

SB

129

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 3/18/93

FURTHER:

DATE TURNED INTO OFFICE: 4-15-93

The Finance Committee considered **SENATE BILL NC. 129**

"An Act relating to the state's chief procurement officer."

and recommends:

- replace with CS SB 129 (FINANCE)
- or adopt previous CS _____ (_____)
- attaches amendment(s)

- same title
- new title
- technical title change (HB only)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

NEW FISCAL NOTES

Department	Date	Zero	Fiscal
DOT/PF EROS		0	3/2/93

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal
Dept of Admin		0	3/17/93

Appropriation No Fiscal Note

DO PASS.

OTHER RECOMMENDATIONS:

1. Sharon Do Pass
 Co-Chair: Signature/Recommendation

2. Tracy Grace - 10/255
 Co-Chair: Signature/Recommendation

FISCAL NOTE

No. 2

STATE OF ALASKA
1993 LEGISLATIVE SESSION

Bill Version: CSSB 129 (STA)

(S) Publish Date: 3-18-93

Revision Date: _____ Dept. Affected: Administration
 Title: An Act relating to State procurement. BRU: General Services
 Component: Purchasing
 Sponsor: Senate Rules Committee
 Requestor: Senate State Affairs Committee COMPONENT SERIAL NO. 60

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY93) impact: \$ 0.00

ANALYSIS: (attach a separate page if necessary.)

Prepared By: Dugan Petty, Director Phone: 465-2250
 Division: General Services Date: _____

Approved by Commissioner: Nancy Bear Uera Date: 3/17/93
 Agency: Department of Administration

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3/4/93

Revision Date:
Title: Powers of Chief Procurement Officer

Department Affected: DOT&PF
BRU: E&OS

Sponsor: Rules
Requestor:

Component: D&C
Component Serial Number: 547

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING:	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE FUND SOURCE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

1002 FEDERAL RECEIPTS	0	0	0	0	0	0
1003 GF MATCH	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/PROGRAM RECEIPTS	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL FUNDING:	0	0	0	0	0	0

SB 129

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY93) impact: \$0

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Loren Rasmussen

Phone: 465-2951

Division: Engineering & Operations Standards

Date: March 2, 1993

Approved by Commissioner: Frank G. Turpin

Phone: 465-3901

Agency: Department of Transportation and Public Facilities

Date: March 2, 1993

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8-LS0591NK ✓
Bannister
4/15/93

in deleted
5-18-93
unrev.

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:
Referred:

**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."**

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 INSTRUCTION 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 Act if a minimum
19 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 Act through March 31, 1994. The subsequent reports shall be

1 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 Act, the six-year term of the
4 chief procurement officer under AS 36.30.010(a), as amended by sec. 1 of this Act, shall
5 include the time the person holds the position before the effective date of this Act.

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 Act.

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 Act.

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 Act.

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 Act.

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.

AMENDMENT

indented
4-15-93
Frank

IN THE SENATE

BY FRANK

TO: CSSB 129(FIN)

Page 1, line 1, following "procurement" insert:
"and providing for an effective date"



Page 6, after line 16; insert new bill sections to read:

" * Sec 15. section 12 of this Act is retroactive to May 1, 1993.

* Sec. 16. Section 12 and 15 of this Act take effect immediately under AS 01.10.070(c). "

SENATE FINANCE
COMMITTEE

Amendment Number: (3) REVISED
Bill Number: SB 129
Sponsor: FRANK Date: 4/15/93
Logged In By: FRM

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. CS SB 129 (FIN) AM

Revision Date: _____
Title: 'An Act relating to State procurement; and providing for an effective date.'
Sponsor: Senate Rules Committee
Requestor: _____

Department Affected: Administration
BRU: Leasing and Facilities
Component: Leasing and Facilities
COMPONENT SERIAL NO. 81

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	*	*	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	*	*	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	*	*	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	*	*	0	0	0	0
TOTAL	*	*	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

*copy to H.F.
4-22-93*

Estimate of current year (FY93) impact: 0

ANALYSIS: (Attach a separate page if necessary.)
See attached.

Prepared by: Dugan Petty, Director
Division: General Services

Phone: _____
Date: _____

Approved by Commissioner: Nancy Bear Userra
Agency: Administration

Date: 4/21/93

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. CS SB 129 (FIN) AM

ANALYSIS: (continued)

Sections 1 through 11 made various changes involving the duties of the Chief Procurement Officer and the procurement process that will have a minimal fiscal impact on the division. Section 12 authorizes the extending of leases during FY 94 and the first half of FY 95 if the lessor will agree to

- a. 10 percent reduction in base rent over the extended term; or
- b. 5 percent reduction of base rent over the extended term if lessors make ADA compliance changes.

This bill would result in lease savings by giving the department the opportunity to extend leases if sufficient savings could be achieved. In practice a lease would have to meet certain criteria before the department would agree to an extension under this bill. For example:

- 1. The lease must have an ongoing and projected need by the agency.
- 2. The lease must meet agency needs.
- 3. Extension of the lease must be an overall good business decision.
- 4. The extension must reduce base rent by a minimum of the required 10 percent or 5 percent.

Not all lessors will agree to a rent reduction in return for an extension, and all leases will not meet our criteria for extension even if the lessor is interested in a cost reduction. It is not possible to accurately predict how much savings will be achieved, but we believe savings could be significant.

FY 94 projected total lease payments are \$31,188.5. There is no way to estimate the fiscal savings at this time. If one-third of our leases average a 5 percent rent reduction and one-third average a 10 percent rent reduction, a \$1,543.8 saving could be achieved. This would result in a base rent reduction for the life of the lease.

CALCULATIONS			
TOTAL LEASE OBLIGATION	PERCENT OF LESSORS AGREEING TO EXTEND		POTENTIAL SAVINGS
31,188.5	at 5%	33%	\$ 514.6
31,188.5	at 10%	33%	<u>1,029.2</u>
			\$1,543.8

This bill gives us significant potential to reduce the current projected lease obligation, but we can only speculate about the actual amount of savings. Several large leases offer very significant opportunity for savings. It is possible savings could fall short or exceed this estimate depending on which lessors are willing to negotiate reductions. The FY 94 leasing budget is comprised of \$26,468.3 in general funds and \$4,720.2 in interagency receipts. Savings could be achieved in both funding sources.

4/28/93

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HCS CSSB 129 (STA)

(S) Await CONC/RECD

Revision Date: _____
Title: 'An Act relating to State procurement; and providing for an effective date.'
Sponsor: Senate Rules Committee
Requestor: _____

Department Affected: Administration
BRU: Leasing and Facilities
Component: Leasing and Facilities
COMPONENT SERIAL NO. 81

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CONTRACTUAL	*	*	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	*	*	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	*	*	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	*	*	0	0	0	0
TOTAL	*	*	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY93) impact: 0

ANALYSIS: (Attach a separate page if necessary.)
See attached.

Prepared by: Dugan Petty, Director *Dugan Petty*
Division: General Services

Phone: _____
Date: _____

Approved by Commissioner: Nancy Bear Usera *NBE*
Agency: Administration

Date: 4/27/93

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HCS CSSB 129 (STA)

ANALYSIS: (continued)

Sections 1 through 11 made various changes involving the duties of the Chief Procurement Officer and the procurement process that will have a minimal fiscal impact on the division. Section 12 authorizes the extending of leases during FY 94 and the first half of FY 95 if the lessor will agree to

- a. 10 percent reduction in base rent over the extended term; or
- b. 5 percent reduction of base rent over the extended term if lessors make ADA compliance changes.

This bill would result in lease savings by giving the department the opportunity to extend leases if sufficient savings could be achieved. In practice a lease would have to meet certain criteria before the department would agree to an extension under this bill. For example:

- 1. The lease must have an ongoing and projected need by the agency.
- 2. The lease must meet agency needs.
- 3. Extension of the lease must be an overall good business decision.
- 4. The extension must reduce base rent by a minimum of the required 10 percent or 5 percent.

Not all lessors will agree to a rent reduction in return for an extension, and all leases will not meet our criteria for extension even if the lessor is interested in a cost reduction. It is not possible to accurately predict how much savings will be achieved, but we believe savings could be significant.

FY 94 projected total lease payments are \$31,188.5. There is no way to estimate the fiscal savings at this time. If one-third of our leases average a 5 percent rent reduction and one-third average a 10 percent rent reduction, a \$1,543.8 saving could be achieved. This would result in a base rent reduction for the life of the lease.

CALCULATIONS		
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31,188.5	at 10% 33%	<u>1,029.2</u>
		<u>\$1,543.8</u>

This bill gives us significant potential to reduce the current projected lease obligation, but we can only speculate about the actual amount of savings. Several large leases offer very significant opportunity for savings. It is possible savings could fall short or exceed this estimate depending on which lessors are willing to negotiate reductions. The FY 94 leasing budget is comprised of \$26,468.3 in general funds and \$4,720.2 in interagency receipts. Savings could be achieved in both funding sources.

4-15-93

These amends.
incorporated
within draft
CS5B129 (Fin)
"Kiersion 4-15-93"

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR FRANK

TO: CSSB 129(STA)

Amend #1

Page 4, following line 21:

Insert a new bill section to read:

"* Sec. 11. LEASE EXTENSIONS AUTHORIZED. (a) Notwithstanding AS 36.30, the Department of Administration, the legislature, and the court system may extend for up to a maximum extension of five years a real property lease that is entered into under AS 36.30, including procedures adopted under AS 36.30.020 - 36.30.030, and that is in existence on the effective date of this Act if a minimum cost savings of

University of Alaska

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

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

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

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

Renumber the following bill section accordingly.

Page 5, following line 3:

Insert a new bill section to read:

SENATE FINANCE COMMITTEE
Amendment Number: ①
Bill Number: SB 129
Sponsor: FRANK Date: 4/14/93
Logged In By: for

4-14-93 p.m. add University plus University regis. re: procurement

"* **Sec. 13.** (a) Subsections 11(a) - (b) of this Act are repealed December 31, 1994.

(b) Subsection 11(c) of this Act is repealed April 1, 1995."

4-14-93
SF moved
Adopted
8-LS0591N.1
Bannister
4/13/93

A M E N D M E N T

Amend. #2

OFFERED IN THE SENATE
TO: CSSB 129(STA)

Page 2, following line 2:

Insert a new bill section to read:

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

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

*Conceptual:
Add real property*

Renumber the following bill sections accordingly.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 15, 1993

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

1031 W. 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 269-5100
FAX: (907) 276-3697

KEY BANK BUILDING
100 CUSHMAN ST., SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 452-1568
FAX: (907) 456-1317

P. O. BOX 110300 - STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

The Honorable Steve Frank
Alaska State Senate
State Capitol
Juneau, Alaska 99811-1182

Re: Proposed amendment to
CSSB 129 (STA)

Dear Senator Frank:

At the request of your legislative assistant, Rick Solie, we have reviewed the proposed amendment to CSSB 129 (STA) which will allow the Department of Administration, the Alaska Court System, the Legislative Affairs Agency and the University of Alaska to negotiate lease extensions for up to a maximum of five years. It exempts these extensions from the procurement code. This amendment requires that before an extension can be entered into that it result in at least a 10 percent costs savings to the agency. Alternatively, the cost savings may be reduced to minimum of 5 percent provided the leasing entity brings its lease premises into compliance with the American with Disabilities Act of 1990 (ADA) -- assuming they are not currently in compliance. Lease extensions successfully negotiated under this amendment must be reported quarterly to the Legislative Budget and Audit Committee.

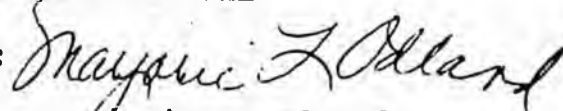
We find no constitutional problems with this amendment. So long as the agency negotiating an extension under this amendment realizes the minimum 10 percent cost savings or minimum 5 percent cost savings with ADA compliance, potential competitive bidders for other lease space will have no viable claim that the state is not in compliance with the procurement code, AS 36.30, because such an extension is exempt under AS 36.30.

We hope this addresses your questions.

Sincerely yours,

CHARLES E. COLE
ATTORNEY GENERAL

by:



Marjorie L. Odland
Assistant Attorney General

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF REVENUE

TREASURY DIVISION

333 WILLOUGHBY AVENUE, 11TH FLOOR
P.O. BOX 110405
JUNEAU, ALASKA 99811-0405
PHONE: (907) 465-2350
FAX: (907) 465-2394

April 15, 1993

The Honorable Steve Frank, Co-Chair
Senate Finance Committee
State Capitol, Room 518
Juneau, AK 99801-1182

Dear Senator Frank:

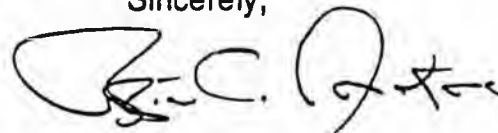
The Department of Revenue (DOR) would like to propose an amendment to CSSB 129 (FIN), Version 8-LS0591\K, "An Act relating to state procurement". This amendment deals with refinancing of capital leases set forth on page 2, Sec. 3. We propose the following change to that section at line 12, following "property" insert:

except an agreement related to a refinancing of outstanding balance owing

This amendment would allow the State Bond Committee to take advantage of interest cost savings at opportune times.

Please feel free to contact me at 465-3750 if you have questions.

Sincerely,



Brian C. Andrews
Debt Manager

93-076

cc: Kris Lethin, Governor's Office

APP. 0.6 1993

XPRT CONSULTANTS

9701 Brier Street
Anchorage, Alaska 99516
(907) 346-3416

2 April 1993

Chairs Frank and Pearce, and Members of the Committee

Senate Finance Committee

Alaska State Senate

SUBJECT: SB 129 - Chief Procurement Officer - Recommendations and Comments

The concept of creating a means to assure better statutory compliance is a good idea and a lofty goal, but probably won't be achieved through additional limitations on the authority of the Chief Procurement Officer (CPO).

SB 129 as proposed does have several aspects which will enhance the role and position of the CPO and which will be beneficial to the overall procurement function. However, the bill needs more work before passage to avert potential misinterpretation.

Comments and suggestions as a result of in-depth review of SB 129 are attached for your review and consideration. Also attached is brief resume of the undersigned consultant, to attest expert qualifications in the field of public procurement.

XPRT Consultants is an independent non-partisan firm established in 1982 for consultation, expert services, and representation in procurement and contracting matters.

In your deliberations, please give weight to the attached recommendations and suggestions regarding SB 129.

If I can be of any further assistance, please call (907) 346-3416.

Sincerely,



PEGGY R. THOMAS, C.P.M.

Chief Executive Officer

Attachment

cc: Senate State Affairs Committee

SB 129 - CHIEF PROCUREMENT OFFICER AUTHORITY - COMMENTS AND SUGGESTIONS

1
2 Although certain past procurement transactions may have
3 demonstrated problems regarding statutory approval, there could
4 really be some confusion created if subject bill is enacted as
5 proposed. Based on in-depth review, and for consistency with the
6 existing law, the following changes should be incorporated in SB
7 129 (SB0129a).

8
9 Abuse of authority by ANY procurement officer, including the CPO,
10 should be handled by appropriate discipline and/or enforcement of
11 existing law.

12
13 - Sec. 2.

14
15 AS PROPOSED:

16
17 "AS 36.30.010 is amended by adding new subsections to read:

18 (c) The chief procurement officer may not delegate the duties
19 of the chief procurement officer established under this chapter."

20 (d) While a person performs the duties of the chief
21 procurement officer under this chapter, the person may not be
22 employed in or appointed to another position with the state.

23 (e) The annual salary of the chief procurement officer is
24 range 26, step C, of the salary schedule established in AS
25 39.27.011."

26
27 RECOMMENDATION: Regarding Sec. 2. (c)

28
29 Suggest deletion of that portion of Sec. 2., which adds new
30 subsection (c) to AS 36.30.010, and which prohibits CPO delegation
31 of AS 36.30 established duties.

32
33 RATIONALE:

34
35 AS 36.30.010 sets forth (and in fact prescribes) "duties" of the
36 chief procurement officer (CPO). This proposed amendment, would
37 preclude the CPO's delegating authority to "procure or supervise
38 the procurement of" supplies, services, etc. In other words, all
39 procurement would have to be done by or under the supervision of
40 the CPO.

41
42 As worded, the proposed new AS 36.30.010 (c) will forbid any
43 delegation by the CPO of procurement authority to others. AS
44 36.30.010 (in subsection (b)) among other duties enumerated,
45 already states:

46
47 "Except as otherwise specifically provided in this chapter, the
48 chief procurement officer shall (1) procure or supervise the
49 procurement of all supplies, services, and professional services
50 needed . . ."

SB 129 - CHIEF PROCUREMENT OFFICER AUTHORITY - COMMENTS AND SUGGESTIONS

1 It should be noted that if the wording in the presently proposed
2 amendment (Sec. 2., adding (c) to AS 36.30.010) is retained, it
3 will impose several undesirable supervisory and organizational
4 relationship changes.

5
6 Also, as drafted, Sec. 2 apparently conflicts with the concept of
7 delegation of authority by the "commissioner" to agencies set forth
8 in AS 36.30.015 (a) and (b). If the CPO is required by AS
9 36.30.010 (c) to either do or to supervise all procurement, AND if
10 the CPO is forbidden to delegate the duty of "procurement" or
11 "supervision of procurement" to others, then all State procurement
12 would have to be done by the CPO or under CPO supervision. This
13 means that no other agency may do State procurement, and conflicts
14 with the statutory provision for delegation by "commissioner" to
15 agencies expressed in AS 36.30.015(a). Thus, in essence, the
16 proposed amendment precludes ANY decentralization of the
17 procurement function.

18
19 The State Procurement Code already forbids the CPO to delegate in
20 excess of the small purchases limitation (presently \$25,000) for
21 the following:

- 22
23 - sole source approval (AS 36.30.300(a)) and
24 - limited competition approval (AS 36.30.305(a)).

25
26 For consistency, if intent is to prohibit delegation for other
27 specific sections of AS 36.30, the limitations should be inserted
28 at the point in the chapter where the limit is imposed, as it is in
29 AS 36.30.300 and 305. On the other hand, although not as
30 consistent, and perhaps harder to read and apply, to further limit
31 CPO's power of redelegation, a more specific statement of the
32 limitations should be given in the proposed amendment, i.e.,

33
34 "(c) The chief procurement officer may not delegate the duties of
35 the chief procurement officer established under AS 36.30.010 xx,
36 xx, xx, xx, or AS 36.30.xxx, xxx, xxx."

37
38 (Insert at the "xx" or "xxx" the specific subparagraphs of the
39 section(s) for which it is intended to forbid delegation.)

40
41 AS 36.30.560 -- 625, identify the procurement officer of the
42 contracting agency as the person who issues appealable decisions in
43 bid protests a /or contract disputes. If delegation by the CPO is
44 not permitted, these references would also need to be further
45 clarified or changed.

46
47 The CPO should never serve in a dual capacity as both defendant and
48 deciding official in cases of bid protest or contract controversy
49 at the appellate level. The CPO must be allowed to delegate
50 procurement authority to the agency level or to other procurement

SB 129 - CHIEF PROCUREMENT OFFICER AUTHORITY - COMMENTS AND SUGGESTIONS

1 officers who actually perform the procurement process. The
2 University of Alaska Board of Regents through adopted procurement
3 regulations and the President has designated the CPO as the
4 appellate level for purposes of deciding bid protests and contract
5 controversies. If the Code is amended to preclude the CPO's
6 delegation of procurement authority, the University will of
7 necessity have to reorganize its procurement function to eliminate
8 creation of a conflict of interest.
9

10 The University CPO cannot legitimately be involved in actually
11 doing procurement transactions because the CPO is required to make
12 appellate decisions in protests and disputes which are brought
13 against the University and which are initially made and must be
14 defended by the responsible procurement officer, i.e., someone
15 other than the CPO. For the CPO to sit in judgement on appeals of
16 his/her own decisions would be a grave conflict of interest. Thus,
17 it is essential that the CPO may delegate procurement authority to
18 others for conformity with the protest and conflict resolution
19 procedures established in University regulations implementing AS
20 36.30.
21

22 If the CPO is constrained from delegating procurement authority to
23 others, it will require new organization structures in both the
24 State's purchasing department(s) and the University's.
25

26 The executive department's autonomy to determine structure within
27 its administrative functions would be undermined if it cannot
28 exercise its own choice as to procurement organization structure.
29 There should be no statutory requirement to have either a
30 centralized or decentralized procurement office per se, leaving
31 maximum discretion to the department(s) for delegation outside the
32 central environment. All delegations by the CPO to others should
33 be worded in such a way as to exclude what is forbidden by statute
34 to be delegated, thereby assuring legal conformity.
35

36 An appointed CPO has statutory procurement authority per AS
37 36.30.010.
38

39 Certain "commissioners" have statutory procurement authority per AS
40 36.30.015(a). For the University of Alaska, which has no
41 commissioner, special definition of terms is provided by statute in
42 AS 36.30.005(c). The President of the University equates to
43 "commissioner" and has delegated the entire statutory authority of
44 AS 36.30 to the University CPO.
45

46 The State has a commissioner who functions separately from the CPO,
47 a CPO, and in addition, a Director of General Services and Supply
48 (GS&S). The GS&S is a centralized state procurement office where
49 the actual procurement is done for items and services (except
50 construction) which exceed various agencies' delegated authority.

SB 129 - CHIEF PROCUREMENT OFFICER AUTHORITY - COMMENTS AND SUGGESTIONS

1 Some procurement authority has also been delegated to agencies.

2
3 The diversity of organization and structure within the discretion
4 of the department(s) would not be permitted if AS 36.30.010(c) is
5 amended as proposed to prohibit delegation by the CPO of the CPO's
6 statutory duties.

7
8 Abuse of authority by ANY procurement officer, including the CPO,
9 should be handled by appropriate discipline and/or enforcement of
10 existing law.

11
12 **RECOMMENDATION: Regarding Sec. 2. (d)**

13
14 Suggest that Sec. 2. (d) should be deleted, and the language
15 suggested below be substituted in lieu thereof.

16
17 "(d) The chief procurement officer shall not be assigned additional
18 duties inconsistent with or outside the functions ascribed to the
19 position by this chapter."

20
21 **RATIONALE:**

22
23 This proposed amendment of AS 36.30.010 to add a new subsection (d)
24 as drafted will make it impossible for an incumbent CPO to apply
25 for and/or be hired for any other position with the State, creating
26 a chilling effect on any potential for career progression during
27 the term of appointment. The CPO should not be excluded from
28 consideration for other positions. If the intent is to be certain
29 that other duties are not added to detract from the full attention
30 required for performance of CPO functions, or limit the free
31 exercise of independent judgement, then that is what the amendment
32 should say. The language recommended above could accomplish the
33 latter.

34
35 **- Sec. 4.**

36
37 **AS PROPOSED:**

38
39 "AS 36.30.310 is amended to read:

40 Sec. 36.30.310. EMERGENCY PROCUREMENTS . . . A written
41 determination by the chief procurement officer of the basis for the
42 emergency and for the selection of the particular contractor shall
43 be included in the contract file . . ."

44
45 **RECOMMENDATION: Regarding Sec. 4**

46
47 Suggest the proposed amendment of AS 36.30.310 to require written
48 determination by the chief procurement officer for exercise of
49 emergency procurement authority be deleted in its entirety.

50

SB 129 - CHIEF PROCUREMENT OFFICER AUTHORITY - COMMENTS AND SUGGESTIONS

1 RATIONALE:

2
3 Delay occasioned by referral to the CPO for approval will make it
4 impossible for procurement officers to respond appropriately in
5 emergency situations. Timely response to procurement requirements
6 in an emergency is essential in order to mitigate damage and/or
7 loss. When urgency of circumstances demands it, procurement must
8 be accomplished without delay. If routine procedure requires
9 waiting for approval by the CPO before procurement action can be
10 taken to satisfy emergency needs, then it cannot meet expected and
11 appropriate immediate response criteria. The procurement officer
12 with requisite authority who is nearest to the need is the one who
13 has the most knowledge of the urgency, and who is in the best
14 position to exercise independent judgement required to make the
15 written determination regarding a prospective emergency
16 procurement. Restriction for only the CPO to make written
17 determinations for emergency procurement will cripple the State's
18 ability to provide adequate procurement support in response to
19 emergency situations.

20
21 Abuse of authority by ANY procurement officer, including the CPO,
22 should be handled by appropriate discipline and/or enforcement of
23 existing law.

24
25 - Sec. 5.

26
27 AS PROPOSED:

28
29 "AS 36.30 is amended by adding a new section to read:

30 Sec. 36.30.315. DETERMINATIONS BY CHIEF PROCUREMENT OFFICER;
31 CRIMINAL PENALTY. (a) In a determination made by the chief
32 procurement officer under AS 36.30.300 - 36.30.310, the chief
33 procurement officer shall independently examine the material facts
34 of the contract and independently determine whether the contract is
35 eligible for the procurement procedure selected for the contract.

36 (b) If the chief procurement officer knowingly makes a
37 false statement in a determination made by the chief procurement
38 officer under AS 36.30.300 - 36.30.310, the chief procurement
39 officer is guilty of a class A misdemeanor."
40

41 RECOMMENDATION: Regarding Sec. 5. (a)

42
43 Suggest paragraph (a) the proposed addition of new section, (AS
44 36.30.315) be deleted, and language suggested below be substituted
45 in lieu thereof. Also, this amendment should be at AS 36.30.935
46 instead of at AS 36.30.315.

47
48 "Sec. 36.30.935. PROHIBITION AGAINST SUBSTITUTION OF JUDGEMENT IN
49 PROCUREMENT MATTERS. Procurement decisions which form the basis of
50 procurement actions taken within statutory or delegated procurement

1 authority are not voidable after the fact, except for reason of
2 illegality. Decisions taken pursuant to law and regulation by a
3 procurement officer are of necessity the product of the independent
4 judgement of such officials. Exertion of undue influence to change
5 decisions or to adversely affect the competitive and statutory
6 process of public procurement is a violation of this chapter."
7

8 RATIONALE:
9

10 If the intent is to require the independent judgement of the CPO in
11 making determinations under AS 36.30, the concept should be
12 applicable to ALL determinations required by and transactions
13 executed by ANY procurement officer under the authority of AS
14 36.30. The ABA Model from which the statute was spawned carried
15 the intent for exercise of independent judgement by the responsible
16 procurement officer, i.e., the final word and responsibility for a
17 procurement transaction is vested in the procurement officer who
18 executes a procurement document within the limits of his/her
19 delegated authority.
20

21 There is another side to this concept which should also be
22 considered. Of course, if the law states that the independent
23 judgement of the CPO is to be exercised, that precludes anyone's
24 substituting their judgement for that of the CPO either before or
25 after the fact. In effect this will strengthen the authority of
26 the CPO and is a good idea. However, it should be noted that if
27 the intent is to make the CPO more responsible for the decisions
28 and approvals rendered in procurement matters, then ENFORCEMENT of
29 the present law is what is needed, i.e., if ANY procurement
30 officer, including the CPO knowingly violates AS 36.30, action
31 should be taken to prosecute pursuant to the law. The present law
32 adequately covers this, but the proposed amendment actually reduces
33 the penalty instead of imposing a heavier charge for knowing
34 violation of AS 36.30 in a procurement matter. If intent is to
35 lighten the stigma of the potential penalty in hopes that
36 enforcement is more likely to occur, then perhaps it should be
37 amended accordingly at AS 36.30.930.
38

39 If the intent is to be sure that the CPO is not merely rubber-
40 stamping someone else's product, then language similar to that
41 recommended above (added at AS 36.30.935) should be used.
42

43 Abuse of authority by ANY procurement officer, including the CPO,
44 should be handled by appropriate discipline and/or enforcement of
45 existing law.
46

47 The language suggested above will protect procurement officers from
48 undue pressures and insulate against political influence thereby
49 reducing potential for circumvention of the Code.
50

1 **RECOMMENDATION: Regarding Sec. 5. (b)**

2
3 Suggest that paragraph (b) of the proposed amendment (which
4 classifies as a class A misdemeanor, a false statement knowingly
5 made in a determination by the CPO) be added at AS 36.30.930 of the
6 statute, instead of at 36.30.315, if it is to be added at all.
7 Recommend it should not be added.

8
9 **RATIONALE:**

10
11 The State Procurement Code at AS 36.30.930 already says that
12 knowing violation of the statute is a class C felony. In addition,
13 AS 36.30.687(d) states that misrepresentation in connection with a
14 State procurement is a class C felony. The addition of a section
15 making such violations of this nature when committed by the CPO a
16 Class A misdemeanor appears to conflict with sections 687 and 930
17 and lighten the stigma of the charge when the CPO is the offender.
18 The opposite should be true. If the CPO violates the statute,
19 perhaps a more severe penalty should be assessed. At least, if the
20 emphasis is needed or intended, the class of crime should be
21 consistent with present law, or the classes stated in the existing
22 AS 36.30 should also be changed.

23
24 Abuse of authority by ANY procurement officer, including the CPO,
25 should be handled by appropriate discipline and/or enforcement of
26 existing law.

27
28 - Sec. 6.

29
30 The effective dates in this section should be reconciled with any
31 changes which occur as a result of the foregoing comments and
32 recommendations.

33
34 THE CHANGES SUGGESTED ABOVE ARE MOSTLY TECHNICAL, BUT SHOULD BE
35 MADE IN ORDER TO CLEAR UP POSSIBLE MISUNDERSTANDINGS, AND TO
36 MAINTAIN CONSISTENCY WITH OTHER (UNCHANGED) PROVISIONS OF AS 36.30.

37
38
39 - ADDITIONAL COMMENTS ON SECTIONS SUPPORTED WITHOUT CHANGE

40
41 - Sec. 1.

42
43 The concept of a six-year appointment for the CPO is a good one,
44 provided that the person is not restrained from accepting other
45 positions with the state, i.e., is free to apply for other
46 positions and vacate incumbency as CPO. It is appropriate that the
47 CPO not serve in any dual or conflicting role IN ADDITION TO
48 incumbency as CPO, and that the appointing authority be limited as
49 to assignment of extra duties to the CPO.

50

1 - Sec. 2. (e)

2
3 It is consistent with good management and competent salary surveys
4 that the compensation of the CPO be set at the proposed range 26,
5 step C, of the salary schedule established in AS 39.27.011.
6 Putting the CPO salary range into law emphasizes the importance of
7 the role of the CPO. This should make it patently obvious that
8 State procurement is not merely a clerical function.

9
10 - Sec. 3.

11
12 It is consistent with other approval requirements in AS 36.30 to
13 vest authority in the CPO for limited competition procurement.

14
15 Explanation of the underlying philosophy for the concept of limited
16 competition may be helpful in considering how this section of the
17 Code was originally derived. Limited competition in the context of
18 the ABA Model Procurement Code as originally conceived is a
19 function of specification, i.e., whether a purchase description
20 (specification) allows full and open competition or whether it is
21 restrictive. The concept of competition goes all the way back to
22 the basic source of the item, the manufacturer who is the top tier
23 of the distribution system. Full and open competition does not
24 restrict competition at any level. A procurement which by its
25 terms or specification eliminates competition at any tier is
26 restrictive, i.e. limited competition.

27
28 - FULL AND OPEN COMPETITION - GENERIC SPECIFICATION

29
30 Purchase descriptions which are written as a technical
31 specification setting forth all dimensional, material, structural,
32 operational, and other characteristics of an item allow for full
33 and open competition, i.e., any producer who is willing can make
34 it, and any willing source can bid on it. The technical
35 specification in this context is written without calling out a
36 "particular brand name only" or "brand name or equal," and any
37 product which meets the parameters of the technical data will be
38 acceptable.

39
40 - FULL AND OPEN COMPETITION - BRAND NAME OR EQUAL SPECIFICATION

41
42 Purchase descriptions which specify a brand name or several brand
43 names, "or equal" permit the offering of items which are equivalent
44 to the brand name or names specified. This type of specification
45 permits full and open competition because any product which meets
46 the parameters, i.e., is one of the brand name(s) specified, or the
47 equivalent thereof will be acceptable.

SB 129 - CHIEF PROCUREMENT OFFICER AUTHORITY - COMMENTS AND SUGGESTIONS

1 * The ABA Model Procurement Code R4-202.02.2 (b)(v) is cited as
2 follows:
3 "Nonrestrictive Use of Brand Name or Equal Specifications. Where a
4 brand name or equal specification is used . . . the use . . . is
5 **not intended to limit or restrict competition.**"
6 [Emphasis supplied.]

7
8 - LIMITED COMPETITION - BRAND NAME ONLY - NO SUBSTITUTE
9

10 A purchase description which requires a particular brand name and
11 no substitute restricts competition and is not a full and open
12 competition procurement. "Limited competition" is derived from
13 this concept. Several lower tier vendors may be able to supply
14 such an item, but only one manufacturer's product will be
15 considered. A procurement for "brand name only - no substitute",
16 thus limits competition in that it restricts all but a single
17 producer from the distribution pattern, even though it is
18 competitive in the lower tiers. Therefore, such a procurement is
19 restrictive of competition. The competition "tree" does not spring
20 from several production sources and is thus "limited".
21

22 * The ABA Model Procurement Code R4-202.02.2 (c)(i) and (ii) are
23 cited as follows: "Brand Name Specification . . . use . . . is
24 restrictive . . . The Procurement Officer shall seek to identify
25 sources from which . . . the designated brand name . . . can be
26 obtained and shall solicit . . . whatever degree of competition is
27 practicable. If only one source can supply the requirement, the
28 procurement shall be made under . . . Sole Source . . ."
29 [Emphasis supplied.]
30

31 * The ABA Model Procurement Code citations at the asterisks above
32 demonstrate how competitive aspects of procurement are determined
33 by the degree of competition permitted or dictated by the
34 specification.
35

36 NOTE: Based on knowledge and belief the view advanced above in
37 defining the concept of "limited competition" is not incorporated
38 in any existing procurement regulations implementing the State
39 Procurement Code. This is probably due to semantics of discussions
40 prior to adoption of the Code, i.e., some of the meaning was lost
41 through well-meaning substitution of terms. Consequently, this
42 revelation of the underlying philosophy for limited competition may
43 come as a shock even to some procurement professionals.
44
45

PEGGY R. THOMAS

9701 Brien
Anchorage, AK 99516
(907) 786-1650 (Office) 346-3416 (Home)

OBJECTIVE: Qualification information herein is provided as background to an expert opinion rendered on the strength of over 35 years professional procurement and contracting experience gained through continued service and provision of sound procurement leadership in government organizations.

EMPLOYMENT HISTORY:

Sep 1988 to Present **Deputy Chief Procurement Officer**
University of Alaska, Anchorage, AK

Jan 1982 to Present **Owner (Consultant: Contracts and Procurement)**
Xprt Consultants, 9701 Brien, Anchorage, AK

Jan 1982 - Apr 1987 **Manager, Supply Division**
Nov 1979 - Jan 1982 **Manager, Supply & Procurement Division**
The Alaska Railroad, Anchorage, AK

Aug 1979 - Nov 1979 **Municipal Purchasing Officer**
Municipality Of Anchorage, Anchorage, AK

Feb 1978 - Aug 1979 **Chief, Contracting & General Services Branch**
U. S. Fish & Wildlife Service, Alaska Region,
Anchorage, AK

Dec 1976 - Feb 1978 **Chief, Services & Construction Contracts Branch**
Alaskan Air Command (AAC), Base Procurement,
Elmendorf AFB, AK

Sep 1973 - Dec 1976 **Deputy Chief, Procurement & Contracting**
Feb 1972 - Sep 1973 **Chief, Contract Administration Branch**
Sep 1971 - Feb 1972 **Chief, Supplies Procurement Branch**
Base Procurement Division, Mountain Home AFB, ID

Jun 1966 - Sep 1971 **Chief, Supplies Procurement Branch**
Jan 1962 - Jun 1966 **Contract Specialist (Construction)**
Dec 1960 - Jan 1962 **Purchasing Agent (Supplies/Services)**
Apr 1958 - Dec 1960 **Housewife, New Mother, Widowed in 1959**
Nov 1955 - Apr 1958 **Supervisory Purchasing Agent**
Dec 1953 - Nov 1955 **Procurement Administration Clerk**
Procurement Offices, Altus AFB, OK & Dyess AFB, TX

PROFESSIONAL CERTIFICATION: **Certified Purchasing Manager (C.P.M.)**
conferred by National Association of
Purchasing Management

AFFILIATIONS: 1983 - Present **Member of MENSA** (American Mensa Ltd)

Current **Purchasing Management Assoc. of AK**

HONORS AND AWARDS

Oct 1965 Outstanding Performance Rating & Quality Salary Increase
Sustained Superior Performance Award

Nov 1967 Dept. of Air Force Suggestion Program Award

May 1968 USAF Certificate of Achievement - Resources Conservation

Feb 1971 Military Airlift Command Personal Achievement Award

Dec 1972 Dept. of Air Force Suggestion Program Award

Dec 1973 Distinguished Public Service Award, Nationwide Program to
Keep America Beautiful

Jul 1974 Distinguished Public Service Commendation by Cecil D. Andrus
Governor, State of Idaho

Jul 1975 Tactical Air Command Certificate of Achievement

May 1976 Outstanding Performance Rating & Quality Salary Increase
Sustained Superior Performance Award

Jul 1976 Command Achievement Award for Resources Conservation FY 76

Nov 1976 Outstanding Procurement Office Award, Tactical Air Command

1983 Who's Who In America

1981-1983 Who's Who of American Women

1981-1983 World Who's Who of Women

1981-1983 Directory of Distinguished Americans

1982-1983 Personalities of America

1982-1983 Personalities of the West and Midwest

1982-1983 Who's Who in the West

1982-1983 International Who's Who of Intellectuals

1982-1983 Community Leaders of America

1982-1983 Two Thousand Notable Americans

1984-1985 Who's Who of Finance and Industry

1984 International Book of Honor

1984 Dictionary of International Biography



*Department of Transportation
and Public Facilities*

POSITION PAPER

BILL NO: SB 129

APPROVED: 

TITLE: Powers of Chief Procurement
Officer

DATE: March 2, 1993

Section 1 changes the term of the chief procurement officer from six to four years.

Section 2 adds two new requirements for the chief procurement officer. First, the duties may not be delegated. This will cause some delays in the procurement process when the chief procurement officer is absent, traveling or the office is vacant. Second, the chief procurement officer may not be employed or appointed to another position. This should not cause any major impact.

Section 3 for Department of Administration's limited procurement under \$100,000 approval is delegated from the Commissioner to the chief procurement officer. This could assist in more timely approval of limited procurements.

Section 4 requires the chief procurement officer make procurement determinations in the event of an emergency. This would make a major revision to emergency procurement procedure. It would require the chief procurement officer to determine an emergency exists before any procurement is made. This may cause significant delays in addressing an emergency in a timely manner.

Section 5 requires the chief procurement officer to independently examine material used to determine an emergency procurement and establishes it is a class A misdemeanor if a false statement is made.

Section 6 provides for the effective dates for the various sections of the bill.

For Further Information contact Katy McHugh at 465-3904.

FISCAL NOTE

No. 1

STATE OF ALASKA
1993 LEGISLATIVE SESSION

Bill Version: SB 129

(S) Publish Date: 3-18-93

Revision Date: _____ Dept. Affected: Administration
 Title: An Act relating to the State's Chief Procurement Officer. BRU: General Services
 Component: Purchasing
 Sponsor: Senate Rules Committee
 Requestor: Senate State Affairs Committee COMPONENT SERIAL NO. 60

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	11.9	11.9	11.9	11.9	11.9	11.9
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	11.9	11.9	11.9	11.9	11.9	11.9

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	11.9	11.9	11.9	11.9	11.9	11.9
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	11.9	11.9	11.9	11.9	11.9	11.9

POSITIONS

FULL-TIME	11.9	11.9	11.9	11.9	11.9	11.9
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY93) impact: \$ 0.00 (Assuming July 1, 1993 effective date.)

ANALYSIS: (attach a separate page if necessary.)

The fiscal impact of this bill is the difference in salary of the Chief Procurement Officer as currently compensated, and Range 26, step C as indicated in the bill. It is assumed that the range and step will remain constant with no yearly merit increases.

Prepared By: Dugan Pettv, Director *Dugan Pettv*
 Division: General Services

Phone: 465-2250
 Date: _____

Approved by Commissioner: Nancy Bear Usura *Nancy Bear Usura*
 Agency: Department of Administration

Date: 3/3/93

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AMENDMENT

IN THE SENATE

BY FRANK

TO: CSSB 129(STA)

Page 4, after line 21, insert new sections to read:

" * Sec 11. Notwithstanding AS 36.30, the Department of Administration may extend a lease entered into under AS 36.30 that is in existence on the effective date of this Act, if the department can achieve a cost savings of a minimum of ten percent on the rent due under the lease, or a cost savings of a minimum of five percent on the rent due under the lease if the lessor agrees to modifications to the facility to bring it in compliance with the Americans with Disabilities Act (ADA). An extension authorized under this section may not exceed five years. The department shall submit a quarterly report to the Legislative Budget & Audit Committee detailing the leases extended and cost savings achieved under this section.

* Sec. 12. Section 11 of this Act is repealed December 31, 1994."

Renumber the following sections accordingly.

SENATE FINANCE COMMITTEE

Amendment Number: ①
Bill Number: SB 129
Sponsor: FRANK Date: 4/13/97
Logged In By: (Signature)

AMENDMENT

IN THE SENATE

BY FRANK

TO: CSSB 129(STA)

Page 4, after line 21, insert new sections to read:

" * Sec 11. Notwithstanding AS 36.30, the Department of Administration may extend a lease into under AS 36.30 and that is in existence on the effective date of this Act, if the department can achieve a unit cost savings on the rent due under the lease. An extension authorized under this section may not exceed five years. The department shall submit a monthly report to the Legislative Budget & Audit Committee detailing the leases and cost savings achieved for leases modified under this section.

* Sec. 12. Section 11 of this Act is repealed December 31, 1994."

Renumber the following sections accordingly.

SENATE FINANCE
COMMITTEE ①
Amendment Number: _____
Bill Number: SB 129
Sponsor: Frank Date: 4/13/93
L. _____
Frank



OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT Administration	DIVISION General Services	BILL NUMBER DRAFT	SPONSOR Senator Frank
SHORT TITLE OF BILL "An Act relating to the extension of existing leases; and providing for an effective date."			
DEPARTMENT POSITION			
PREPARED BY <i>[Signature]</i>	DATE	COMMISSIONER'S SIGNATURE <i>[Signature]</i>	DATE 9/1/83

SUMMARY

OTHER AGENCIES AFFECTED BY BILL All Customer Agencies	CONSTITUENT GROUP(S) AFFECTED BY BILL Lessors and Landlords
ORGANIZATIONAL SUPPORT FOR BILL None Known	ORGANIZATIONAL OPPOSITION TO BILL None Known

FISCAL IMPACT NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT
(See Attached)

ANALYSIS OF BILL/PROGRAM EFFECTS
(See Attached)

AMENDMENTS PROPOSED

Suggested changes

There is potential opportunity to save approximately 1.6 million in FY 94 by extending the Frontier building lease in return for a rental rollback to \$2.25 per S. F.

Such a renewal could lead to a partial consolidation of resource agencies. Similar offers from the Frontier building management have been declined in the past because of procurement law requirements. The bill as written, would not permit extension because annual payments would be approximately \$3,921,831.00 and exceed the cap of \$300,000.00.

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS

Section 1

Permits the extension of existing leases if we could achieve rent reductions in return for the extensions. The bill as proposed would encompass approximately 250 leases that have an annual value of approximately \$13,043.8. If an average 5 percent rent reduction could be achieved at the beginning of FY 94, a savings of over \$652.1 would result.

Approximately 18 leases totaling \$18,337.8 would be excluded by the \$300,000.00 annual cap.

This bill would result in lease savings by giving the department the opportunity to extend leases if sufficient cost savings could be achieved. In practice, the lease would have to:

1. Have ongoing projected need for the space;
2. Meet agency needs;
3. Provide ADA compliance;
4. Be a good business decision; and
5. Result in cost savings before we would decide to trade rent for extensions.

There could be potential criticism of the department when discretion is exercised under this bill. Potential lessors with available space could complain that their building would have resulted in greater savings had the space been bid. The argument is hard to defeat without a bid process. However, such a disgruntled lessor would have no standing under statute in this process. The division would need to perform careful analysis prior exercising discretion permitted under this bill.

Currently, 22 leases are on month-to-month and over 30 leases will expire during FY 94. This provides a real vehicle to resolve a growing lease workload crisis. It would permit limited resources to target the leases which must be rebid because they would not meet our criteria for renewal.

This bill would give the division additional opportunity to leverage ADA compliance improvements that we may not otherwise be able to compel lessors to furnish.

In summary, this bill would give the department greater flexibility to:

- Reduce the cost of operating government
- Improve the efficiency and effectiveness of limited resources
- Provide better service to our client agencies.

Section 2

Repeals this window of opportunity after approximately 18 months.

While this is not an excessive window, by elevating this to be a project status, we believe all leases can be reviewed, prioritized, and extensions renegotiated during this time.

Section 3

Make this bill effective immediately.

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 2/22/93

FURTHER: FINANCE

Date of 5-Day Notice: 3-1-93
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 3-18-93

STATE AFFAIRS Committee considered SB 129

"~~An Act~~ relating to the state's chief procurement officer."

and recommends it be replaced with

and recommends:

replace with _____ CS SB129 (STA)

attaches amendment(s) & a msg of the Cmte reports it back w/ no mem

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

- same title
- new title
- technical title change (HB only)

phi

FISCAL NOTE INFORMATION

Department	Date	Zero	Fiscal
<i>SB</i> Dept. of Admin.	<i>3-3-93</i>		<input checked="" type="checkbox"/>
<i>CSSB</i> Dept. of Admin.	<i>3-17-93</i>	<input checked="" type="checkbox"/>	

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

Governor's Bill with Previous Fiscal Notes (enter information above)

DO PASS:

OTHER RECOMMENDATIONS:

Adrian I. Taylor - NO REC
J. Demco - NO REC
Mike Miller - NO REC

Steven A. Leman NR
Chair: Signature and Recommendation