
4 a construction contract, a lease of space, or procurement for the state equipment fleet,
5 the commissioner of transportation and public facilities, if the controversy concerns
6 an amount in excess of \$50,000. The procurement officer shall notify the contractor
7 in writing that the time for the issuance of a decision has been extended and of the
8 date by which a decision shall be issued.

9 * **Sec. 24.** AS 36.30.625(a) is amended to read:

10 (a) An appeal from a decision of the procurement officer on a contract
11 controversy may be filed by the contractor with the commissioner of administration,
12 or for a controversy involving a construction contract, a lease of space, or
13 procurement for the state equipment fleet, the commissioner of transportation and
14 public facilities. The appeal shall be filed within 14 days after the decision is
15 received by the contractor. The contractor shall file a copy of the appeal with the
16 procurement officer.

17 * **Sec. 25.** AS 36.30.870(b) is amended to read:

18 (b) Regulations under this chapter applicable to procurements of construction,
19 leases of space, or procurements for or disposal of property of the state equipment
20 fleet shall be adopted by the commissioner of administration only after consultation
21 with the commissioner of transportation and public facilities.

22 * **Sec. 26.** AS 38.05.030(d) is amended to read:

23 (d) Real property acquired by and under the management of the agencies
24 referred to in (b) of this section that is no longer needed for its intended use shall be
25 transferred to the commissioner, except that the Department of Transportation and
26 Public Facilities may dispose of real property acquired by it under AS 19.05.040(2),
27 [AND] 19.05.080 - 19.05.120, and AS 35.20.010 - 35.20.070.

28 * **Sec. 27.** AS 44.42.020(a)(1) is amended to read:

29 (1) plan, design, construct, and maintain all state modes of
30 transportation and transportation facilities and all docks, floats, breakwaters, buildings,
31 and similar facilities, allocate space in state buildings to the various departments

according to need and available space, and exercise all leases of space:

* Sec. 28. AS 44.42.020(b) is amended to read:

(b) The department may

(1) engage in experimental projects relating to available or future modes of transportation and any means of improving existing transportation facilities and service;

(2) acquire and dispose of land or interests in land by deed, agreement, or lease of space and exercise the power of eminent domain, including the declaration of taking as provided in AS 09.55;

(3) publish plans, schedules, directories, guides, and manuals for distribution, with or without charge, to private or public entities or persons;

(4) operate state housing in support of the department's statutory responsibilities and charge rent that is consistent with applicable collective bargaining agreements, or, if no collective bargaining agreement is applicable, competitive with market conditions;

(5) charge reasonable fees to cover the costs of issuing easements, licenses, and permits and to cover the costs of reproduction, printing, mailing, and distribution of contract and bid documents and design and construction standards manuals;

(6) charge and collect fees for training services and technical assistance provided by department personnel;

(7) delegate to another agency the authority to maintain buildings and similar facilities.

* Sec. 29. AS 47.10.150 is amended to read:

Sec. 47.10.150. GENERAL POWERS OF DEPARTMENT OVER JUVENILE INSTITUTIONS. The department may

(1) subject to AS 36.30 (State Procurement Code), through the Department of Transportation and Public Facilities, purchase, lease, or construct buildings or other facilities for the care, detention, rehabilitation, and education of children in need of aid or delinquent minors;

(2) subject to AS 35.05.010, adopt plans, through the Department

1 of Transportation and Public Facilities, for physical construction of juvenile homes,
2 juvenile detention facilities, and other juvenile institutions;

3 (3) adopt standards and regulations under this chapter for [THE
4 DESIGN, CONSTRUCTION, REPAIR, MAINTENANCE, AND] operation of all
5 juvenile detention homes, facilities, and institutions;

6 (4) inspect periodically each juvenile detention home, facility, or other
7 institution to ensure that the standards and regulations adopted are being maintained;

8 (5) reimburse cities maintaining and operating juvenile detention
9 homes and facilities;

10 (6) enter into contracts and arrangements with cities and state and
11 federal agencies to carry out the purposes of this chapter;

12 (7) do all acts necessary to carry out the purposes of this chapter;

13 (8) adopt the regulations necessary to carry out this chapter;

14 (9) accept donations, gifts, or bequests of money or other property for
15 use in construction of juvenile homes, institutions, or detention facilities;

16 (10) operate juvenile homes when municipalities are unable to do so;

17 (11) receive, care for, and place in a juvenile detention home, the
18 minor's own home, a foster home, or correctional school or treatment institution all
19 minors committed to its custody under this chapter.

20 * Sec. 30. AS 44.21.020(5) is repealed.

21 * Sec. 31. TRANSITION. (a) Litigation, hearings, investigations, and other proceedings
22 pending under a law amended or repealed by this Order, or in connection with functions
23 transferred by this Order, continue in effect and may be continued and completed
24 notwithstanding a transfer or amendment or repeal provided for in this Order.

25 (b) Contracts, rights, liabilities, and obligations created by or under a law amended
26 or repealed by this Executive Order, and in effect on June 30, 1993, remain in effect
27 notwithstanding this Order's taking effect. Records, equipment, appropriations, and other
28 property of agencies of the state whose functions are transferred under this Order shall be
29 transferred to implement the provisions of this Order.

30 * Sec. 32. This Order takes effect July 1, 1993.

DATED: _____

Walter J. Hickel
Governor

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