

Editor's notes. — Section 3, ch. 94, SLA 2004, provides that this section “applies to a cause of action that arose on or after June 26, 2004.”

Legislative history reports. — For governor's transmittal letter for ch. 94, SLA 2004 (SB 338),

authorizing substitution of the state for a state employee named as a defendant in a civil action when the employee is sued for an act that occurred in the course and scope of employment, see 2004 Senate Journal 2181 - 2182.

NOTES TO DECISIONS

Certification by attorney general held reviewable. — Where an action against state employees was certified by the attorney general as an action against the state because the employees were acting within the scope of their employment, that certification was reviewable. *State v. Heisey*, 271 P.3d 1082 (Alaska 2012).

Applicability to § 1981 claim. — There was no reason to continue the litigation of whether dismissal

of a plaintiff's 42 U.S.C.S. § 1981 claim violated the Supremacy Clause or the plaintiff's constitutional right to a jury trial because state law was inapplicable to claims brought under § 1981, the attorney general made it absolutely clear that it would not certify individual state employee defendants on § 1981 claims, the disputed issue would not be repeated and would not evade future review. *Slade v. State*, — P.3d — (Alaska Sept. 26, 2014).

Sec. 09.50.260. Undertaking. [Repealed, § 2 ch 19 SLA 1975.]

Sec. 09.50.270. Payment of judgment against the state. An attachment or execution may not issue against the state. When a final judgment is rendered against the state in an action, the clerk of the court shall immediately transmit a certified copy of the judgment to the Department of Administration which shall either approve payment of the judgment against the state if a sufficient appropriation exists for payment, or audit the amount and transmit a copy to the legislature with the recommendation that an appropriation be made for its payment. (§ 26.03 ch 101 SLA 1962)

Revisor's notes. — In 1994, “An attachment or execution may not” was substituted for “No attach-

ment or execution shall” in order to conform the section to the current style of the Alaska Statutes.

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Statutory benefit. — This statute gives a plaintiff a specific, albeit uncertain, remedy: the chance to

have his claim presented to the legislature. *Zerbetz v. Alaska Energy Ctr.*, 708 P.2d 1270 (Alaska 1985).

Sec. 09.50.280. Judgment for plaintiff; punitive damages. If judgment is rendered for the plaintiff, it shall be for the legal amount found due from the state with interest as provided under AS 09.30.070 and without punitive damages. (§ 26.04 ch 101 SLA 1962; am § 2 ch 30 SLA 1965; am § 20 ch 26 SLA 1997)

Cross references. — For interest on judgments, see AS 09.30.070; for legal rate of interest, see AS 45.45.010. For a statement of legislative intent relating to the provisions of ch. 26, SLA 1997, see § 1, ch. 26, SLA 1997 in the 1997 Temporary and Special Acts. For severability of the provisions of ch. 26, SLA 1997,

see § 56, ch. 26, SLA 1997 in the 1997 Temporary and Special Acts.

Editor's notes. — Section 55, ch. 26, SLA 1997 provides that the provisions of ch. 26, SLA 1997 apply “to all causes of action accruing on or after August 7, 1997.”

NOTES TO DECISIONS

Prejudgment interest to be more liberally awarded. — The legislature's 1965 amendment to this section evinces an intent that prejudgment interest be awarded more liberally than prior judicial interpretations of AS 45.45.010 would have called for. *State v. Phillips*, 470 P.2d 266 (Alaska 1970); *National Bank v. J.B.L. & K. of Alaska, Inc.*, 546 P.2d 579 (Alaska 1976).

Prejudgment interest is in the nature of compensation damages. *National Bank v. J.B.L. & K. of Alaska, Inc.*, 546 P.2d 579 (Alaska 1976).

Prejudgment interest. — Medical service provider's administrative claims under AS 47.07.070 were not covered by the waiver of sovereign immunity in AS

9.50.250; therefore, the state was not liable for prejudgment interest under this section for additional payments made to the provider after it brought successful administrative claims to increase the Medicaid reimbursement rates. *Samissa Anchorage, Inc. v. Dept of Health & Soc. Servs.*, 57 P.3d 676 (Alaska 2002).

Contractor was precluded from an award of prejudgment interest in his public contract dispute because (1) the state procurement code, AS 36.30, did not specifically authorize prejudgment interest on awards under AS 36.30.620 and 36.30.625; (2) the new provision in the procurement code, AS 36.30.623, allowing prejudgment interest on awards against the

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Quoted in *Zerbetz v. Alaska Energy Ctr.*, 708 P.2d 1270 (Alaska 1985).

Sec. 37.05.180. Limitation on payment of warrants. A warrant upon the state treasury may not be paid unless presented at the office of the commissioner of revenue within six months of the date of its issuance. A warrant not presented within that time is presumed abandoned, except where the warrant is for the payment of a permanent fund dividend or a benefit payment or refund under AS 14.25, AS 22.25, AS 26.05, AS 39.30, AS 39.35, former AS 39.37, or AS 39.45. Money held for an abandoned warrant shall be delivered to the custody of the Department of Revenue to be administered as unclaimed property under AS 34.45. (§ 3 ch 130 SLA 1951; am § 1 ch 128 SLA 1960; am § 1 ch 7 SLA 1961; am § 3 ch 4 SLA 1992; am § 26 ch 59 SLA 2002; am § 1 ch 98 SLA 2003; am § 21 ch 99 SLA 2004)

Sec. 37.05.190. Pre-audit of claims. (a) The Department of Administration shall examine and audit every receipt, account, bill, claim, refund, and demand on the funds in the state treasury arising from activities carried on by state agencies. It shall determine whether or not the obligation is incurred in accordance with laws and regulations adopted under authority of law, and that the amount is correct and is unpaid.

(b) The department may not approve for payment an account, bill, claim, refund, or demand on funds in the state treasury unless the claim is ordered by act of the legislature or is contracted against the state by an authorized officer or agent of the state. (§ 6 art III ch 82 SLA 1955; am § 5 ch 186 SLA 1957)

Sec. 37.05.200. Pre-audit of receipts. The Department of Revenue shall transmit to the Department of Administration copies of receipt documents showing all receipts received by the Department of Revenue. The receipt documents shall be audited, examined, and the amounts entered in the proper accounts in the records of the Department of Administration. The Department of Administration may adopt regulations to establish the system for providing current receipt documents. (§ 7 art III ch 82 SLA 1955; am § 5 ch 186 SLA 1957)

Sec. 37.05.210. Fiscal reporting and statistics. (a) The Department of Administration shall

(1) file with the governor and with the legislative auditor before December 16 a report of the financial transactions of the preceding fiscal year and of the financial condition of the state as of the end of that year, prepared in accordance with generally accepted accounting principles and audited by the legislative auditor in accordance with generally accepted audit standards, with comments and supplementary data that the Department of Administration considers necessary; this report shall be printed for the information of the legislature and the public;

(2) compile statistics necessary for the budget and other statistics required by the governor;

(3) file a travel and compensation report with the legislature by January 31 of each year containing detailed information for the previous calendar year of the salaries, per diem, travel expenses, relocation expenses, and any additional allowances for

(A) the governor, the lieutenant governor, and the chiefs of staff of the governor and lieutenant governor;

(B) the president and vice-president of the University of Alaska and the chancellors of the individual campuses of the university;

(C) the commissioners or other executive heads of the principal departments in the executive branch of state government, and the deputy commissioners and division directors in those departments; and

paid an amount, instead of actual expenses of transportation, not to exceed a mileage allowance set by the commissioner of administration for the use of privately-owned automobiles or airplanes, when engaged in official travel inside or outside their designated posts of duty or places of service. In addition to the mileage allowance, there may be allowed reimbursement for the actual cost of ferry fares, and bridge, road, and tunnel tolls. When two or more officials or employees are traveling in the same direction, and it is possible to share a privately-owned automobile or airplane, the mileage permitted shall be allowed only once. (§ 6 ch 60 SLA 1957; am § 11 ch 47 SLA 1974)

Sec. 39.20.140. Travel costs and travel outside the state. (a) The Department of Administration may not pay an official or employee for per diem or transportation costs unless the travel is clearly necessary to benefit the state.

(b) The Department of Administration may not reimburse an official or employee or pay for more than the lowest tourist class fare for the most direct route unless

(1) tourist class accommodation is not available;

(2) waiting for tourist class accommodation would occasion a delay harmful to the state; or

(3) the Department of Administration finds that travel by tourist class accommodation is not in the best interest of the state, and authorizes other accommodation.

(c) When the Department of Administration authorizes more expensive travel under (b)(3) of this section, it shall file a justification for that authorization with the travel voucher. When fares other than tourist class are authorized under (b) of this section, the Department of Administration may not reimburse the official or employee or pay for more than the lowest first class fare available.

(d) Officials and employees are authorized to travel only the least number of days necessary to transact the business involved, to secure return passage, and to return.

(e) Every official and employee shall, unless otherwise authorized by law to travel outside the state, obtain prior approval for travel outside the state from the head of the official's or employee's department or from an immediate supervisor, or from the Department of Administration if the official or employee is not within a department or is not under the direct supervision of an official or supervisor. If an employee deviates materially from the travel authorized under this section, the employee must obtain approval for the deviation from the person who approved the travel before the Department of Administration may reimburse the employee for the travel. (§ 7 ch 60 SLA 1957; am § 1 ch 83 SLA 1962)

Sec. 39.20.150. Advances and recovery. (a) An agency may advance, through proper disbursing methods, to a person entitled to per diem or mileage allowance under AS 39.20.110 — 39.20.170 the sums considered advisable considering the character and probable duration of the travel to be performed.

(b) Sums advanced and not used for allowable travel expense are recoverable by setoff against salary due, or otherwise, from the person to whom advanced, or the person's estate, by deduction from any amount due from the state, or by other legal methods of recovery that may be necessary. (§ 8 ch 60 SLA 1957)

Sec. 39.20.160. Regulations. The fixing and payment under AS 39.20.110 — 39.20.170 of travel and per diem allowances and of advances and recovery and reimbursement of travel expenses shall be in accordance with regulations adopted by the commissioner of administration. The regulations shall be uniform for all officials and employees, and all agencies and departments. The regulations shall also govern the use of public transportation facilities by officials and employees. The regulations relate to the internal management of state agencies and their adoption is not subject to AS 44.62 (Administrative Procedure Act). (§ 9 ch 60 SLA 1957; am § 2 ch 13 SLA 1963)

(e) The commissioner of administration shall notify the Legislative Budget and Audit Committee in writing of a transfer of money from the general fund under (a) of this section. (§ 1 ch 126 SLA 1972; am §§ 1 — 3 ch 90 SLA 2014)

Effect of amendments. — The 2014 amendment, effective July 17, 2014 in (a), in the first sentence, deleted “, and with the approval of the legislative budget and audit committee,” following “state bond committee”, added the second and third sentences; in (d), deleted “immediately” following “shall be” and

substituted “within 15 months after the transfer” for “as soon as sufficient money has been received in the bond construction fund or account to which the transfer was made” at the end; added (e), and made related changes.

Sec. 37.10.088. Department of Administration authorized to make advances to the University. (a) During any fiscal year the Department of Administration may make advances to the University of Alaska against verified receivables from appropriations for grants and contracts from federal or private sources of the university and upon condition that the university reimburse the fund for these advances from funds received by the university from federal or private sources. The advances may not exceed 80 percent of the verified receivables from grants and contracts appropriated from federal or private sources.

(b) The total of advances in a fiscal year may not exceed 10 percent of the total of grants and contracts from federal and private sources appropriated to the university for that fiscal year. The amounts advanced in a fiscal year shall be repaid in full to the department within 120 days following the close of that fiscal year. If the repayment is not made on a timely basis, the department may withhold amounts due from state fund appropriations for the university.

(c) The commissioner of administration shall submit a quarterly report of all advances and reimbursements under this section to the Legislative Budget and Audit Committee.

(d) The department shall establish the procedure for making advances to the university and for securing reimbursement from the university. (§ 8 ch 46 SLA 1977; am § 1 ch 79 SLA 1978; am § 63 ch 14 SLA 1987)

Legislative history reports. — For letter of intent on ch. 46, SLA 1977 (HCSSB 261), see 1977 House Journal, p. 1019.

Sec. 37.10.089. Loans to the education loan fund; bond purchase agreements and letters of credit. (a) If the education loan fund (AS 14.42.210) is unable to fully finance loan demand in a fiscal year, the commissioner may invest in the education loan fund for the purpose of financing education loans under AS 14.43.161 — 14.43.175, 14.43.600 — 14.43.750, and AS 14.44.040. The commissioner shall require the corporation to secure the investment of state money.

(b) The commissioner may make investments under (a) of this section only when the commissioner determines that market conditions relating to tax-exempt private activity revenue bonds make the issuance of the bonds by the corporation impracticable or uneconomical for the purpose of financing education loans under AS 14.43.161 — 14.43.175, 14.43.600 — 14.43.750, and AS 14.44.040.

(c) The corporation shall repay money invested under (a) of this section under terms established by the commissioner and agreed to by the corporation. Except as provided in this section, the terms must be consistent with the duties of a fiduciary set out in AS 37.10.071(c).

(d) Notwithstanding any other provision of this section, the commissioner is authorized to enter into an agreement with the corporation to provide a bond purchase agreement and a letter of credit when market conditions relating to those credit enhancement mechanisms are uneconomical. The commissioner may require the corporation to pay the costs associated with providing credit enhancement and may charge the corporation a fee for this service.

deceased member or survivor under this section shall be included.

"(e) An increase in benefit payments under this section is effective July 1 of each calendar year and is based on the percentage increase in the consumer price index for urban wage earners and clerical work-

ers for Anchorage, Alaska, during the previous calendar year, as determined by the United States Department of Labor, Bureau of Labor Statistics.

"(f) In this section, 'system' means the elected public officers retirement system under former AS 39.37."

NOTES TO DECISIONS

"Employee retirement system". — The Elected Public Officers Retirement System is an "employee retirement system" within the meaning of Alaska Const., art. XII, § 7, which provides that membership in state employee retirement systems shall constitute a contractual relationship. State ex rel. Hammond v. Allen, 625 P.2d 844 (Alaska 1981).

There is no valid basis upon which to distinguish the rights of elected officials in the Elected Public Officers Retirement System from their rights in the public employees' retirement system in the context of Alaska Const., art. XII, § 7. State ex rel. Hammond v. Allen, 625 P.2d 844 (Alaska 1981).

Contractual relationship. — The Elected Public Officers Retirement System constitutes a contractual relationship between participants in that program and the state of Alaska, which must be honored by the state. Therefore, all elected officials who were participating in the Elected Public Officers Retirement System at the time its repeal became effective [October 14, 1976] will be entitled to the benefits provided by that system upon retirement. State ex rel. Hammond v. Allen, 625 P.2d 844 (Alaska 1981).

Effective period of ch. 205, SLA 1975. — Walters v. Cease, 388 P.2d 263 (Alaska 1964), which held that the effectiveness of an act passed by the legislature is not suspended during the period between its effective

date and its rejection by referendum, clearly establishes that the legislation enacting this chapter, ch. 205, SLA 1975, whatever its import, was in full force from January 1, 1976, its effective date, until October 14, 1976, the date of repeal by referendum. State ex rel. Hammond v. Allen, 625 P.2d 844 (Alaska 1981).

Rights not subject to implied condition subsequent of repeal. — Even though a referendum petition was duly filed over three months before the effective date of this chapter (Jan. 1, 1976), the rights accrued under the Elected Public Officers Retirement System were not subject to any implied condition subsequent of repeal by the electorate, and those rights remain fully enforceable. State ex rel. Hammond v. Allen, 625 P.2d 844 (Alaska 1981).

Even assuming the extreme likelihood of the subsequent repeal of a legislative enactment, Alaska Const., art. XII, § 7, and AS 01.10.100(a) preclude the finding of an implicit condition subsequent in the contracts between participants in the Elected Public Officers Retirement System and the state of Alaska, since AS 01.10.100(a) provides that "[t]he repeal . . . of any law does not release or extinguish any . . . liability incurred or right accruing or accrued under such law" and finding a condition subsequent to be implicit in the contract under consideration would undermine Alaska Const., art. XII, § 7. State ex rel. Hammond v. Allen, 625 P.2d 844 (Alaska 1981).

Secs. 39.37.010 — 39.37.150. Elected public officers retirement system. [Rejected at Referendum.]

Chapter 40. United States Savings Bonds Purchase Plan.

Section

- 10. Authorization
- 20. Administration

Sec. 39.40.010. Authorization. An employee of the state may give written authorization to permit an employer to deduct a sum of money each month from the employee's wages for the purchase of United States savings bonds. The United States savings bonds purchased shall be made payable to the person specified by the employee. (§ 1 ch 46 SLA 1963)

Sec. 39.40.020. Administration. (a) The wage deductions withheld under AS 39.40.010 shall be held in trust until a United States savings bond is purchased by the Department of Administration. After the purchase of the bond, it shall be turned over to the employee.

(b) The Department of Administration shall adopt regulations to carry out this chapter. (§ 1 ch 46 SLA 1963)