

HB

444

REPRESENTATIVE JOHN J. COWDERY

HB 444

Sponsor Statement

"An Act relating to nongovernmental activities of state agencies, including the University of Alaska: and providing for an effective date."

HB 444 requires state agencies to annually list which of their activities are "not inherently governmental." Inherently governmental function is defined as, "a function that is so closely related to the public interest that it requires performance by state governmental employees". Section 2 (c) of the bill contains several paragraphs of elaboration for this definition.

HB 444, first of all, requires each state agency to identify government activities that are not inherently governmental in nature. Secondly, it requires consideration of all realistic and fair costs of government agency performance when comparisons are made with private sector costs.

Interested persons may challenge the inclusion or omission of an activity on a list.

HB 444 provides a long-term mechanism to carry on the work that the privatization commission began. In order to accomplish this, we need legislation that requires the executive branch to identify activities that are inherently non-governmental, and to cost them out. This is the type of information that is a prerequisite to making intelligent decisions about outsourcing government services. Surely, it will generate debate about what is or is not inherently governmental, and how much cost is attached to certain functions. These are debates worth having. HB 444 puts us on the right track toward government activities that we want and are willing to pay for.

HB 444 does not mandate privatization, but will provide the basis for long term, consistent efforts toward cost effective government.

(7)

HOUSE COMMITTEE REPORT

Date Referred to Committee: April 6, 2000

FURTHER REFERRALS:

Finance

Date of Committee Action: 4/15/00

The STATE AFFAIRS Committee considered:

HB 444

HOUSE BILL NO. 444

STATE GOVERNMENT ACTIVITIES

"An Act relating to nongovernmental activities of state agencies, including the University of Alaska; and providing for an effective date."

recommends it be replaced

with the following committee substitute CSHB 444 (STA)

the same title
 a new title

additional referral to _____ Committee

attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal note(s) OMB

fiscal note(s) _____

zero fiscal note(s) _____

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Jennette James</i>	<input checked="" type="checkbox"/>			
<i>[Signature]</i>	<input checked="" type="checkbox"/>			
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CHAIR'S SIGNATURE Jennette James

Lovetta

Passed

1-LS1177(H)

Bannister

4/13/00

CS FOR HOUSE BILL NO. 444()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY

Offered:

Referred:

Sponsor(s): HOUSE RULES COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to nongovernmental activities of state departments; and providing
2 for an effective date."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 44 is amended by adding a new chapter to read:

5 **Chapter 64. Inventory and Procurement of Nongovernmental Activities.**

6 **Sec. 44.64.010. Annual list required.** (a) Each department shall submit to
7 the office of management and budget each fiscal year a list of the activities performed
8 by the department's employees that, in the judgment of the commissioner of the
9 department, are not inherently governmental activities.

10 (b) The director of the office of management and budget shall consult with a
11 department when the department is preparing the list under (a) of this section and shall
12 review the list.

13 (c) In this section, "inherently governmental activity"

14 (1) means an activity that is so closely related to the public interest that

1 it requires performance by state government employees; the term includes an activity
2 that

3 (A) requires either the exercise of discretion in applying state
4 governmental authority or the making of value judgments, including judgments
5 relating to monetary transactions and entitlements, and making decisions for the
6 state government; or

7 (B) involves the interpretation or execution of the laws of the
8 state

9 (i) to bind the state to take or not to take an action by
10 contract, policy, regulation, authorization, order, or another method;

11 (ii) to determine, protect, or advance state economic,
12 political, territorial, property, or other interests by military action,
13 intergovernmental agreements, civil judicial proceedings, criminal
14 judicial proceedings, contract management, or another method;

15 (iii) that will significantly affect the life, liberty, or
16 property of private persons;

17 (iv) to commission, appoint, direct, or control officers
18 or employees of the state; or

19 (v) that will exert ultimate control over the acquisition,
20 use, or disposition of the real or personal property, whether tangible or
21 intangible, of the state, including the collection, control, or disbursement
22 of appropriated or other state money;

23 (2) does not include

24 (A) gathering information for or providing advice, opinions,
25 recommendations, or ideas to state government employees; or

26 (B) an activity that is primarily ministerial and internal in
27 nature, including building security, mail operations, facilities operations,
28 facilities maintenance, warehouse operations, motor vehicle fleet management
29 operations, routine electrical services, or routine mechanical services.

30 **Sec. 44.64.020. Description of listed activity.** The description of a listed
31 activity must include

1 (1) the fiscal year when the activity first appeared on a list;

2 (2) the number of full-time employees that are needed to perform the
3 activity;

4 (3) the name of a department employee who is responsible for the
5 activity and from whom additional information about the activity may be obtained.

6 **Sec. 44.64.030. Transmittal and publication of list.** (a) The commissioner
7 of each department shall promptly transmit a copy of the list prepared by the
8 department under AS 44.64.010 to the legislature and make the list available to the
9 public.

10 (b) For each list prepared by a department, the director of the office of
11 management and budget shall promptly publish in the Alaska Administrative Journal
12 a notice that the list is available to the public.

13 (c) If, as a result of a challenge or an appeal under AS 44.64.040, a
14 department changes a list after a notice is published under (b) of this section, the state
15 department that prepared the list shall promptly

16 (1) transmit a copy of the change to the legislature and make the
17 change available to the public; and

18 (2) publish in the Alaska Administrative Journal a notice that the
19 change is available to the public.

20 **Sec. 44.64.040. Challenge and appeal.** (a) An interested person may
21 challenge the inclusion or omission of an activity on a list by filing with the
22 department that prepared the list a written notice stating the person's challenge and the
23 reasons for the challenge. A challenge must be filed with the department within 30
24 days after publication of the notice under AS 44.64.030(b) or (c)(2), as applicable.

25 (b) Within 28 days after a department receives notice of a challenge under (a)
26 of this section, a department employee appointed by the commissioner of the
27 department shall decide whether to reject or uphold the challenge and shall transmit
28 a notice of the decision to the person who filed the notice. The notice must include
29 the decision, an explanation of the reasons for the decision, and an explanation of the
30 party's right to appeal under (c) of this section.

31 (c) An interested person may appeal an adverse decision made by a department

1 under (b) of this section. The appeal must be filed with the department within 10 days
2 after the person receives the notice of the decision.

3 (d) Within 10 days after a department receives an appeal of a decision under
4 (c) of this section, the commissioner of the department shall decide the appeal and
5 shall transmit to the person who filed the appeal a notice of the decision on the appeal,
6 including an explanation of the rationale for the decision. The person who filed the
7 appeal may appeal an adverse decision to the superior court.

8 (e) A challenge under this section, an appeal to a department under this
9 section, and an appeal to the superior court under this section are not subject to
10 AS 44.62 (Administrative Procedure Act).

11 **Sec. 44.64.050. Procurement determination.** For the purpose of determining
12 whether to contract with a private person to perform a listed activity, when a
13 department compares its costs of performing the activity with the costs of contracting
14 with a private person to perform the activity, the department shall consider all of the
15 realistic and fair costs of the activity. In this section, "costs" includes the quality
16 assurance costs, the cost to technically monitor performance of the activity, liability
17 insurance costs, the cost of employee retirement and disability benefits, and other
18 overhead costs.

19 **Sec. 44.64.090. Definitions.** In this chapter, unless the context indicates
20 otherwise,

21 (1) "department" means a department listed under AS 44.17.005, but
22 does not include a public corporation located in a department;

23 (2) "interested person" means

24 (A) a private person who

25 (i) is an actual or prospective bidder or offeror for a
26 contract to perform the activity; and

27 (ii) has a direct economic interest in performing the
28 activity that would be adversely affected by a determination not to
29 procure the performance of the activity from a private person;

30 (B) a representative of a business association or professional
31 association, if the association includes as members private persons referred to

1 in (A) of this paragraph;

2 (C) an employee of an organization within the department if the
3 employee or the organization is an actual or prospective performer of the
4 activity; or

5 (D) the head of a labor organization that includes within its
6 membership employees referred to in (C) of this paragraph; in this
7 subparagraph, "labor organization" means a nonprofit organization established
8 wholly or partly to bargain collectively or deal with employers, including the
9 state, concerning grievances, terms, or conditions of employment or other
10 mutual aid or protection in connection with employees;

11 (3) "list" means a list prepared under AS 44.64.010;

12 (4) "listed activity" means an activity included on a list prepared under
13 AS 44.64.010, including an activity added after a challenge or an appeal under
14 AS 44.64.040.

15 * Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

From the office of . . . Representative John J. Cowdery

State Capitol, Suite 204

Juneau, AK 99801

907-465-3879 phone

907-465-2069 fax

MEMORANDUM

TO: Representative Jeannette James, Chair, State Affairs Committee

FROM: Representative John J. Cowdery *J.C.*

DATE: April 14, 2000

RE: HB 444 – State Affairs Committee Meeting on 4/15/00

CC: Representative Green, Representative Hudson, Representative Whittaker,
Representative Ogan, Representative Smalley, and Representative Kerttula

Notes:

Attached is a work draft substitute for HB 444. HB 444 will be heard again in State Affairs on Saturday. I hope that you have time to review this work draft, as I will be asking for the committee to adopt it as the committee substitute.

I would like to explain the changes made from the original version. The original bill included a paragraph on page 5, line 6-10, which specified that if and when an agency decided to obtain a private person to perform an activity, that the competitive sealed bidding process would be used. This paragraph has now been deleted from the bill.

All language that pertains to the University of Alaska has also been deleted. The primary purpose of this is because the University is not part of the Executive Branch. Secondly, during the course of the privatization commissions work we learned how progressive the University actually is in the area of identifying their activities, already.

Under the Challenge and Appeal section, paragraph (e) was modified to include allowing a person to appeal the decision to the superior court. This makes it clear that everyone has a constitutional right to go to court.

HOUSE BILL NO. 444

IN THE LEGISLATURE OF THE STATE OF ALASKA
 TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE

Introduced: 4/6/00

Referred: State Affairs, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to nongovernmental activities of state agencies, including the
 2 University of Alaska; and providing for an effective date."

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

4 * Section 1. AS 36.30.005(c) is amended to read:

5 (c) Notwithstanding other provisions of law, except to the extent that
 6 AS 44.64.050(b) directs how certain contracts are to be procured, all rights,
 7 powers, duties, and authority relating to the procurement of supplies, services,
 8 professional services, and construction and the disposal of supplies for the University
 9 of Alaska are transferred to the Board of Regents. To the maximum extent possible,
 10 authority granted under this subsection shall be exercised in accordance with this
 11 chapter. The Board of Regents shall adopt regulations under this subsection that are
 12 substantially equivalent to the regulations adopted by the commissioner of
 13 administration to implement this chapter. For the purposes of this subsection, unless
 14 the context otherwise requires, in this chapter,

- 1 (1) "agency" means a subunit of the University of Alaska;
- 2 (2) "attorney general" means the president of the University of Alaska;
- 3 (3) "chief procurement officer" means a person designated by the
- 4 president of the University of Alaska whose qualifications are substantially equivalent
- 5 to those provided in AS 36.30.010(a);
- 6 (4) "commissioner," "commissioner of administration," or
- 7 "commissioner of transportation and public facilities" means the Board of Regents or
- 8 the president of the University of Alaska if so designated by the Board of Regents by
- 9 regulations adopted under this subsection; and
- 10 (5) "department" means the University of Alaska.

11 * Sec. 2. AS 44 is amended by adding a new chapter to read:

12 **Chapter 64. Inventory and Procurement of Nongovernmental Activities.**

13 **Sec. 44.64.010. Annual list required.** (a) Each state agency shall submit to

14 the office of management and budget each fiscal year a list of the activities performed

15 by the agency's employees that, in the judgment of the state agency head, are not

16 inherently governmental activities.

17 (b) The director of the office of management and budget shall consult with a

18 state agency when the agency is preparing the list under (a) of this section and shall

19 review the list.

20 (c) In this section, "inherently governmental activity"

21 (1) means an activity that is so closely related to the public interest that

22 it requires performance by state government employees; the term includes an activity

23 that

24 (A) requires either the exercise of discretion in applying state

25 governmental authority or the making of value judgments, including judgments

26 relating to monetary transactions and entitlements, and making decisions for the

27 state government; or

28 (B) involves the interpretation or execution of the laws of the

29 state

30 (i) to bind the state to take or not to take an action by

31 contract, policy, regulation, authorization, order, or another method;

1 (ii) to determine, protect, or advance state economic,
 2 political, territorial, property, or other interests by military action,
 3 intergovernmental agreements, civil judicial proceedings, criminal
 4 judicial proceedings, contract management, or another method;

5 (iii) that will significantly affect the life, liberty, or
 6 property of private persons;

7 (iv) to commission, appoint, direct, or control officers
 8 or employees of the state; or

9 (v) and will exert ultimate control over the acquisition,
 10 use, or disposition of the real or personal property, whether tangible or
 11 intangible, of the state, including the collection, control, or disbursement
 12 of appropriated or other state money;

13 (2) does not include

14 (A) gathering information for or providing advice, opinions,
 15 recommendations, or ideas to state government employees; or

16 (B) an activity that is primarily ministerial and internal in
 17 nature, including building security, mail operations, facilities operations,
 18 facilities maintenance, warehouse operations, motor vehicle fleet management
 19 operations, routine electrical services, or routine mechanical services.

20 **Sec. 44.64.020. Description of listed activity.** The description of a listed
 21 activity must include

22 (1) the fiscal year when the activity first appeared on a list;

23 (2) the number of full-time employees that are needed to perform the
 24 activity;

25 (3) the name of a state agency employee who is responsible for the
 26 activity and from whom additional information about the activity may be obtained.

27 **Sec. 44.64.030. Transmittal and publication of list.** (a) Each state agency
 28 head shall promptly transmit a copy of the list prepared by the state agency under
 29 AS 44.64.010 to the legislature and make the list available to the public.

30 (b) For each list prepared by a state agency, the director of the office of
 31 management and budget shall promptly publish in the Alaska Administrative Journal

1 a notice that the list is available to the public.

2 (c) If, as a result of a challenge made under AS 44.64.040, a state agency
3 changes a list after a notice is published under (b) of this section, the state agency that
4 prepared the list shall promptly

5 (1) transmit a copy of the change to the legislature and make the
6 change available to the public; and

7 (2) publish in the Alaska Administrative Journal a notice that the
8 change is available to the public.

9 **Sec. 44.64.040. Challenge and appeal.** (a) An interested person may
10 challenge the inclusion or omission of an activity on a list by filing with the state
11 agency that prepared the list a written notice stating the person's challenge and the
12 reasons for the challenge. A challenge must be filed with the agency within 30 days
13 after publication of the notice under AS 44.64.030(b) or (c)(2), as applicable.

14 (b) Within 28 days after a state agency receives notice of a challenge under
15 (a) of this section, an agency employee appointed by the state agency head shall decide
16 whether to reject or uphold the challenge and shall transmit a notice of the decision
17 to the person who filed the notice. The notice must include the decision, an
18 explanation of the reasons for the decision, and an explanation of the party's right to
19 appeal under (c) of this section.

20 (c) An interested person may appeal an adverse decision made by a state
21 agency under (b) of this section. The appeal must be filed with the agency within 10
22 days after the person receives the notice of the decision.

23 (d) Within 10 days after a state agency receives an appeal of a decision under
24 (c) of this section, the state agency head shall decide the appeal and shall transmit to
25 the person submitting the appeal a notice of the decision on the appeal, including an
26 explanation of the rationale for the decision.

27 (e) A challenge and an appeal under this section are not subject to AS 44.62
28 (Administrative Procedure Act).

29 **Sec. 44.64.050. Procurement of listed activity.** (a) For the purpose of
30 determining whether to contract with a private person to perform a listed activity,
31 when a state agency compares its costs of performing the activity with the costs of

1 contracting with a private person to perform the activity, the agency shall consider all
2 of the realistic and fair costs of the activity. In this subsection, "costs" includes the
3 quality assurance costs, the cost to technically monitor performance of the activity,
4 liability insurance costs, the cost of employee retirement and disability benefits, and
5 other overhead costs.

6 (b) When a state agency decides to obtain a private person to perform a listed
7 activity, the agency shall use competitive sealed bidding under AS 36.30.100 -
8 36.30.190 or competitive sealed proposals under AS 36.30.200 - 36.30.270 to procure
9 the contract with the person to perform the listed activity, unless a law other than this
chapter or AS 36.30 requires that another method be used for the procurement.

11 **Sec. 44.64.090. Definitions.** In this chapter, unless the context indicates
12 otherwise,

(1) "interested person" means

(A) a private person who

(i) is an actual or prospective bidder or offeror for a
contract to perform the activity; and

(ii) has a direct economic interest in performing the
activity that would be adversely affected by a determination not to
procure the performance of the activity from a private person;

(B) a representative of a business association or professional
association, if the association includes as members private persons referred to
in (A) of this paragraph;

(C) an employee of an organization within the state agency if
the employee or the organization is an actual or prospective performer of the
activity; or

(D) the head of a labor organization that includes within its
membership employees referred to in (C) of this paragraph; in this
subparagraph, "labor organization" means a nonprofit organization established
wholly or partly to bargain collectively or deal with employers, including the
state, concerning grievances, terms, or conditions of employments or other
mutual aid or protection in connection with employees;

*Could be
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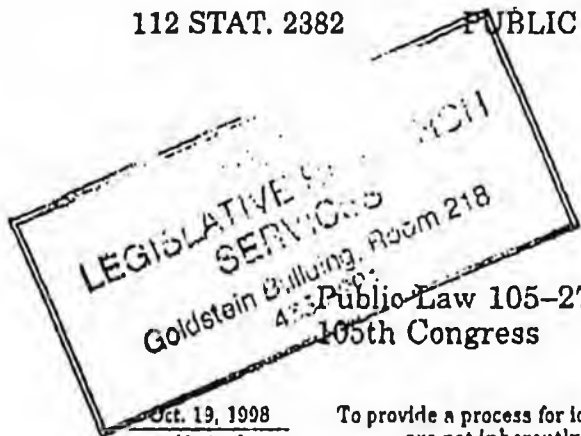
*It's
already
required in
union contracts
etc.*

- 1 (2) "list" means a list prepared under AS 44.64.010;
- 2 (3) "listed activity" means an activity included on a list prepared under
- 3 AS 44.64.010, including an activity added after a challenge under AS 44.64.040;
- 4 (4) "state agency" means the University of Alaska and a department
- 5 listed under AS 44.17.005, but does not include a public corporation located in a
- 6 department;
- 7 (5) "state agency head" means, for a state agency that is
- 8 (A) a department, the commissioner of the department; or
- 9 (B) the University of Alaska, the president of the university.
- 10 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

*This is the Federal Counter-part
of HB 444.*

112 STAT. 2382

PUBLIC LAW 105-270—OCT. 19, 1998



An Act

To provide a process for identifying the functions of the Federal Government that are not inherently governmental functions, and for other purposes.

Oct. 19, 1998
[S. 314]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Federal Activities
Inventory Reform
Act of 1998.
31 USC 501 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Activities Inventory Reform Act of 1998".

Records.

SEC. 2. ANNUAL LISTS OF GOVERNMENT ACTIVITIES NOT INHERENTLY GOVERNMENTAL IN NATURE.

Deadline.

(a) **LISTS REQUIRED.**—Not later than the end of the third quarter of each fiscal year, the head of each executive agency shall submit to the Director of the Office of Management and Budget a list of activities performed by Federal Government sources for the executive agency that, in the judgment of the head of the executive agency, are not inherently governmental functions. The entry for an activity on the list shall include the following:

(1) The fiscal year for which the activity first appeared on a list prepared under this section.

(2) The number of full-time employees (or its equivalent) that are necessary for the performance of the activity by a Federal Government source.

(3) The name of a Federal Government employee responsible for the activity from whom additional information about the activity may be obtained.

(b) **OMB REVIEW AND CONSULTATION.**—The Director of the Office of Management and Budget shall review the executive agency's list for a fiscal year and consult with the head of the executive agency regarding the content of the final list for that fiscal year.

(c) **PUBLIC AVAILABILITY OF LISTS.**—

(1) **PUBLICATION.**—Upon the completion of the review and consultation regarding a list of an executive agency—

(A) the head of the executive agency shall promptly transmit a copy of the list to Congress and make the list available to the public; and

(B) the Director of the Office of Management and Budget shall promptly publish in the Federal Register a notice that the list is available to the public.

(2) **CHANGES.**—If the list changes after the publication of the notice as a result of the resolution of a challenge under section 3, the head of the executive agency shall promptly—

(A) make each such change available to the public and transmit a copy of the change to Congress; and

Federal Register
Publication.

PUBLIC LAW 105-270—OCT. 19, 1998

112 STAT. 1383

(B) publish in the Federal Register a notice that the change is available to the public.

Federal Register,
Publication.

(d) **COMPETITION REQUIRED.**—Within a reasonable time after the date on which a notice of the public availability of a list is published under subsection (c), the head of the executive agency concerned shall review the activities on the list. Each time that the head of the executive agency considers contracting with a private sector source for the performance of such an activity, the head of the executive agency shall use a competitive process to select the source (except as may otherwise be provided in a law other than this Act, an Executive order, regulations, or any executive branch circular setting forth requirements or guidance that is issued by competent executive authority). The Director of the Office of Management and Budget shall issue guidance for the administration of this subsection.

(e) **REALISTIC AND FAIR COST COMPARISONS.**—For the purpose of determining whether to contract with a source in the private sector for the performance of an executive agency activity on the list on the basis of a comparison of the costs of procuring services from such a source with the costs of performing that activity by the executive agency, the head of the executive agency shall ensure that all costs (including the costs of quality assurance, technical monitoring of the performance of such function, liability insurance, employee retirement and disability benefits, and all other overhead costs) are considered and that the costs considered are realistic and fair.

SEC. 3. CHALLENGES TO THE LIST.

(a) **CHALLENGE AUTHORIZED.**—An interested party may submit to an executive agency a challenge of an omission of a particular activity from, or an inclusion of a particular activity on, a list for which a notice of public availability has been published under section 2.

(b) **INTERESTED PARTY DEFINED.**—For the purposes of this section, the term “interested party”, with respect to an activity referred to in subsection (a), means the following:

(1) A private sector source that—

(A) is an actual or prospective offeror for any contract, or other form of agreement, to perform the activity; and

(B) has a direct economic interest in performing the activity that would be adversely affected by a determination not to procure the performance of the activity from a private sector source.

(2) A representative of any business or professional association that includes within its membership private sector sources referred to in paragraph (1).

(3) An officer or employee of an organization within an executive agency that is an actual or prospective offeror to perform the activity.

(4) The head of any labor organization referred to in section 7103(a)(4) of title 5, United States Code, that includes within its membership officers or employees of an organization referred to in paragraph (3).

(c) **TIME FOR SUBMISSION.**—A challenge to a list shall be submitted to the executive agency concerned within 30 days after the publication of the notice of the public availability of the list under section 2.

112 STAT. 2384

PUBLIC LAW 105-270—OCT. 19, 1998

Deadline. (d) **INITIAL DECISION.**—Within 28 days after an executive agency receives a challenge, an official designated by the head of the executive agency shall—

(1) decide the challenge; and

(2) transmit to the party submitting the challenge a written notification of the decision together with a discussion of the rationale for the decision and an explanation of the party's right to appeal under subsection (c).

(e) **APPEAL.**—

Deadline.

(1) **AUTHORIZATION OF APPEAL.**—An interested party may appeal an adverse decision of the official to the head of the executive agency within 10 days after receiving a notification of the decision under subsection (d).

(2) **DECISION ON APPEAL.**—Within 10 days after the head of an executive agency receives an appeal of a decision under paragraph (1), the head of the executive agency shall decide the appeal and transmit to the party submitting the appeal a written notification of the decision together with a discussion of the rationale for the decision.

SEC. 4. APPLICABILITY.

(a) **EXECUTIVE AGENCIES COVERED.**—Except as provided in subsection (b), this Act applies to the following executive agencies:

(1) **EXECUTIVE DEPARTMENT.**—An executive department named in section 101 of title 5, United States Code.

(2) **MILITARY DEPARTMENT.**—A military department named in section 102 of title 5, United States Code.

(3) **INDEPENDENT ESTABLISHMENT.**—An independent establishment, as defined in section 104 of title 5, United States Code.

(b) **EXCEPTIONS.**—This Act does not apply to or with respect to the following:

(1) **GENERAL ACCOUNTING OFFICE.**—The General Accounting Office.

(2) **GOVERNMENT CORPORATION.**—A Government corporation or a Government controlled corporation, as those terms are defined in section 103 of title 5, United States Code.

(3) **NONAPPROPRIATED FUNDS INSTRUMENTALITY.**—A part of a department or agency if all of the employees of that part of the department or agency are employees referred to in section 2105(c) of title 5, United States Code.

(4) **CERTAIN DEPOT-LEVEL MAINTENANCE AND REPAIR.**—Depot-level maintenance and repair of the Department of Defense (as defined in section 2460 of title 10, United States Code).

SEC. 5. DEFINITIONS.

In this Act:

(1) **FEDERAL GOVERNMENT SOURCE.**—The term "Federal Government source", with respect to performance of an activity, means any organization within an executive agency that uses Federal Government employees to perform the activity.

(2) **INHERENTLY GOVERNMENTAL FUNCTION.**—

(A) **DEFINITION.**—The term "inherently governmental function" means a function that is so intimately related to the public interest as to require performance by Federal Government employees.

PUBLIC LAW 105-270—OCT. 19, 1998

112 STAT. 2385

(B) **FUNCTIONS INCLUDED.**—The term includes activities that require either the exercise of discretion in applying Federal Government authority or the making of value judgments in making decisions for the Federal Government, including judgments relating to monetary transactions and entitlements. An inherently governmental function involves, among other things, the interpretation and execution of the laws of the United States so as—

(i) to bind the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;

(ii) to determine, protect, and advance United States economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;

(iii) to significantly affect the life, liberty, or property of private persons;

(iv) to commission, appoint, direct, or control officers or employees of the United States; or

(v) to exert ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the United States, including the collection, control, or disbursement of appropriated and other Federal funds.

(C) **FUNCTIONS EXCLUDED.**—The term does not normally include—

(i) gathering information for or providing advice, opinions, recommendations, or ideas to Federal Government officials; or

(ii) any function that is primarily ministerial and internal in nature (such as building security, mail operations, operation of cafeterias, housekeeping, facilities operations and maintenance, warehouse operations, motor vehicle fleet management operations, or other routine electrical or mechanical services).

SEC. 6. EFFECTIVE DATE.

This Act shall take effect on October 1, 1998.

Approved October 19, 1998.

LEGISLATIVE HISTORY—S. 314:

SENATE REPORTS: No. 105-269 (Comm. on Governmental Affairs).

CONGRESSIONAL RECORD, Vol. 144 (1996):

July 30, considered and passed Senate.

Oct. 5, considered and passed House.

○

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**Representative
John J. Cowdery**
Chairman
House Rules
Committee

Session:
State Capitol Bldg., Suite
204
Juneau, AK 99801

Phone: 907-465-3879
Fax: 907-465-2069
Toll Free: 1-888-269-3879

MEMORANDUM:

DATE: April 6, 2000

TO: Representative Jeannette James
Chair, House State Affairs

FROM: Representative John J. Cowdery
House Rules Committee

RE: HB 444

This memo is a request to have HB 444, "An act relating to nongovernmental activities of state agencies, including the University of Alaska; and providing for and effective date.", scheduled for a hearing.

This bill was introduced today, and State Affairs is the first committee of referral.

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB 444

Revision Date/Time (Note if correction) _____ Dept. Affected All state agencies
 Title An Act relating to nongovernmental activities of BRU Multiple
state agencies. Component Multiple
 Sponsor House Rules Committee
 Requester House State Affairs Committee Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 444 would require all state agencies to annually prepare a list of activities performed by employees that are not "inherently governmental activities". In addition, the bill provides for a challenge and appeal process regarding activities that are included or omitted from these lists. The fiscal impact of this provision would depend on the volume of challenges and appeals, which is difficult to predict. Therefore, this fiscal note has asterisks above to indicate this uncertain fiscal impact.

Prepared by: Jack Kreinheder, Senior Policy Analyst *JK* Phone 465-4676
 Division Office of Management and Budget Date/Time 4/11/00 2:17 PM
 Approved by Director: Annalee McConnell *Annalee McConnell* Date 4/11/00
Office of the Governor

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Subject: fiscal note

Date: Fri, 07 Apr 2000 13:06:50 -0800

From: Barbara Cotting <Barbara_Cotting@legis.state.ak.us>

Organization: Alaska State Legislature

To: shari_kochman@gov.state.ak.us

I have scheduled HB 444, State Government Activities, for hearing in House State Affairs on Tuesday April 11 and need fiscal notes.

Thanks.

Barbara

*Not received.
as of 4/10/00.
hee*