

# LEGAL SERVICES

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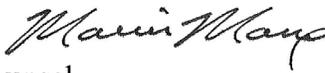
State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

April 23, 2022

**SUBJECT:** Bonuses for nonunion executive branch employees who are subject to AS 39.27.011 (HB 416; Work Order No. 32-LS1675\A)

**TO:** Representative Matt Claman  
Chair of the House Judiciary Committee  
Attn: Lizzie Kubitz

**FROM:** Marie Marx   
Legislative Counsel

You have asked whether substantive legislation is necessary to provide bonuses to nonunion executive branch employees who are subject to the salary schedule in AS 39.27.011.

AS 39.27.011(a) establishes "the pay plan for classified and partially exempt employees in the executive branch of the state government who are not members of a collective bargaining unit established under the authority of AS 23.40.070 - 23.40.260 (Public Employment Relations Act) and for employees of the legislature under AS 24." AS 39.25.120(a) expressly provides that "[p]ositions in the partially exempt service are included in the position classification plan established under this chapter and are compensated according to the pay plan under AS 39.27.011." AS 39.27.011(k) provides:

Notwithstanding (a) - (j) of this section, the governor or a designee of the governor may, on a case-by-case basis, authorize for a partially exempt employee in the executive branch a higher pay than Step F. The authorization must be based on a determination that the action serves a critical governmental interest of the state, the employee possesses exceptional qualifications, recruitment difficulties exist, or the action is necessary due to competitive salaries in the relevant labor market. A determination made under this subsection must be in writing.

AS 39.27.011(k) was enacted in sec. 14, ch. 47, SLA 2013, through a governor's bill (SB 95 from the 28th Legislature). In describing the purpose of this provision, then-Deputy Commissioner of the Department of Administration Curtis Thayer stated that partially exempt positions are subject to classification and pay plans, which limits

flexibility.<sup>1</sup> He explained the state is often not competitive for top talent and needs some flexibility for mission critical positions, and that under what is now AS 39.27.011(k), the governor or designee may pay a partially exempt employee outside Step F of the pay scale under the circumstances and procedures outlined in AS 39.27.011(k).<sup>2</sup> In a hearing on the house companion bill (HB 195), Deputy Commissioner Thayer stated that under this provision, the department would attempt to attract people into state service for a particular position.<sup>3</sup> Only when a commissioner or director had a difficult time filling a position, would they go to the governor's office to ask for a variance, and the process to achieve the variance would be long and rigorous.<sup>4</sup> This legislative history shows that the governor and the legislature intended AS 39.27.011(k) to be the mechanism a department must use to compensate employees covered by AS 39.27.011 outside the pay plan, and that this provision was intended to only allow flexibility for partially exempt employees. Other than the authorization allowed in AS 39.27.011(k), I have not identified any other authority allowing an agency to compensate employees covered by AS 39.27.011 outside the pay plan.

If the legislature wishes to allow an agency to compensate employees covered by AS 39.27.011 outside the pay plan, the course of action with the least legal risk would be to enact temporary or permanent law. The legislature has typically accomplished this through the enactment of temporary legislation. For example, in sec. 1, ch. 1, TSSLA 2000, an appropriation bill included a statement of legislative intent that certain appropriations in the bill be used to pay certain nonunion executive branch employees a lump sum payment of \$1,200, subject to some reductions. This bill was introduced by the governor in the 21st Legislature as HB 3001. At the same time, the governor also introduced a companion bill, HB 3002, which was enacted in ch. 2, TSSLA 2000. The companion bill made the substantive changes in temporary law that were necessary to authorize the lump sum payments outside the nonunion executive branch employees' pay scale. As the governor explained in his transmittal letter, "I am transmitting two bills to this third special session of the Twenty-First Legislature of the State of Alaska which provide necessary appropriations and statutory authorizations to honor our collective bargaining agreements and to extend similar provisions to non-covered employees in the executive, legislative, and judicial branches."<sup>5</sup>

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<sup>1</sup> Minutes of Senate Finance Committee, SB 95, testimony of Deputy Commissioner of the Department of Administration Curtis Thayer (April 8, 2013).

<sup>2</sup> *Id.*

<sup>3</sup> Minutes of Senate Finance Committee, HB 195, testimony of Deputy Commissioner of the Department of Administration Curtis Thayer (April 8, 2013).

<sup>4</sup> *Id.*

<sup>5</sup> 2000 House Journal 3795 - 3796.

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In sec. 11, ch. 53, SLA 2005, the legislature enacted a temporary law authorizing, for a specific period of time, bonuses for legislative employees "[i]n addition to compensation authorized under AS 24.10.200 and AS 24.10.210 . . . ." Those sections provide that legislative employees are to be compensated under the salary schedule in AS 39.27.011. Section 11, ch. 53, SLA 2005, expressly prohibited the payment of bonuses under the uncodified law after January 1, 2005. This prohibition was later codified in AS 24.10.220. The effect of sec. 11, ch. 53, SLA 2005, was to allow bonuses for legislative employees only for a specific period of time.

In sum, if the legislature wishes to provide bonuses to nonunion executive branch employees who are subject to the salary schedule in AS 39.27.011, I recommend that this be accomplished through substantive legislation.

Please let me know if I may be of further assistance.

MYM:lme

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