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Referred: Rules

1 IN THE SENATE BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 193 (Judiciary) am H

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act amending state personnel laws; and providing  
7 for an effective date."

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

9 \* Section 1. AS 39.25.040 is amended to read:

10 Sec. 39.25.040. DIRECTOR OF PERSONNEL. The head of the division  
11 of personnel is the director of personnel appointed by the commissioner  
12 of administration and responsible to the commissioner of administration  
13 for the execution of the duties and responsibilities imposed by this  
14 chapter and the rules adopted under this chapter. The director of  
15 personnel shall [MUST] have at least three years of practical working  
16 experience in the field of personnel administration.

17 \* Sec. 2. AS 39.25.060(b) is amended to read:

18 (b) Members of the board may not be [SHALL BE QUALIFIED ELECTORS  
19 OF THE STATE WHO ARE NOT] employees [OR OFFICERS] of the state. Not  
20 more than two members of the board may be members of the same political  
21 party.

22 \* Sec. 3. AS 39.25.070(1) is amended to read:

23 (1) approve or disapprove amendments to the personnel rules  
24 in accordance with AS 39.25.140 [THE ORIGINAL RULES OR A PART OF THEM  
25 WITHIN 60 DAYS OF THEIR SUBMISSION TO THE BOARD AND APPROVE OR DIS-  
26 APPROVE AMENDMENT TO THE RULES WITHIN 30 DAYS OF SUBMISSION TO THE  
27 BOARD, AND IN CARRYING OUT THIS DUTY, THE BOARD, IF REQUESTED, MAY HOLD  
28 THE PUBLIC HEARINGS IT CONSIDERS NECESSARY];

29 \* Sec. 4. AS 39.25.070 is amended by adding a new paragraph to read:

1 (7) employ staff members, who shall be in the classified  
2 service.

3 \* Sec. 5. AS 39.25.080 is repealed and reenacted to read:

4 Sec. 39.25.080. PUBLIC RECORDS. (a) State personnel records,  
5 including employment applications and examination materials, are confi-  
6 dential and are not open to public inspection except as provided in  
7 this section.

8 (b) The following information is available for public inspection,  
9 subject to reasonable regulations on the time and manner of inspection:

10 (1) the names and position titles of all state employees;

11 (2) the position held by a state employee;

12 (3) prior positions held by a state employee;

13 (4) whether a state employee is in the classified, partially  
14 exempt, or exempt service;

15 (5) the dates of appointment and separation of a state em-  
16 ployee; and

17 (6) the compensation authorized for a state employee.

18 (c) A state employee has the right to examine his own personnel  
19 files and may authorize others to examine his files.

20 (d) An applicant for state employment who appeals an examination  
21 score may review written examination questions relating to the examina-  
22 tion unless the questions are to be used in future examinations.

23 \* Sec. 6. AS 39.25.090 is amended to read:

24 Sec. 39.25.090. COVERAGE OF CHAPTER. This chapter and the rules  
25 adopted under it apply to all positions in (1) the classified service,  
26 and (2) the exempt and partially exempt service as specifically pro-  
27 vided.

28 \* Sec. 7. AS 39.25.110 is repealed and reenacted to read:

29 Sec. 39.25.110. EXEMPT SERVICE. Unless otherwise provided by

1 law, the following positions in the state service constitute the exempt  
2 service and are exempt from the provisions of this chapter and the  
3 rules adopted under it:

4 (1) persons elected to public office by popular vote or  
5 appointed to fill vacancies in elected offices;

6 (2) justices, judges, magistrates, and employees of the  
7 judicial branch including employees of the Judicial Council;

8 (3) employees of the state legislature and its agencies;

9 (4) the head of each principal department in the executive  
10 branch;

11 (5) officers and employees of the University of Alaska;

12 (6) certificated teachers and noncertificated employees  
13 employed by a regional educational attendance area established and  
14 organized under AS 14.08.031 - 14.08.041 to teach in, administer, or  
15 operate schools under the control of a regional educational attendance  
16 area school board;

17 (7) certificated teachers employed by the Department of  
18 Education as correspondence teachers or teachers in skill centers  
19 operated by the Department of Education;

20 (8) patients and inmates employed in state institutions;

21 (9) persons employed in a professional capacity to make a  
22 temporary or special inquiry, study or examination as authorized by the  
23 governor;

24 (10) members of boards, commissions, or authorities;

25 (11) the officers and employees of the following boards,  
26 commissions and authorities:

27 (A) Alaska Gas Pipeline Financing Authority;

28 (B) Alaska Permanent Fund Corporation;

29 (C) Alaska Energy Center;

1 (D) Alaska Industrial Development Authority;  
2 (E) Alaska Commercial Fisheries Entry Commission;  
3 (F) Alaska Commission on Postsecondary Education;  
4 (G) Employees of the Citizens' Advisory Commission  
5 on Federal Areas in Alaska (AS 41.37.010);

6 (12) the executive secretary and legal counsel of the Alaska  
7 Municipal Bond Bank Authority;

8 (13) licensed physicians, as defined in AS 47.30.340(9)  
9 employed by the state;

10 (14) petroleum engineers and petroleum geologists employed in  
11 a professional capacity by the Department of Natural Resources and by  
12 the Oil and Gas Conservation Commission; except for those employed in  
13 the division of geological and geophysical surveys in the Department of  
14 Natural Resources;

15 (15) officers, agents, and employees of the Alcoholic Beverage  
16 Control Board granted limited peace officer powers by the Alcoholic  
17 Beverage Control Board under AS 04.06.110;

18 (16) persons employed by the division of marine transporta-  
19 tion as masters and members of the crews of vessels who operate the  
20 state ferry system and who are covered by a collective bargaining  
21 agreement provided in AS 23.40.040;

22 (17) officers and employees of the state who reside in  
23 foreign countries;

24 (18) employees of the Alaska Seafood Marketing Insti-  
25 tute;

26 (19) firefighters employed by the Department of Natural  
27 Resources for a fire emergency;

28 (20) employees of the Office of the Governor and the office  
29 of the lieutenant governor, including the staff of the governor's

1 mansion.

2 \* Sec. 8. AS 39.25.120 is repealed and reenacted to read:

3 Sec. 39.25.120. PARTIALLY EXEMPT SERVICE. (a) Positions in the  
4 partially exempt service are included in the position classification  
5 plan established under this chapter and are compensated according to the  
6 pay plan (AS 39.27.011).

7 (b) A person holding a position in the partially exempt service is  
8 not required to take an examination or qualify or earn a place on a  
9 register, and is not eligible for a hearing by the personnel board in  
10 case of dismissal, demotion, or suspension. Positions in the partially  
11 exempt service are specifically exempt from the rules established under  
12 AS 39.25.150(3) - (10), (13), (14), and (17).

13 (c) The following positions in the state service constitute the  
14 partially exempt service:

15 (1) deputy and assistant commissioners of the principal  
16 departments of the executive branch, including the assistant adjutant  
17 general of the Department of Military Affairs;

18 (2) the directors of the major divisions of the principal  
19 departments of the executive branch and the regional directors of the  
20 Department of Transportation and Public Facilities;

21 (3) attorney members of the staff of the Department of Law  
22 and of the public defender agency;

23 (4) one private secretary for each head of a principal de-  
24 partment in the executive branch;

25 (5) employees of councils, boards, or commissions established  
26 by statute in the Office of the Governor or the office of the lieutenant  
27 governor, unless a different classification is provided by statute;

28 (6) the executive director, deputy director, hearing officers,  
29 and administrative law judges of the Alaska Public Utilities Commission;

1 (7) the director, deputy director, staff legal counsel, and  
2 hearing officers of the Alaska Transportation Commission;

3 (8) not more than two special assistants to the commissioner  
4 of each of the principal departments of the executive branch, but the  
5 number may be increased if the partially exempt service is extended  
6 under AS 39.25.130 to include the additional special assistants;

7 (9) the principal executive officer of the following boards,  
8 councils, or commissions:

9 (A) Alaska Public Broadcasting Commission;

10 (B) Professional Teaching Practices Commission;

11 (C) Parole Board;

12 (D) Board of Nursing;

13 (E) Real Estate Commission;

14 (F) Alaska Royalty Oil and Gas Development Advisory

15 Board;

16 (G) Alaska Historical Commission;

17 (H) Alaska State Council on the Arts;

18 (I) Alaska Police Standards Council;

19 (J) Council on Science and Technology;

20 (K) Older Alaskans Commission;

21 (10) Alaska Pioneers' Home managers;

22 (11) hearing examiners in the Department of Revenue;

23 (12) the comptroller in the division of treasury, Department  
24 of Revenue;

25 (13) investment officers in the Department of Revenue;

26 (14) airport managers in the Department of Transportation and  
27 Public Facilities employed at the Anchorage and Fairbanks International  
28 Airports;

29 (15) the deputy director of the division of tourism and the

1 deputy director of the division of insurance in the Department of Com-  
2 merce and Economic Development;

3 (16) the executive director and staff of the Alaska Public  
4 Offices Commission.

5 \* Sec. 9. AS 39.25.130(a) is amended to read:

6 (a) The [AFTER JUNE 30, 1961, THE] personnel board, upon written  
7 recommendation of the commissioner of administration, may extend the  
8 partially exempt service to include any position [WHICH WAS] in the  
9 classified service [ON APRIL 19, 1960,] which, in the judgment of the  
10 board:

11 (1) involves principal responsibility for the determination  
12 of policy;

13 (2) involves principal responsibility for the way in which  
14 policies are carried out; or

15 (3) involves responsibilities and duties of a type not sus-  
16 ceptible to the ordinary recruiting and examining procedures.

17 \* Sec. 10. AS 39.25.130(c) is amended to read:

18 (c) The [AFTER JUNE 30, 1961, THE] personnel board, upon written  
19 recommendation of the commissioner of administration, may extend the  
20 classified service to include any position [WHICH WAS] in the partially  
21 exempt service [ON APRIL 19, 1960].

22 \* Sec. 11. AS 39.25.140(c) is repealed and reenacted to read:

23 (c) At least 30 days before the adoption, amendment, or repeal of  
24 a personnel rule, the secretary to the personnel board shall provide  
25 notice that the personnel board has the proposed action under considera-  
26 tion. The notice shall be

27 (1) posted in public buildings throughout the state;

28 (2) published in one or more newspapers of general circulation  
29 throughout the state;

1 (3) mailed to each person or group that filed a request for  
2 notice of proposed action with the secretary to the personnel board;

3 (4) furnished to each member of the legislature and to the  
4 Legislative Affairs Agency.

5 \* Sec. 12. AS 39.25.140(e) is amended to read:

6 (e) The rules adopted under this chapter relate to the internal  
7 management of state agencies and their adoption is not subject to the  
8 Administrative Procedure Act. The rules shall [MAY] be published in the  
9 Alaska Administrative Register and Code for informational purposes.

10 \* Sec. 13. AS 39.25.140 is amended by adding new subsections to read:

11 (f) Failure to mail notice to a person as required in this section  
12 does not invalidate an action taken by the personnel board.

13 (g) An amendment to the personnel rules takes effect 30 days after  
14 it is approved by the personnel board. The board, if requested to do  
15 so, may hold a public hearing on a proposed amendment.

16 \* Sec. 14. AS 39.25.150 is repealed and reenacted to read:

17 Sec. 39.25.150. SCOPE OF THE RULES. The personnel rules shall  
18 provide for

19 (1) the preparation, maintenance, and revision by the direc-  
20 tor of personnel, subject to approval of the commissioner of adminis-  
21 tration and the personnel board, of a position classification plan for  
22 all positions in the classified and partially exempt services; the  
23 position classification plan shall include

24 (A) a grouping together of all positions into classes on  
25 the basis of duties and responsibilities;

26 (B) an appropriate title, a description of the duties  
27 and responsibilities, training and experience qualifications, and  
28 other necessary specifications for each class of positions;

29 (2) the preparation, maintenance, revision and administration

1 by the director of personnel of a pay plan for all positions in the  
2 classified and partially exempt services; the pay plan (A) shall be  
3 based upon the position classification plan; (B) shall provide for fair  
4 and reasonable compensation for services rendered, and reflect the  
5 principle of like pay for like work; (C) may be amended, approved, or  
6 disapproved by the legislature in regular or special session; after the  
7 pay plan is in effect, a salary or wage payment may not be made to a  
8 state employee covered by the plan unless the payment is in accordance  
9 with this chapter and the rules adopted under this chapter or unless the  
10 payment is in accordance with a valid agreement entered into in accor-  
11 dance with AS 23.40;

12 (3) the use of employee selection methods, including open  
13 competitive examinations, when appropriate, that will fairly test the  
14 capacity and fitness of the person examined to discharge the duties of  
15 the class in which employment is sought;

16 (4) the establishment and maintenance of eligible lists for  
17 appointment and promotion providing the names of eligible candidates in  
18 order of their relative performance in the examinations;

19 (5) the procedure for certifying eligible candidates; the  
20 rule adopted under this paragraph may include procedures providing a  
21 preference for certifying local residents when appropriate;

22 (6) promotions from within the state service when there are  
23 qualified candidates in the state service; vacancies shall be filled by  
24 promotion whenever practicable and in the best interest of the state  
25 service and promotion shall be by competitive examination whenever  
26 possible; in considering promotions, applicants' qualifications, per-  
27 formance record, seniority, and conduct shall be evaluated;

28 (7) a period of probation not to exceed one year before an  
29 appointment to a position becomes permanent, except that a permanent

1 employee receiving a promotional appointment retains permanent status in  
2 the service and job class from which appointed for the duration of the  
3 probationary period and may be demoted to a former class without right  
4 of appeal, notwithstanding AS 39.25.170, but if the employee is dismissed  
5 from the service the appeal rights under AS 39.25.170 apply;

6 (8) nonpermanent and emergency appointments to positions in  
7 the state service in accordance with AS 39.25.195 - 39.25.200;

8 (9) provisional appointment without competitive examination  
9 when appropriate eligible lists are not available;

10 (10) transfers from one department to another and from another  
11 merit system jurisdiction to the state service;

12 (11) transfers from one area of the state to another;

13 (12) the reinstatement of a person who resigns in good stand-  
14 ing;

15 (13) layoffs for reason of lack of money or work, abolition  
16 of positions, or material changes in duties or organization; both  
17 performance and seniority records shall be considered in the develop-  
18 ment of layoff orders;

19 (14) the development, maintenance, and use of employee perfor-  
20 mance records;

21 (15) the establishment of disciplinary measures which may  
22 include disciplinary suspension without pay;

23 (16) the procedures for review of disputed personnel actions,  
24 for resolving employee and interagency grievances, and for resolving  
25 grievances of the general public concerning the operation of the state  
26 personnel system;

27 (17) hours of work for all employees in the state service;

28 (18) methods and procedures covering overtime work and  
29 pay;

1 (19) the granting of employment preference rights to a veteran  
2 not within the area of promotion, when the veteran possesses the neces-  
3 sary qualifications in the job classification applied for under this  
4 chapter; in an examination to determine the qualification of applicants  
5 for entrance into the classified service under merit system examination,  
6 five additional points shall be added to the passing grade of a veteran  
7 and ten additional points shall be added to the passing grade of a  
8 disabled veteran, but the additional points may be used only the first  
9 time the veteran obtains a position in the classified service; if a  
10 position in the classified service is eliminated, employees shall be  
11 released in accordance with rules which give due effect to all factors;  
12 if all job qualifications are equal, the veteran shall be given pref-  
13 erence over the nonveteran and the veteran shall be kept on the job;  
14 this paragraph may not be interpreted to amend the terms of a collective  
15 bargaining agreement; in this paragraph

16 (A) "veteran" means a person with 181 days or more  
17 active service in the armed forces of the United States who has  
18 been honorably discharged after having served during any period  
19 between April 6, 1917, and December 1, 1919, between September 16,  
20 1940, and December 31, 1947, or between June 27, 1950, and  
21 November 7, 1975;

22 (B) "disabled veteran" means a veteran who is entitled  
23 to compensation under laws administered by the United States  
24 Veterans' Administration, or a person who was honorably discharged  
25 or released from active duty because of a service-connected dis-  
26 ability;

27 (20) the employment of persons in permanent positions on a  
28 part-time basis of 15 hours or more a week, including the employment of  
29 two persons to fill one permanent full-time position; these employees

1 shall be designated as permanent part-time employees;

2 (21) the granting of employment preference to severely handi-  
3 capped persons; this includes the right to provisional appointment  
4 without competitive examination for periods up to four months and the  
5 granting of eligibility to a severely handicapped person provisionally  
6 appointed under the rules who demonstrates ability to perform the job  
7 for permanent appointment without competitive examination; provisional  
8 employment under this paragraph may not exceed four months during a  
9 12-month period; "severely handicapped" as used in this paragraph means  
10 persons certified by the director of the division of vocational reha-  
11 bilitation to be severely handicapped;

12 (22) the establishment of programs facilitating the employment  
13 of disadvantaged persons;

14 (23) the delegation, when feasible, of personnel responsibil-  
15 ities and duties to the principal departments of the executive branch;

16 (24) the establishment of a transition period of up to 12  
17 months for an employee to be reappointed to a classified position if the  
18 employee's position is withdrawn from the partially exempt or  
19 exempt service and placed in the classified service;

20 (25) other rules and administrative regulations, not incon-  
21 sistent with this chapter, which are necessary for its enforcement.

22 \* Sec. 15. AS 39.25.153 is repealed and reenacted to read:

23 Sec. 39.25.153. PERSONNEL OFFICERS. (a) If a principal depart-  
24 ment of the executive branch has a personnel officer, the personnel  
25 officer shall be employed by and located within that department.

26 (b) Subject to the provisions of (d) of this section, the per-  
27 sonnel officers for the Departments of Transportation and Public Facili-  
28 ties, Fish and Game, Education, Labor, and Health and Social Services,  
29 have the following powers with respect to the classes of positions

1 unique to their departments:

2 (1) to assign positions to an existing class in the state  
3 classification plan and to the salary range for that class as estab-  
4 lished by the state pay plan or by a valid agreement entered into in  
5 accordance with AS 23.40;

6 (2) to administer and score examinations and to place suc-  
7 cessful applicants on departmental eligible lists;

8 (3) to certify those eligible to the appointing authorities.

9 (c) The initial determination of classes of positions unique to  
10 the departments listed in (b) of this section shall be made by the  
11 personnel officer of the department in consultation with the commis-  
12 sioner of his department subject to the approval of the director of  
13 personnel in the Department of Administration.

14 (d) The assumption of a power set out in (b) of this section must  
15 be approved by the commissioner of administration and must be in harmony  
16 with the merit principle of personnel administration (AS 39.25.010).

17 \* Sec. 1b. AS 39.25.160 is repealed and reenacted to read:

18 Sec. 39.25.160. GENERALLY. (a) A classified employee may not  
19 take an active part in the management of a political party above the  
20 precinct level.

21 (b) A person may not give, render, pay, offer, solicit, or accept  
22 money, services, or other valuable thing in connection with securing or  
23 making an appointment, promotion, or advantage in a position in the  
24 classified service.

25 (c) A person may not require an assessment, subscription, contri-  
26 bution, or service for a political party from a state employee.

27 (d) A person may not seek or attempt to use a political party  
28 endorsement in connection with an appointment or promotion in the  
29 classified service.

1 (e) An employee in the classified or partially exempt service who  
2 seeks nomination or becomes a candidate for state or national elective  
3 political office shall immediately resign any position held in the  
4 state service. The employee's position becomes vacant on the date the  
5 employee files a declaration of candidacy for state or national elective  
6 office.

7 (f) Action affecting the employment status of a state employee or  
8 an applicant for state service, including appointment, promotion, demo-  
9 tion, suspension, or removal, may not be taken or withheld on the basis  
10 of unlawful discrimination due to race, religion, color, or national  
11 origin, age, handicap, sex, marital status, change in marital status,  
12 pregnancy, or parenthood. In addition, action affecting the employment  
13 status of an employee in the classified service, including appointment,  
14 promotion, demotion, suspension, or removal, may not be taken or with-  
15 held for a reason not related to merit.

16 (g) Action affecting the employment status of an employee in the  
17 classified service or an applicant for a position in the classified  
18 service, including appointment, promotion, demotion, suspension, or  
19 removal, may not be taken or withheld on the basis of unlawful discrim-  
20 ination due to political beliefs.

21 (h) A person may not knowingly make a false statement, certifi-  
22 cate, mark, rating, or report with regard to a test, certification, or  
23 appointment made under this chapter or in any manner commit a fraud  
24 preventing the impartial execution of this chapter and the personnel  
25 rules adopted under this chapter.

26 (i) A person may not obstruct the right of another person to  
27 examination, eligibility, certification, appointment, or promotion  
28 under this chapter.

29 \* Sec. 17. AS 39.25 is amended by adding a new section to read:

1           Sec. 39.25.175. PROCEDURE. (a) A subpoena shall be issued at  
2 the request of a party to a proceeding begun under AS 39.25.170.

3           (b) If a person refuses to respond to a subpoena issued under  
4 this section, or refuses to testify at a hearing authorized by AS 39.-  
5 25.170, the personnel board may apply to the superior court for an  
6 order requiring the person to respond to the subpoena or to testify.

7           (c) Failure to obey the order of the superior court requiring  
8 response to a subpoena or testimony at a hearing may be punished as  
9 contempt of court.

10 \* Sec. 18. AS 39.25 is amended by adding a new section to read:

11           Sec. 39.25.181. DEFINITIONS. In this chapter,

12           (1) "fraud" means for a person to knowingly

13               (A) create or confirm another's false impression which  
14 the person does not believe to be true, including false impres-  
15 sions as to law or value and false impressions as to intention or  
16 other state of mind;

17               (B) fail to correct another's false impression which  
18 the person previously has created or confirmed;

19               (C) prevent another from acquiring pertinent information;

20           (2) "knowingly" means for a person to be aware with respect  
21 to conduct or to a circumstance described by a provision of law that  
22 his conduct is of that nature or that the circumstance exists; when  
23 knowledge of the existence of a particular fact is required, that know-  
24 ledge is established if a person is aware of a substantial probability  
25 of its existence, unless he actually believes it does not exist;

26           (3) "precinct" means the territory within which resident  
27 voters may cast votes at one polling place;

28           (4) "state employee" means a person employed by the state  
29 who is paid a wage or salary, but does not include a person hired by

1 the state to work as an independent contractor or a person who is in  
2 the custody of the state.

3 \* Sec. 19. AS 39.25 is amended by adding a new section to article 6 to  
4 read:

5 Sec. 39.25.192. EMPLOYEE POLITICAL RIGHTS. A state employee may

6 (1) be a member of a national, state, or local political  
7 party;

8 (2) take part in a political campaign;

9 (3) express political opinions; however, while engaged on  
10 official business, a state employee may not display or distribute  
11 partisan political material;

12 (4) register party preference;

13 (5) serve as a voting or nonvoting delegate to a party con-  
14 vention;

15 (6) be appointed, nominated, or elected to nonpartisan  
16 public office in a local government unit; and

17 (7) make contributions to a political party or a candidate  
18 for public office.

19 \* Sec. 20. AS 39.25.180 is repealed.

20 \* Sec. 21. This Act takes effect July 1, 1982.