

SB

147

SB 147

Sponsor Statement

“An Act relating to nongovernmental activities of state agencies; and providing for an effective date.”

SB 147 is a mirror of the, “Federal Activity Inventory Reform Act.” It passed congress in 1998 and then was signed into law by President Clinton.

SB 147 requires state agencies to annually list, which of their activities are “not inherently governmental.” An 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 1 (c) of the bill contains several paragraphs of elaboration for this definition.

SB 147, 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, of these non-governmental activities.

Interested persons may challenge the inclusion or omission of an activity on a list. There are always challenges to the list, by employees, private industry, and unions. On the Federal level it has been evident that challenges and appeals work through the process and often the decision is reversed upon the gathering of new information.

SB 147 provides a long-term mechanism to start the process of reorganization of state government. In order to accomplish this, we need legislation that requires the executive branch to identify activities that are inherently non-governmental, and to associate a cost with them. This is the type of information that is a prerequisite to making intelligent decisions, about whether the government should be doing the work at all. Surely, it will generate debate about what is or is not inherently governmental, and how much cost is attached to these functions. These debates are a vital step in the reorganization process. SB 147 puts us on the right track toward government activities that we want and are willing to pay for.

SB 147 provides the basis for long term, consistent efforts toward cost effective government. Policymakers and citizens alike become more informed about the missions, budgets, and responsibilities of the services being provided by our government workers. This merely is the first step in making intelligent, informed decisions about government services.

FISCAL NOTE

**STATE OF ALASKA
2001 LEGISLATIVE SESSION**

Fiscal Note Number: _____
 Bill Version: SB 147
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: All
 Title: An act relating to nongovernmental activities of BRU: _____
state departments. Component: _____
 Sponsor: Sen. Cowdery
 Requester: Senate State Affairs Component Number: _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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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	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SB 147 requires all state agencies to annually prepare a list of activities performed that are "not inherently governmental activities." The bill narrowly defines inherently governmental activities, and also defines activities that are not inherently governmental, including building security, mail operations, facilities operations, facilities maintenance, and several other functions.

This bill appears to be an attempt to encourage privatization or contracting out of certain predetermined functions. While the Knowles Administration supports the evaluation of contracting state services where appropriate, the approach taken by this bill is not a sound basis for determining which services should be contracted, and the Administration opposes this legislation.

Prepared by: Jack Kreinheder, Senior Policy Analyst Phone 465-4676
 Division: Office of Management and Budget Date/Time 3/25/01 4:30 PM
 Approved by: Annalee McConnell, Director Date 03/25/2001
 Agency: Office of Management and Budget

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ALASKA
★ STATE ★
CHAMBER
OF COMMERCE

March 28, 2001

Senator John Cowdery
Alaska State Senate
Juneau, Alaska 99801

SB 147 - Nongovernmental Activities of State Agencies

Dear Senator Cowdery:

The Alaska State Chamber of Commerce is in support of Senate Bill 147, requiring state agencies to list the activities performed by the departments that are not inherently governmental activities.

Over time, for various reasons, agencies become involved in activities that would not ordinarily fall into the purview of their responsibilities. Sometimes it is done out of expediency when there is no other entity available to perform the activity. This bill would generate the need to take inventory and provide opportunity to relieve agencies of unneeded activities, or activities for which someone else could be responsible.

Much progress has been made in the state's effort to achieve a more cost-effective government. Senate Bill 147 will help keep us on the path toward efficiency. The federal government recognized the value of this inventory process and, in 1998, the *Federal Activity Inventory Reform Act* was passed by the U.S. Congress. We believe adoption of Senate Bill 147 would, likewise, be beneficial to Alaska.

Sincerely,

Pamela La Bolle
President

Letter of Support

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Daily Briefing

March 3, 1999

OMB orders agencies to send outsourcing lists

By Brian Friel

letters@govexec.com

Federal agencies must prepare lists of employees' jobs that could be outsourced under rules proposed by the Office of Management and Budget on Monday.

OMB's proposed rules, which require agencies to submit the target lists to OMB by June 30 each year, are mandated by the Federal Activities Inventory Reform (FAIR) Act of 1998. The act directs agencies to submit a list to OMB each year of all their activities, such as technical support and cafeteria maintenance, that are performed by federal employees and are not inherently governmental. Agencies must also report to OMB the number of federal employees who currently perform functions that could be outsourced. The lists will be published in the *Federal Register*.

The act then calls on agencies to review the commercial activities lists "within a reasonable time" to decide whether to outsource the jobs.

OMB's proposed rules include procedures for people to protest the inclusion or exclusion of activities on the lists. For example, federal employees' unions could challenge an agency's assertion that an activity is not inherently governmental, while private firms could challenge an agency's decision that an activity could not be outsourced.

If an agency decides to outsource an activity on its list, then it must follow OMB Circular A-76 procedures, which require a public-private competition for the work. The federal employees who currently perform the work compete against private-sector bidders in the A-76 process.

The Defense Department is conducting A-76 competitions

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[Clinton signs privatization bill](#) (Oct. 22)
[Bill creates outsourcing rules](#) (July 16)

for 229,000 employees' jobs from 1997 through 2005. But most other agencies have not jumped on the A-76 bandwagon. The FAIR Act is an attempt to get other agencies to use A-76 procedures more frequently.

OMB published its proposed rules in the Mar. 1 *Federal Register*.

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Daily Briefing

January 11, 2000

Agencies say most federal jobs not 'inherently governmental'

By Brian Friel

letters@govexec.com

About 900,000 federal employees—more than half of the civilian workforce—do work that could be performed in the private sector, according to lists released by 115 agencies and compiled by *GovExec.com*.

The first-ever governmentwide tally of jobs that could be outsourced, released under the Federal Activities Inventory Reform (FAIR) Act, indicates that fewer federal jobs are inherently governmental than are candidates to be contracted out. The 115 agencies that released inventories employ a total of 1.7 million workers, so only about 850,000 federal jobs are inherently governmental, according to the FAIR Act lists.

Under the FAIR Act, if a private sector company could perform the work, an employee's job must be included on the outsourcing list. The lists also indicate whether agencies plan to actually outsource the jobs or if they plan to keep the work in-house.

The Defense Department, which employs 662,900 civilian workers, listed 504,000 civilian jobs on its FAIR Act inventory that could be performed in the private sector. But the Pentagon is considering outsourcing only 304,000 of those jobs, and has designated only about 229,000 jobs as candidates to be contracted out.

Once DoD jobs are designated for outsourcing, workers undergo a public-private competition, which gives the in-house employees a chance to defend their jobs against private companies. About 50 percent of public-private competitions result in jobs being outsourced.

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For all the lists, see [GovExec. Act Report](#)

Private contractors are combing through the FAIR Act inventories to see if they think even more federal jobs should be included on the lists, while employees and unions are reviewing the lists to determine if jobs on the inventories should be re-classified as inherently governmental.

The FAIR Act inventories were released in three waves in 1999—one in September, one in October and one in December. Updated inventories will be released annually.

The FAIR Act lists are compiled in *GovExec.com's* FAIR Act Report.

Sample List From:

FEDERAL HIGHWAY ADMINISTRATION FAIR Act Inventory 2000

Organization Unit	State	Location	FTE	Activity / Function Code	Reason Code	Year the Activity First Appeared on the Commercial Activities Inventory	Responsible Official	Year of Cost Comparison or Conversion	FTE Savings	Estimated Annualized Cost Comparison Dollar Savings	Date of Completed Post-MEO Performance Review	
FHWA DIVISION OFFICE	AK	JUNEAU	1	W829	D	1999	GARY L. DICKSON SEVENTH STREET, NW WASHINGTON DC 20590-0003 5707 E-MAIL: GARY.DICKSON@FHWA DOT GOV	400 TEL: (202) 366- 5707	N/A	0	\$0	N/A
FHWA DIVISION OFFICE	AZ	PHOENIX	1	W829	D	2000	- DITTO -	N/A	0	\$0	N/A	
FHWA DIVISION OFFICE	AR	LITTLE ROCK	1	W829	D	1999	- DITTO -	N/A	0	\$0	N/A	
WESTERN RESOURCE CENTER	CA	SAN FRANCISCO	1	W829	D	1999	- DITTO -	N/A	0	\$0	N/A	
FHWA DIVISION OFFICE	CO	LAKEWOOD	1	W829	D	1999	- DITTO -	N/A	0	\$0	N/A	
SOUTHERN RESOURCE CENTER	GA	ATLANTA	1	W829	D	1999	- DITTO -	N/A	0	\$0	N/A	
FHWA DIVISION OFFICE	GA	ATLANTA	1	W829	D	1999	- DITTO -	N/A	0	\$0	N/A	
FHWA DIVISION OFFICE	IA	AMES	1	W829	D	1999	- DITTO -	N/A	0	\$0	N/A	
MIDWESTERN RESOURCE CENTER	IL	OLYMPIA FIELDS	1	W829	D	1999	- DITTO -	N/A	0	\$0	N/A	
FHWA DIVISION OFFICE	IL	SPRINGFIELD	1	W829	D	1999	- DITTO -	N/A	0	\$0	N/A	
FHWA DIVISION OFFICE	IN	INDIANAPOLIS	1	WR29	D	1999	- DITTO -	N/A	0	\$0	N/A	
FHWA DIVISION OFFICE	KS	TOPEKA	1	W829	D	1999	- DITTO -	N/A	0	\$0	N/A	
FHWA DIVISION OFFICE	MD	ANNAPOLIS	1	W829	D	1999	- DITTO -	N/A	0	\$0	N/A	
EASTERN RESOURCE CENTER	MD	BALTIMORE	1	W829	D	1999	- DITTO -	N/A	0	\$0	N/A	
FHWA DIVISION OFFICE	ME	AUGUSTA	1	W829	D	1999	- DITTO -	N/A	0	\$0	N/A	
FHWA DIVISION OFFICE	MI	LANSING	1	W829	D	1999	- DITTO -	N/A	0	\$0	N/A	
FHWA DIVISION OFFICE	MN	ST PAUL	1	W829	D	1999	- DITTO -	N/A	0	\$0	N/A	
FHWA DIVISION OFFICE	MO	JEFFERSON CITY	1	W829	D	1999	- DITTO -	N/A	0	\$0	N/A	
FHWA DIVISION OFFICE	MT	HELENA	1	W829	D	1999	- DITTO -	N/A	0	\$0	N/A	

Sample List FHA

FEDERAL HIGHWAY ADMINISTRATION
FAIR Act Inventory 2000

Organization Unit	State	Location	FTE	Activity / Function Code	Reason Code	Year the Activity First Appeared on the Commercial Activities Inventory	Responsible Official	Year of Cost Comparison or Conversion	FTE Savings	Estimated Annualized Cost Comparison Dollar Savings	Date of Completed Post-MEO Performance Review
FHWA DIVISION OFFICE	NE	LINCOLN	1	W829	D	1999	- DITTO -	N/A	0	\$0	N/A
FHWA DIVISION OFFICE	NH	CONCORD	1	W829	D	1999	- DITTO -	N/A	0	\$0	N/A
FHWA DIVISION OFFICE	NV	CARSON CITY	1	W829	D	1999	- DITTO -	N/A	0	\$0	N/A
EASTERN RESOURCE CENTER	NY	ALBANY	1	W829	D	1999	- DITTO -	N/A	0	\$0	N/A
FHWA DIVISION OFFICE	NY	ALBANY	1	W829	D	1999	- DITTO -	N/A	0	\$0	N/A
FHWA DIVISION OFFICE	OH	COLUMBUS	1	W829	D	1999	- DITTO -	N/A	0	\$0	N/A
FHWA DIVISION OFFICE	OK	OKLAHOMA CITY	1	W829	D	1999	- DITTO -	N/A	0	\$0	N/A
FHWA DIVISION OFFICE	OR	SALEM	1	W829	D	1999	- DITTO -	N/A	0	\$0	N/A
FHWA DIVISION OFFICE	PA	HARRISBURG	1	W829	D	1999	- DITTO -	N/A	0	\$0	N/A
FHWA DIVISION OFFICE	SD	PIERRE	1	W829	D	1999	- DITTO -	N/A	0	\$0	N/A
FHWA DIVISION OFFICE	TN	NASHVILLE	1	W829	D	1999	- DITTO -	N/A	0	\$0	N/A
FHWA DIVISION OFFICE	TX	AUSTIN	1	W829	D	1999	- DITTO -	N/A	0	\$0	N/A
FHWA DIVISION OFFICE	UT	SALT LAKE CITY	1	W829	D	1999	- DITTO -	N/A	0	\$0	N/A
FHWA DIVISION OFFICE	VT	MONTPELIER	1	W829	D	1999	- DITTO -	N/A	0	\$0	N/A
FHWA DIVISION OFFICE	WI	MADISON	1	W829	D	1999	- DITTO -	N/A	0	\$0	N/A
FHWA DIVISION OFFICE	WV	CHARLESTON	1	W829	D	1999	- DITTO -	N/A	0	\$0	N/A
FHWA DIVISION OFFICE	WY	CHEYENNE	1	W829	D	1999	- DITTO -	N/A	0	\$0	N/A
TOTALS			35						0	\$0	

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A-76 and Outsourcing

March 14, 2001



The FAIR Act Report

This special ongoing section provides lists of jobs that could potentially be outsourced under the 1998 Federal Activities Inventory Reform Act. New lists will be added as agencies release them.

These lists include all activities performed by federal employees that could be outsourced to private firms, as reported by the agencies. Activities that are considered "inherently governmental" are not included on the lists, unless noted. Jobs are listed by category, and in some cases, by location.

For more information, see:

- [Reason Codes](#).
- [Activity/Function Codes](#)
- [FAIR Act reporting](#)
- [Year 2000 data requirements](#)

Advisory Council on Historic Preservation	1999	2000
Agency for International Development	1999	2000
Agriculture Department	1999	2000
Arlington National Cemetery	1999	2000
Broadcasting Board of Governors	1999	2000
Chemical Safety Board	1999	2000
Commerce Department	1999	2000
Commission on Fine Arts	1999	N/A
Consumer Product Safety Commission	1999	2000

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Defense Department	1999	2000
Defense Nuclear Facilities Safety Board	1999	2000(pdf)
Education Department	1999	2000
Energy Department	1999	2000
Environmental Protection Agency	1999	2000
Environmental Protection Agency (OIG)	1999	2000(pdf)
Equal Employment Opportunity Commission	1999	2000
Federal Emergency Management Agency	1999	2000
Federal Energy Regulatory Commission	1999	N/A
Federal Labor Relations Authority	1999	2000
Federal Maritime Commission	1999	2000
Federal Mediation and Conciliation Service	N/A	2000
Federal Mine Safety and Health Review Commission	1999	2000(pdf)
Federal Retirement Thrift Investment Board	1999	2000 (pdf)
Federal Trade Commission	1999	N/A
General Services Administration	1999	2000
Health and Human Services Department	1999	2000
Holocaust Memorial Council and Museum	1999	2000 (pdf)
Housing and Urban Development Department	1999	2000
Housing and Urban Development Department Inspector General	1999	2000
Interior Department	1999	2000
International Trade Commission	1999	2000(pdf)
Inter-American Foundation	1999	N/A
John F. Kennedy Center for the Performing Arts	1999	2000
Justice Department	1999	2000
Labor Department	1999	2000
Merit Systems Protection Board	1999	2000

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NASA	<u>1999</u>	<u>2000</u>
National Archives and Records Administration	<u>1999</u>	<u>2000</u>
National Capital Planning Commission	<u>1999</u>	N/A
National Credit Union Administration	<u>1999</u>	N/A
National Endowment for the Arts	<u>1999</u>	<u>2000</u>
National Gallery of Art	<u>1999</u>	<u>2000</u>
National Labor Relations Board	<u>1999</u>	<u>2000</u>
National Science Foundation	<u>1999</u>	<u>2000</u>
National Transportation Safety Board	<u>1999</u>	<u>2000</u>
Nuclear Regulatory Commission	<u>1999</u>	<u>2000</u>
Nuclear Regulatory Commission(OIG)	N/A	<u>2000</u>
Nuclear Waste Technical Review Board	<u>1999</u>	<u>2000</u>
Office of Government Ethics	<u>1999</u>	<u>2000(pdf)</u>
Office of Inspector General, Defense Department	<u>1999</u>	N/A
Office of Inspector General, National Labor Relations Board	<u>1999</u>	<u>2000</u>
Office of Management and Budget	<u>1999</u>	<u>2000</u>
Office of National Drug Control Policy	No 1999 list	<u>2000</u>
Office of Personnel Management	<u>1999</u>	<u>2000</u>
Office of Special Counsel	<u>1999</u>	<u>2000</u>
Peace Corps	<u>1999</u>	<u>2000</u>
Railroad Retirement Board, Office of Inspector General	No 1999 list	<u>2000</u>
Securities and Exchange Commission	<u>1999</u>	N/A
Selective Service System	<u>1999</u>	N/A
Small Business Administration	<u>1999</u>	N/A
Smithsonian Institution	<u>1999</u>	<u>2000</u>
Social Security Administration	<u>1999</u>	<u>2000</u>
State Department	<u>1999</u>	<u>2000 (pdf)</u>
State Department Inspector General	<u>1999</u>	N/A
Transportation Department	<u>1999</u>	<u>2000</u>
Treasury Department	<u>1999</u>	<u>2000</u>
Treasury Department Inspector General	<u>1999</u>	<u>2000</u>

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United States Trade Representative	<u>1999</u>	<u>2000</u>
Veterans Affairs Department	<u>1999</u>	<u>2000</u>
Woodrow Wilson Center	<u>1999</u>	<u>2000</u>

The following agencies reported that all of their jobs are inherently governmental during the years indicated:

African Development Foundation	1999	<u>2000</u>
American Battle Monuments Commission	1999	N/A
Appalachian Regional Commission	1999	<u>2000</u>
Architectural and Transportation Barriers Compliance Board	1999	<u>2000</u>
Barry Goldwater Scholarship and Excellence in Education Foundation	1999	<u>2000</u> (pdf)
Christopher Columbus Fellowship Foundation	1999	2000
Committee for Purchase from People who are Blind or Severely Disabled	1999	<u>2000</u> (pdf)
Council on Environmental Quality	1999	2000
Federal Election Commission	1999	<u>2000</u>
Federal Housing Finance Board	1999	N/A
Federal Financial Institutions Council Appraisal Subcommittee	1999	N/A
Harry S. Truman Scholarship Foundation	1999	<u>2000</u>
Institute of Museum and Library Services	1999	<u>2000</u>
James Madison Memorial Fellowship Foundation	1999	<u>2000</u>
Japan-United States Friendship Commission	1999	<u>2000</u>
Marine Mammal Commission	1999	2000
Morris Udall Foundation	1999	2000
National Commission on Libraries and Information Science	1999	N/A
National Council on Disability	1999	<u>2000</u>
National Education Goals Panel	1999	N/A
National Endowment for the Humanities	1999	<u>2000</u> (pdf)
National Mediation Board	1999	<u>2000</u> (pdf)
Occupational Safety & Health Review Commission	1999	<u>2000</u>

Office of Federal Housing Enterprise Oversight	1999	<u>2000</u>
Office of Navajo and Hopi Indian Relocation	<u>1999</u>	2000
Office of Science and Technology Policy	No 1999 list	<u>2000</u>
Occupational Safety & Health Review Commission	1999	<u>2000</u>
Trade and Development Agency	No 1999 list	<u>2000 (pdf)</u>

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THE WHITE HOUSE

Federal Activities Inventory Reform Act of 1998

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FEDERAL ACTIVITIES INVENTORY REFORM ACT OF 1998

[[Page 112 STAT. 2382]]

Public Law 105-270

105th Congress

An Act

To provide a process for identifying the functions of the Federal Government that are not inherently governmental functions, and for other purposes. <<NOTE: Oct. 19, 1998 - [S. 314]>>

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, <<NOTE: 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".

SEC. 2. <<NOTE: Records.>> ANNUAL LISTS OF GOVERNMENT ACTIVITIES

NOT INHERENTLY GOVERNMENTAL IN NATURE.

(a) <<NOTE: Deadline.>> 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) <<NOTE: Federal Register, Publication.>> 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

[[Page 112 STAT. 2383]]

(B) <<NOTE: Federal Register, Publication.>> publish in the Federal Register a notice that the change is available to the public.

(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.

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(d) <<NOTE: Deadline.>> 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 (e).

(e) Appeal.--

(1) <<NOTE: Deadline.>> 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.

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(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 (1998):

July 30, considered and passed Senate.

Oct. 5, considered and passed House. [Return to FAIR main page](#)
