

Original sponsors: Ferguson and Rodey

Offered: 4/12/79  
Referred: Rules

1 IN THE SENATE

BY THE STATE AFFAIRS COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 198

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the hiring of nonpermanent em-  
7 ployees in the state personnel system; and providing  
8 for an effective date."

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

10 \* Section 1. LEGISLATIVE FINDINGS AND INTENT. The legislature finds and  
11 declares that certain inconsistencies and abuses in the hiring of nonperma-  
12 nent employees have jeopardized the integrity and efficiency of the merit  
13 system as well as the morale of employees. The legislature intends to curb  
14 the widespread administrative practice of using nonpermanent state employment  
15 to evade departmental accountability and mask poor planning. The legislature  
16 further intends that nonpermanent employees be used only to the extent that  
17 it is impractical to meet the need with permanent employees and that the  
18 burden of proof shall fall upon the department or agency which proposes  
19 nonpermanent hire.

20 \* Sec. 2. AS 39.25.150(9) is amended to read:

21 (9) nonpermanent [TEMPORARY] appointments to positions in the  
22 state service in accordance with AS 39.25.195 - 39.25.200 [WHICH ARE  
23 DETERMINED TO BE OF A SEASONAL OR TEMPORARY NATURE];

24 \* Sec. 3. AS 39.35.680(21)(C)(iii) is amended to read:

25 (iii) casual or [,] emergency [OR TEMPORARY]  
26 workers or nonpermanent employees as defined in AS 39.25.200;

27 \* Sec. 4. AS 39.25 is amended by adding new sections to article 6 to read:

28 Sec. 39.25.195. APPOINTMENT OF NONPERMANENT EMPLOYEES. (a) An  
29 individual may not be appointed as a nonpermanent employee in the state

1 service without prior written approval of the director except as an  
2 emergency employee.

3 (b) Every appointment to state service except an emergency appoint-  
4 ment, shall be made from an applicable eligible list or dispatching  
5 register unless in appropriate circumstances the director has waived  
6 this requirement.

7 (c) No appointment of a nonpermanent employee may be made unless  
8 the request for authorization is approved by the director, adequate  
9 money is available for the anticipated duration of the appointment, and  
10 the director determines that

11 (1) the hiring department or agency has certified that the  
12 legislature has appropriated money for the work in question knowing that  
13 it is to be performed by a nonpermanent employee;

14 (2) the hiring department or agency has certified that there  
15 is an immediate need to fill an authorized, permanent position and it is  
16 impractical either to establish the position or to make certification  
17 within a reasonable time;

18 (3) the hiring department or agency has certified that an  
19 immediate need exists and the director determines that the hiring depart-  
20 ment or agency could not reasonably have been expected to anticipate and  
21 meet through the creation of a permanent position; or

22 (4) the hiring department or agency has certified that a  
23 program or project exists and the director determines that the needs for  
24 employees can most appropriately be met through the use of program or  
25 project employees.

26 (d) The director may not authorize the appointment of a nonperma-  
27 nent employee if he determines that

28 (1) the need for the nonpermanent employee can practicably be  
29 met through establishing and filling an authorized permanent position;

1 (2) the need for the nonpermanent employee would be more  
2 appropriately met through an emergency appointment; or

3 (3) the need for the nonpermanent employee is not immediate  
4 and could reasonably have been anticipated and met by the appointing  
5 authority through the creation and filling of a permanent position.

6 (e) A nonpermanent employee may not be placed on the state payroll  
7 unless the director has first approved the personnel action for the  
8 employee's appointment.

9 (f) Nothing in this section prevents the director from adopting  
10 regulations to provide for timely substitution for permanent employees  
11 on medical or personal leave or other situations in which the appoint-  
12 ment of an emergency or permanent employee would be inappropriate or  
13 when delay in making a temporary replacement would cause serious interrup-  
14 tion.

15 (g) A department or agency may not use nonpermanent employees to  
16 perform a given work assignment for more than 120 calendar days in a  
17 12-month period. A department or agency may not employ any individual  
18 as a nonpermanent employee for more than 120 calendar days in a 12-month  
19 period. In appropriate circumstances the director may authorize an  
20 extension of the limit imposed by this subsection if he finds that there  
21 is an immediate need for the extension. The limit imposed by this  
22 subsection does not apply to program or project employees or to substi-  
23 tutes appointed under (f) of this section.

24 (h) The director shall present a report on nonpermanent and emer-  
25 gency hire practices in state government to the legislature within the  
26 first 10 days of each regular legislative session. A hiring department  
27 or agency shall certify to the director within 15 working days following  
28 the appointment its reasons for appointing an emergency employee. The  
29 report shall include information on the number of nonpermanent employees

1 authorized under this section and the number of emergency employees  
2 hired in each department, a description of the procedures used in autho-  
3 rizing the hiring of nonpermanent employees, and any recommendations for  
4 legislation required to implement the intent of this section.

5 Sec. 39.25.197. TERMINATION OF NONPERMANENT EMPLOYEES. When the  
6 director determines that an employee has been appointed as a result of a  
7 false certification under AS 39.25.195, he shall immediately notify the  
8 head of the affected department or agency in writing and the department  
9 or agency shall terminate the employee from state service within one  
10 working day after receipt of notice.

11 Sec. 39.25.198. CIVIL LIABILITY. A person who makes a false  
12 certificate under AS 37.25.195 is personally liable in a civil action to  
13 an individual terminated under AS 37.25.197 for any resultant damages  
14 and for punitive damages of an amount not to exceed three times the gross  
15 monthly salary at which the nonpermanent employee was appointed.

16 Sec. 39.25.200. DEFINITIONS. In AS 39.25.195 - 39.25.200,

17 (1) "certified" means signed by the head of a department or  
18 agency or by a responsible person designated by him;

19 (2) "director" means the director of the division of person-  
20 nel and labor relations;

21 (3) "emergency employee" means an employee appointed for a  
22 period not to exceed 30 calendar days, whose appointment was made under  
23 conditions requiring immediate action to carry on work that is required  
24 in the public interest;

25 (4) "nonpermanent employee" means a person who is employed in  
26 state service in a position which is not in the exempt or partially  
27 exempt service and who is not a permanent or an emergency employee;

28 (5) "permanent employee" means an employee who has been  
29 appointed to an authorized, permanent full-time or part-time or perma-

1        nent seasonal position in the classified service and who is in the  
2        process of completing or has successfully completed the required proba-  
3        tionary service in that position;

4                (6) "program or project employee" means a nonpermanent em-  
5        ployee, including a student intern, who is employed in state service  
6        with prior written understanding that employment in that position will  
7        continue for at most the duration of a specified program or project  
8        which is not a regular and continuing function of a department or agency  
9        and which has an established probable date of termination.

10       \* Sec. 5. This Act takes effect January 1, 1980.