

## CS FOR SENATE BILL NO. 129(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 4/16/93  
 Referred: RULES

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE BUDGET AND  
 AUDIT COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to state procurement; and providing for an effective date."

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

3 \* Section 1. AS 36.30.010(a) is amended to read:

4 (a) The commissioner shall appoint to the partially exempt service the chief  
 5 procurement officer of the state. The chief procurement officer must have at least five  
 6 years of prior experience in public procurement, including large scale procurement of  
 7 supplies, services, or professional services, and must be a person with demonstrated  
 8 executive and organizational ability. The chief procurement officer may be removed  
 9 by the commissioner only for cause. The term of office of the chief procurement  
 10 officer is six [FOUR] years.

11 \* Sec. 2. AS 36.30.010 is amended by adding new subsections to read:

12 (c) While a person performs the duties of the chief procurement officer under  
 13 this chapter, the person may not be employed in or appointed to another position with  
 14 the state.

1 (d) The annual salary of the chief procurement officer is range 23 of the salary  
2 schedule established in AS 39.27.011.

3 \* Sec. 3. AS 36.30.080(c) is amended to read:

4 (c) If the department, legislative branch, or judicial branch intends to enter into  
5 or renew a lease of real property [OR LEASE-PURCHASE AGREEMENT, EXCEPT  
6 AN AGREEMENT RELATED TO A REFINANCING,] with an annual rent to the  
7 department, legislative branch, or judicial branch that is anticipated to exceed  
8 \$1,000,000, or with total lease payments that exceed \$10,000,000 for the full term of  
9 the lease, the department, legislative branch, or judicial branch shall provide notice to  
10 the legislature. If the department, legislative branch, or judicial branch intends  
11 to enter into or renew a lease-purchase or lease-financing agreement for real  
12 property, the department, legislative branch, or judicial branch shall provide  
13 notice to the legislature. The notice must include the anticipated annual lease  
14 obligation amount, the anticipated total construction, acquisition, or other costs of the  
15 project, and the total lease payments for the full term of the lease, if the agreement  
16 is a lease-purchase or lease-financing agreement, or if the agreement is a lease  
17 other than a lease-purchase or lease-financing agreement and [ , IF] the total lease  
18 payments for the full term of the lease exceed \$10,000,000 [ , THE TOTAL LEASE  
19 PAYMENTS FOR THE FULL TERM OF THE LEASE]. The department may not  
20 enter into or renew an agreement requiring notice under this subsection unless the  
21 project has been approved by the legislature by law. An appropriation for the project  
22 does not constitute approval of the project for purposes of this subsection. The  
23 department may not enter into an agreement under this subsection if the optional  
24 renewal period allowed under the agreement exceeds two years. In this subsection,  
25 "term" includes defined renewal options.

26 \* Sec. 4. AS 36.30.300(a) is amended to read:

27 (a) A contract may be awarded for supplies, services, professional services, or  
28 construction without competitive sealed bidding, competitive sealed proposals, or other  
29 competition in accordance with regulations adopted by the commissioner. A contract  
30 may be awarded under this section only when the chief procurement officer or, for  
31 construction contracts or procurements for the state equipment fleet, the commissioner

1 of transportation and public facilities determines in writing that there is only one  
2 source for the required procurement or construction. A sole source procurement may  
3 not be awarded if a reasonable alternative source exists. The written determination  
4 must include findings of fact that support by clear and convincing evidence the  
5 determination that only one source exists. Except for procurements of supplies,  
6 services, professional services, or construction that do not exceed the amount for  
7 small procurements under AS 36.30.320(a) or (b), as applicable [AS 36.30.320(a)],  
8 the authority to make the determination required by this subsection may not be  
9 delegated.

10 \* Sec. 5. AS 36.30.305(a) is amended to read:

11 (a) A contract for supplies, services, professional services, or a construction  
12 contract under \$100,000, may be awarded without competitive sealed bidding or  
13 competitive sealed proposals, in accordance with regulations adopted by the  
14 commissioner. A contract may be awarded under this section only when the chief  
15 procurement officer [COMMISSIONER], or, for construction contracts under  
16 \$100,000 or procurements for the state equipment fleet, the commissioner of  
17 transportation and public facilities, determines in writing that a situation exists that  
18 makes competitive sealed bidding or competitive sealed proposals impractical or  
19 contrary to the public interest. Procurements under this section shall be made with  
20 competition that is practicable under the circumstance. Except for procurements of  
21 supplies, services, professional services, or construction that do not exceed the amount  
22 for small procurements under AS 36.30.320(a) or (b), as applicable  
23 [AS 36.30.320(a)], the authority to make a determination required by this section may  
24 not be delegated.

25 \* Sec. 6. AS 36.30.310 is amended to read:

26 Sec. 36.30.310. EMERGENCY PROCUREMENTS. Procurements may be  
27 made under emergency conditions as defined in regulations adopted by the  
28 commissioner when there exists a threat to public health, welfare, or safety, when a  
29 situation exists that makes a procurement through competitive sealed bidding or  
30 competitive sealed proposals impracticable or contrary to the public interest, or to  
31 protect public or private property. An emergency procurement need not be made

1 through competitive sealed bidding or competitive sealed proposals but shall be made  
2 with competition that is practicable under the circumstances. A written determination  
3 by the chief procurement officer of the basis for the emergency and for the selection  
4 of the particular contractor shall be included in the contract file. The written  
5 determination must include findings of fact that support the determination. Except  
6 when there is insufficient time for the chief procurement officer to make the  
7 written determination required by this section, the chief procurement officer may  
8 not delegate the authority to make the determination.

9 \* Sec. 7. AS 36.30 is amended by adding a new section to read:

10 Sec. 36.30.315. DETERMINATIONS BY CHIEF PROCUREMENT  
11 OFFICER; CRIMINAL PENALTY. (a) In a determination made by the chief  
12 procurement officer under AS 36.30.300 - 36.30.310, the chief procurement officer  
13 shall independently examine the material facts of the procurement and independently  
14 determine whether the procurement is eligible for the procurement method requested.

15 (b) If the chief procurement officer knowingly makes a false statement in a  
16 determination made by the chief procurement officer under AS 36.30.300 - 36.30.310,  
17 the chief procurement officer is guilty of a class A misdemeanor.

18 \* Sec. 8. AS 36.30.370 is amended to read:

19 Sec. 36.30.370. TYPES OF CONTRACTS. Any [SUBJECT TO  
20 LIMITATIONS OF THIS SECTION, ANY] type of contract that will promote the best  
21 interests of the state may be used, except that the use of a  
22 cost-plus-a-percentage-of-cost contract is prohibited. [A COST-REIMBURSEMENT  
23 CONTRACT MAY BE USED ONLY WHEN A DETERMINATION IS MADE IN  
24 WRITING BY THE PROCUREMENT OFFICER THAT A  
25 COST-REIMBURSEMENT CONTRACT IS LIKELY TO BE LESS COSTLY TO  
26 THE STATE THAN ANY OTHER TYPE OR THAT IT IS IMPRACTICABLE TO  
27 OBTAIN THE SUPPLIES, SERVICES, PROFESSIONAL SERVICES, OR  
28 CONSTRUCTION REQUIRED EXCEPT UNDER A COST-REIMBURSEMENT  
29 CONTRACT.]

30 \* Sec. 9. AS 36.30.610(c) is amended to read:

31 (c) The commissioner of administration or the commissioner of transportation

1 and public facilities, as appropriate, shall, within 15 days ~~from the date the~~  
2 ~~appellant's comments on the protest report are due under AS 36.30.605(c) and (d)~~  
3 [AFTER RECEIPT OF AN APPEAL], notify the appellant of the acceptance or  
4 rejection of the appeal and, if rejected, the reasons for the rejection.

5 \* Sec. 10. AS 36.30.850(b) is amended by adding new paragraphs to read:

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

8 (31) contracts that are between the Department of Law and attorneys  
9 who are not employed by the state and that are for the review or prosecution of  
10 possible violations of the criminal law of the state in situations where the attorney  
11 general concludes that an actual or potential conflict of interest makes it inappropriate  
12 for the Department of Law to review or prosecute the possible violations.

13 \* Sec. 11. AS 36.30.150(b) is repealed.

14 \* Sec. 12. LEASE EXTENSIONS AUTHORIZED. (a) Notwithstanding AS 36.30, the  
15 Department of Administration, the University of Alaska, the legislature, and the court system  
16 may extend for up to a maximum extension of five years a real property lease that is entered  
17 into under AS 36.30, including procedures and regulations adopted under AS 36.30.005(c) and  
18 36.30.020 - 36.30.030, and that is in existence on the effective date of this section if a  
19 minimum cost savings of

20 (1) 10 percent can be achieved on the rent due under the lease; or

21 (2) five percent can be achieved on the rent due under the lease and the lessor  
22 agrees to make modifications of the leased real property to bring the real property into  
23 compliance with the requirements of 42 U.S.C. 12101 - 12213 (Americans with Disabilities  
24 Act of 1990).

25 (b) The cost savings under (a) of this section shall be calculated on the remaining term  
26 of the lease and any renewals, including extensions allowed under (a) of this section.

27 (c) The Department of Administration, the University of Alaska, the Alaska Court  
28 System, and the Legislative Affairs Agency shall submit a quarterly report to the Legislative  
29 Budget and Audit Committee detailing the leases extended and the cost savings achieved  
30 under (a) - (b) of this section. The first report is due July 1, 1994, and must cover the period  
31 from the effective date of this section through March 31, 1994. The subsequent reports shall

1 be made October 1, 1994, January 2, 1995, and April 1, 1995.

2 \* **Sec. 13. TRANSITIONAL PROVISIONS.** (a) With respect to the person holding the  
3 position of chief procurement officer on the effective date of this section, the six-year term  
4 of the chief procurement officer under AS 36.30.010(a), as amended by sec. 1 of this Act,  
5 shall include the time the person holds the position before the effective date of this section.

6 (b) AS 36.30.010(c) and (d), added by sec. 2 of this Act, apply to the chief  
7 procurement officer on and after the effective date of this section.

8 (c) AS 36.30.300(a), 36.30.305(a), 36.30.310, 36.30.370, amended by secs. 4 - 6 and  
9 8 of this Act, and 36.30.850(b)(30) and (31), added by sec. 10 of this Act, apply to a  
10 procurement that begins on or after the effective date of this section.

11 (d) AS 36.30.315, enacted by sec. 7 of this Act, applies to a determination made on  
12 or after the effective date of this section.

13 (e) AS 36.30.610(c), amended by sec. 9 of this Act, applies to a protest report filed  
14 under AS 36.30.605 on or after the effective date of this section.

15 \* **Sec. 14.** (a) Subsections 12(a) and (b) of this Act are repealed December 31, 1994.

16 (b) Subsection 12(c) of this Act is repealed April 1, 1995.

17 \* **Sec. 15.** If sec. 12 of this Act takes effect after May 1, 1993, sec. 12 of this Act is  
18 retroactive to May 1, 1993.

19 \* **Sec. 16.** Sections 12 and 15 of this Act take effect immediately under AS 01.10.070(c).