

SENATE BILL NO. 352

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/23/04

Referred: State Affairs

A BILL

FOR AN ACT ENTITLED

1 **"An Act amending the Public Employment Relations Act to exclude from collective**
2 **bargaining individuals who perform confidential or managerial duties for a public**
3 **employer and relating to those exclusions; and providing for an effective date."**

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

5 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
6 to read:

7 LEGISLATIVE FINDINGS AND PURPOSE. (a) The legislature finds that

8 (1) public employers require the undivided loyalty of confidential employees
9 and managers to implement policy initiatives and to bargain and administer public employee
10 labor agreements effectively;

11 (2) participation in collective bargaining can create a conflict between an
12 employee's loyalty to an employer and to a labor or employee organization;

13 (3) national labor relations laws governing private sector employers avoid
14 conflicting loyalties by excluding confidential employees and managers from bargaining;

1 (4) the public interest will be better served if the Public Employment Relations
2 Act follows the example set in the national labor relations laws.

3 (b) The purpose of this Act is to change the definition of "employee" in
4 AS 23.40.070 - 23.40.260 (the Public Employment Relations Act) to exclude from collective
5 bargaining confidential employees and managers of public employers in the same manner that
6 29 U.S.C. 151 - 169 (National Labor Relations Act) excludes them from bargaining, and to
7 require the courts and the Alaska labor relations agency to rely on precedent decided under 29
8 U.S.C. 151 - 169 when applying similar provisions in the Public Employment Relations Act.

9 * **Sec. 2.** AS 23.40 is amended by adding a new section to read:

10 **Sec. 23.40.142. Other authority.** The courts of this state and the labor
11 relations agency shall give great weight to relevant decisions of the National Labor
12 Relations Board and federal courts in the orders and decisions made under
13 AS 23.40.070 - 23.40.260.

14 * **Sec. 3.** AS 23.40.250(6) is amended to read:

15 (6) "public employee" means any employee of a public employer,
16 **regardless of** whether [OR NOT] in the classified service of the public employer,
17 except

18 **(A) an** elected or appointed **official** [OFFICIALS] or
19 **superintendent** [SUPERINTENDENTS] of schools;

20 **(B) a person employed as a confidential employee or**
21 **manager;**

22 * **Sec. 4.** AS 23.40.250 is amended by adding new paragraphs to read:

23 (10) "confidential employee" means an employee of a public employer
24 who assists and acts in a confidential capacity to a person who formulates, determines,
25 and effectuates management policies in labor relations matters for the public
26 employer;

27 (11) "manager" means an employee of a public employer who
28 formulates and effectuates management policy by expressing and making operative
29 the decisions of the public employer and who has discretion in the performance of the
30 job independent of the public employer's established policy.

31 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 APPLICABILITY. (a) This Act does not invalidate a collective bargaining
3 agreement in effect on the effective date of secs. 1 - 4 of this Act between the state, the
4 University of Alaska, or a political subdivision of the state, and a labor or employee
5 organization.

6 (b) For a collective bargaining agreement that expires before the effective date of
7 secs. 1 - 4 of this Act, a new agreement may not contain provisions contrary to this Act.

8 * **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 TRANSITION: REGULATIONS. The Alaska labor relations agency may proceed to
11 adopt regulations necessary to implement the changes made by this Act. The regulations take
12 effect under AS 44.62 (Administrative Procedure Act), but not before the effective date of the
13 respective statutory change.

14 * **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to
15 read:

16 TRANSITION: EFFECT ON SALARY OF CERTAIN EMPLOYEES. (a)
17 Notwithstanding any other provision of law, for a state employee who becomes excluded
18 from a collective bargaining unit, and becomes subject to the salary schedules in
19 AS 39.27.011, as a result of this Act taking effect,

20 (1) the employee's salary on the day before the effective date of secs. 1 - 4 of
21 this Act may not be reduced solely as a result of the employee's being excluded from the
22 collective bargaining unit and becoming subject to the salary schedules in AS 39.27.011; this
23 paragraph does not apply in the case of a voluntary or involuntary demotion of a state
24 employee;

25 (2) the employee's established merit anniversary date as it existed on the day
26 before the effective date of secs. 1 - 4 of this Act is not affected as a result of this Act taking
27 effect;

28 (3) for the employee's first merit anniversary date on or after the effective date
29 of secs. 1 - 4 of this Act on which the employee is otherwise entitled to a merit increase, the
30 step increase given shall be at least the next step that results in an increase in the employee's
31 salary under the salary schedule.

1 (b) The salaries of employees of the University of Alaska whose collective bargaining
2 status is affected by this Act are set in accordance with the compensation policy of the Board
3 of Regents of the University of Alaska.

4 * **Sec. 8.** Sections 5(b) and 6 of this Act take effect immediately under AS 01.10.070(c).

5 * **Sec. 9.** Except as provided in sec. 8 of this Act, this Act takes effect July 1, 2004.