

**HOUSE CS FOR CS FOR SENATE BILL NO. 129(STA)****IN THE LEGISLATURE OF THE STATE OF ALASKA****EIGHTEENTH LEGISLATURE - FIRST SESSION****BY THE HOUSE STATE AFFAIRS COMMITTEE****Offered: 4/24/93****Referred: Finance****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, other than (1) an agreement related to the refinancing of an outstanding  
13 balance owing or (2) a lease-purchase or lease-financing agreement by the  
14 University of Alaska that is secured by student fees or university receipts as  
15 defined in AS 14.40.491, that has annual lease payments of less than \$1,000,000,  
16 and for which the total lease payments for the full term will not exceed  
17 \$10,000,000, the department, legislative branch, or judicial branch shall provide  
18 notice to the legislature. The notice must include the anticipated annual lease  
19 obligation amount, the anticipated total construction, acquisition, or other costs of the  
20 project, and the total lease payments for the full term of the lease, if the agreement  
21 is a lease-purchase or lease-financing agreement, or if the agreement is a lease  
22 other than a lease-purchase or lease-financing agreement and [, IF] the total lease  
23 payments for the full term of the lease exceed \$10,000,000 [, THE TOTAL LEASE  
24 PAYMENTS FOR THE FULL TERM OF THE LEASE]. The department may not  
25 enter into or renew an agreement requiring notice under this subsection unless the  
26 project has been approved by the legislature [BY LAW]. An appropriation for the  
27 project constitutes [DOES NOT CONSTITUTE] approval of the project for purposes  
28 of this subsection. The department may not enter into an agreement under this  
29 subsection if the optional renewal period allowed under the agreement exceeds two  
30 years. In this subsection, "term" includes defined renewal options.

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

1 (a) A contract may be awarded for supplies, services, professional services, or  
2 construction without competitive sealed bidding, competitive sealed proposals, or other  
3 competition in accordance with regulations adopted by the commissioner. A contract  
4 may be awarded under this section only when the chief procurement officer or, for  
5 construction contracts or procurements for the state equipment fleet, the commissioner  
6 of transportation and public facilities determines in writing that there is only one  
7 source for the required procurement or construction. A sole source procurement may  
8 not be awarded if a reasonable alternative source exists. The written determination  
9 must include findings of fact that support by clear and convincing evidence the  
10 determination that only one source exists. Except for procurements of supplies,  
11 services, professional services, or construction that do not exceed the amount for  
12 small procurements under AS 36.30.320(a) or (b), as applicable [AS 36.30.320(a)],  
13 the authority to make the determination required by this subsection may not be  
14 delegated.

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

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

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

31 Sec. 36.30.310. **EMERGENCY PROCUREMENTS.** Procurements may be

1 made under emergency conditions as defined in regulations adopted by the  
2 commissioner when there exists a threat to public health, welfare, or safety, when a  
3 situation exists that makes a procurement through competitive sealed bidding or  
4 competitive sealed proposals impracticable or contrary to the public interest, or to  
5 protect public or private property. An emergency procurement need not be made  
6 through competitive sealed bidding or competitive sealed proposals but shall be made  
7 with competition that is practicable under the circumstances. A written determination  
8 by the chief procurement officer of the basis for the emergency and for the selection  
9 of the particular contractor shall be included in the contract file. The written  
10 determination must include findings of fact that support the determination. Except  
11 when there is insufficient time for the chief procurement officer to make the  
12 written determination required by this section, the chief procurement officer may  
13 not delegate the authority to make the determination.

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

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

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

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

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

1       OBTAIN THE SUPPLIES, SERVICES, PROFESSIONAL SERVICES, OR  
2       CONSTRUCTION REQUIRED EXCEPT UNDER A COST-REIMBURSEMENT  
3       CONTRACT.]

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

5               (c) The commissioner of administration or the commissioner of transportation  
6       and public facilities, as appropriate, shall, within 15 days from the date the  
7       appellant's comments on the protest report are due under AS 36.30.605(c) and (d)  
8       [AFTER RECEIPT OF AN APPEAL], notify the appellant of the acceptance or  
9       rejection of the appeal and, if rejected, the reasons for the rejection.

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

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

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

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

19       \* Sec. 12. LEASE EXTENSIONS AUTHORIZED. (a) Notwithstanding AS 36.30, the  
20       Department of Administration, the University of Alaska, the legislature, and the court system  
21       may extend for up to a maximum extension of five years a real property lease that is entered  
22       into under AS 36.30, including procedures and regulations adopted under AS 36.30.005(c) and  
23       36.30.020 - 36.30.030, and that is in existence on the effective date of this section if a  
24       minimum cost savings of

25               (1) 10 percent can be achieved on the rent due under the lease; or

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

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

1           (c) The Department of Administration, the University of Alaska, the Alaska Court  
2 System, and the Legislative Affairs Agency shall submit a quarterly report to the Legislative  
3 Budget and Audit Committee detailing the leases extended and the cost savings achieved  
4 under (a) - (b) of this section. The first report is due July 1, 1994, and must cover the period  
5 from the effective date of this section through March 31, 1994. The subsequent reports shall  
6 be made October 1, 1994, January 2, 1995, and April 1, 1995.

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

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

13           (c) AS 36.30.300(a), 36.30.305(a), 36.30.310, 36.30.370, amended by secs. 4 - 6 and  
14 8 of this Act, and 36.30.850(b)(30) and (31), added by sec. 10 of this Act, apply to a  
15 procurement that begins on or after the effective date of this section.

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

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

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

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

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

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