

Introduced: 1/21/91

IN THE HOUSE
Referred: Judiciary

IN THE SENATE
Referred: State Affairs, Finance

EXECUTIVE ORDER NO. 78

1 Under the authority of art. III, sec. 23, of the Alaska Constitution, and in accordance with
2 AS 24.08.210, I order the following:

3 * **Section 1. FINDINGS.** As governor, I find that it would be in the best interests of efficient
4 administration to transfer the office of equal employment opportunity from the Office of the Governor
5 to the Department of Administration.

6 * **Sec. 2.** AS 44.21.020 is amended by adding a new paragraph to read:

7 (14) administer the office of equal employment opportunity.

8 * **Sec. 3.** AS 44.21 is amended by adding new sections to read:

9 **ARTICLE 8. OFFICE OF EQUAL EMPLOYMENT OPPORTUNITY.**

10 **Sec. 44.21.500. OFFICE ESTABLISHED.** The office of equal employment opportunity
11 is established in the department.

12 **Sec. 44.21.501. POWERS AND DUTIES OF THE OFFICE.** (a) The office shall
13 administer the equal employment opportunity program for the executive branch of state
14 government to ensure compliance with AS 44.21.500 - 44.21.508 and shall

15 (1) assist state officials to carry out their equal employment opportunity
16 responsibilities, including promoting the recruitment, employment, training, and retention of
17 members of protected classes, and recommend solutions to any problems identified;

18 (2) train state managers and supervisors in their equal employment opportunity
19 and affirmative action responsibilities and offer orientation programs to employees to inform
20 them of their rights and responsibilities under AS 44.21.500 - 44.21.508

21 (3) monitor records of personnel actions, develop auditing and reporting systems
22 to acquire statistical information, and prepare federal and state reports concerning the composition
23 of the work force;

1 (4) prepare and submit the affirmative action plan for employment in the
2 executive branch of state government to the governor;

3 (5) prepare guidelines for the affirmative action programs of agencies and review,
4 audit and make recommendations concerning the programs;

5 (6) ensure that agencies comply with the affirmative action plan and with the
6 agency affirmative action program;

7 (7) implement standards by which performance evaluations of supervisors reflect
8 compliance with affirmative action plans and objectives, including the granting or denial of merit
9 increases;

10 (8) assist the division of labor relations in collective bargaining negotiations
11 between the state and employee bargaining organizations to ensure that each collective bargaining
12 agreement negotiated by the state ensures equal employment opportunity;

13 (9) file quarterly reports with the governor and the legislature concerning agency
14 compliance with and progress in its affirmative action program, the affirmative action plan, state
15 and federal equal employment opportunity laws and regulations;

16 (10) accept, investigate, and resolve complaints of discrimination from employees,
17 previous employees, or applicants for employment;

18 (11) serve as primary liaison between the executive branch and state and federal
19 agencies, minority and women's organizations, and community groups concerned with equal
20 employment opportunity; and

21 (12) prepare and submit an annual report to the governor and the legislature by
22 February 15 on the progress and problem areas in the equal employment opportunity program
23 and the implementation of the affirmative action plan.

24 (b) The office may

25 (1) recommend legislative or administrative action to the governor relating to
26 equal employment opportunity and affirmative action matters;

27 (2) require the purging of the records of a complaint of unlawful discrimination
28 from the personnel file of an employee who has filed a complaint of unlawful discrimination;

29 (3) forbid an agency to hire or promote employees based on a discriminatory
30 employment practice;

31 (4) require an agency to reverse a personnel action including a hiring decision if

1 it finds that the action was based on a discriminatory employment practice;

2 (5) require an agency to change its selection procedures if it finds that the
3 procedures violate state or federal laws prohibiting employment discrimination; and

4 (6) when there is reason to believe that an employee has violated this subsection,
5 require the agency to investigate and to impose discipline if the investigation reveals facts
6 warranting it.

7 (c) A collective bargaining agreement adopted under AS 23.40.070 - 23.40.260 (Public
8 Employment Relations Act) must be consistent with principles of equal employment opportunity
9 and affirmative actions. AS 44.21.500 - 44.21.508 supersede the provisions of AS 39.25 (State
10 Personnel Act).

11 Sec. 44.21.502. ADMINISTRATIVE REGULATIONS. The commissioner shall adopt
12 regulations under the Administrative Procedure Act (AS 44.62) to carry out the office's duties.

13 Sec. 44.21.503. AFFIRMATIVE ACTION PLAN. The department shall establish an
14 equal employment opportunity program and adopt annually an affirmative action plan for the
15 executive branch of state government. The plan remains in effect until the department establishes
16 a subsequent plan. The office shall work with each agency to enhance equal employment
17 opportunity.

18 Sec. 44.21.504. COMPLIANCE WITH AFFIRMATIVE ACTION PLAN. (a) Each
19 agency shall comply with the affirmative action plan. Each commissioner or executive head of
20 an agency shall adopt an affirmative action program to implement the plan within the agency.
21 At the request of the office, a state official shall report to the office about agency employment
22 practices and activities to implement and comply with the plan or program.

23 (b) When the office finds that an agency has violated the affirmative action plan or its
24 affirmative action program, the office may

25 (1) suspend the hiring authority of the agency; and

26 (2) impose mandatory affirmative action measures on the agency to bring the
27 agency into compliance.

28 Sec. 44.21.505. EMPLOYMENT DISCRIMINATION COMPLAINTS. (a) The office
29 shall accept complaints of employment discrimination in the executive branch of state
30 government and shall confer with the complainant and the agency involved to bring about an
31 informal resolution of complaint.

1 (b) An agency shall notify the office when the agency receives a complaint alleging
2 employment discrimination.

3 (c) The office may not make public the records of a complaint or investigation.

4 Sec. 44.21.506. RETALIATION PROHIBITED. (a) An agency, officer, or state
5 employee may not directly or indirectly refuse to hire, transfer or promote, or dismiss, demote,
6 suspend, lay off, or otherwise discipline a person for filing a complaint with the office for a
7 failure to comply with affirmative action or equal employment opportunity or for assisting the
8 office in an investigation of a complaint.

9 (b) A person who knowingly violates this section is liable for a civil penalty of not more
10 than \$1,000.

11 Sec. 44.21.507. ACCESS TO CONFIDENTIAL RECORDS. The office may have access
12 to all data, records, and reports necessary to carry out its functions under AS 44.21.500 -
13 44.21.508. The office may not make public information designated as confidential by AS
14 39.25.080 or another law. However, the office may make public statistical information compiled
15 from confidential records.

16 Sec. 44.21.508. DEFINITIONS. In AS 44.21.500 - 44.21.508,

17 (1) "agency" means a department, office, agency, public corporation, board,
18 commission, authority, or other organizational unit of the executive branch;

19 (2) "commissioner" means the commissioner of administration;

20 (3) "department" means the Department of Administration;

21 (4) "employment in the executive branch of state government" includes
22 employment as a permanent, probationary, provisional, nonpermanent, or temporary employee
23 in the classified, partially exempt, or exempt services in the executive branch of state
24 government;

25 (5) "member of a protected class" means a person protected by federal or state
26 laws that prohibit discrimination in employment or a person who experiences or has experienced
27 difficulty in obtaining employment or advancement in employment because of another factor not
28 related to merit;

29 (6) "office" means the office of equal employment opportunity in the department.

30 * Sec. 4. AS 44.19.441, 44.19.442, 44.19.443, 44.19.444, 44.19.445, 44.19.446, 44.19.447, 44.19.448,
31 and 44.19.449 are repealed.

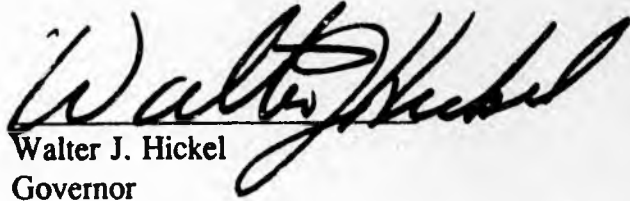
1 * Sec. 5. Transition. (a) Litigation, hearings, investigations, and other proceedings pending under
2 a law amended or repealed by this Order, or in connection with functions transferred by this Order,
3 continue in effect and may be continued and completed notwithstanding a transfer or amendment or
4 repeal provided for in this Order.

5 (b) Regulations adopted by the office of equal employment opportunity under authority of
6 AS 44.19.443 before March 23, 1991, remain in effect until regulations are adopted under AS 44.21.502
7 by the commissioner of administration, and take effect. The Department of Administration may enforce
8 the regulations adopted under AS 44.19.443 until its own take effect.

9 (c) Contracts, rights, liabilities, and obligations created by or under a law amended or repealed
10 by this Executive Order, and in effect on March 22, 1991, remain in effect notwithstanding this Order's
11 taking effect. Records, equipment, appropriations, and other property of agencies of the state whose
12 functions are transferred under this Order shall be transferred to implement the provisions of this Order.

13 * Sec. 6. This Order takes effect March 23, 1991.

14
15 DATED: 1-21-91

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17 
18 Walter J. Hickel
19 Governor