

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8176 ○ HOUSE STATE AFFAIRS ○

440

S B

90

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 10, 1993

FURTHER REFERRALS:

Resources

Date of Committee Action: 3-23-93

The STATE AFFAIRS Committee considered:

SB 90

SENATE BILL NO. 90

DECLARATION OF DISASTER EMERGENCIES

"An Act clarifying powers and duties of state officials in relation to a disaster emergency caused by a catastrophic oil discharge or the release of a hazardous substance."

RECOMMENDATIONS:

be replaced with _____ the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal impact _____

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) DMVA 2-17-93

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Al Veary</i>		<i>Harley Olberg</i>		✓	
<i>F. Walker</i>	X				
<i>B. Davis</i>	X				
<i>Don L. Davis</i>	✓				
<i>Don Sanders</i>	✓				
<i>Pete Fost</i>	X				

Al Veary

 CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 90

Revision Date: _____
 Title: Oil and Hazardous Substance
Disaster Emergencies
 Sponsor: Senator Leman
 Requestor: Senate Oil & Gas

Department Affected: Environmental
Conservation
 BRU: Spill Prevention & Response
 Component: Spill Response Office

COMPONENT SERIAL NO. 1429

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	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING:

1002 FEDERAL RECEIPTS	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF MATCH	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/PROGRAM RECFT	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS: NONE

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY93) impact: \$ NONE

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Janice Adair
 Division: Commissioner's Office

Phone: 465-5010
 Date: 2/9/93

Approved by Commissioner: *Janice Adair*
 Agency: Department of Environmental Conservation

Date: 2/10/93

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).



Department of Environmental Conservation

Position Paper

Bill No: Senate Bill 90

Approved:

Name: John A. Sandor

Title: Commissioner

Date: February 10, 1993

Bill Title: Disaster Emergencies

Senate Bill 90 clarifies how a release or imminent release of oil or a hazardous substance would be declared a disaster emergency by the Governor, and thus deploying the state's resources to cope with the situation. It would codify a Memorandum of Agreement dated January 8, 1992 entered into by the Commissioners of DEC and the Department of Military and Veteran's Affairs.

The Department of Environmental Conservation supports the legislation.

For further information contact: *Janice Adair*
Assistant Commissioner/Legislative Liaison
465-5010



SENATOR LOREN LEMAN

Northwest Anchorage

311 "C" Street Anchorage, AK 99503 561-7614 During Session: State Capitol Juneau, AK 99801 465-2095

SPONSOR STATEMENT

SB90: "An Act clarifying powers and duties of state officials in relation to a disaster emergency caused by a catastrophic oil discharge or the release of a hazardous substance."

PROPOSAL

SB90 clarifies the governor's authority to declare a disaster emergency involving a catastrophic oil discharge and the response by the departments of environmental conservation and military and veterans' affairs.

It also would allow either the commissioner of environmental conservation or the commissioner of military and veterans' affairs to ask the governor to find that an actual or imminent catastrophic oil discharge constitutes an emergency under AS 26.23.

This bill is introduced at the request of the Department of Military and Veterans Affairs in cooperation with the Department of Environmental Conservation.

HISTORY

Many statute changes were made as a result of the Exxon Valdez oil spill. AS 26.23.020 and AS 46.04.080(a) were amended by the legislature in 1990. These amendments created a conflict with respect to whose authority it is to act under AS 46.04.080(a). The departments entered into a Memorandum of Agreement on January 8, 1992, as a method of complying with the statutes. This bill will complete the necessary changes.

MEMORANDUM OF AGREEMENT
BETWEEN THE

STATE OF ALASKA
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF SPILL PREVENTION AND RESPONSE

AND THE

STATE OF ALASKA
DEPARTMENT OF MILITARY AND VETERANS AFFAIRS
DIVISION OF EMERGENCY SERVICES

This agreement is effective the latest date of approving signature, by and between the Department of Environmental Conservation, Division of Spill Prevention and Response, hereinafter referred to as the "DEC/DSPAR" and the Department of Military and Veterans Affairs, Division of Emergency Services, hereinafter referred to as the "DMVA/DES."

RECITALS

- A. Pursuant to AS 46.03.020, the DEC/DSPAR, acting by and through its Commissioner, may enter into agreements.
- B. Pursuant to AS 26.23.040(e)(9)&(11), the DMVA/DES, acting by and through its Commissioner, may enter into agreements.
- C. The DMVA/DES has statutory responsibility for disaster emergency planning and management [AS 26.23.040].
- D. The DEC/DSPAR has statutory responsibility for response planning and management for releases of hazardous substances, including oil [AS 46.03, 46.04, 46.08, 46.09, 46.13].
- E. To the extent that an actual or imminent release of oil or a hazardous substance constitutes a real or potential disaster emergency, the DEC/DSPAR and the DMVA/DES shall coordinate their statutory responsibilities [AS 26.23.195, 26.23.215, 46.04.080 & 46.09.030].

Therefore, in consideration of this mutual interest to provide integrated response to real or potential disaster emergency situations, both parties agree to the following:

AN OPERATIONAL STATEMENT

I. Background and Objectives

Actual or imminent releases of hazardous substances, to include both crude and non-crude oil, (hereafter referred to as "releases"), have the potential for causing significant damage, hardship suffering, and/or loss of life. Releases may be catastrophic in their effect on natural

resources or the environment, without being considered a disaster emergency, as defined in Alaska Statute 26.23.900(2). However, it is envisioned that from time to time releases will occur which constitute a disaster emergency. The Commissioners of the DEC and the DMVA will coordinate to determine that a release constitutes a disaster emergency under AS 26.23 and may request the governor to declare a disaster emergency. If a disaster emergency is declared, the Governor will appoint a State Coordinating Officer (SCO) to coordinate all State disaster assistance activities.

The DMVA/DES is the agency designated and authorized by the Governor's promulgation of the State Disaster Emergency Operations Plan (hereinafter referred to as the State EOP), to coordinate statewide disaster activities, determine the severity and magnitude of pending destruction by catastrophic events, and institute a gubernatorial declaration of disaster emergency.

The DEC/DSPAR is the agency designated in the State Master Oil and Hazardous Substance Discharge Prevention and Contingency Annex (hereinafter referred to as the State Master Plan) to the State EOP, to provide the State On Scene Coordinator (SOSC), who is responsible for ensuring responses to releases are adequate. The SOSC commands the State's release incident command system (ICS) and is responsible for coordinating the State's response activities to releases according to the State Master Plan.

During a response to release incidents that pose imminent threat to life and/or private property, DEC/DSPAR and DMVA/DES agree to augment local efforts essential to: accommodate assessment of potential damage; preparation planning for evacuation of the threatened public; management of disaster emergency expenses; and tasking, as necessary, to other State departments and agencies to provide assistance as stipulated in the State EOP.

Additionally, pursuant to the State Master Plan, the DMVA/DES serves to augment the State On Scene Coordinator (SOSC).

In that the DMVA/DES can provide substantial assistance to DEC/DSPAR during non-disaster emergency releases, and DEC/DSPAR can likewise assist DMVA/DES in non-release disaster emergencies, arrangements to formalize mutual support is essential.

DEC/DSPAR and DMVA/DES will jointly propose statutory changes as required, to clarify the relationships established pursuant to this agreement.

<u>II. Responsible Officers</u>	<u>DEC/DSPAR</u>	<u>DMVA/DES</u>
Signatory Authority	Commissioner	Commissioner
Authorized agency representatives: Cooperative relationships and program responsibility	Director	Director
Agency functional representatives: Statewide Coordination	Spill Prevention & Planning Manager	Emergency Services Manager
	Chief, Spill Response Office	Chief of Logistics

The above personnel will designate alternates in their absence and inform their counterparts in the other agency as to the alternate's name, position, and office and home phones.

III. General Provisions

Either agency may request assistance from the other provided administrative arrangements are set forth for proper reimbursement of incurred expenditures by the requesting agency. The services provided will be based on each agency's existing capabilities and limitations at the time of the request, to include those obtainable under formal contract and/or through a continuing reimbursable services agreement.

A. DMVA/DES Participation and Support To Non-Disaster Emergency Release Actions

1. Upon notification and request for a DMVA/DES representative at a release scene, travel and per diem will be provided by DEC/DSPAR in a manner typically provided their work force.
2. Primarily, the DMVA/DES representative will coordinate with the DEC/DSPAR Incident Commander in matters of logistics support, evacuation plan development, and interface between other State public safety agencies and support groups for assistance to the general public.
3. If a non-disaster emergency release poses an imminent threat of widespread or severe damage, injury or loss of life or property, the Commissioners of the DEC and the DMVA will coordinate to determine if the release constitutes a disaster emergency and may request the Governor to declare a disaster emergency.

B. DEC/DSPAR and DMVA/DES Relationship During a Declared Release Disaster Emergency

1. The SCO appointed by the Governor will serve as the incident commander for the disaster emergency.
2. The SOSC designated by DEC/DSPAR will be the incident commander for release response and regulatory activities.
3. The SOSC will coordinate response activities with the SCO pursuant to the basic plan.

C. DEC/DSPAR Participation and Support to Non-Release Disaster Emergencies

1. Upon notification and request for DEC/DSPAR support to non-release disaster emergencies, DEC/DSPAR capability will be provided to the extent practical and within its qualifications to perform services.
2. Contingency stocks of equipment and supplies will be made available, to the extent that they do not interfere with actual release operations being conducted at the time of the request.

D. Special Provisions

1. Refurbishment of equipment used during emergency response actions is reimbursable.
2. Warehousing of equipment obtained during emergency activities will be made available by the borrowing agency, to the extent possible.
3. DEC/DSPAR will collocate selected personnel with DMVA/DES to facilitate emergency response planning and coordination pursuant to this agreement.

IV. Term of Agreement

This mutual support agreement may be rewritten by mutual consent, at any time, to amend or modify its provisions. It shall remain in force until such time as either agency requests termination.

Nothing in this agreement shall obligate any party to the expenditure of funds, or for future payments of money, in excess of appropriations authorized by law.

[Handwritten signature]

Commissioner
Department of Military and
Veterans Affairs

8 Jan 92

Date

[Handwritten signature]

Commissioner
Department of Environmental
Conservation

8 Jan '92

Date

[Handwritten signature]

Charles E. Cole
Attorney General

January 8, 1992

Date

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. 5377

Revision Date: _____ Dept. Affected: DMVA
 Title: An act clarifying powers and duties of state officials in relation to disaster emergency BRU: Disaster Planning & Control
 Component: Disaster Planning & Control
 Sponsor: Sen. Lehman
 Requestor: Sen. Lehman COMPONENT SERIAL NO. 1308

Expenditures/Revenues: (Thousands of Dollars)

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

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

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

ANALYSIS: (Attach a separate page if necessary)

Zero fiscal impact

Prepared by: Jeff Morrison, Director
 Division: Administrative & Support Services
 Approved by Commissioner: Jeff Morrison for Hugh L. Cox III
 Agency: DMVA

Phone: 465-4730
 Date: 5 Feb 93
 Date: 2/5/93

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

DEPARTMENT OF MILITARY AND VETERANS AFFAIRS
POSITION PAPER

For: An act clarifying powers and duties of state officials in relation to a disaster emergency caused by a catastrophic oil discharge or the release of a hazardous substance.

The purpose of this legislation is to clarify an ambiguity within existing statutes regarding disaster emergencies emanating from catastrophic oil releases. There is an apparent conflict between two titles of Alaska Statutes, AS 26, and AS 46.

The Department of Military and Veterans Affairs is charged with responding to disaster emergencies declared by the governor, receiving their authority from AS 26. The Department of Environmental Conservation is charged with responding to catastrophic oil releases, receiving their authority from AS 46. When a catastrophic oil release results in a disaster emergency which threatens life or property, the statutes appear to conflict.

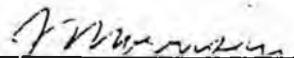
AS 26.23.020 establishes gubernatorial responsibility for meeting the dangers presented by all disasters, including those caused by catastrophic oil releases which endanger life and property. It requires that the governor declare a condition of disaster emergency by proclamation to activate appropriate response and recovery efforts. The disaster declaration constitutes the authority for the deployment and use of state resources to cope with the disaster.

AS 46.04.080(a) states, however, that the "actual of imminent occurrence of a catastrophic oil discharge constitutes a disaster emergency under AS 26.23 without a declaration of disaster by the governor under AS 26.23." In this case, the executive decision making process is subverted, the authority of the governor to take action under AS 26.23 is unclear, and the responsibilities of the Departments of Military and Veterans Affairs and Environmental Conservation are confused.

Both departments experienced problems implementing the statute as written into their respective emergency plans. The commissioners of the two departments resolved this issue by Memorandum of Agreement dated January 8, 1992 (copy attached). The language proposed for statutory change would seek to remove the apparent inconsistency between AS 26 and AS 46 by changing AS 46.04.080(a).

Hazardous substance releases are far more life threatening than are oil discharges. The current language of AS 46.09.030 addresses the situation in which hazardous substance releases constitute disaster emergencies. This language presents no conflicts with AS 26.23, and is used as a model for the language offered as a replacement for AS 46.04.080(a). Section 1 of the bill addresses this clarification.

Section 2 of the bill addresses a minor housekeeping issue in the statutes. The current language of AS 46.09.030 reads that the director of the division of emergency services may request the governor to declare a disaster, rather than the Commissioner of the Department of Military and Veterans Affairs. Section 2 changes the law to replace the director of emergency services with the commissioner of military and veterans affairs. The language on lines 14-18 on page 2 of the bill are technical changes suggested by the bill drafter to conform to current drafting style.


for Hugh L. Cox III, Commissioner

Date: 2/5/93

[File: Leman2]

SB

128

FISCAL NOTE

No. 1

STATE OF ALASKA
1993 LEGISLATIVE SESSION

Bill Version: SB 128
(S) Publish Date: 3-18-93

Revision Date: March 17, 1993 Dept. Affected: Governor's Office (OMB)
 Title: "An Act Relating to Legislative Audits" BRU: _____
 Component: _____
 Sponsor: Senate Rules on Request of LBSA
 Requestor: Senate State Affairs Committee COMPONENT SERIAL NO. _____

Expenditures:Revenues: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact \$ -0- Changes in CS SB 128 (STA) have no fiscal impact. This fiscal note is appropriate.

ANALYSIS: (Attach a separate page if necessary)

3/17/93 [Signature]
 date Comte Aide (initial)

Prepared by: Portia Babcock, Senate State Affairs Committee Staff Phone: 465-4522
 Division: Senate State Affairs Committee Date: March 17, 1993
 Approved by Commis. oner: Senator Loren Leman, Chairman Date: March 17, 1993
 Agency: Senate State Affairs Committee

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February 22, 1993

SENATE JOURNAL

p. 440

SB 128

SENATE BILL NO. 128 by the Senate Rules Committee by request of the Legislative Budget and Audit Committee, entitled:

"An Act relating to legislative audits."

was read the first time and referred to the State Affairs and Finance Committees.

March 18, 1993

SENATE JOURNAL

p. 845

SB 128

The State Affairs Committee considered SENATE BILL NO. 128 "An Act relating to legislative audits" and recommended it be replaced with

CS FOR SENATE BILL NO. 128(STA)

March 18, 1993

SENATE JOURNAL

p. 846

SB 128

Signing do pass: Senator Leman, Chair. Signing no recommendation: Senators Miller, Taylor, Duncan.

Zero fiscal note for SENATE BILL NO. 128 and the Committee Substitute published today from the Senate State Affairs Committee.

SENATE BILL NO. 128 was referred to the Finance Committee.

April 14, 1993

SENATE JOURNAL

p. 1353

SB 128

The Finance Committee considered SENATE BILL NO. 128 "An Act relating to legislative audits" and recommended the State Affairs Committee Substitute offered on page 845 be adopted and further attaches a Senate Finance Committee Letter of Intent. Signing do pass: Senators Frank, Pearce, Cochairs, Senators Rieger, Jacko, Kelly, Sharp. Signing no recommendation: Senator Kerttula.

Letter of Intent
for
CS for SB 128(STA)

In recommending items for monitoring to the Legislative Budget and Audit Committee, the legislative auditor will prioritize items according to their significance in terms of the necessity for immediate action and their relative fiscal and/or policy impacts. The legislative auditor will work in concert with OMB to balance the resources reasonably

available to monitor items with the committee's recommendation of items for monitoring. In approving an item for monitoring under AS 24.20.312, the Legislative Budget and Audit Committee should consider the fiscal and policy significance of the item recommended by the legislative auditor. Matters of lesser significance may be referred to OMB to the extent that OMB and the legislative auditor agree that resources are available to adequately monitor the items.

April 14, 1993

SENATE JOURNAL

p. 1354

SB 128

Previous zero fiscal note.

SENATE BILL NO. 128 was referred to the Rules Committee.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSSB 128

Revision Date: _____
Title: An Act Relating to Legislative Audits

Dept. Affected: OFFICE OF THE GOVERNOR
BRU: Office of Management & Budget
Component: Division of Audit & Management Service

Sponsor: Phillips
Requestor: Phillips

COMPONENT SERIAL NO. 17

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	190.2	199.7	209.7	270.2	231.2	242.8
TRAVEL	5.0	5.3	5.5	5.8	6.1	6.4
CONTRACTUAL	4.5	4.7	5.0	5.2	5.5	5.7
SUPPLIES	1.5	1.6	1.7	1.7	1.8	1.9
EQUIPMENT	5.1					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	206.3	211.3	221.9	232.9	244.6	256.8

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE* (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	206.3	211.3	221.9	232.9	244.6	256.8
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	206.3	211.3	221.9	232.9	244.6	256.8

Estimate of any current year (FY94) cost: \$ _____

POSITIONS

FULL-TIME	3	3	3	3	3	3
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: Gary Anderson
Division: Audit and Management Services
Approved by Commissioner: [Signature]
Agency: [Signature]

Phone: 465-3568
Date: 1/26/94
Date: 1/26/94

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Analysis

Based on OMB/DAMS experience with following up on our own audits we assume that the following percentages of the original project time will be required to follow-up on Legislative Audit reports.

Review of report and work papers	5%
Follow-up procedures	10%
Reporting	<u>5%</u>
	<u>20%</u>

Legislative audit has approximately 30 auditors who would average a minimum of 1200 hours per year on projects which calculates out to $30 \times 1200 = 36,000$ project hours. Legislative Audit currently follows up on their State Single Audit Report which constitutes approximately 50% of their project hours. Follow-up time at 20% of the remaining hours (18,000) would then constitute 3,600 hours or, using the same utilization numbers: 3 internal auditors. Following is a cost breakdown for three new internal auditors.

3 auditors at range/step 19C	\$139,860
Fringe benefits at 36%	<u>50,350</u>
Total personal services	\$190,210
Travel *	5,000
Contractual *	4,500
Supplies *	1,500
Equipment (new computers: 3 x \$1,700)	<u>5,100</u>
Grand Total	<u>\$206,310</u>

* Represents prorated variable costs for these items in the FY 1995 budget.

Future year's costs have been increased at 5% per year.

Position Title Internal Auditor II			No. of Positions 3	Range / Step 19C	Barg. Unit Exempt
Employee Status FT	Staff Months 36		Location Juneau	Election District	
TYPE OF EXPENDITURE			Justification		
		Amount	A staff auditor (Journeyman level). Additional positions required to perform follow-up on Legislative Audit reports		
Salary	46.6	139.9			
Benefits	16.8	50.3			
Premium Pay					
Ret					
Total Personal Services	63.4	190.2			
Travel		5.0			
Contractual		4.5			
Commodities		1.5			
Equipment		5.1			
Ret					
Total Cost		206.3			
FUNDING SOURCE FOR TOTAL COST					
General Receipts	1002				
Match	1003				
General Fund	1004	206.3			
Receipts	1007				
Receipts	1061				
Ret					

**Request For
New Position**

AGENCY Office of the Governor
 BRU Office of Management and Budget
 COMPONENT Division of Audit and Management Services

FY 95

Page _____ of _____
 Revised Date: _____

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSSB 128

Revision Date: _____
Title: An Act Relating to Legislative Audits

Dept. Affected: OFFICE OF THE GOVERNOR
BRU: Office of Management & Budget
Component: Division of Audit & Management Services

Sponsor: Phillips
Requestor: Phillips

COMPONENT SERIAL NO. 17

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	190.2	199.7	209.7	220.2	231.2	242.8
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SUPPLIES	1.5	1.6	1.7	1.7	1.8	1.9
EQUIPMENT	5.1					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	206.3	211.3	221.9	232.9	244.6	256.8

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	206.3	211.3	221.9	232.9	244.6	256.8
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1006 GF/MHTIA						
Other						
TOTAL	206.3	211.3	221.9	232.9	244.6	256.8

Estimate of any current year (FY94) cost: \$ _____

POSITIONS

FULL-TIME	3	3	3	3	3	3
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: Gary Anderson
Division: Audit and Management Services
Approved by Commissioner: [Signature]
Agency: [Signature]

Phone: 465-3568
Date: 1/26/94
Date: 1/26/94

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Reporting	<u>5%</u>
	<u>20%</u>

Legislative audit has approximately 30 auditors who would average a minimum of 1200 hours per year on projects which calculates out to 30 X 1200 = 36,000 project hours. Legislative Audit currently follows up on their State Single Audit Report which constitutes approximately 50% of their project hours. Follow-up time at 20% of the remaining hour (18,000) would then constitute 3,600 hours or, using the same utilization numbers: 3 internal auditors. Following is a cost breakdown for three new internal auditors.

3 auditors at range/step 19C	\$139,860
Fringe benefits at 36%	<u>50,350</u>
Total personal services	\$190,210
Travel *	5,000
Contractual *	4,500
Supplies *	1,500
Equipment (new computers: 3 x \$1,700)	<u>5,100</u>
Grand Total	<u>\$206,310</u>

* Represents prorated variable costs for these items in the FY 1995 budget.

Future year's costs have been increased at 5% per year.

Position Title Internal Auditor II		No. of Positions 3	Range / Step 19C	Barg. Unit Exempt
Employee Status FT	Staff Months 36	Location Juneau		Election District
TYPE OF EXPENDITURE		Amount		
Salary	46.6	139.9		
Benefits	16.8	50.3		
Minimum Pay				
Other				
Total Personal Services	63.4	190.2		
Travel		5.0		
Contractual		4.5		
Commodities		1.5		
Equipment		5.1		
Other				
Total Cost		206.3		
FUNDING SOURCE FOR TOTAL COST				
General Receipts	1002			
Match	1003			
General Fund	1004	206.3		
Receipts	1007			
Receipts	1061			
Other				
		Justification		
		A staff auditor (Journeyman level). Additional positions required to perform follow-up on Legislative Audit reports		

**Request For
New Position**

AGENCY Office of the Governor

BRU Office of Management and Budget

COMPONENT Division of Audit and Management Services

FY 95

Page _____ of _____

Revised Date: _____

FISCAL NOTE

REQUEST:

Revision Date: January 29, 1994 Dept. Affected Governor's Office (OMB)
 Title: "An Act relating to Legislative audits"

BRU: _____
 Components: _____

Sponsor: Sen. Randy Phillips
 Requestor: House State Affairs

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants, Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

CHANGE IN REVENUES						
--------------------	--	--	--	--	--	--

FUNDING: (THOUSANDS OF DOLLARS)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

-0-

ESTIMATE OF ANY CURRENT YEAR (FY 94) COST \$

POSITIONS:

Full-Time	0	0	0	0	0	0
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Cecile M. Elliott *CME*
 Division: House State Affairs
 Approved By: Rep. Al Vezey, Chairman *AV*
 Agency: House State Affairs

Phone: 465-3719
 Date: January 30, 1994
 Date: January 30, 1994



ALASKA STATE LEGISLATURE

SENATOR RANDY PHILLIPS

SENATE DISTRICT L

SESSION
State Capitol
Juneau, AK 99801
(907) 465-4949
800-478-4950
Fax: 465-4979

INTERIM
P.O. Box 142
Eagle River AK 99577
(907) 694-4949

CHAIR
Legislative Budget & Audit
Community & Regional Affairs

VICE-CHAIR
Transportation

MEMBER
Alaska Commission on
Postsecondary Education

Memorandum

TO: Representative Al Vezey, Chair
House State Affairs Committee

FROM: Senator Randy Phillips
Legislative Budget and Audit Committee

DATE: January 24, 1994

RE: Sponsor Statement in support of:
Senate Bill 128, "An Act relating to legislative audits."

Senate Bill 128 was introduced to provide a systematic follow up procedure for recommendations made by the Legislative Auditor.

Currently Alaska's statute provides no formal follow up procedure for the recommendations of the Legislative Auditor. While the Auditor does review the status of prior year recommendations, the Auditor has no enforcement powers.

Senate Bill 128 would require that the Office of Management and Budget (OMB) work with agencies on the implementation of audit recommendations and to report to the Legislature on the status of these recommendations.

The Legislative Budget and Audit Committee will develop procedures to ensure that only significant audit recommendations are identified for follow-up by OMB.

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347

MEMORANDUM

TO: The Honorable Steve Frank
Co-Chair, Senate Finance Committee

FROM: Randy S. Welker *Randy*
Legislative Auditor

DATE: April 13, 1993

RE: LBA Policy on SB 128

At your request, I have drafted the following proposed Legislative Budget and Audit Committee policy and procedure that specifically addresses your concern over the issues to be referred to OMB for monitoring and follow-up.

As I stated today before the Finance Committee, the bill clearly provides for the LBA Committee to make the determination of which items will be forwarded for monitoring. Section 1 of the bill (on page 1, lines 6-8) adds language stating "A committee recommendation involving an agency in the executive branch may be identified for monitoring under AS 24.20.312." Further, Section 2 (page 2, lines 2-3) states that "the office of management and budget shall review each item identified for monitoring in a recommendation involving an agency in the executive branch. . ."

The following policy and procedure would be proposed to the LBA Committee to address the concern over the amount of resources necessary for OMB to monitor items identified by LBA. This recommended language would become part of the more comprehensive procedures proposed for full implementation of the legislation.

- ☛ In recommending items for monitoring to the Committee, the legislative auditor will prioritize items according to their significance in terms of the necessity for immediate action and their relative fiscal and/or policy impacts. The legislative auditor will work in concert with OMB to balance the resources reasonably available to monitor items with the Committee's recommendation of items for monitoring.

Senator Frank

-2-

April 13, 1993

- In approving an item for monitoring under AS 24.20.312, the Committee should consider the fiscal and policy significance of the item recommended by the legislative auditor. Matters of lesser significance may be referred to OMB to the extent that OMB and the legislative auditor agree that resources are available to adequately monitor the items.

As you can see, there is ample room in the language of the bill and the ability of the LBA Committee to temper its referral of items to OMB for monitoring through the adoption of policy and procedures. This discretionary authority will allow the Committee to operate within the confines of a zero fiscal note, provided some concession of priority from OMB.

Without some reordering of priorities within OMB, a modest fiscal note may be necessary.

Sen. Randy Phillips
Chairman
Rep. Terry Martin
Vice Chairman
Sen. Al Adams
Sen. Steve Frank
Sen. Steve Rieger
Sen. Bert Sharp
Rep. John Davies
Rep. Mark Hanley
Rep. Ron Larson
Rep. Eileen MacLean

State of Alaska



Legislative Budget and Audit Committee

Session
Rm. 103
State Capitol
Juneau, AK 99801
(907) 465-4949

Interim
P.O. Box 142
Eagle River AK 99577
(907) 694-4949

Sectional Analysis

SB 128

Section 1:

Provides that the Legislative Budget and Audit Committee may identify audit recommendations that will be monitored by the Office of Management and Budget.

Section 2.

(a) Provides that the Office of Management and Budget shall be responsible for monitoring the implementation of those audit recommendations identified by the Legislative Budget and Audit Committee.

(b) Provides that the Office of Management and Budget report to the Legislative Auditor and to each member of the Legislative Budget and Audit Committee on the status of audit recommendations.

Section 3.

Adds the monitoring of audit recommendations to the duties of the Office of Management and Budget.

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347

MEMORANDUM

TO: The Honorable Randy Phillips
Chairman, Legislative Budget
and Audit Committee

FROM: Randy S. Welker
Legislative Auditor

DATE: March 9, 1993

RE: SB 128 - An Act relating to legislative audits

Senate Bill 128 was introduced to enhance the implementation rate of recommendations contained in audit reports issued by the Division of Legislative Audit. The Audit Division does not have enforcement powers. Therefore, we must rely on our ability to convince the audited agency that our recommendations have merit and would improve financial accountability and/or improve the efficiency, effectiveness and economy of state operations.

Often, agencies agree with our recommendations in their response to the audit report. Other times, the agency disagrees in part or entirely with our recommendations. Regardless of the agreement or disagreement, we believe that a formal system of follow-up on audit recommendations is necessary.

We presently review the implementation of recommendations made in our annual financial/compliance Single Audit of the State of Alaska. Each year's audit addresses the status of recommendations made in the prior year audit. We presently do not have a systematic method to follow up on items contained in our performance or special audits.

The responsibility for implementing audit recommendations rests with the administration. It is our responsibility to ensure that the agencies have an effective system for resolving audit differences and pursuing implementation. Senate Bill 128 provides the framework for that system of follow-up within the Office of Management and Budget (OMB).

The Division of Audit and Management Services within OMB is staffed with auditors who have the necessary qualifications to adequately address the issues raised in our reports. The attached table should give you some idea of the number of recommendations we issue in a year. This table was prepared from the highlighted recommendations in the audit digests contained in the 1992 Annual Report of the Legislative Budget and Audit Committee. As you can see, recommendations were made to virtually every department and to many other state entities. According to language in the bill, the Legislative Budget and Audit Committee would not necessarily refer all recommendations to OMB.

OMB would have the responsibility to monitor the implementation of those items with which the audited agency agrees and to seek resolution of items with which the audited agency disagrees in whole or in part.

Please contact me if I can provide any additional information.

Attachment

SUMMARY OF AUDIT RECOMMENDATIONS BY DEPARTMENT - 1992 AUDITS

AUDIT ↓	DEPARTMENT →	GOV	DOA	LAW	DOR	DOE	HSS	LAB	CEC	MVA	DNR	DFG	DPS	DEC	DOC	CRA	DOT	UNIV	OTHER
SWSA '91		1	9	1	2	8	11	1	1	1		3	1	2		1	20		
AKPAY Controls			9																
State Publications			3																
OPA			9																
Statewide Procurement		3	4	3	4	2	5	1						1	3	3	5	1	7
Employee Incentive Award Program			4																1
PFDD					6														
DOR-Income & Excise Tax Audit Division					5														
Special Education Agency						3													
PERA Impact on School Districts						1													1
DFYS							5												
Selected Abortion Issues							3												
Medicaid Rate Advisory Commission Rate Setting Issues							4												
5 Licensing Board Audits									5										
Big Game Commercial Services Board- Consistency of Penalties													2						
AEA/DEC - Circuit Rider Maintenance Program & Remote Maintenance Worker Program									2										
Alaska Tourism Marketing Council									6										
Submerged Lands Recalculation Project											1								
Wood-Tikchik State Park											1								
OHSR Corps and Emergency Response Depots										3				5					
Intensive Supervision Surveillance Program															4				
TOTALS BY DEPARTMENT (187)		4	38	4	17	14	28	2	14	4	2	3	3	8	7	4	25	1	9

Other Column is made up of: Permanent Fund Corporation (1), Alaska Science and Technology Foundation (1), Alaska Railroad Corporation (1), Alaska Court System (3), Alaska Energy Authority (1), and recommendations for Legislation to the Alaska Legislature (2)

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347

MEMORANDUM

TO: The Honorable Randy Phillips
Chairman, Legislative Budget
and Audit Committee

FROM: Randy S. Welker *Randy*
Legislative Auditor

DATE: February 13, 1993

RE: Audit Recommendation Follow-up Process

The attached table outlines a procedure that could be used to provide an ongoing follow-up process to the special/performance audit recommendations made by the Division of Legislative Audit.

The process we recommend involves using the Office of the Governor's Office of Management and Budget (OMB). Within OMB is the Division of Audit and Management Services. This division is staff with auditors who would have the necessary qualifications to adequately address the issues. I have not discussed these procedures with OMB, so I do not have an indication of their willingness to earnestly participate.

While the procedures I have outlined are lengthy, I believe that the majority of them could be adopted as LBA procedures and I would recommend that only the critical steps be placed in statute. The following outlines those items I think should be statutory requirements:

AS 24.20.311 should be amended to read:

Sec. 24.20.311. Reports. The committee shall file copies of its approved audit reports including any committee recommendations with the governor, the agency concerned and the legislature. Committee recommendations may include items requiring follow-up by the Office of Management and Budget under AS 24.20.312. An annual report summarizing....

(continued)

AS 24.20 is amended by adding a new sections to read:

Sec. 24.20.312. Audit Recommendation Follow-up. (a) The Office of Management and Budget is responsible for the review, resolution of differences, and follow-up on recommendations made by the legislative auditor and filed with the governor under AS 24.20.311.

(b) For follow-up items with which the audited agency concurs, the office shall monitor the agencies progress towards full implementation. For items with which the agency partially or fully disagrees, the office shall review the position of the legislative auditor and the agency. The office shall then either seek the governor's directive to implement the recommended action or report to the committee and the legislative auditor within sixty days with an alternative resolution or final position of opposition.

(c) By January 31, the office shall submit a report to the committee and the legislative auditor on the follow-up items filed with the governor during the previous calendar year. The report shall address the degree of implementation or continued opposition to the follow-up items.

(d) The legislative auditor shall review the report submitted by the office and make recommendations to the committee on the disposition of each follow-up item. The auditor may recommend closure of an item fully implemented, closure through waiver of implementation for a stated cause, or continued monitoring by the office for an additional year. The committee shall make the final determination on closure or continued monitoring by the office.

I have not developed a detailed "follow-up" format, but it would not be difficult to do. The process outlined in the attached pretty well identifies the type of information we would want to get from the audited agencies.

The committee procedures could also provide for our follow-up reporting to the committee by January 31 of the recommendations made in our single audits (financial). The committee could also refer any of those recommendations to OMB for follow-up resolution as well.

AUDIT RECOMMENDATION FOLLOW-UP			
	AGENCY	ACTION	DISCUSSION
1.	Leg. Audit	Preliminary Audit submitted to LBA will include an "Audit Follow-up Summary".	"Audit Follow-up Summary" will contain those items the Leg. Auditor believes should be tracked.
2.	LBA Committee	Review report and summary; approve for release to agency for response.	In normal LBA process, would require response to audit and completion of information requested on the "Audit Follow-up Summary".
3.	Audited Agency	Agency would prepare response to the audit report and complete the "Audit Follow-up Summary" within 20 days.	In addition to normal agency response, the "Summary" would require info such as agreement, partial agreement or disagreement; detail timeline, position responsible for implementation, limitations on implementation.
4.	Leg. Audit	Formal Response and "Summary" included in report for final presentation to LBA.	Like current process, audit response and "Follow-up Summary" would be included in final audit presented to LBA.
5.	LBA Comm.	Approve release of audit to public and "Follow-up Summary" to Gov./OMB.	Release procedures would include the transmittal of the "Summary" to OMB.
6.	OMB	OMB responsible for review, resolution of differences and follow-up.	For follow-up items the agency agrees with, OMB would monitor the progress of implementation; for items of partial or full disagreement, OMB review positions of auditor and agency, then seek gov. directive to implement or report back to LBA and Leg. Auditor w/in 60 days w/ alternative solution or final position of opposition.
7.	Leg. Auditor	Make interim reports to LBA on acceptability of alternatives proposed by OMB and final rebuttal on position of opposition.	As necessary, the Leg. Auditor will keep the Committee apprised of the ongoing monitoring and review by OMB. Particular focus will be on areas of opposition.
8.	LBA Comm.	Consider interim actions.	The Committee at any time could exercise options such as formal communication to the Governor, requesting Commissioner or agency personnel to appear before LBA.

AUDIT RECOMMENDATION FOLLOW-UP			
AGENCY		ACTION	DISCUSSION
9.	OMB	Submit Annual Report on Follow-up to LBA and Leg. Auditor.	By Jan. 31 OMB would be required to issue a report to the LBA and the Leg. Auditor detailing the extent of departmental implementation of "Follow-up Summary" items. Report would be required for all items issued in previous year detailing degree of implementation, lack of implementation, or continued opposition to recommendations.
10.	Leg. Auditor	Review report, make any necessary verification inquiries, and report to the LBA with recommended action.	The review would include acceptance of status reported and recommendation to LBA on an item by item basis for (1) closure-fully implemented, (2) continued monitoring for additional year and report following Jan. 31, (3) closure- waiver of implementation for stated cause.
11.	LBA	Review OMB Annual Report and Leg. Auditor suggested recommendations on action.	LBA would have final determination on closure recommendations and those items referred back to OMB for continued follow-up during next year. For items not closed, consider any or all options available: (1) Commissioner and/or agency personnel called before the LBA for discussion, (2) Referral of item to Finance Committee's for continued discussion during budget deliberations, (3) Formal communication with Gov., (4) Recommend OMB impound funds until adequate progress is made towards implementation, (5) Recommend the Finance Committees or Conference Committee assess a misc. reduction or conditioned appropriation budget item until implementation.

SB

129

HOUSE COMMITTEE REPORT

(7)

Date Referred: April 20, 1993

FURTHER REFERRALS:

Finance

Date of Committee Action: 4-23-93

The STATE AFFAIRS Committee considered:

CSSB129(FIN) am

CS FOR SENATE BILL NO. 129(FIN) am

POWERS OF CHIEF PROCUREMENT OFFICER

"An Act relating to state procurement; and providing for an effective date."

RECOMMENDATIONS:

the same title
 be replaced with HOUSE CS FOR CS FOR SB 129 (STA) a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal impact _____

fiscal note(s) ADM 3-18-93
DOT & PF 4-10-93

zero fiscal note _____

zero fiscal note(s) _____

SIGNING <u>DO PASS</u>	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i>	X				
<i>B. D...</i>	X				
<i>Hauley Olbery</i>	✓				
<i>Jerry Sanders</i>	✓				

[Signature]
 CHAIRMAN'S SIGNATURE

8-LS0591X
Dierdorff
4/23/93

HOUSE CS FOR CS FOR SENATE BILL NO. 129(STA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered:
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; and providing for an effective date."

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

3 * Section 1. AS 36.30.010(a) is amended to read:

4 (a) The commissioner shall appoint to the partially exempt service the chief
5 procurement officer of the state. The chief procurement officer must have at least five
6 years of prior experience in public procurement, including large scale procurement of
7 supplies, services, or professional services, and must be a person with demonstrated
8 executive and organizational ability. The chief procurement officer may be removed
9 by the commissioner only for cause. The term of office of the chief procurement
10 officer is six [FOUR] years.

11 * Sec. 2. AS 36.30.010 is amended by adding new subsections to read:

12 (c) While a person performs the duties of the chief procurement officer under
13 this chapter, the person may not be employed in or appointed to another position with
14 the state.

1 (d) The annual salary of the chief procurement officer is range 23 of the salary
2 schedule established in AS 39.27.011.

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

4 (c) If the department, legislative branch, or judicial branch intends to enter into
5 or renew a lease of real property [OR LEASE-PURCHASE AGREEMENT, EXCEPT
6 AN AGREEMENT RELATED TO A REFINANCING,, with an annual rent to the
7 department, legislative branch, or judicial branch that is anticipated to exceed
8 \$1,000,000, or with total lease payments that exceed \$10,000,000 for the full term of
9 the lease, the department, legislative branch, or judicial branch shall provide notice to
10 the legislature. If the department legislative branch. or judicial branch intends
11 to enter into or renew a lease-purchase or lease-financing agreement for real
12 property, other than (1) an agreement related to the refinancing of an outstanding
13 balance owing or (2) a lease-purchase or lease-financing agreement by the
14 University of Alaska that is secured by student fees or university receipts as
15 defined in AS 14.40.491. that has annual lease payments of less than \$1,000,000;
16 and for which the total lease payments for the full term will not exceed
17 \$10,000,000. the department. legislative branch. or judicial branch shall provide
18 notice to the legislature. The notice must include the anticipated annual lease
19 obligation amount, the anticipated total construction, acquisition, or other costs of the
20 project, and the total lease payments for the full term of the lease. if the agreement
21 is a lease-purchase or lease-financing agreement. or if the agreement is a lease
22 other than a lease-purchase or lease-financing agreement and [, IF] the total lease
23 payments for the full term of the lease exceed \$10,000,000 [, THE TOTAL LEASE
24 PAYMENTS FOR THE FULL TERM OF THE LEASE]. The department may not
25 enter into or renew an agreement requiring notice under this subsection unless the
26 project has been approved by the legislature [BY LAW]. An appropriation for the
27 project constitutes [DOES NOT CONSTITUTE] approval of the project for purposes
28 of this subsection. The department may not enter into an agreement under this
29 subsection if the optional renewal period allowed under the agreement exceeds two
30 years. In this subsection, "term" includes defined renewal options.

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

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

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

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

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

31 Sec. 36.30.310. EMERGENCY PROCUREMENTS. Procurements may be

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CS FOR SENATE BILL NO. 129(STA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered: 3/18/93
Referred: FINANCE

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE BUDGET AND
AUDIT COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to state procurement."

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 36.30.300(a) is amended to read:

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

18 * Sec. 4. AS 36.30.305(a) is amended to read:

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

1 not be delegated.

2 * Sec. 5. AS 36.30.310 is amended to read:

3 Sec. 36.30.310. EMERGENCY PROCUREMENTS. Procurements may be
4 made under emergency conditions as defined in regulations adopted by the
5 commissioner when there exists a threat to public health, welfare, or safety, when a
6 situation exists that makes a procurement through competitive sealed bidding or
7 competitive sealed proposals impracticable or contrary to the public interest, or to
8 protect public or private property. An emergency procurement need not be made
9 through competitive sealed bidding or competitive sealed proposals but shall be made
10 with competition that is practicable under the circumstances. A written determination
11 by the chief procurement officer of the basis for the emergency and for the selection
12 of the particular contractor shall be included in the contract file. The written
13 determination must include findings of fact that support the determination. Except
14 when there is insufficient time for the chief procurement officer to make the
15 written determination required by this section, the chief procurement officer may
16 not delegate the authority to make the determination.

17 * Sec. 6. AS 36.30 is amended by adding a new section to read:

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

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

26 * Sec. 7. AS 36.30.370 is amended to read:

27 Sec. 36.30.370. TYPES OF CONTRACTS. Any [SUBJECT TO
28 LIMITATIONS OF THIS SECTION, ANY] type of contract that will promote the best
29 interests of the state may be used, except that the use of a
30 cost-plus-a-percentage-of-cost contract is prohibited. [A COST-REIMBURSEMENT
31 CONTRACT MAY BE USED ONLY WHEN A DETERMINATION IS MADE IN

1 WRITING BY THE PROCUREMENT OFFICER THAT A
2 COST-REIMBURSEMENT CONTRACT IS LIKELY TO BE LESS COSTLY TO
3 THE STATE THAN ANY OTHER TYPE OR THAT IT IS IMPRACTICABLE TO
4 OBTAIN THE SUPPLIES, SERVICES, PROFESSIONAL SERVICES, OR
5 CONSTRUCTION REQUIRED EXCEPT UNDER A COST-REIMBURSEMENT
6 CONTRACT.]

7 * Sec. 8. AS 36.30.610(c) is amended to read:

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

13 * Sec. 9. AS 36.30.850(b) is amended by adding new paragraphs to read:

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

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

21 ^{new} _{action} * Sec. 10. AS 36.30.150(b) is repealed.

22 * Sec. 11. TRANSITIONAL PROVISIONS. (a) With respect to the person holding the
23 position of chief procurement officer on the effective date of this Act, the six-year term of the
24 chief procurement officer under AS 36.30.010(a), as amended by sec. 1 of this Act, shall
25 include the time the person holds the position before the effective date of this Act.

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

28 (c) AS 36.30.300(a), 36.30.305(a), 36.30.310, 36.30.370, amended by secs. 3 - 5 and
29 7 of this Act, and 36.30.850(b)(30) and (31), added by sec. 9 of this Act, apply to a
30 procurement that begins on or after the effective date of this Act.

31 (d) AS 36.30.315, enacted by sec. 6 of this Act, applies to a determination made on

1 or after the effective date of this Act.

2 (e) AS 36.30.610(c), amended by sec. 8 of this Act, applies to a protest report filed

3 under AS 36.30.605 on or after the effective date of this Act.

8-LS0591NK v
Bannister
4/15/93

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 CONSTRUCTION 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.

FISCAL NOTE

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
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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

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. Furpin*
Frank G. Furpin

Phone: 465-3901

Agency: Department of Transportation and Public Facilities

Date: March 2, 1993

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53129

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

Sponsor: Senate Rules Committee Component: Purchasing

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
---------	---	---	---	---	---	---

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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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. 00

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
---------	---	---	---	---	---	---

REVENUE FUND SOURCE:	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

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: 465-2251
 Division: General Services Date: _____

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

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information call the Governor's Legislative Office

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
---------	---	---	---	---	---	---

REVENUE FUND SOURCE:	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

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
Division: General Services

Phone: _____
Date: _____

Approved by Commissioner: Nancy Bear Usera
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>
			<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.

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347

MEMORANDUM

TO: The Honorable Randy Phillips
Chairman, Legislative Budget
and Audit Committee

FROM: Randy S. Welker *Randy*
Legislative Auditor

DATE: February 4, 1993

RE: Recommendations for Amending Procurement Statutes

This memorandum is in response to your concerns regarding continued abuse of established contracting and procurement procedures. Our recent audit on the contract for services related to opening the Arctic National Wildlife Refuge is the most recent of several reports we have issued on abuses and circumvention of contracting procedures. From this background and perspective, we offer the following suggestions about possible amendments to the procurement statutes that would improve the fairness of the procurement process and curb the continuing abuses.

Make the Chief Procurement Officer (CPO) more independent

A central aspect to the State's procurement procedures is the position of the CPO. The primary impetus for the creation of this oversight position was the consensus of Senator Faiks' special committee on state contracting that some independent authority was necessary to make government contracting more fair and open. The minutes of that committee's deliberations indicate that the CPO was intended to act as an independent reviewer and approval authority over government contracting. The concept had been adopted from a model governmental procurement code that served in large measure as a guide to the committee's discussions and review.

In establishing the position of CPO, AS 36.30.010 most significantly provides that removal prior to expiration of a four year term, can be only for cause. Typically directors of state agencies can be removed at the discretion of the administration. Accordingly, the "removal for cause" provision indicates that the legislature wanted the CPO to have more autonomy and authority than a typical agency director. These provisions reflect Senator Faiks'

committee's concern that some measure of independent review be introduced into the state's procurement process.

Since its inception the position of CPO has not functioned as originally intended. The Cowper administration simply gave the Director of General Services and Supply the additional title of CPO. For the most part procurement practices continued as usual. In order to reinforce the independence aspect of the CPO position, the legislature should consider prohibiting the CPO from serving in any other capacity.

The CPO has extensive authority and responsibilities, the most significant being the mandated responsibility to "*procure or supervise the procurement of all supplies, services and professional services by an agency.*" We advise that the statutes be amended to make the intended independence and oversight function of the CPO more definite and clear. One way would be lengthen the term of office to six years rather four. This would clearly indicate that the CPO had a status beyond a single gubernatorial term. Consideration could also be given to making the CPO subject to confirmation by the legislature. The legislature may also feel it necessary to specify the salary or pay range for the position in order to further insulate the CPO from undue influence or pressure from executive branch agencies.

Require CPOs to certify procurement documentation

The procurement statutes repeatedly attempt to fix responsibility for procurement determinations with the CPO. For example, AS 36.30.300 states that a sole source contract can only be awarded after the CPO has determined "*in writing that there is only one source for the procurement exists*" and that "*this written determination must include findings of fact that are supported by clear convincing evidence.*" Further the statute prohibits the CPO from delegating his responsibilities to make such determinations. Such specificity indicates that the legislature wanted the CPO to independently exercise oversight and approval over procurement decisions.

In various audits of specific procurement and contracts we found that the CPO did indeed delegate his responsibility to make independent determinations. Typically, CPOs have been approving requests for alternative procurement (that is, procurement other than competitive sealed bidding) with the caveat that their "*approval is based solely on the attached information provided by [state agency].*" Particularly in procurement that involved the Office of the Governor, past CPOs have acquiesced to the certifications of staff in that office as to the necessity or lack of alternatives when approving sole source solicitations.

In view of this, we recommend that AS 36.30 be amended to specifically require the CPO to independently make, and certify that they made, the necessary determinations for approving non-competitive procurement. More specifically, AS 36.30 could be amended to put in place requirements similar to those that fiscal officers must follow when certifying state expenditures. AS 37.10.030 states that fiscal officers are responsible for "*the existence and correctness of the facts recited in the certificate or stated on the voucher or its supporting papers and for the legality of the proposed payment under the appropriation or fund involved.*"

Accordingly, if similar requirements were inserted in AS 36.30 the CPO could be responsible for accuracy and correctness of the information used for his approvals of limited solicitations. Failure to independently review, evaluate, and verify circumstances surrounding various procurement when certifying alternative procurement requests could subject the CPO to the sanctions of AS 11.56.210, unsworn falsification. The statute makes it a class A misdemeanor to for a person submit a false written or recorded statement which he knows not to be true. Attaching such sanctions to the CPO approvals should further serve to make the CPO more vigilant, which in turn would enhance the position's independence, when approving the use of alternative procurement procedures.

It should be recognized that there are limits to how much the effectiveness of a CPO can be improved by statutory amendment. No matter how much the autonomy and independence of the position is enhanced, the attitude and inclination of the individual appointed to the position is still the most critical element to making the concept of a CPO a workable part of promoting more open and fair government procurement.

Six suggestions for statutory amendments

In summary, we offer the following six suggestions regarding how the State's procurement statutes could be amended to provide more open and fair procurement:

- ◆ Increase the term of the CPO to six years. (AS 36.30.010 (a))
- ◆ Prohibit the CPO from holding any other state position. (AS 36.30.010 (b))
- ◆ Require legislative confirmation of the CPO. (AS 36.30.010 (a))
- ◆ Fix CPO salary in Statute to preclude retaliation. (AS 36.30.010 (a))
- ◆ Replace "commissioner" with CPO in Limited Competition Procurement section of the Procurement Code (Note: No change recommended to commissioner of Transportation reference). (AS 36.30.305 (a))
- ◆ Add statutory requirement that the CPO must "certify" as to the existence and correctness of the facts and the legality of the proposed alternative procurement under the State's procurement code. Further, subject the certification to sanctions under AS 11.56.210. This should apply to all procurement made under Article 4. Other Procurement Methods for which the CPO has approval responsibilities. This includes sole source (AS 36.30.300), limited competition (AS 36.30.305), and emergency procurement (AS 36.30.310).

Sen. Randy Phillips
Chairman

Rep. Terry Martin
Vice Chairman

Sen. Al Adams

Sen. Steve Frank

Sen. Steve Rieger

Sen. Bert Sharp

Rep. John Davies

Rep. Mark Hanley

Rep. Ron Larson

Rep. Eileen MacLean

State of Alaska



Session

Rm. 103

State Capitol

Juneau, AK 99801

(907) 465-4949

Interim

P.O. Box 142

Eagle River AK 99577

(907) 694-4949

Legislative Budget and Audit Committee

Sectional Analysis

CS SB 129 (STA)

Section 1:

Changes the term of office of the Chief Procurement Officer from four (4) to six (6) years.

Section 2.

Prohibits the delegation of the duties of the Chief Procurement Officer.

Prohibits the Chief Procurement Officer from holding more than one state position.

Sets the salary of the Chief Procurement Officer at range 23.

Section 3. NEW Section

Allows for the delegation of authority for small procurements of professional services.

Section 4.

Requires the Chief Procurement Officer rather than the Commissioner to make the determination that a sole source procurement is necessary and in the public interest.

(New) Allows for the delegation of authority for small procurements of professional services.

Section 5:

Requires that the Chief Procurement Officer make the written determination on an emergency procurement.

(New) Allows for delegation of authority when there is insufficient time for the chief procurement officer to make the determination.

Section 6:

(a) Requires that the Chief Procurement officer independently examine the material facts of a procurement.

(b) Makes it a Class A misdemeanor for the Chief Procurement Officer to knowingly make a false statement in a determination under AS 36.30.300-36.30.310.

NEW Section 7:

Removes the requirement that a cost-reimbursement contract needs to have a written determination by the procurement officer that it is impractical to obtain the supplies or services in another manner.

NEW Section 8:

Clarifies the time period for rejection of an appeal.

NEW Section 9:

Adds two exceptions to the procurement code.

1. contracts performed outside the U.S.
2. contracts between the Department of Law and outside counsel

NEW Section 10:

Deletes the requirement for special determinations for total or life cycle cost contracts.

Section 11 Transitional Provisions:

(a) The six year term of the current Chief Procurement Officer shall include the time that the person held the position prior to the effective date of the act.

The other provisions of the act apply the Chief Procurement Officer and to procurements and determinations made after the effective date of the act.



*Department of Transportation
and Public Facilities*

POSITION PAPER

BILL NO: SB 129

APPROVED: *J. S. Durkin*

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.

STATE OF ALASKA

DEPARTMENT OF REVENUE

TREASURY DIVISION

WALTER J. HICKEL, GOVERNOR

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:

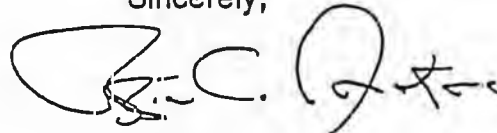
The Department of Revenue (DOR) would like to propose an amendment to CSSB 129 (FIN), Version 8-LS0591\K, "An Act relating to state procurement". This amendment deals with refinancing of capital leases set forth on page 2, Sec. 3. We propose the following change to that section at line 12, following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

Position Paper
CSSB 129(FIN)
Department of Administration

The Department of Administration's position is that on balance, CSSB 129(FIN) will improve state procurement. Several sections of the bill seek to make the procurement process more efficient and standardizes the treatment of various types of procurements.

The bill requires the Chief Procurement Officer to perform independent examinations of material facts prior to determining eligibility for alternate procurement methods. Current practice is to rely on the facts as represented by agency personnel and consider those representations as evidence. This change will generally require a longer preparation and review process for alternate procurements. However, the increased review time is offset by improved accountability which will enhance the integrity of the procurement process.

The bill authorizes extensions of real property leases in return for cost savings. The department expects to realize substantial savings in lease costs if current lessors are willing to negotiate reduced rates in exchange for lease extensions. We believe this gives us a valuable tool to reduce costs in our leasing budget while addressing a growing workload crisis.

The bill also adds a requirement to provide notice to the legislature prior to entering into or renewing any real property lease-purchase or lease-financing agreements. In this section, notice requires passage of law. We believe a more streamlined notice procedure should be pursued but agree that lease-purchase or lease-financing of real property should involve the legislature.

The bill amends the emergency procurement section of the code by requiring the Chief Procurement Officer to determine the basis for the emergency and the selection of a contractor. Currently, agency personnel are allowed to make this determination. Delegation of the authority to make the determination would be allowed only when the Chief Procurement Officer does not have sufficient time to make the required determination. The Department will write regulations defining "insufficient time for the Chief Procurement Officer to make the written determination" as the time necessary for the preparation and submission of information to the Chief Procurement Officer plus the time required for the Chief Procurement Officer's review.

The Department supports this bill because it contains some sections that standardize and streamline the procurement process, some sections that increase accountability, and another section that will lead to cost savings.



Nancy Bear Usera
Commissioner
Department of Administration

AMENDMENT #)

IN THE SENATE

BY SENATOR FRANK

TO: SENATE BILL NO. 129(FIN)

Page 2, line 12, after "property";

Insert:

"except an agreement related to a refinancing of outstanding balance owing"

AMENDMENT

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). "

A M E N D M E N T

OFFERED IN THE SENATE
TO: CSSB 129(STA)

BY SENATOR FRANK

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

(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 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) of this section. The first report is due July 1, 1994, and shall 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:

**** Sec. 13.** (a) Subsection 11(a) of this Act is repealed December 31, 1994.

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

A M E N D M E N T

OFFERED IN THE SENATE
TO: CSSB 129(STA)

BY SENATOR FRANK

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

(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:

"* 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."

AMENDMENT

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). "

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 REPORT

DATE: 3/18/93

FURTHER:

DATE TURNED INTO OFFICE: 3-15-93

The Finance Committee considered SENATE BILL NO. 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 E905		0	3/2/93

PREVIOUS FISCAL NOTES

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

Appropriation No Fiscal Note

DO PASS.

[Signature]
[Signature]
[Signature]
[Signature]
 1. [Signature] DO PASS

OTHER RECOMMENDATIONS:

 2. [Signature]

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

ofw

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

FISCAL NOTE INFORMATION

Department	Date	Zero	Fiscal
<i>SB</i> Dept. of Admin.	3.3.93		✓
<i>SSB</i> Dept. of Admin.	3.17.93	✓	

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. Duncan - No Rec
Mike Miller - NO REC

Steven A. Lewman NR

Chair: Signature and Recommendation

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 majority 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

phi

same title
 new title
 technical title change (HB only)

FISCAL NOTE INFORMATION

Department	Date	Zero	Fiscal
<u>SB Dept. of Admin.</u>	<u>3.3.93</u>		<input checked="" type="checkbox"/>
<u>SSSB Dept. of Admin.</u>	<u>3.17.93</u>	<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
Jedunjal - NO REC
Mike Killee - NO REC

Steven A. Lemaw NR
Chair: Signature and Recommendation

XPRT CONSULTANTS

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

2 April 1993

RECEIVED 4/2 - 3 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 . . ."

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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, 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 and/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

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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.