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Appendix A

***DOT/PF M&O Briefing to Privatization Subcommittee
Dated September 3, 1999****

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Senator Jerry Ward
(907) 465-4940; Senator Jerry Ward@legis.state.ak.us
Room 423, State Capitol, Juneau, AK 99801-1182

Representative John Cowdery
(907) 465-3879; Representative John Cowdery@legis.state.ak.us
Room 204, State Capital, Juneau, AK 99801-1182

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DOT/PF SUBCOMMITTEE

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DELIVERY OF GOVERNMENT SERVICES**

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**COMMISSION ON PRIVATIZATION AND
DELIVERY OF GOVERNMENT SERVICES**

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SUBCOMMITTEE REPORT

ON THE

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

5.4 NOVEMBER 18, 1999
(16) pt

8.1 (12 pt)

**Subcommittee Members: Frank Dillon, Co-Chair; Sam Kito, Co-Chair;
Jim Ashton, Joe Beedle, Al Brooks, Alan Christopherson, Jerry DesJarlais,
George Easley – Chairman Emeritus, Tom Fink, Glen Glenzer, Bob Griffin, Mike Hamilton, Spence
Hochstein, Andy Lindhal, Tom Maloney, Tom Meehan, Emil Notti, Marco Pignalberi, Pat Ryan, Henry
Springer, Steve Wells, Marie Wilson, Thomas Young**

Appendix A

DOT/PF M&O Briefing to Privatization Subcommittee Dated September 3, 1999*

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COMMISSION ON PRIVATIZATION AND DELIVERY OF GOVERNMENT SERVICES

Appendix B

Bid Schedule and Scope of Work for Road Maintenance On Elmendorf Air Force Base, Alaska*

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Appendix C

DOT/PF Unified Road Maintenance Study Dated August 21, 1992

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**COMMISSION ON PRIVATIZATION AND
DELIVERY OF GOVERNMENT SERVICES**

Appendix D

Central Region Agreements/Contracts

DOT/PF SUBCOMMITTEE

**COMMISSION ON PRIVATIZATION AND
DELIVERY OF GOVERNMENT SERVICES**

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Appendix D

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Central Region Agreements/Contracts

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DOT/PF SUBCOMMITTEE

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COMMISSION ON PRIVATIZATION AND DELIVERY OF GOVERNMENT SERVICES

Appendix E

***Privatization Commission Director Letter to Fairbanks
and Anchorage Mayors, DOT/PF and Local 71
Regarding Joint Maintenance and Operations
Recommendations
Dated October 7, 1999
and
DOT/PF Response dated
October 27, 1999 and November 3, 1999***

DOT/PF SUBCOMMITTEE

**COMMISSION ON PRIVATIZATION AND
DELIVERY OF GOVERNMENT SERVICES**

Appendix F

Privatization Subcommittee Member Report on Maintenance and Operations

DOT/PF SUBCOMMITTEE

**COMMISSION ON PRIVATIZATION AND
DELIVERY OF GOVERNMENT SERVICES**

Appendix G

Privatization Subcommittee Member Report On Joint Agreements

DOT/PF SUBCOMMITTEE

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Appendix H

DOT/PF List of Category III Roads in Southeast and Northern Regions*

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(907) 465-4940; Senator_Jerry_Ward@legis.state.ak.us
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DELIVERY OF GOVERNMENT SERVICES**

Appendix I

DOT/PF FY98 Facilities Maintenance Cost by Building

DOT/PF SUBCOMMITTEE

**COMMISSION ON PRIVATIZATION AND
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Appendix J

State of Alaska Property Schedule by Department and Division*

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DOT/PF SUBCOMMITTEE

COMMISSION ON PRIVATIZATION AND DELIVERY OF GOVERNMENT SERVICES

Appendix K

***Division of Legislative Audit Report # 25-4472-95
DOT/PF Highway Design Cost and Quality Comparison
Dated August 16, 1994***

DOT/PF SUBCOMMITTEE

**COMMISSION ON PRIVATIZATION AND
DELIVERY OF GOVERNMENT SERVICES**

1-LS1177A
Bannister
11/18/99

HOUSE BILL NO.

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

BY REPRESENTATIVE COWDERY

**Introduced:
Referred:**

A BILL**FOR AN ACT ENTITLED**

1 "An Act relating to nongovernmental activities of state departments."

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

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

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

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

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

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

13 (1) means an activity that is so closely related to the public interest that
14 it requires performance by state government employees; the term includes an activity
15 that

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

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

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

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

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

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

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

(2) does not include

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

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

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

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

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

activity;

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

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

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

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

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

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

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

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

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

1 (d) Within 10 days after a department receives an appeal of a decision under
2 (c) of this section, the commissioner of the department shall decide the appeal and
3 shall transmit to the person submitting the appeal a notice of the decision on the
4 appeal, including an explanation of the rationale for the decision.

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

7 **Sec. 44.64.050. Review of list.** Within a reasonable time after a list is
8 published under AS 44.64.030(b) or (c)(2), the commissioner of the department that
9 prepared the list shall review the activities on the list.

10 **Sec. 44.64.060. Procurement of listed activity.** (a) For the purpose of
11 determining whether to contract with a private person to perform a listed activity,
12 when a department compares its costs of performing the activity with the costs of
13 contracting with a private person to perform the activity, the department shall consider
14 all of the realistic and fair costs of the activity. In this subsection, "costs" includes the
15 quality assurance costs, the cost to technically monitor performance of the activity,
16 liability insurance costs, the cost of employee retirement and disability benefits, and
17 other overhead costs.

18 (b) When a department decides to obtain a private person to perform a listed
19 activity, the department shall use competitive sealed bidding under AS 36.30.100 -
20 36.30.190 or competitive sealed proposals under AS 36.30.200 - 36.30.270 to procure
21 the contract with the person to perform the listed activity, unless a law other than this
22 chapter or AS 36.30 requires that another method be used for the procurement.

23 **Sec. 44.64.090. Definitions.** In this chapter, unless the context indicates
24 otherwise,

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

27 (2) "interested person" means

28 (A) a private person who

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

31 (ii) has a direct economic interest in performing the

1 activity that would be adversely affected by a determination not to
2 procure the performance of the activity from a private person;

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

6 (C) an employee of an organization within the department if the
7 employee or the organization is an actual or prospective performer of the
8 activity; or

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

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

16 (4) "listed activity" means an activity included on a list prepared under
17 AS 44.64.010, including an activity added after a challenge under AS 44.64.040.

Appendix K

Division of Legislative Audit Report # 25-4472-95 DOT/PF Highway Design Cost and Quality Comparison Dated August 16, 1994

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**COMMISSION ON PRIVATIZATION AND
DELIVERY OF GOVERNMENT SERVICES**

Appendix L

***Privatization Subcommittee Member Report on
Design and Construction Activities
Dated October 28, 1999***

DOT/PF SUBCOMMITTEE

**COMMISSION ON PRIVATIZATION AND
DELIVERY OF GOVERNMENT SERVICES**

Appendix M

Privatization Subcommittee Member Report on Design and Construction Activities Dated October 4, 1999

DOT/PF SUBCOMMITTEE

**COMMISSION ON PRIVATIZATION AND
DELIVERY OF GOVERNMENT SERVICES**

Appendix N

Privatization Subcommittee Member Report Regarding On-Site Store*

For a Sample NAPA RFP, please contact:

Senator Jerry Ward

(907) 465-4940; Senator Jerry Ward@legis.state.ak.us

Room 423, State Capitol, Juneau, AK 99801-1182

Representative John Cowdery

(907) 465-3879; Representative John Cowdery@legis.state.ak.us

Room 204, State Capital, Juneau, AK 99801-1182

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DOT/PF SUBCOMMITTEE

COMMISSION ON PRIVATIZATION AND DELIVERY OF GOVERNMENT SERVICES

Appendix O

DOT/PF SEF Presentation to Privatization Subcommittee Dated August 27, 1999*

*Not available in electronic format. To see original, please contact one of the following:

Senator Jerry Ward
(907) 465-4940; Senator_Jerry_Ward@legis.state.ak.us
Room 423, State Capitol, Juneau, AK 99801-1182

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DOT/PF SUBCOMMITTEE

COMMISSION ON PRIVATIZATION AND DELIVERY OF GOVERNMENT SERVICES

Appendix P

Privatization Subcommittee Member Reports on State Equipment Fleet

DOT/PF SUBCOMMITTEE

**COMMISSION ON PRIVATIZATION AND
DELIVERY OF GOVERNMENT SERVICES**

Appendix Q

DOT/PF Memo Listing Professional Service Contracts Dated October 14, 1999*

*Not available in electronic format. To see original, please contact one of the following:

Senator Jerry Ward
(907) 465-4940; Senator_Jerry_Ward@legis.state.ak.us
Room 423, State Capitol, Juneau, AK 99801-1182

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**COMMISSION ON PRIVATIZATION AND
DELIVERY OF GOVERNMENT SERVICES**

Appendix R

DOT/PF Component Budget Summary

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COMMISSION ON PRIVATIZATION AND DELIVERY OF GOVERNMENT SERVICES

Appendix S

National Cooperative Highway Research Program Synthesis of Highway Practice 277*

Contract Road Maintenance in Australia: A Pilot Study*

British Columbia's Experience with Contracted Road and Bridge Maintenance*

*Not available in electronic format. To see original, please contact one of the following:

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**COMMISSION ON PRIVATIZATION AND
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Appendix T

State Equipment Fleet Parts, Services, & Commodities FY1999 Vendors*

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COMMISSION ON PRIVATIZATION AND DELIVERY OF GOVERNMENT SERVICES

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

December 14, 1999

SUBJECT: Privatization Commission Recommendations (Work Order No. 21-LS1211)

TO: Representative John Cowdery
Attn: Marco Pignalberi

FROM: Tamara Brandt Cook
Director *TBC*

Here are some comments about the list of recommendations you sent me. As you requested, this is just a quick overview with no real effort to check all the statutes that may be involved. Also, I admit that I do not understand some of the recommendations and these I simply skipped. Please let me know if you would like a closer review of some of these recommendations.

(1) Recommendation No. 6 - This does not indicate whether or not legislation is believed to be required. Is this an oversight? That recommendation, "increase level of cooperation between CSED and private agencies," is too vague for me to have any idea of what type of private agencies are at issue here, let alone whether legislation would be involved.

(2) Recommendation No. 14 - There is a suggestion that the enforcement duties for the state's tobacco and gaming laws be shifted to the ABC Board. In this regard, check out AS 04.06.110 which authorizes the director of the Board (with the concurrence of the commissioner of public safety) to exercise enforcement powers for violations of laws relating to alcohol, prostitution, and gambling (AS 11.66.200 - 11.66.280). This has to do with enforcement of "criminally punishable" laws, not laws relating to regulation of permitted gaming activities. I cannot tell from the recommendation if the suggestion is limited to enforcement of criminal statutes, or whether there is a desire to use the ABC Board as the regulatory body for permitted activities relating to tobacco and gaming.

(3) Recommendation No. 16 - The proposed merger of the Income and Excise Audit Division and the Oil and Gas Audit Division does not appear to require legislation.

(4) Recommendation No. 20 - This requires enactment of legislation to amend AS 14.03.250 - 14.03.290 (charter schools).

(5) Recommendation No. 22 - This does not require legislation.

- (6) Recommendation No. 24 - The state constitution probably so restricts the power to adopt a voucher system, as to make this recommendation impossible to fulfill. (Sheldon Jackson College v. State, 599 P.2d 127 (Alaska 1979)) Is it the intent of this recommendation that a state constitutional amendment be proposed by the legislature?
- (7) Recommendation No. 26 - This is worded as a requirement for legislation, so, presumably, the "legislation required" column should be affirmatively marked.
- (8) Recommendation No. 30 - I suspect that this will require legislation.
- (9) Recommendation No. 34 - Moving the teacher certification program to the Division of Occupational Licensing will require legislation. Also, will a new board be created to be in charge of this?
- (10) Recommendation No. 36 - I presume that, since this speaks in terms of "school safety legislation," the "legislation required" column should be affirmatively marked.
- (11) Recommendations No. 48 and 54 - If Alyeska Central School is closed, at least one statute will need to be amended to delete reference to that school, AS 14.17.460.
- (12) Recommendation No. 70 - Providing funding for maintenance of Mt. Edgecumbe High School will probably require an appropriation.
- (13) Recommendation No. 84 - There is no real definition of "general fund" now. With respect to the treatment of program receipts, see AS 37.05.146. The Supreme Court for purposes of Art. IX, sec. 17(d) appears to have decided that virtually all state assets are in the general fund if they are not in one of the two constitutionally created distinct funds, the permanent fund or the budget reserve fund. (Hickel v. Cowper, 874 P.2d 922 (Alaska 1994)) In any case, this recommendation will probably take legislation to implement.
- (14) Recommendation No. 104 - The issue of compensating private businesses or others from a particular source, such as licensing fees, will always raise issues involving the appropriation of those fees for that purpose because the dedication of funds is unconstitutional. In that sense, legislation will always be necessary in these situations.
- (15) Recommendation No. 116 - As a general matter, the legislature probably has already prohibited "unnecessary and redundant rulemaking." (See AS 44.62.020 and 44.62.030) If this recommendation contemplates further legislative action, then legislation will, presumably, be required.
- (16) Recommendation No. 122 - By its terms this recommendation requires legislation.
- (17) Recommendation No. 128 - Does this mean that a new Statewide Public Service Department is to be established?

- (18) Recommendation No. 130 - Legislation is required to carry out this recommendation.
- (19) Recommendation No. 136 - This requires appropriations and, in that sense, legislation is required.
- (20) Recommendation No. 138 - Legislation is required to carry out this recommendation.
- (21) Recommendation No. 184 - The Executive Budget Act already sets schedules and procedures for developing and reporting the budget. (AS 37.07.010 - 37.07.120) If these statutes are to be changed, legislation is needed.
- (22) Recommendations No. 188, 214, and 236 - These recommendations as stated require legislation.
- (23) Recommendation No. 290 - The transfer of roads to local communities probably will require legislation. Reimbursement for expenses relating to those roads to local communities will require legislation.
- (24) Recommendation No. 296 - Establishing a dedicated fund will require the legislature to submit a proposed constitutional amendment to the voters, so legislation is required.
- (25) Recommendation No. 298 - This will require legislation.
- (26) Recommendations No. 324 and 326 - By their terms legislation is required.
- (27) Recommendations No. 330 and 332 - Both these require legislation.
- (28) Recommendation No. 338 - A system is already in place for monitoring regulations by the legislative branch. (See AS 44.62.040(c), 44.62.320(b)) Except through the legislative process, the legislature cannot get involved in the implementation of regulations without violating the separation of powers doctrine. (State v. A.L.I.V.E. Voluntary, 606 P.2d 769 (Alaska 1980))
- (29) Recommendation No. 342 - This is a request for legislation and, as such, legislation would be required.
- (30) Recommendation No. 348 - This is a direct call for budgetary action and would, consequently, require legislation.
- (31) Recommendation No. 358 - This recommendation will require legislation. In addition, federal law will need to be checked to determine whether the state can make this change.
- (32) Recommendation 360 - This has been placed under "policy recommendations" and may well belong there, but it would take legislation to implement.

(33) Recommendation 366 - This would take legislation to implement and it is unlikely that it can be accomplished and keep the state in compliance with federal law.

(34) Recommendations No. 368, 370, 372, 374, 376, and 378 - All require legislation.

(35) Recommendation No. 418 - Since this requests legislation, perhaps it should be a "legislative" rather than "policy" recommendation.

(36) Recommendations No. 426 and 432 - These would require legislation and, perhaps, should be considered a "legislative" rather than a "policy" recommendation.

(37) Recommendations No. 446 and 450 - These involve the introduction of proposed legislation and, consequently, might be better placed in the "legislative recommendations" category.

(38) Recommendation No. 476 - This appears to be a "legislative" recommendation.

(39) Recommendation No. 492 - This will require legislation and, perhaps, a constitutional amendment.

(40) Recommendations No. 524 and 526 - These require legislation and should probably be "legislative" recommendations.

(41) Recommendation No. 536 - This will require legislation.

(42) Recommendation No. 554 - By its terms, this recommendation requires legislation.

(43) Recommendation No. 560 - This looks like a "legislative" rather than a "policy" recommendation.

(44) Recommendation No. 564 - This will require legislation. (See AS 42.40.940)

(45) Recommendation No. 580 - This will require legislation.

TBC:jr:pl
99-310.jdr