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AMERICAN ASSOCIATION
ALASKA



OF UNIVERSITY WOMEN
DIVISION

April 1981

To: Members of the Senate State Affairs
From: Susan R. Clark, Legislative Chair, Alaska Division of the
American Association of University Women
1109 C Street, Juneau, Alaska 99801 (586-6952)

Re: Veterans' Preference for State Employment (SB 193, SB 104)

I would like to begin first with an acknowledgement to Sen. Bradley, because I know that his hard work in this area has been done in good faith and out of a sincere concern for the welfare of those men and women who made personal sacrifices for the sake of our country's safety.

I also want to point out that I personally grew up in the military. My father, godfather, and father-in-law were all career officers in the armed services, and my husband and brother were both active in the military during the Vietnam war. I had planned at one time to make the Navy a career. I also want to point out that the new Alaska division president of A.A.U.W. is herself a veteran.

A.A.U.W. feels that we must bring to the attention of the legislature that while the goals of preference are legitimate, and while the current state statute may not have been enacted for the purpose of discriminating against women, the exclusionary impact upon women is so severe as to require the state to further its goals through a more limited form of preference.

Looking at the current law as too broad, please consider who is covered: a person with a minimum of 90 (181 is a change currently being proposed) days active service serving during World War I, World War II, and Vietnam or Korea who has been honorably discharged. According to the Veterans' Preference Act of 1944, such preference was designed to reward veterans for the sacrifice of military service, to ease the transition from military to civilian life, to encourage patriotic service, and to attract loyal and well disciplined people to civil service occupations. In terms of the last reason, it should be pointed out that preference itself has little if any relevance to actual job performance. The first two reasons for preference seem the most pertinent to Alaska - reward for sacrifice and ease of transition into civilian life. Both reasons are valid, but as lifetime preferences, they are subject to the objection that they give the veteran more than a square deal. Certainly, upon returning to civilian status, a veteran should have access to his or her job, and perhaps for 5 years or so after returning, preference could be given as reward and help for veterans, but there should be some sort of limit on the length of time one can reap rewards for what can be a brief and un Hazardous term of service.

Because the extent to which the status of veteran is one that few women have been permitted to achieve, every hiring preference for veterans, however modest or extreme, must admit inherent gender-bias, and therefore legislated preference must be considered with due caution and careful consideration. The 5 points for veterans and 10 points for disabled veterans comes directly from the 1944 Federal Veterans' Preference Act. These points are added to a veteran's score after other written tests are administered. In Alaska where mere hundreths of a single point can separate job applicants, the system is overly weighted, especially when compared with other handicapped, disadvantaged or suspect classes of people.

Conceding that the goal here is to benefit the veteran, there is no reason to absolve the legislature from awareness that the means chosen to achieve this goal reserves a major sector of public employment to an already established class, which, as a matter of historical fact, is already 80% male in categories other than the clerical and para-professional jobs. The current point system and lifetime preference, only compounds and contributes to sex bias in all levels of state employment.

Women have been overtly excluded from the military, and not just by tradition and culture. During WW I for example "a variety of proposals were made to enlist women for work in the Army as doctors, telephone operators, and clerks, but all were rejected by the War Dept." Navy women did achieve military rank and status during this time, and were the first women to do so. While the Army Nurse Corps was the first official military unit for women, they were not granted full military rank until 1944 - forty-three years later. During the Second World War several temporary women's units were formed including WAAC (Women's Army Auxiliary Corps), WAVES (Women Accepted for Voluntary Emergency Service), and WASP (Women Airforce Pilots). These women, however, were in fact civilians and had no regular military status, and thus no veteran status. In fact, although the WASP personnel were filling some of the most hazardous of flying jobs, that of towing targets for air gunnery practice, and testing planes fresh out of repair depots, they were denied commissions based on the fact that "the authority of the act of September 1941, to make temporary appointments as officers in the U.S. Army 'from among qualified persons' refers to and contemplates men exclusively, and may not be regarded as authority for commissioning women as officers...." These women finally won their hard earned veterans' status in September 1976, but other women who had been active in the war have not.

Women's services were finally established on a permanent basis in 1948, however quotas were placed on the numbers that could enlist. Women were not to exceed 2% of the total enlisted strength, their eligibility requirements were more stringent than were those for men, and career opportunities were also limited. In addition women were involuntarily removed from service for pregnancy, parenthood, and even marriage. These strictures have carried on into the '60's and '70's. Not until 1967 was the 2% quota lifted, and the many restrictive policies concerning women's participation in the military were not modified or eliminated until the 1970's. Amazingly, or perhaps not so, once the barriers were down women joined in large numbers.

In just three years from 1973-1975 the percentage of enlisted women in the military had doubled.

There are two ways to ameliorate the effects of the veterans' preference on women and minorities. One is to modify the point system and to place a time limit on preferential access to jobs. The other solution is to look to expanding what is considered by the word veteran, and thereby include in this law others who have served their country every bit as well and as patriotically as have those on "military active duty". Other states include language that recognizes nurses and other women who were discharged and so served in any "corps or unit of the United States established for the purpose of enabling women to serve with, or as auxiliary to, the armed forces of the United States..." Language should also recognize those who underwent severe hardship because of the war. In WW II both the Aleut Americans and the Japanese Americans were uprooted and forced into relocation camps. We have never rewarded their sacrifices with jobs or appeasements of any sort. In expanding the concept of who is a veteran, we need also to look at the men and women who served in civil defense jobs, with the American Red Cross, the Civil air patrol, as war correspondants, and in the merchant marine (who incidentally were in the same waters as navy destroyers and also under attack, but receive no reward in terms of their patriotism, personal sacrifice and danger).

Looking again at the contributions of women to the war effort, we are but slightly aware of the sacrifices and contributions of over 2 million World War II women who took the places of the absent men working in the American war industries: in shipyards, aircraft plants, ammunition plants. The call to "inlist" in the factories was every bit as organized and strong as for men in the armed forces. Concern about dangerous working conditions and long hours took a back seat to America's call to keep up the production to supply the war with weapons, and ammunition. For the short-handed women in the farm communities, the call was to get out the crops to feed the troops. If personal sacrifice, patriotism and danger is a standard for preference, then these women deserve veterans' status every bit as much as the service veterans. One amazing statistic of which you may be unaware is that during the war period "more deaths occurred from industrial accidents than from combat." Where was and is their reward? For their commitment and patriotism, they received not preferred lifetime access to civil service jobs, but firings. No one helped them with their transition back into "civilian" jobs. For many minority women who were even then the major financial support for their families, this transition meant leaving highly skilled, well paying jobs to go back to the dead end drudgery and poverty wages of domestic work.

It is interesting to note that the Federal Veterans' Preference Act of 1944 included in its preference the wives of disabled service personnel and the unmarried widows of deceased ex-service personnel. We tend to look at patriotic service and personal sacrifice as being a military male prerogative, but I feel we need to look hard at the patriotism and sacrifice of the service personnel spouses who held the country and family together as essentially single parents, frequently having to hold down another job to

support their families because the salary range for enlisted personnel in the military is so low that those families qualify for government assistance. Vietnam vets, in addition, currently have the highest divorce rate of any class of Americans, a rate that is generally high among all military personnel. This means, for example, that those women who held families together during the father's service, and who now must have full time employment to support themselves and their children (of whom women still usually have custody), who traditionally are not educated for well paying jobs, and who have traditionally been denied many levels of employment advancement, now in addition find that the men to whom they gave support are receiving preferential treatment in the jobs the women need to support their families.

As you can see, equitable expansion of the term veteran would be a formidable legislative task, but should be attempted so that families of veterans and those who served alongside veterans can be recognized. As it now stands, the Alaska statute exacts a substantial price from a group of individuals who have long been subject to employment discrimination, and who, because of circumstances totally beyond their control, have had little if any chance of becoming members of the preferred class. Admitting that any hiring preference for veterans does at this time have a severe impact on the public employment opportunities of women, we nevertheless recognize the sacrifice and hardship of military veterans must not be ignored. Through workable modifications in the law, we can strive together to discover solutions that recognize the needs, sacrifices, and contributions of both the military veteran groups and the groups of minorities and women which are so impacted by historical discrimination.



NATIONAL ORGANIZATION FOR WOMEN

Anchorage Chapter

P.O. Box 1722

Anchorage, Alaska 99510

March 24, 1981

Senator Vic Fisher
Senate Staff
Pouch V, State Capitol
Juneau, Alaska 99811

Dear Senator Fisher:

On behalf of the Anchorage Chapter of the National Organization for Women, we wish to comment on Senate Bill No. 193, Senate Bill No. 104, and Senate Bill No. 248.

Senate Bill No. 193 entitled: "An Act amending the State Personnel Act (A. 39.25); and providing for an effective date."

A proposed amendment, change in language page 14, line 22,

...after the word age,... strike "or",

...insert "marital status, changes in marital status,"

...continue with "handicap,"

...insert "or any other non-merit reason."

Proposed language would be (line 21) "...discrimination due to race, sex, color, religion, national origin, age, marital status, change in marital status, handicap, or any other non-merit reason." These changes would strengthen this non-discrimination statement. Employment status should not be inhibited by a persons marital situation or other reasons not effecting their work performance.

Senate Bill No. 248 is a good bill and will strengthen equal employment opportunities for both women and minorities within the executive branch. This bill has our support.

Senate Bill No. 104 is unacceptable. Historically veteran's preference legislation has proven to have a negative impact on women in the job market. The variation in numbers of women who qualify for veteran's benefits as compared to the numbers of men is an inhibiting factor to equal employment opportunities for women.

Your consideration of these comments is appreciated.

Sincerely,

Madeline G. Holdorf
President

cc: Labor Committee
Anchorage Chapter, National
Organization for Women

FISCAL NOTE

A. Dale G. York

I. REQUEST

Bill/Resolution No. SB 193 Page 1 of 4
 Title An Act amending the State Personnel Act (AS 39.25)
 Requested by Rules Committee (for the Blue Ribbon Commission) Date 02-20-81

II. FISCAL DETAIL

Agency Affected Administration
 Program Category Affected General Government
 BRU, Program, or Subprogram(s) Affected Personnel
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES		56.4	62.1	68.3	75.1	82.6
200 TRAVEL		.7	.8	.9	1.0	1.1
300 CONTRACTUAL		6.4	7.0	7.7	8.5	9.4
400 COMMODITIES		6.0	.9	1.0	1.1	1.2
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		69.5	70.8	77.9	85.9	94.3

FUNDING (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
GENERAL FUND		69.5	70.8	77.9	85.9	94.3
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
FULL TIME		2	2	2	2	2
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Personal Services: A Regulations Specialist II and a Clerk II will be needed to fulfill the requirements of the Administrative Procedures Act.

Travel was inflated at a rate of 12 per cent. All other factors were inflated at a rate of 10 per cent. FY 82 contains one time furnishing costs in commodities.

The cost of the Hearing Officer and Legal Notices will be sustained by the Personnel Board Budget.

IV. DATE March 12, 1981

PREPARED BY Bruce Cummins
 AGENCY Division of Personnel
 PHONE 465-4430

Original: Legislative Finance
 Budget and Management
 Public Sponsor (First Legislator Named) Senator Pay
 cc: Keith Specking (Office of the Governor)

Bruce Cummins

1	POSITION TITLE Regulations Specialist II			RANGE/STEP 16 A	DEPT. UNIT. K	LOCATION Juneau	GOV.	APPROV.	DIS/APP.
2	TYPE OF POSITION PFT	STAFF MONTHS 12	RP No.	PCN No.	PRIORITY	FORM 12	PAGE/LINE	LEG.	

3	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
4	PERSONAL SERVICES:		
	SALARY	2,291 per mo.	27,492
5	BENEFITS	15.79 %	4,341
6	FICA	6.13 %	1,685
7	HEALTH INS.	150 per mo.	1,800
8	TOTAL PERSONAL SERVICES		35,318
9	TRAVEL		700
10	CONTRACTUAL		3,200
11	COMMODITIES		3,000
12	EQUIPMENT		
13	OTHER		
14	TOTAL COST		42,218

JUSTIFICATION:

To properly implement Senate Bill 193, as it has been presented, will require the services of a Regulation Specialist II.

The Regulation Specialist II will assist the Director of Personnel in the proper preparation and drafting of new or revised regulations under the Admin. Proc. Act.

	CODE	FUNDING SOURCE	
15		FED RCPTS	
16		GF MATCH.	
17		GEN. FUND	42,218
18		J. A. RCPTS	
19		PGM RCPTS	
20		OTHER	

21	CONTINUATION		FOR B&M USE ONLY
22	ADDITION		

4A KEY NUMBER _____ COLUMN NO. _____

AGENCY Administration PROGRAM Centralized Administrative Services

BRU Personnel

COMPONENT Personnel

13 REQUEST FOR NEW POSITION.

FY 82

1	POSITION TITLE Clerk II	RANGE/STEP 7 A	BARG. UNIT. K	LOCATION Juneau	GOV	APPROV.	DISAPP.
2	TYPE OF POSITION PFT	STAFF MONTHS 12	RP No.	PCN No.	PRIORITY	FORM 12 PAGE/LINE	LEG.

3	TYPE OF EXPENDITURE	AMOUNT
	1	2
4	PERSONAL SERVICES:	
5	SALARY 1,319 per mo.	15,828
6	BENEFITS 15.79 %	2,500
7	FICA 6.13 %	970
8	HEALTH INS. 150 per mo.	1,800
9	TOTAL PERSONAL SERVICES	21,098
10	TRAVEL	
11	CONTRACTUAL	3,200
12	COMMODITIES	3,000
13	EQUIPMENT	
14	OTHER	
14	TOTAL COST	27,298

JUSTIFICATION:

To properly implement Senate Bill 193, as it has been presented, will require the services of a Clerk I. The Clerk I will assist the Regulation Specialist II in the proper distribution of the proposals and in the technical requirements.

	CODE	FUNDING SOURCE
15		FED RCPTS. 1002
16		GF MATCH. 1003
17		GEN. FUND 1001
18		I-A RCPTS. 1005
19		PGM RCPTS 1004
20		OTHER

21	CONTINUATION	FOR B&M USE ONLY
22	ADDITION	

4A Key NUMBER _____ COLUMN NO. _____

AGENCY Administration PROGRAM Centralized Administrative Services

BRU Personnel

COMPONENT Personnel

13 REQUEST FOR NEW POSITION.

FY 82

I. REQUEST

BILL/Resolution No. SB 193 Page 4 of 4

Title An Act amending the State Personnel Act

Requested by _____ Date _____

II. FISCAL DETAIL

Agency Affected Administration

Program Category Affected General Government

BRU, Program, or Subprogram(s) Affected Labor Relations Agency (Personnel Board)

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		17.0	18.7	20.6	22.6	24.9
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		17.0	18.7	20.6	22.6	24.9

FUNDING (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
GENERAL FUND		17.0	18.7	20.6	22.6	24.9
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Above costs assume costs of \$75/hour for a hearing Officer and a total of 120 hours; \$500/month for contracted secretarial services and 2.0 publications costs. Inflation beyond FY 82 is calculated at 10%.

IV. DATE 03-06-81

PREPARED BY Judy Cronahel

AGENCY Administration

PHONE 455-227

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor: (First Legislator Named)

Senator Ray

33-00: 12-12-80
Re: [unclear]

April 6, 1981

Senator Jalmar Kertulla
Pouch V
Juneau, Ak 99811

Dear Senator:

We recently found that Senate Bill 193 includes a section 8 that repeals and re-enacts A.S. 39.25.110, but deleted "teachers employed by the state to teach in schools operated by the state." This may have been due to an oversight that the teachers of the Alaska Skill Center and the Correspondence Study Teachers are still included in this category. Several individuals (Terry Cameron, Bruce Cummings, Bob Manners and Jerry Hiley) have testified that the exemption from the classified service remain in effect, and we agree. Would you please keep an eye on this and inform us of any action or further hearings on this bill?

Thank you.

Sincerely yours,

Al Lamberson, Sec-Treas.

for Ben Ikerd, President
Alaska Skill Center Teachers Association

c.c. Boohe:
Hiley
Bill Ray, Chairman
Blue Ribbon Commission on the State
Personnel Act
Ikerd
Sen. V. Fisher, Chairman
Senate State Affairs Committee



JUNEAU, ALASKA

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT
Pouch AG/Mail Stop 0123
Juneau, Alaska 99811
(907) 465-4442

Senator Bill Ray
Chairman

MEMORANDUM

March 31, 1981

TO: Members of the Senate State Affairs Committee

FROM: Teresa B. Cramer *TBC*
Administrative Assistant

SUBJECT: SB 193 - Amending the State Personnel Act

Senate Bill 193 makes a comprehensive revision of the State Personnel Act, to change personnel practices, to expand the protections granted employees in the exempt and partially exempt services, and to make the Act consistent with the Public Employment Relations Act. The major changes made in the bill are noted below:

Section 6. Amending AS 39.25.080. PUBLIC RECORDS.

This section amends the current law to provide that only those personnel records listed are available for public inspection. In fact, the materials listed are those which are presently made available under existing law for public inspection. The law now states that except for those materials made confidential by the Personnel Rules, state personnel records are public.

Section 8. Amending AS 39.25.110. EXEMPT SERVICE.

The bill deletes the material in the existing paragraph (8) which states that "certificated teachers employed by the state to teach in schools operated by the state" are in the exempt service. After being advised by the Personnel Office of the Department of Education that there were no employees of schools operated by the state, the commission deleted the paragraph. In fact, there are employees considered to fall within this group. They are employed as correspondence study teachers in Juneau and in the Alaska Skills Center in Seward. The commission has not had an opportunity to consider whether it wishes to change its initial action of deleting paragraph (8).

Section 9. Amending AS 39.25.120. PARTIALLY EXEMPT SERVICE.

Paragraph (19) of this section of the bill adds a group of employees to the partially exempt service who are presently members of the classified service but do not participate in collective bargaining. These are the employees of the Division of Labor Relations within the Department of Administration who are responsible for representing the state in collective bargaining. The majority of the commission recommends that these employees be placed in the partially exempt service in order to insure that they are directly responsive to the policies of the administration.

Section 12. Amending AS 39.25.140. AMENDMENT OF PERSONNEL RULES.

The bill proposes that those Personnel Rules which fall within areas of concern to the public be required to be adopted in accordance with the Administrative Procedures Act to insure an opportunity for public comment. All of the Personnel Rules are presently exempt from the requirements of the APA.

Section 13. Amending AS 39.25.150. SCOPE OF THE RULES.

Paragraph (16) of the bill no longer sets a limit of 30 days for disciplinary suspension.

Paragraph (17) of the bill provides that the Personnel Rules shall include procedures for resolving disputes from the general public.

Paragraph (23) of the bill is added to permit the adoption of Rules relating to special employment programs for the disadvantaged.

Section 14. Amending AS 39.25.153. PERSONNEL OFFICERS.

Subsection (a) provides that all personnel officers shall be employees of the department in which they serve.

Subsection (b) amends the powers granted to the personnel officers listed in the statute.

Section 15. Amending AS 39.25.160. GENERALLY.

Subsection (c) extends protection from being required to make contributions to a political party to all employees. The existing

Memo to Senate State Affairs Committee
March 31, 1981
Page Three

subsection applies only to those employed in the classified service.

Subsection (e) adds a requirement that members of the partially exempt service resign from state employment when seeking political office.

Subsection (f) extends protection from unlawful discrimination to all state employees, not merely to members of the classified service.

Section 17. Amending AS 39.25.170. HEARINGS AND APPEALS UPON DISMISSAL, DEMOTION, OR SUSPENSION.

Subsections (c) and (i) repeat the expanded coverage from unlawful discrimination which was granted in AS 39.25.160(f).

TBC:lmk



NEA - ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

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March 27, 1981

TO: Senator Vic Fischer, Chair
Senate State Affairs Committee

FROM: NEA-Alaska

MEMORANDUM: SB 193

Regards Section 39.25.110, EXEMPT SERVICE, the changes therein no longer provide that "(8) certificated teachers employed by the State to teach in schools operated by the State" be included in this section.

We respectfully request that the State Affairs Committee amend SB 193 to include in Section 39.25.110 the group referred to in #8 above, or more specifically, the teachers of the Centralized Correspondence Study Program of the Department of Education.

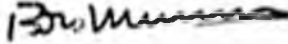
Exclusion at this time from exempt service status may have the effect of disenfranchising this group of employees of the State of Alaska from their statutory rights under 23.40, the Public Employees Relations Act, to organize and negotiate their terms and conditions of employment.

For nearly two years the Correspondence Teachers have been trying to establish their rights to collective bargaining through the State Labor Relations Agency. This effort has been expensive, time-consuming, and, at many times, extremely frustrating.

On 19 December 1980 the Agency, in Order and Decision 56B determined that the Correspondence Teachers did in fact have the right to organize and negotiate their terms and conditions of employment under 23.40. Since part of the rationale for this Decision and Order centered on the fact that Correspondence Teachers enjoyed exempt status, our concern is that exclusion at this time may serve to confuse the issue and possibly deprive them of rights under the Act.

Thank you for your attention and consideration to this matter.

Respectfully submitted:


Robert Manners
Executive Secretary

RM:jw



ALASKA PUBLIC EMPLOYEES ASSOCIATION

State Headquarters: 340 North Franklin Street, Juneau, Alaska 99801 • Tel: (907) 586-2334

MEMORANDUM

To: Nancy Groszek, A.A.
State Affairs Committee

From: Cherie Shelley
Executive Director

Subject: SB 193, Section 12

Date: April 3, 1981

The above-referenced provision requires that proposed changes in the personnel rules be submitted by the director of personnel to the Commissioner of Administration, who then forwards the approved changes to the personnel board for further action. If a proposed amendment concerns "matters of public policy," it is then subject to the review procedures of the Administrative Procedure Act.

As an initial matter it is worth noting that very few state employees are still subject to the personnel rules, as they have in large part been superseded by collective bargaining agreements. It seems a waste of time and expense to require the personnel board to comply with the detailed and time-consuming demands of the Administrative Procedure Act for changing rules that affect only the handful of employees not represented by a labor organization.

Of more serious concern is the potential for disruption contained in paragraph (f) of section 12, listing some examples of "matters of public policy." A quick review of the items listed reveals that many of them are already addressed through collective bargaining. However, by labeling them "matters of public policy," a very real possibility of conflict between this provision and the law giving public employees the right to bargain collectively is created.

The legislature extended the right to organize for purposes of bargaining collectively to public employees at AS 23.40. et seq. Public employers are also given the corresponding obligation to negotiate with and enter into agreements with those organizations representing employees "on matters of wages, hours, and other terms and conditions of employment." AS 23.40.070(2).

The phrase "terms and conditions of employment" is defined at AS 23.40.250(7) as meaning "the hours of employment, the compensation and fringe benefits, and the employer's personnel policies affecting the working conditions of the employees; but does not mean the general policies describing the function and purposes of a public employer."

There is a substantial danger that the above quoted language barring negotiations over general policies relating to the function and purposes of the employer will be read to mean those things designated in the proposed legislation as "matters of public policy." This follows from the tendency to equate "public policy" matters with those things for which collective bargaining is prohibited as not properly the subject of negotiatic such an interpretation would immediately remove eligibilit hours of work and merit increases from the arena of collective bargaining, with the possibility that other terms and conditions of employment would also be held to be "matters of public policy" and therefore not subject to negotiation.

This result is obviously contrary to the intent of the Public Employment Relations Act, but the fact remains that an ambiguity is created by the reference to "public policy." So long as the application of this phrase in the proposed legislation is limited to the context in which it appears, i.e., the personnel rules, nothing beyond the apparent intent of the bill will follow.

It seems that an additional subparagraph or change in wording to the effect that the application of the "public policy" test is limited only to this provision would be in order. This would guarantee that no unexpected and unintended amendment of PERA occurs through an improper application of this legislation should it pass.



Ombudsman

Frank Flavin

State of Alaska

Reply to:

- 840 K Street, Room 203
Anchorage, Alaska 99501
(907) 276-4011
- Pouch W0
Juneau, Alaska 99811
(907) 465-4970
- P.O. Box 74358
Fairbanks, Alaska 99707
(907) 452-4001

MEMO

DATE: May 14, 1981
TO: Senate State Affairs Committee
FROM: Frank Flavin, Ombudsman
RE: Proposed CS for Senate Bill 193

Proposed Amendment:

In section 39.25.140 at page 8, line 3 of the proposed CS insert subsection (d) of Sec. 39.25.140 of the original SB 193 found at page 8 lines 6 through 8. This subsection to become subsection (c) in the proposed CS to read:

(c) If the proposed amendments concern matters of public policy, the personnel board shall adopt them in accordance with the Administrative Procedure Act (AS 44.62).

The present subsection (c) at page 8 line 3 of proposed CS should become subsection (d) and read:

(d) If the proposed amendments relate only to internal management of the state agencies [when the proposed amendments are submitted to the personnel board,] the commissioner of administration shall post notice in public buildings throughout the state that the personnel board has the proposed amendments under consideration. The notice required by this subsection shall be posted at least 30 days before any decision is made to amend the personnel rules and shall include an address for the receipt of written comments.

Subsections (d), (e), (f) and (g) should be respectively relabeled as subsections (e), (f), (g) and (h).

BASIS

As drafted, Sec. 34.25.140 of the proposed CS presumes that amendment of personnel rules is a matter of concern only to state employees and management. In fact, many procedures, such as recruitment, examination, selection methods and eligible lists directly impact members of the general public. It is safe to say there are as many people who would like to be state employees as those who are. We receive many complaints concerning state hiring practices. The Administrative Procedures Act is the established vehicle for insuring participation by members of the general public.

OVERVIEW OF THE EFFECT OF COLLECTIVE BARGAINING
ON THE
STATE PERSONNEL ACT AND THE PERSONNEL RULES

Prepared by:

Lori Peterson

Edited by:

Teresa B. Cramer

Senator Bill Ray, Chairman
Blue Ribbon Commission on the
State Personnel Act

August 1979

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	CLASSIFICATION.....	2
	A. Statute.....	2
	B. Personnel Rules.....	2
	C. Collective Bargaining Contracts.....	2
	D. Summary.....	3
III.	RECRUITMENT, EXAMINATION AND ELIGIBLE LISTS.....	4
	A. Statutes.....	4
	B. Personnel Rules.....	4
	C. Collective Bargaining Contracts.....	5
	D. Summary.....	6
IV.	TEMPORARY, EMERGENCY, PROVISIONAL AND PART-TIME APPOINTMENTS.....	7
	A. Statutes.....	7
	B. Personnel Rules.....	7
	C. New Legislation.....	8
	D. Collective Bargaining Contracts.....	8
	E. Summary.....	9
V.	PROBATIONARY PERIODS.....	10
	A. Statutes.....	10
	B. Personnel Rules.....	10
	C. Collective Bargaining Contracts.....	11
	D. Summary.....	12
VI.	TRAINING.....	13
	A. Personnel Rules and Statutes.....	13
	B. Collective Bargaining Contracts.....	13
	C. Summary.....	14
VII.	TRANSFERS.....	14
	A. Statutes.....	14
	B. Personnel Rules.....	15
	C. Collective Bargaining Contracts.....	15
	D. Summary.....	16
VIII.	PROMOTIONS.....	16
	A. Statutes.....	16
	B. Personnel Rules.....	16
	C. Collective Bargaining Contracts.....	17
	D. Summary.....	18
IX.	MERIT INCREASES.....	18
	A. Personnel Rules and Statutes.....	18
	B. Collective Bargaining Contracts.....	18
	C. Summary.....	19

TABLE OF CONTENTS (cont.)

X.	LAYOFFS.....	19
	A. Statutes.....	19
	B. Personnel Rules.....	20
	C. Collective Bargaining Contracts.....	20
	D. Summary.....	21
XI.	SUSPENSION, DEMOTION AND DISMISSAL.....	21
	A. Statutes.....	21
	B. Personnel Rules.....	21
	C. Collective Bargaining Contracts.....	22
	D. Summary.....	24
XII.	HEARINGS AND APPEALS.....	24
	A. Statutes.....	24
	B. Personnel Rules.....	25
	C. Collective Bargaining Contracts.....	26
	D. Summary.....	27
XIII.	HOURS OF WORK.....	27
	A. Statutes.....	27
	B. Personnel Rules.....	28
	C. Collective Bargaining Contracts.....	28
	D. Summary.....	30
XIV.	PAY.....	30
	A. Personnel Rules and Statutes.....	30
	B. Collective Bargaining Contracts.....	31
	C. Summary.....	32
XV.	CONCLUSION.....	32
	A. Miscellaneous Contract Provisions.....	33

I. INTRODUCTION

The purpose of this overview is to summarize the effect of collective bargaining on the Personnel Act (AS 39.25) and the Personnel Rules and, as space permits, to identify the different systems for handling personnel procedures established by the contracts considered. This is a topical presentation of the Personnel Act, the Rules and five of the eight collective bargaining contracts covering Alaska's public employees during 1979. No attempt is made to investigate the application of the contracts: The study is limited to summarization of actual contract terminology.

The five contracts studied represent a variety of union memberships and interests: APEA's General Government Unit (GGU) represents non-supervisory members; APEA's Supervisory Unit represents supervisory and managerial members; Confidential Employees Association (CEA) represents members employed in personnel departments; Local 71 represents members belonging to the labor, trades and crafts professions; and Public Safety Employees Association (PSEA) represents regularly commissioned public safety officers.

Because marine employees are classified as exempt and are therefore excluded from the provisions set forth in the Personnel Act (AS 39.25.110(12)) and the Personnel Rules, they have not been considered here. The Inland-boatmen's Union of the Pacific (IBU), the International Order of Masters, Mates and Pilots (MMP) and the Marine Engineers Beneficial Association (MEBA) negotiate with the state on wages, hours, working conditions and other employee benefits covering marine transportation employees engaged in the operation of the state ferry system. AS 23.40.040.

Each of the collective bargaining contracts reviewed here contains a clause committing the union and the state to strengthening merit principles in the bargaining unit and to use all due diligence in maintaining merit principles among public employees. Each contract also contains a statement that the terms of the contract take precedence over personnel rules and departmental operating procedures. One of the contracts provides that if the terms of the contract conflict with the law, the contract supersedes the provision of the law. Additionally, the contracts provide that the parties will renegotiate if any portion of the contract is declared invalid and that the remaining parts of the contract should be considered valid.

There are two Local 71 contract versions, one printed by the state and one by the union. There are no substantive differences between the two, although articles and sections are numbered differently. All citations noted herein are from the union version.

II. CLASSIFICATION

A. Statute:

Sec. 39.25.150. Scope of rules. The personnel rules shall provide for (1) the preparation, maintenance, and revision by the director of personnel...of a position classification plan for all positions in the classified and partially exempt services;

B. Personnel Rules

Actual allocations of positions to job classifications are handled by the Director of the Division of Personnel with assistance from the appointing authorities. This necessitates budgeting prior to the completion of classification actions and certification of the availability of funds by the Director of the Division of Budget and Management. PR 204.5. Periodically, classification allocations in both the classified and partially exempt service are to be systematically reviewed by the Director, and appropriate adjustments are to be made in accordance with findings. PR 2.

C. Collective Bargaining Contracts

All collective bargaining contracts representing employees in the state service recognize the classification, development, modification and assignment of positions to various classifications as a management prerogative. The contract terms on this topic are limited, in most instances, to requirements that job descriptions be updated periodically, and to the enumeration of the classifications within each union.

General Government Unit

The GGU contract provides that the union may require the employing department to prepare an updated position description when it believes the duties and responsibilities of an employee's position description are inconsistent with the employee's assigned duties. The union may then request the department to order a job audit by the Chief of the Classification and Pay Section of the Division of Personnel. If the union believes inequities exist in a class series, between classes or in salary ranges assigned classes, it may notify the Chief of Classification and Pay, who must then respond. In either case, the union may appeal any findings of the Chief of Classification and Pay to the Director of Personnel and then to the Commissioner of Administration. Art. 19.

Supervisory Unit

In the SU contract, disputes or grievances relating to classification are apparently subject to grievance procedures outlined in Article 10, which state that any dispute arising between the unit or an employee and the state is to be settled by the methods outlined in that article. The contract does not otherwise address the topic of classification.

Local 71

Local 71's contract states that the state and the union agree to review all existing classification specifications and descriptions within the union's purview and to take any classification or reclassification action necessary to correct errors. A procedure is set forth for handling disputes on such matters. The Commissioner of Administration is responsible for initiating investigations on classification actions disputed by the union. If the Commissioner of Administration and the union cannot resolve an issue regarding classification, then an arbitrator may be called in for a final binding decision. The arbitrator has authority to establish a new wage rate or classification only for positions in which new types of equipment or operations for which rates of pay have not been previously established are the subject of the dispute.

Confidential Unit

The CEA contract has no provisions addressing the classification process. Any disagreement or dispute regarding classification could conceivably be filed in accordance with grievance procedures set out in the contract. Art. 13.

Public Safety Unit

The PSEA contract enumerates classifications within the union by title and salary range (Art. 15), and grievances regarding classification resulting from violations of the personnel rules or the operating procedures manual can be brought before the Commissioner of Administration. Grievances involving contract terms may be brought to binding arbitration. Art. 10(1).

D. Summary

Of all the contracts studied, Local 71's appears to establish the most involvement in the state's classification system. Only Local 71's contract requires a classification study of positions within the union and provides a separate procedure for resolving classification disputes.

The membership of CEA and SU have the most knowledge of, and in the normal scope of their responsibilities, the most control over classification procedures. Confidential employees in the normal course of their functions handle all classification actions for their departments and are therefore less likely to encounter problems on their own behalf. Similarly, supervisors work closely with the classification plan and are more familiar with its implementation. Conversely, GCU, Local 71 and PSEA members are isolated from the actual classification processes and consequently have less ability to influence classification decisions.

III. RECRUITMENT, EXAMINATION AND ELIGIBLE LISTS

A. Statutes

The Personnel Act states that, in accordance with the merit principle of employing the best qualified persons for state service, the personnel rules shall provide for "the use of sound selection methods, including open competitive examinations...for positions in state service". AS 39.25.150(3). The rules shall also provide for:

the establishment and maintenance of eligible lists for appointment and promotion; the names of eligible candidates shall be placed on eligible lists in order of their relative performance in the examinations. AS 39.25.150(5).

The statutes provide for a veteran's preference system (AS 39.25.150(23)), employment preference for the severely handicapped (AS 39.25.150(25)), and a vocational substitution program for Alaskan residents who live in underemployed or remote areas of the state where opportunities to gain hiring qualifications do not exist (AS 39.25.155).

B. Personnel Rules

The Director of the Division of Personnel is responsible for recruitment of qualified applicants for the classified and partially exempt service. PR 3 01.0.

There are three types of examinations used by the state: continuous examinations, with no closing date for receipt of applications; specific examinations, which do have a time limit on receipt of applications; and promotional examinations, which are only open to permanent employees. PR 3 01.0. The final examination grade may be based on all factors of the examination, including test results, educational requirements, experience and other data from the applicant or other verified information. PR 3 05.1. The performance record and seniority of a permanent employee in the classified service applying for promotion is also evaluated. PR 3 05.2.

Applicants may review tests, except those used for a continuous recruitment class and other information used in the applicant's final rating except information gained as a result of confidential inquiries. PR 3 06.0.

All eligible lists must be by class title, with eligibles ranked following competitive tests and performance ratings. All lists are applicable statewide, unless otherwise designated by the Director, and all vacancies are filled by certification from competitive eligible lists except as otherwise provided in the rules. PR 4 01.0.

The Director is responsible for the certification of such lists for filling vacancies within the classified and partially exempt services. Emergency appointments are an exception to this rule. Eligibles for permanent positions are first to be certified from layoff lists, and if none exist, the Director certifies from competitive eligible lists. Appointments are made on the basis of merit from the selection of the highest on the list in accordance with the duties of the position. Selection is made from the top five available eligibles on competitive lists, and can include eligibles on rehire lists. In unique and unusual circumstances, the appointing authority can choose an applicant below the top five. PR 5.

C. Collective Bargaining Contracts

The contracts examined in this study, with the exception of Local 71's, recognize recruitment, examination, selection, promotions, transfers and the determination of methods for such action as a management prerogative.

General Government Unit

When a member applies for a position within the GGU contract's jurisdiction, the applicant is required to receive notification of her or his eligibility for a competitive examination. If the Division of Personnel finds that an applicant fails to meet the test and examination standards for the position, the unit can receive an explanation of the criteria used in the computation of the final rating on training and experience. Art. 18(9). If a written examination is found to have discriminatory impact on members, the unit and the Deputy Director of the Division of Personnel agree to appoint an advisor to review the examination(s) in question and to make recommendations for corrective action. If the GGU and the Deputy Director cannot reach an agreement on the advisor's recommendations, the matter is referred to the Director for final disposition. Art. 18(10).

The GGU contract also requires that explanation be provided to the union from the Division of Personnel when a member is refused certification on an eligible list. Employees are not required to seek the approval of their supervisors when requesting placement on transfer lists. Art. 18(1).

Supervisory Unit

The SU contract also requires explanation from the Division of Personnel when a member is refused certification on an eligible list. Supervisors cannot remove names of employees from eligible or transfer lists, and placement on transfer lists does not necessitate the approval of a supervisor. Art. 16(1).

The contract does not contain any direct reference to the recruitment and examination processes, but does agree to uphold the merit principle of encouraging the hire of the most qualified. Art. 4.

Public Safety Unit

PSEA's contract stipulates that the merit principle of selecting the most qualified will be upheld. Art. 5. There is no specific mention of the topic of eligible lists in PSEA's contract.

Confidential Unit

CEA's contract requires that employees receive written explanation in instances where they are refused certification on eligible lists or are removed from lists. Placement of an employee's name on a transfer list does not necessitate a supervisor's approval. Art. 12(1). CEA's contract requires that vacancies be filled first from layoff lists, and if none exist, from promotional lists. This serves to give applicants who are current members of the union or previous members preference over applicants from outside the union's jurisdiction. Art. 12(4).

Local 71

Preferential hiring facilities are provided for within the Local 71 contract for the purpose of operating a job referral system, which the state uses in acquiring employees for classifications within the union's purview. A joint hiring committee of two state representatives and two union representatives is established contractually to oversee and control the job referral system, to establish rules and regulations for maintaining the system and to hear grievances, or in the case of a deadlock, to employ an impartial umpire to make a final binding decision. Local 71's contract stipulates that selection of applicants for certification to the state is not discriminatory and that preference is given to residents of Alaska and residents within the immediate vicinity of available positions. The state maintains the right to reject applicants referred by Local 71, but must supply reason(s) for rejection of applicants. In the event that Local 71 cannot supply a qualified applicant upon the state's request within 48 hours, the state may hire from any other source, provided Local 71 is notified of the action. Art. 5.

Because of federal regulations and merit system standards, Occupational Safety Compliance Officers have been exempted from the job referral system and are subject to the testing and examination process used by the state. Art. 43(1).

D. Summary

Collective bargaining appears to have no significant impact on the state's recruitment and examination processes. However, Local 71's job referral system does replace the state's system with an alternative

practice. Federal and statutory mandates of hiring the best qualified are upheld by all of the unions considered in this study.

IV. TEMPORARY, EMERGENCY, PROVISIONAL & PART TIME APPOINTMENTS

A. Statutes

The Personnel Act provides for the existence of emergency, temporary, provisional and permanent part-time appointments in the personnel rules. Temporary appointments are defined by statute as those of a seasonal or temporary nature, and provisional appointments as those occurring without competitive examination when appropriate eligible lists are not available. AS 39.25.150(8),(9) and (10). Permanent part time appointments are defined as employment on the basis of 15 hours or more a week, including employment of two persons to fill one permanent full-time position. AS 39.25.150(24).

B. Personnel Rules

The personnel rules define more clearly the extent of the appointments and their limitations. Temporary appointments are not to exceed six months in duration and are to be made from eligible lists when practicable. The Director of the Division of Personnel may grant extensions to this time limit, and temporary employees may seek employment in other departments immediately following the expiration of this term, but not with the same employing department. PR 5 06.0. The rules also create short term appointments, which are not to exceed 90 days in any one calendar year and may be made for positions in remote areas only. PR 5 06.1.

Emergency appointments are limited to 30 days in duration with no more than three appointments per person in any one calendar year. An emergency is defined as a condition necessitating immediate action to provide work in the public interest, and as filling a need that could not be anticipated. Exception to the limit of three appointments per person in one year is made for guards or attendants for prisoners. PR 5 07.0.

Provisional appointments may be authorized by the Director in the absence of appropriate eligible lists. A provisional employee must be terminated upon the expiration of the probationary period of a regular permanent appointment or the subsequent appointment from an appropriate eligible list. A provisional employee may be converted to probationary status, provided the employee meets the qualifications specified by the Director and is placed on an eligible list in a position that is reachable for appointment. PR 5 08.0.

C. New Legislation

Effective as of January 1, 1980, reference to temporary appointments will be eliminated from the statutes in accordance with new legislation on nonpermanent hire. The following is a summary of Chapter 67, SLA 1979:

State Employees

Categorizes all classified state employees as permanent, non-permanent or emergency employees and provides that a nonpermanent employee may not be appointed and placed on the payroll without the prior written approval of the director of the division of personnel and labor relations. Sets out conditions under which nonpermanent employees may be appointed and limits their service to 120 days in a 12-month period unless they are "program or project employees." Makes a person who falsely certifies a need for a nonpermanent employee personally liable in a civil action to the nonpermanent employee if the employee was terminated as a result. (HCS CSSB 198).

D. Collective Bargaining Contracts

General Government Unit

GGU is recognized as the exclusive representative of temporaries in the unit, and conditions on temporary employment are set out. Temporaries do not come under the definition of "member". The contract limits the temporary employment period to nine months, with no extensions possible. However, by amending the contract, that term has been shortened to six months. Temporaries must meet minimum qualifications of the classifications they are hired for. Following the six month term, a person may be employed as a temporary within a different employing department. Temporaries receive holiday pay, credit for time in service should they become probationary employees and compensation that is at least equivalent to the entry level of the assigned class. Art. 2(2).

Emergency appointments to positions within GGU are limited to a total of no more than 60 days in any calendar year. The contract states that emergency employees are not members of the unit and are therefore not covered by the terms of the contract. They are subject to the personnel rules on emergency appointments. Art. 22.

Supervisory Unit

The SU contract contains a clause similar to that of GGU regarding the representation of temporaries, but does not include provision for retroactive credit for time in service towards the probationary period. Art. 2(2). Emergency appointments are not addressed in the SU contract. By definition, the term "employee" as used in the contract includes permanent, probationary and provisional employees. Art. 1(2)(c).

Public Safety Unit

Temporaries are also recognized as bargaining unit members of PSEA. Temporaries must meet minimum qualifications, be paid at wage levels equivalent to those paid to permanent employees within the same classification and receive evaluations on performance after 30 days in service to be included in their personnel records. Temporaries are also eligible for holiday pay. Art. 2. The duration of temporary employment is not limited by PSEA's contract, and emergency employees are not specifically addressed. Provisional employees are included in the definition of "member" and are therefore subject to the same terms and conditions of the contract as are permanent employees. Art 1(2)(g).

Confidential Unit

Temporary employment is limited to nine months within any calendar year by CEA's contract, and temporaries are eligible to receive holiday pay. Provisional employees are recognized as "members" and are therefore subject to the terms and conditions of the contract as are permanent employees. Art. 2. Emergency appointments are not addressed.

Local 71

Local 71's contract limits the temporary term to not more than 120 calendar days, although the time may be extended by mutual agreement between the union and the state. Temporaries, in lieu of benefits, receive \$1.32 per hour over regular class wages. Seniority is retroactive if a temporary is appointed to permanent status. CETA and PEP temporary appointments are not restricted to the 120 day limit, but are placed at step B of the salary scale following the 120 day period. Art. 25(2) and (3).

Local 71 does not recognize emergency employees within their contract. As an alternative to emergency appointments, Local 71's contract provides for "casual" employees who can be appointed by the Director of Personnel for not more than 15 calendar days. These appointments are not subject to other terms and conditions of the contract, with the exception of overtime compensation. Art. 25(5). Provisional employees are not recognized in Local 71's contract.

E. Summary

Of the contracts examined, Local 71's alters the effect of appointments to the greatest extent. Besides restricting the time in which its members may be employed as temporaries (120 days), Local 71 has created an alternative category for emergency appointments, which the union labels "casual" employment (15 days).

In regard to time limitations on emergency appointments, GGU's contract is the only one that restricts the initial employment period to one shorter than established in the personnel rules. On temporary appointments, both GGU and SU contract amendments restrict extensions beyond the six month period specified by the personnel rules, thus denying the possibility of extensions with the Director's approval.

CEA's contract, rather than limiting the employment period for temporaries, extends the time to nine months and makes no reference to possible extensions. PSEA's contract is the only one that does not address time limitations on temporary appointments.

Temporaries are entitled to holiday and compensation that is equivalent to that of permanent employees within the same classifications. Local 71 is the only union that provides additional compensation (\$1.32 per hour) in lieu of medical and insurance benefits. Three unions address credit for a temporary's time in service: GGU, SU and Local 71.

Provisional employees are generally recognized as being subject to the same provisions as permanent employees, with the exception of Local 71.

V. PROBATIONARY PERIODS

A. Statutes

The objective of the probationary term is to give an appointing authority opportunity to examine and evaluate the performance of the hired employee. The Personnel Act states that the personnel rules shall provide for:

a period of probation not to exceed one year...except that a permanent employee receiving a promotional appointment retains permanent status in the service and job class from which appointed for the duration of the probationary period, and may be demoted to his former class without right of appeal, §170 of this chapter notwithstanding, but if dismissed from the service he has appeal rights under §170 of this chapter. AS 39.25.150(7).

B. Personnel Rules

The probationary period set out in the personnel rules is one year for employees above range 13 and six months for those range 13 and below, which can be extended at the Director's discretion. Employees rehired, promoted or transferred must complete a probationary period for the position they are appointed to, which counts towards the completion of any probationary period uncompleted in a lower classification.

Temporary and emergency employees do not receive credit towards the probationary period for time in service. PR 6 01.0 and PR 6 02.0. During this probationary period, the Director can request employee evaluations at any time. PR 6 03.0.

A probationary employee, unless holding permanent status at the time of probationary appointment, may be dismissed without the right of appeal or hearing, unless dismissal is a result of discrimination. The employee dismissed for reasons other than discrimination may petition the Director for review of such action. The Director may restore an individual's name to an appropriate eligible list, but may not certify the individual to the same appointing authority. PR 6 05.0.

The Director is notified 15 days prior to the expiration of the probationary period, and if performance evaluations are satisfactory, the employee is placed in permanent status. PR 6 05.0. If dismissed from service, a probationary employee has the right to appeal through the Director to the Personnel Board under Rule 12 01.2, but does not have the right to appeal a demotion to a former classification. PR 6 06.0.

C. Collective Bargaining Contracts

General Government Unit

The GGU contract provides for a probationary term of six months for ranges 13 and below. The Director of Personnel may limit, by written agreement with the employee, the probationary period for ranges 5 through 13 to three months. The probationary terms for positions in range 14 and above are one year, but may be shortened to six months at the Director's discretion. Art. 18(7). All probationary employees are required to receive a written performance evaluation mid-way through the probationary term. Art. 18(8). A probationary holding permanent status in another classification is entitled to process disputes up to step four of the grievance procedures. Art. 10(1). In all other aspects, probationary employees are recognized as members and are subject to the terms and conditions of the GGU contract. Art. 2(1).

Supervisory Unit

The SU contract contains no mention of time limitations on probationary periods, so it is assumed that there is no alteration of the personnel rules in this regard. The contract does state, however, that probationary employees receive semi-annual evaluations (Art. 16(4)) and that appeals in response to dismissal of a probationary in permanent status may be submitted to arbitration (step five) for settlement. Because the definition of "employee" includes probationaries (Art. 1 (2)(h)), they have access to the grievance procedures up to step four on all other matters. Art. 10.

Public Safety Unit

The PSEA contract provides for a probationary period of one year in duration, which may be extended an additional 90 days for completion of a Public Safety Academy course. The probationary period for promoted employees is limited to six months. Art. 18(1).

Probationary employees are precluded from filing grievances during their initial appointment. However, during the final six months of a probationary term, a grievance pertaining to disciplinary action (except dismissal) may be brought before the Commissioner of Administration. Art. 10(1). Probationaries within PSEA must receive semi-annual performance evaluations. Art. 18(2)(B).

Confidential Unit

Probationary employees within CEA are recognized under the definition of "employee" and are subject to the terms and conditions of CEA's contract. Art. 2. Because the probationary employee is not differentiated from the permanent employee, probationaries presumably have access to grievance procedures to the same extent as do permanent employees. Art. 13.

Local 71

Local 71's contract reduces the probationary period as set out in the personnel rules. Upon completion of a 60-day probationary period, an employee is considered to be in permanent status, and seniority is then retroactive to the date of hire. Art. 25(1). Probationary employees who are discharged or terminated have appeal rights through step three of the grievance procedures. Art. 12. Probationary employees holding permanent status have access to arbitration proceedings (step four) in cases of dismissal. All other grievances received from probationaries can be brought to step three. Art. 13.

D. Summary

Probationary time frames set out in the personnel rules are altered either by limiting or extending the periods by the GGU, PSEA and Local 71 contracts.

The Personnel Act states that an employee in the classified service may appeal a dismissal, a demotion or a suspension of more than 30 days in a hearing before the Personnel Board. AS 39.25.170(a). The phrase "employee in the classified service" has been interpreted by the Supreme Court of Alaska to include permanent employees and to exclude probationary or provisional employees. Whaley vs. State, 438 P.2d 718 (1968). (By extension of this reasoning, temporary employees would also be excluded.)

The statute setting out probationary periods does make clear, however, that promoted employees retain their permanent status in the classes from which they were promoted and therefore do have the right to appeal dismissals from state service under AS 39.25.170, although they may not appeal demotions to their former classes. AS 39.25.150(7).

Under the personnel rules, however, all probationary employees may appeal dismissals which are alleged to result from discrimination based on race, color, sex, religion, national origin or political beliefs to the Director of the Division of Personnel and Labor Relations. PR 6 04.0.

Grievance rights on demotions and dismissal issues for probationary members not holding permanent status vary within each collective bargaining contract. With the exception of CEA, probationary members are precluded from arbitration proceedings.

VI. TRAINING

A. Personnel Rules and Statutes

The Director of Personnel is responsible for the development, in cooperation with appointing authorities, of programs for the improvement of employee effectiveness and morale. AS 39.25.050(3). The personnel rules implementing the statute provide for pre-service and in-service training to raise the quality of employee performance. Appointing authorities, with the Director's approval, can establish intern and apprenticeship training programs. Regulations on reimbursement of educational fees are issued by the Commissioner of Administration and are contingent upon the employee's agreement to remain in state service. PR 8 02.0.

B. Collective Bargaining Contracts

General Government Unit

In the GGU contract, the Division of Personnel agrees to recognize its responsibility to reimburse employees for expenses incurred in job-related training courses. Employees who attend training courses do not lose leave or pay unless the course is for an extended time. The Division of Personnel is also responsible for developing, when practicable, employee training procedures. On-the-job and cross-training are encouraged. The GGU contract requires that the Division of Personnel designate a person within each department to explain training and educational opportunities available to employees. Art. 20.

Supervisory Unit

As stated in the SU contract, the Division of Personnel agrees to recognize the need for educational advancement and shall reimburse, if funds are available, employees' tuition and text fees for job-related training. The unit's contract also provides for compensation during the training sessions. Art. 23(9).

Local 71

Both the state and Local 71 are to consider individual programs for employee training and reach agreement on provisions regarding wages and conditions in accordance with the union's contract. The state agrees to establish a policy committee of four members from each party to the contract to create training policies and procedures in each department. Art. 25(6).

Public Safety Unit

The PSEA contract has more specific provisions regarding employee training than do other union contracts. The Director of Personnel is to select and assign members to particular fields for safety training. Employees submit memos annually requesting training with comments from supervisors regarding the requests, and if a request is denied, a reason must be supplied to the employee. Whenever possible, the state is to attempt to obtain college accreditation for training courses. PSEA members must qualify on pistol and shotgun courses semiannually and must receive periodic retraining as required to maintain certification for job performance in their unique professions. The Division is also obligated to continue its policy of encouraging members to seek further advanced education. A standing advisory committee is established to make recommendations to the Commissioner of Public Safety on academy training, minimum training needs for Police Standards certification and in-service training needs. Art. 9.

Confidential Unit

The CEA contract states that the Division of Personnel will provide 15 hours of training each year to all members and will develop the contents of such training. Art. 14.

C. Summary

With the exception of Local 71 and PSEA, the scope of collective bargaining in relation to training is limited to requiring the Division of Personnel to create training policies and procedures. The topic of reimbursement for such expenses is addressed by GGU and SU. Local 71 and PSEA provide for the establishment of committees to oversee the implementation of training practices. The CEA contract requires that the state provide 15 hours of training annually to all members.

VII. TRANSFERS

A. Statutes

The Personnel Act states that the Personnel Rules shall provide for:

transfers from one department to another and from another merit system jurisdiction to the state service (and) transfers from one area of the state to another. AS 39.25.150(11) and (12).

B. Personnel Rules

The personnel rules define transfers as lateral moves to the same or parallel job classifications. There are two types of transfers: intra-agency and inter-agency. The status of employees is not affected by transfer. PR 5 10.3. The Director retains the right to examine an employee to establish that minimum qualifications are met before approving parallel transfer. PR 5 10.4. Fringe benefits awarded employees are also not affected by transfer. PR 5 10.6. Transfers without employee consent must be approved by the Director. PR 5 10.7.

C. Collective Bargaining Contracts

All of the collective bargaining contracts recognize the transfer of employees and the methods for determining such action as a management right. The contracts contain some provisions regarding transfers.

General Government Unit

GGU's contract states that an employee can request a transfer from the Division of Personnel and prohibits an immediate supervisor from refusing such a request or from removing an employee's name from a register. Art. 18(1).

Supervisory Unit

Provisions in the SU contract state that employees may request placement on transfer lists through the Division of Personnel and that such requests do not require a supervisor's approval. Art. 16(1).

Local 71

According to Local 71's contract, employees may not be compelled to accept transfers to new duty stations. Art. 25(16)(e).

Public Safety Unit

The provisions set forth in PSEA's contract differ significantly from those in other union contracts. Transfers are to be in the best interest of the Department, and length of service is considered in the determination of preference for transfer where other factors are relatively equal. The state is responsible for posting notices of duty posts available on a monthly basis and for maintaining files of transfer requests. When the most senior member's transfer is not honored in filling a vacancy, that member is advised of the reason in writing.

Members who have served in the unit in excess of five years are not subject to involuntary transfer except under extenuating circumstances. Members normally receive 60 days notice prior to transfer, and are granted five days of administrative leave with an additional five days available at the discretion of the Department Commander to effectuate such a move. The state agrees to continue to effect transfers arising out of special need and extenuating circumstance of a personal nature consistent with transfer policy. Transfer is not considered a method for disciplinary action. Grievances concerning involuntary transfers are to be filed with the Commissioner of Public Safety and may only be appealed to the Commissioner of Administration. Art. 12.

Confidential Unit

CEA's contract states that an employee may have her or his name placed on a transfer list by submitting the proper forms to the Division of Personnel and that this does not necessitate the approval of the employee's supervisor. Art. 12(1).

D. Summary

Collective bargaining contracts, with the exception of Local 71's, limit the ability of supervisors to prohibit employees from applying for transfers and being placed on transfer lists. Transfers may be involuntary for GGU, SU, CEA and PSEA members. Local 71's contract prohibits the state from transferring an employee involuntarily to a new duty station. The PSEA contract is the only one which includes procedures for grievance submissions relating to involuntary transfer.

VIII. PROMOTIONS

A. Statutes

The Personnel Act specifies that the personnel rules shall provide for:

promotions from within the state service when there are qualified candidates in the state service; vacancies shall be filled by promotion whenever practicable and in the best interest of the state service, and promotion shall be by competitive examination whenever possible; in considering promotions, applicants' qualifications, performance record, seniority and conduct shall be evaluated. AS 39.25.150(4).

B. Personnel Rules

The personnel rules implement the statute and provide that appointments be made from the top five eligibles on inter-departmental and

departmental promotional lists. Promoted employees retain permanent status within their former classifications and may be demoted to former former classifications at any time during the probationary period without the right to appeal.

C. Collective Bargaining Contracts

The promotion of employees and the determination of methods for such action is recognized as a management prerogative by GGU, SU, PSEA and CEA contracts.

General Government Unit

Vacant positions within the GGU are to be open to employees in the unit who are certified as promotionally eligible prior to consideration of outside applicants. The GGU contract also states that employees may refuse promotions and not have their names removed from promotional lists should they decide not to accept a promotional opportunity. Art. 18(6). Promotional evaluations and ratings must be placed in personnel files and be made available to GGU members. Art. 18(8).

Supervisory Unit

SU's contract also stipulates that unit members are to be given consideration over outside applicants and that employees may refuse promotions without being removed from such lists. Art. 16(3). The contract states that an employee who is not satisfied with a score received in the rating of training and experience for a promotional opportunity may apply for reexamination. Art. 16(4). Should an employee be unsatisfied with results after a final review by the Director of Personnel of examination results, she or he may appeal the finding to a final review panel.

The review panel consists of three members: one from SU, one from the Division of Personnel and a third party recognized for expertise in the job functions being examined, who is chosen by the other panel members from a list provided by the U.S. Civil Service Commission. The decisions of the panel are final and binding. Art. 16(5).

Local 71

Local 71's contract provides for promotion of its members by seniority as long as the employee is equally qualified with other employees in the classification and the action is mutually agreed upon by both the state and the union. The contract does not state that employees have the right to appeal final ratings of promotability. Promoted employees remain in permanent status in their new positions and therefore have access to grievance procedures. Promotional listings must be posted for four days before being filled. Art. 25 (9) and (13). Promoted employees retain seniority in their former classifications for a period of three years. Art. 25(12).

Confidential Unit

CEA's contract addresses the salary increase received when promoted, which is to be a two-step minimum. Art. 12(2). Promotional lists are to be used when no appropriate layoff lists exist for appointment to positions. Art. 12(4).

Public Safety Unit

PSEA's contract does not address the topic of promotion.

D. Summary

The collective bargaining contracts now in force leave promotions within management's discretion, with the exception of Local 71's. Contained in Local 71's contract is specific language on the methods by which management may promote members, with greater emphasis on seniority than established in the personnel rules.

IX. MERIT INCREASES

A. Personnel Rules and Statutes

The personnel rules state that merit increases are based on an appointing authority's evaluations of employee performance. A one-step increase is awarded for "acceptable" performance of progressively greater value to the state. At the appointing authority's discretion, an increase of two steps may be granted for "outstanding" performance. Merit increases are limited in that they cannot exceed the top step of an assigned salary range. PR 9 02.0.

Performance that is less than acceptable may result in a one-step withdrawal, following employee notification and a 30 day period in which the employee is given an opportunity to improve performance and thus alter an appointing authority's evaluation. Grievance procedures outlined in PR 12 01.1 are available to employees who have received a merit "decrease". PR 9 02.24 and 9 02.25.

B. Collective Bargaining Contracts

General Government Unit

GGU's contract terms on merit increases are consistent with the personnel rules, with an additional clause stating that the state agrees to modify the evaluation and merit system to make it more meaningful. The contract also states that the administration will not establish a quota or percentage system to determine the number of increases to be

granted, but will discuss the establishment of objective performance evaluation criteria with union representatives. Various provisions regarding merit "decreases" are addressed in GGU's contract, such as: A decrease may not be withdrawn below the entry step of a job classification, and no more than one step may be withdrawn in one year. Art. 4.

Local 71

Local 71's contract does not provide merit increases for members. As an alternative, a service bonus program was negotiated with the state. Members of the union are hired at wage step A and remain in that step for 120 days, at which time they are placed at wage step B. An employee is eligible for another increase after seven years in service. At that time, an employee with seven years of continuous service receives an additional twenty cents per hour. After nine years, the employee is entitled to an increase of forty cents per hour, and after eleven years an increase of fifty cents. These rates are cumulative and an alternative to the longevity bonus program (AS 39.27.022) and merit increases. Art. 20.

Supervisory, Confidential and Public Safety Units

SU and PSEA contracts do not address the topic of merit increases. CEA's contract states that when an employee is promoted, the increase in salary will be at least an advance of two steps if one-half of the merit increase evaluation period has been served, or step A, whichever is greater. Art. 12(2).

C. Summary

With the exception of Local 71, negotiations on merit increases have been limited to agreements to "modify the evaluation and merit system to be more meaningful" and to "establish objective performance evaluation criteria" (GGU) and provisions regarding promotional compensation in conjunction with merit increases (CEA).

Local 71 is the only collective bargaining union that has opted out of receiving merit increases for its membership by substituting the increases with its own service bonus plan.

X. LAYOFFS

A. Statutes

The Personnel Act states that the personnel rules shall provide for:

layoffs for reason of lack of funds or work, abolition of positions, or material changes in duties or organization; both performance

and seniority records shall be considered in the development of layoff orders. AS 39.25.150(15).

B. Personnel Rules

The personnel rules provide that employee layoffs may occur in the classified service when a position is seasonal, a substitute appointment or when positions are abolished due to shortage of work or funds or other reasons that are beyond employee control. An employee may remain on a layoff list for a period of two years and does not lose earned leave or other benefits during that time. PR 11 04.1.

During an emergency, no permanent or probationary employee may be laid off while provisional or temporary employees in the same classification are assigned to positions that could reasonably be assumed by a permanent or probationary employee. PR 11 04.2.

The order of layoff due to reduction of work force is based on performance reports and seniority. PR 11 04.4. Permanent or probationary employees must receive written notice of the reasons for their being laid off. PR 11 04.5 and 11 04.6. The names of permanent or probationary employees who are demoted in lieu of layoff may be placed on layoff lists for the positions from which they were demoted. PR 11 04.8.

C. Collective Bargaining Contracts

The reduction of the state work force due to lack of work, funding or other cause consistent with efficient management is recognized as a management prerogative in CEA, GGU, PSEA and SU contracts.

General Government Unit

Layoff, as defined in GGU's contract, means involuntary separation from service due to abolition of a position, insufficient funds, or lack of work. Art. 1(2)(1). Layoffs of employees are to be performed in accordance with the personnel rules. Art. 3(3). All employees must receive written notification of the reasons for layoff. Art. 31(1).

Supervisory Unit

The only reference to layoff in the SU contract pertains to wages becoming due immediately following separation from service. Art. 12(4).

Local 71

Local 71's contract states that all permanent employees are to be given two weeks notice or two weeks pay prior to discharge, and that termination or layoff slip must be supplied indicating the actual reason for the action. Art. 12.

Local 71's contract also states that layoffs are to be made in reverse order of duty station seniority. If a member is laid off and holds seniority in a lower classification, the individual may be returned to the lower class and wage level. Art. 25(12).

Public Safety Unit

PSEA's contract states that all employees are to receive two weeks notice or two weeks pay prior to discharge. Art. 18(3).

Confidential Unit

CEA's contract addresses the topic of layoffs only by providing that layoff lists are used in selection for vacancies in the bargaining unit. Art. 12(4).

D. Summary

Provisions set out in the GGU, SU and CEA contracts are in accordance with those in the personnel rules. PSEA and Local 71 contracts affect the rules by providing that employees receive either two weeks notice or pay when layoffs occur. Local 71 also provides that layoffs be made in reverse order on the basis of seniority.

XI. SUSPENSION, DEMOTION AND DISMISSAL

A. Statutes

The Personnel Act states that the personnel rules shall provide for:

the imposition of disciplinary suspension without pay for not longer than 30 days in any 12 month period. AS 39.25.150(17).

B. Personnel Rules

Suspension

The personnel rules state that the appointing authority may suspend an employee for delinquency or misconduct and must inform the employee in writing of the reason for the suspension. An employee in the classified or partially exempt service may be suspended without pay and cannot receive seniority credit for the duration of a suspension. PR 11 03.0.

Dismissal

Employees not holding permanent status may be dismissed at any time at the appointing authority's discretion upon written notification. Dismissal based on improper discrimination is forbidden. A permanent employee may be dismissed by an appointing authority for just cause only, normally preceded by suspension of not less than three nor more

than thirty days. During the suspension, the employing department may make a thorough investigation of the cause and notify the employee and the Director of the reason for dismissal. All violations of the prohibitions set out in Rule 13 are considered "just cause" for dismissal (e.g. political activity; bribery; acceptance of gifts; existence of financial conflict of interest; fraud; nepotism; deception or obstruction of rights; etc.). PR 11 05.0.

Demotion

Appointing authorities may demote employees for just cause and must supply a written statement of the reason for such action to both the Director and the employee. Employees have the right to request voluntary demotions to lower classes within their job series and maintain permanent status in the class to which demoted. PR 11 06.0.

C. Collective Bargaining Contracts

General Government Unit

GGU's contract provides that the union be notified in cases of demotion, dismissal, discharge and suspension of members. Art. 31(2). Provision is also made for employees receiving demotions, either voluntary or for just cause, to remain at the same wage step as held in the higher classification. Art. 18(3) and (4). "Just cause" is defined as incompetence, unsatisfactory performance of duties, unexcused absenteeism, drunkenness, dishonesty or gross disobedience. Art. 1(2)(k). All employees, with the exception of those discharged for "just cause", are required to receive written notification of the reason for discharge prior to termination. Suspended employees must also receive written notification of the reasons for such action. Employees who wish to have such action reviewed must follow the grievance procedures outlined in the contract. Art. 31(1). A grievance on demotion or dismissal may be brought to binding arbitration by an employee holding permanent status. Probationary employees may pursue a grievance on suspension, demotion or dismissal only to step four, and are denied access to binding arbitration. Art. 10(1). All grievances resulting from dismissal, demotion or a single suspension in excess of thirty days shall be entered at step three of the grievance procedures. Art. 10(2).

Supervisory Unit

SU's contract contains the same provisions as those in GGU regarding notification of the employee and the union in cases of discharge, suspension and demotion. It also states that a union representative may be present during all stages of hearings determining such matters. Copies of written reprimands must be made available to representatives by employee request. Art. 25(2).

Members of SU who are demoted either voluntarily or for just cause retain the same wage step, a higher step or a step that best reflects creditable service to the state. Art. 16(6) and (8). Dismissed, demoted or suspended employees in permanent status have access to grievance procedures including binding arbitration. Art. 10(1).

Local 71

Local 71's contract recognizes management's right to discharge permanent employees for just cause (e.g. incompetence, unsatisfactory performance, unexcused absenteeism, etc.). The union is to be notified of the reason for the discharge of a permanent employee prior to the employee's notification. All permanent employees are given two weeks notice or pay prior to discharge, with the exception of those discharged for just cause.

All employees are to be supplied with a termination slip showing the specific reason for termination. Local 71 representatives must be notified in writing concurrent with notice to the employee of reasons for disciplinary actions, and union representatives have the right to be present at all hearings if requested by the employee. Employees holding permanent status have access to binding arbitration on matters concerning demotion, dismissal or suspension. Other employees have appeal rights through step three of the grievance procedures. Art. 12.

Public Safety Unit

PSEA's contract states that conduct unbecoming an officer is grounds for immediate dismissal. Otherwise, all employees must receive two weeks notice or pay prior to discharge. Permanent and temporary members of the union are required to give 30 days written notice before leaving employment, which may be modified by mutual agreement between the employee and the state. Art. 18(3) and (4).

The contract sets out detailed procedures governing the conduct of administrative investigations into a member's alleged misconduct, including the member's right to be informed of a complaint and its origin, union representation, time to prepare a response to allegations, a copy of the record of investigation proceedings and reassignment to "administrative" functions without loss of pay or benefits until the conclusion of the investigation. In addition, members may request an investigation into adverse rumors affecting the member's credibility, integrity or reputation. Probationary employees who have completed six months of the initial probationary period are protected by these rights, except in the case of dismissals. Art. 7.

Grievances relating to violations of PSEA's contract terms or involving demotion, discharge or suspensions may be brought to binding

arbitration. During the final six months of the probationary period, an employee may bring a grievance involving any disciplinary action other than dismissal to the Commissioner of Administration. Art. 10(1).

Confidential Unit

CEA's contract states that in cases of discipline, suspension or demotion, CEA will be notified in writing concurrent with the commencement of such action. Employees who directly or indirectly exploit their connection with the employer through outside business activities or who disclose any confidential information pertaining to the employer's business are subject to immediate disciplinary action. Art. 11. Demoted employees must enter classifications at the same step as occupied in the higher range or a step approved by the Director of Personnel. Art. 12(3). The grievance procedure outlined in Article 13 is the sole method for settling disputes on suspension, demotion or dismissal, which are subject to binding arbitration.

D. Summary

It is generally recognized by the five union contracts that discipline, suspension, demotion and dismissal of employees for just cause is a management prerogative. However, the definition of just cause varies slightly in each contract. In most instances, members holding permanent status are provided access to grievance procedures up to and including binding arbitration.

XII. HEARINGS AND APPEALS

A. Statutes

The State Personnel Act provides that:

(a) An employee in the classified service who is dismissed, demoted, or suspended for more than 30 working days in a 12-month period shall be notified in writing by his employer of the action and the reason for it and may be heard publicly by the personnel board and may be represented by counsel at the hearing. In order to be heard, the complainant shall request a hearing within 15 days of dismissal, demotion or suspension.

(b) If the board finds that the action complained of was taken for a political, racial or religious reason, or in violation of this chapter or the rules adopted under this chapter, the officer or employee shall be reinstated to his position without loss of pay or leave benefits for the period of his dismissal, demotion, or suspension. In all other cases, the board shall report its findings and recommendations to both parties. AS 39.25.170.

The personnel rules shall provide for:

the procedures for review of disputed personnel actions and for resolving employee and interagency grievances. AS 39.25.150(18).

B. Personnel Rules

The dispute procedures for hearings and appeals outlined in PR 12 are available to employees in the classified service only. They are as follows:

- Step 1: The employee discusses the action grieved with immediate supervisor.
- Step 2: The employee submits a written statement to the supervisor.
- Step 3: The supervisor replies and submits a copy of the response to the departmental personnel officer.
- Step 4: The employee submits a written grievance to the personnel officer who transmits the information to the Division of Personnel.
- Step 5: There are two alternative methods for procedures at this point:
 - a. If the grievance is not a violation of an interpretation of the personnel rules and is within the discretion of the appointing authority, the departmental personnel officer and the employing division head investigate and make recommendations to the executive head of an agency.
 - b. If the grievance stems from violation of the personnel rules, the Director of the Division of Personnel responds with a written statement of findings to both the grievant and the department.
- Step 6: The agency head or a designated representative makes a decision.
- Step 7: The employee addresses the Commissioner of Administration requesting a hearing.
 - a. A grievance committee is formed to conduct a hearing, which submits a report to the employee's department and the employee's representative following the close of the hearing. (If the grievance is a result of a supervisor's mistake, the committee may order a copy of the decision rendered be placed in the supervisor's personnel file.)

Step 8: An appeal may be submitted to the Personnel Board following receipt of the grievance committee's report.

- a. The Personnel Board reviews and affirms, modifies or vacates findings. The Board may conduct a hearing and then submits a report in the same manner as the grievance committee.

Inter-agency disputes are settled by the appointing authorities representing agencies involved in the disputed personnel action. Final decision on such matters may be made by the Commissioner of Administration.

C. Collective Bargaining Contracts

General Government Unit

GGU's contract sets out grievance procedures which supersede those in the personnel rules. The contract specifies the time limitations on filing grievances and subsequent responses. An employee must first bring a grievance to her or his supervisor, with or without GGU representation, for settlement (step 1). This step may be either verbal (informal) or written (formal) at the employee's discretion. If the dispute is not settled at the supervisor's level, the employee must present the dispute in writing to the division head, again with or without GGU representation (step 2).

If a settlement is not reached at step 2, an employee must seek GGU representation to pursue the grievance. The GGU representative presents an appeal to the Commissioner or head of the agency in question (step 3). Should a satisfactory decision still not be forthcoming, an appeal may be submitted to the Commissioner of Administration (step 4).

The final step is binding arbitration. Any grievance pertaining to the application or interpretation of GGU contract terms or an appeal of demotion or dismissal of an employee holding permanent status may be submitted to arbitration for settlement (step 5). The contract outlines arbitration procedures calling for an arbitrator from the U.S. Federal Mediation and Conciliation Service. Art. 10.

Supervisory Unit

The SU contract contains the same grievance procedures set out in the GGU contract. Art. 10.

Local 71

Local 71's contract provides grievance procedures similar to those outlined above. An employee initially files an appeal with the Steward, then with the executive head of the agency, and then with the Commissioner of Administration. Any grievance regarding the terms of the contract or the demotion or dismissal of a member may be brought to binding arbitration before an arbitrator from the U.S. Federal Mediation and Conciliation Service. Art. 13 and 14.

Confidential Unit

CEA's contract also provides similar grievance procedures. The last alternative for settling a grievance is through the Board of Arbitration before an arbitrator of the U.S. Federal Mediation and Conciliation Service. Unlike the contracts discussed above, the CEA contract does not provide limits to the application of grievance provisions. Art. 13.

Public Safety Unit

PSEA's contract sets forth varying levels to which an employee may carry grievance proceedings. Violations of the personnel rules or the operating procedures manual, involuntary transfers, written reprimands, and disciplinary grievances (except dismissal) of a probationary employee following the initial six month's of the term may be brought to the Commissioner of Administration for final decision. Grievances pertaining to discharge, suspension, demotion and disciplinary actions can be brought to binding arbitration when they are violations of the personnel rules, the operating procedures manual or contract terms. Art. 10(1).

Class grievances are initially submitted to the Commissioner of Public Safety. Art. 10(2). Time limitations are specified in PSEA's contract, as well as enumerated steps for settling grievances up to binding arbitration before a Federal Mediation and Conciliation Service arbitrator. Association grievances are filed with the Commissioner of Public Safety and may be brought to binding arbitration. Art. 10(5) and (6).

D. Summary

All of the collective bargaining contracts examined have grievance procedures superseding those set out in the personnel rules. The contracts generally outline five "steps" in which a grievance may be processed. The final step in all contracts is binding arbitration before an arbitrator from the U.S. Federal Mediation and Conciliation Service. Four contracts limit the scope of arbitration or to whom it is available (PSEA, GGU, SU, and Local 71), and one doesn't (CEA).

In comparing grievance procedures specified by contracts and the personnel rules, time frames do not appear to differ significantly. The personnel rules do not address binding arbitration, but union members must use the procedures outlined in their respective contracts for settlement of disputes.

XIII. HOURS OF WORK

A. Statutes

The Personnel Act states that the personnel rules shall provide for the hours of work for employees and the methods and procedures covering

overtime work and pay, as well as for employees who work part-time at 15 hours or more a week, including two employees filling one permanent full-time position. AS 39.25.150(19), (20) and (24).

B. Personnel Rules

The appointing authority, with the Director's approval, is responsible for the establishment of reasonable working hours, which are not to be less than the minimum work week of 37½ hours. The normal work day consists of 7½ hours from 8:00 to 4:30, Monday through Friday. Overtime availability and compensation are subject to the policies established by the Commissioner of Administration. Holidays are enumerated in this section as well as the rules for following holidays and other rules and regulations that may be adopted by departments required to remain in operation on holidays. PR 7 07.0.

The equations for hourly, part-time and monthly rates are set out in the personnel rules. Part-time compensation is to be proportionate to the rates for full-time service, and actual time on the job is to be the basis for total remuneration. PR 9 03.0. Compensation for overtime may be in cash or in compensatory time off. A maximum of 300 hours of compensatory time may be accrued annually. Anything over that amount must be paid in cash, liquidated annually (unless the Commissioner of Administration approves an extension) and may be taken off when desired by the employee, with the appointing authority's approval.

C. Collective Bargaining Contracts

General Government Unit

GGU's contract states that the determination of employee eligibility for overtime must be in accordance with the Fair Labor Standards Act. A neutral hearing officer is appointed to determine such eligibility and has authority to make binding decisions. Normal working hours as specified by the contract are 37½ hours per week, and anything in excess of the normal week constitutes overtime, which is equalized among those employees who desire additional hours of work. However, it is recognized that the state does have the right to assign and require overtime when an individual's qualifications are necessary to accomplish a particular task. Art. 25(1) and (2).

Employees called back to work within four hours after completion of a shift are subject to recall provisions and the appropriate overtime rate, and employees remaining on call or those who must periodically report their whereabouts are entitled to standby provisions as designated in GGU's contract. Art. 25(3). Shift differentials and holiday provisions are set forth in the contract, which also limits the time an employee may be required to work to a maximum of 15 hours per day. Art. 25(4).

Supervisory Unit

The SU contract contains terms requiring the state's compliance with the Fair Labor Standards Act in determining eligibility for overtime and sets out holiday, standby, recall and shift differential provisions. Art. 18.

Local 71

Local 71's contract provides for overtime on both a daily and weekly basis. Regular working hours consist of 7½ hours per day and 37½ hours per week. Time and a half is paid for the first day worked in excess of 37½ hours, and double time is paid for overtime exceeding two or more days. An employee may not be required to work overtime, which is distributed evenly on the basis of seniority among those who desire it. Art. 22.

Shift differentials for swing and graveyard shifts, hazardous working conditions, recall and standby are provided for in 71's contract. Art. 23, Art. 24 and Art. 26(7) and (8). Working hours for members may be subject to certain variables such as tidal operations, a membership vote in favor of rotating multiple shifts or ferry travel time. Art. 26(2), (10) and (11). Holidays are also provided for in the contract. Art. 32.

Public Safety Unit

PSEA's contract addresses the special interests and functions of its members in regard to overtime and related topics. Provisions are made for shift differentials, holidays, Field Officer Training differentials, standby, recall, early call-in, interruption of vacation, flexible posts, hazardous conditions and sea duty. Art. 15. Members cannot be required to work in excess of 15 hours within a 24 hour period and are entitled to a minimum of 8 hours between shifts. Art. 16(4) and (6). The normal work week is set forth as 37½, and PSEA's contract provides that overtime will constitute hours exceeding 7½ per day. Art. 15(16).

Confidential Unit

CEA's contract states that the normal work week for members consists of 37½ hours, 7½ hours per day, Monday through Friday. Employee overtime eligibility is determined in accordance with the Fair Labor Standards Act guidelines for employees covered by the Act and by policy established by the Commissioner of Administration for those not covered. Holidays are specifically enumerated and the methods for following them. Clauses regarding recall, standby and the maximum hours that an employee may be required to work (16 hours within any 24 hour period) are contained in the contract. Art. 8.

D. Summary

All of the collective bargaining contracts studied contain provisions regarding the "normal" working hours for members (37½ hours per week and 7½ hours per day). Three contracts (PSEA, Local 71 and CEA) state that overtime consists of hours exceeding 7½ in any one day or 37½ in any week. Three contracts (GGU, SU and CEA) provide that overtime eligibility be determined in accordance with the Fair Labor Standards Act.

Guidelines are established by the contracts regarding shift differentials, standby, recall and other variables relating to employee working hours. Holidays are enumerated within each contract, which are identical to those set out in the personnel rules.

XIV. PAY

A. Personnel Rules and Statutes

The Director of the Division of Personnel and Labor Relations has responsibility for the state's pay plan in accordance with AS 39.25.150(2), which states that the personnel rules shall provide for:

the preparation, maintenance, revision, and administration by the director of personnel of a pay plan for all positions in the classified and partially exempt services; the pay plan shall be prepared after consultation with the appointing authorities or their designee, and with representatives of interested employee groups; the plan shall be based upon the position classification plan, shall provide for fair and reasonable compensation for services rendered, and shall be based on the principle of like pay for like work; commissioners' salaries are not the maximum limit for the pay plan and in exceptional circumstances higher salaries may be specified; the pay plan may provide for uniform starting pay, increments and area and time differentials; the pay plan prepared under this section may be amended, approved or disapproved by the legislature in regular or special session; after the pay plan is put into effect, no salary or wage payment may be made to a state employee covered by the pay plan unless the payment is in accordance with this chapter and the rules adopted under this chapter;

The application of the rules on pay depends upon funds being available. Various provisions within the rules address salaries for beginning, former, promoted, transferred and demoted employees; merit increases; hourly parttime and monthly rates as well as overtime compensation; compensatory time; and moving expenses (these topics are addressed in other portions of this study).

B. Collective Bargaining Contracts

All of the contracts negotiated with the state set wage schedules for their respective memberships and provide for cost-of-living adjustments based on the Anchorage Consumer Price Index for multi-year contracts.

Also incorporated in the contracts are clauses pertaining to compensation and variables such as geographic differentials, shift differentials, hazardous working conditions, subsistence, recall and standby. Each collective bargaining contract has provisions that are unique to the functions of its membership.

General Government Unit

GGU's contract states that members of the unit are to receive one and one-half their base salaries for hours exceeding 37½ per week. Employees called back to work within four hours after completion of a shift are entitled to overtime (recall), and those ordered to remain at home or to periodically report their whereabouts are entitled to receive 10% of their base salaries while assigned to a standby roster. Geographic and shift differentials are also included in computation of compensation of standby and recall. Art. 25(3). GGU members receive overtime pay for work on holidays and regular pay for holidays enumerated in the contract.

Supervisory Unit

SU's contract also addresses standby, recall, shift differentials for both swing and graveyard shifts, and hazard pay. Art. 18 and 19.

Local 71

Local 71's contract states that union members are entitled to time and one-half for the first day worked in excess of regular hours and two times their base salary for hours exceeding that limit. Any member working over 7½ hours per day is entitled to receive overtime. Art. 22. Shift differentials are provided to members for both swing and graveyard shifts at 3.75% and 7.5% of base salaries respectively. Art. 23. Members are entitled to hazard pay when working at excessive heights, handling explosives or traveling by helicopter. Art. 24. Provision is also made for standby and recall assignments. Art. 26(7).

Public Safety Unit

PSEA's contract provides members with additional compensation for shift differentials, field officer training differentials, geographic differential, standay, recall, early call-in and hazardous working conditions. Other miscellaneous provisions encompass the unique responsibilities of the union's membership.

Confidential Unit

CEA's contract provides that when members work swing or graveyard shifts, they are entitled to one or two step increases above normal pay ranges, respectively. Recall and standby service is defined, and payment for employee time is provided for by the contract. Art. 8.

C. Summary

Each collective bargaining contract contains a salary schedule for its membership and various provisions regarding compensation variables and overtime. Traditionally, salary negotiations are an integral part of the collective bargaining process and are emphasized by the provisions set forth in the contracts studied. There are many diverse factors that are taken into account regarding salaries, which have only been briefly noted above.

XV. CONCLUSION

There are, of course, many other provisions set forth in the five contracts studied relating to the interests of public employees. These topics (with the exception of leaves of absence, insurance, retirement, examination of records and moving expenses) are not addressed by either the Personnel Act or the personnel rules. They do, however, come under the category of "terms and conditions of employment", which are bargainable in accordance with the Collective Bargaining Act. AS 23.40.

The chart on the following page is designed to enumerate some of the additional topics addressed by the five collective bargaining contracts studied. It is by no means a comprehensive list of all provisions set out in the contracts.

MISCELLANEOUS CONTRACT PROVISIONS

Negotiated Contracts Address:	GGU	SU	Local 71	PSEA	CEA
Insurance Benefits--Life, Health, Travel, Accident	*	*	*	*	*
Reimbursement for Job-Related Property Damage	*	*	*	*	
Employee Leave--Sick Leave, Leaves of Absence	*	*	*	*	*
Parking Privileges	*	*			*
Uniforms--Wearing Apparel	*	*	*	*	
Safety Equipment--Tools, First Aid Kits, etc.	*	*	*	*	*
Accessibility to Personnel Records	*	*	*	*	*
Length of Contracts	*	*	*	*	*
Right to "Exclusive Representation"	*	*	*	*	*
Union Leave Accounts	*		*	*	
Subsistence-- Long Term Per Diem By District	*	*	*		*
Subcontracting/Contracting Outside of Membership	*		*		
Time Off to Vote	*	*	*	*	*
Reimbursement of Moving and Travel Expenditures	*	*	*	*	*
Legal Assistance--Providing Defence for Legal Action Against Member as a result of Performance of Duties	*	*		*	*
Travel and Per Diem Allowances	*	*	*		*
Meal Allowances	*	*	*	*	*
Housing--Remote or Bush Areas			*	*	

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Senator Bill Ray
Chairman

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the State Personnel Act
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STATE PERSONNEL ACT

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INTRODUCTION

In 1978 the Alaska State Legislature created the Blue Ribbon Commission on the State Personnel Act and charged it with making a comprehensive review of the state personnel system. The commission was directed to consider refinements in light of collective bargaining and the growth of the number of state employees, to examine the question of the decentralization of the hiring of state employees, and to consider the deficiencies which had been revealed in reports from the Division of Legislative Audit and from the Ombudsman. See Appendix A, Legislative Resolve No. 27, 1978.

Since its inception, the commission has worked on the issues it was directed to consider, sponsoring legislation and making its recommendation known in annual reports to the legislature. In 1980, at the request of the commission, the legislature extended its life for another year, noting that because of the complex, inter-related nature of the issues facing the commission, more time was needed to resolve them. See Appendix B, Legislative Resolve No. 38, 1980.

Membership on the commission includes representatives from the groups and persons most concerned about the state personnel system. In addition to legislators, there are representatives from the public employee unions and associations representing state employees, from the Department of Administration and the Division of Personnel, from the Ombudsman, from state agencies, and from the public. This diversity and expertise enables the commission to fully consider the questions before it.

During the past year, the commission has focused on two main areas. It has concluded a comprehensive review of the State Personnel Act and also is recommending changes in the nepotism law of the state. In addition, testimony from a retired Alaskan raised issues about the state retirement systems which the commission considered. As a result of this work, the commission is sponsoring three bills amending the retirement systems.

There are issues which the commission was unable to address this year which are discussed briefly in this report. Further study is needed before recommendations can be made on these topics. Because its work is not ended, the commission is requesting that the legislature extend its life for another year.

CHAPTER I

BILLS AMENDING THE STATE PERSONNEL SYSTEM AND THE RETIREMENT SYSTEMS

The commission is proposing two bills amending the personnel system. The first is a comprehensive revision of the State Personnel Act, to make changes in personnel practices, to expand the protections granted employees in the exempt and partially exempt services, and to make the Act consistent with the Public Employment Relations Act. The second bill amends the nepotism statute to give statutory authorization to support the present language of the Personnel Rules.

The commission is sponsoring three bills amending the state's retirement systems. The first limits the state's power to adjust retirement benefits where, through no fault of the retired state employee, the state has been making overpayments for more than two years. This measure is proposed because the resulting total overpayment can be substantial and the mandatory reduction of the retired person's monthly check can cause serious financial difficulties. The second bill sponsored by the commission makes changes in the membership of the Public Employee Retirement Board. The third bill requires that regulations adopted for both the Public Employee Retirement System and the Teachers Retirement System be subject to the Administrative Procedure Act.

SENATE BILL 193: AMENDING THE STATE PERSONNEL ACT
(AS 39.25)

PURPOSE

The amendments proposed to the State Personnel Act are the result of work done by the commission over the past two years. The bill makes several major changes in the Act as well as making it more comprehensive, more consistent with the Public Employee Relations Act, and more clearly written.

The bill provides that those Personnel Rules which are matters of public policy are subject to the rule-making requirements of the Administrative Procedure Act. This will offer an increased opportunity for public comment before adoption of rules affecting the public.

The commission resolved the question of whether the state should move towards a centralized or a decentralized system of personnel administration by placing the present decentralized system in the Act. However, the bill limits the authority personnel officers presently have to operate independently from the Division of Personnel. Decentralization provides the best working relationship between the departments and the division.

Partially exempt and exempt employees of the state are granted increased protection from discrimination, including the right to appeal to the Personnel Board should they believe that they have been disciplined on the basis of unlawful discrimination.

In addition to these major changes, the bill makes a number of other amendments which are discussed in the analysis below.

SECTION BY SECTION ANALYSIS

Section 1. AS 39.040 is amended to read:

Sec. 39.25.040. DIRECTOR OF PERSONNEL. The head of the division of personnel is the director of personnel appointed by the commissioner of administration and responsible to the commissioner of administration for the execution of the duties and responsibilities imposed by this chapter and the rules adopted under this chapter. The director of personnel shall (MUST) have at least three years of practical working experience in the field of personnel administration.

(SB 193, page 1, line 9)

Comment

This section makes a stylistic amendment to conform to the Manual of Legislative Drafting. The substance is not changed.

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

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

(SB 193, page 1, line 17)

Comment

This section deletes the obsolete requirement that members of the Personnel Board be qualified electors of the state. It also eliminates the reference to officers. The definition of state employees in section 18 includes

state officers. (See section 18, page 34 infra)

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

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

(SB 193, page 1, line 22)

Comment

The bill transfers all of the substantive requirements for amending the Personnel Rules to AS 39.25.140 and proposes changes in those procedures. (See section 12, page 16, infra)

Sec. 4. AS 39.25.070(3) is amended to read:

(3) hear and determine appeals by employees (IN THE CLASSIFIED SERVICE) as provided in AS 39.25.170;

(SB 193, page 1, line 29)

Comment

Members of the partially exempt service may appeal to the Personnel Board in certain situations by case law. In addition, appeal rights are granted to partially exempt and exempt employees in cases of prohibited discrimination in the proposed amendments to AS 39.25.170. Therefore, the reference to the classified service in this paragraph is deleted.

Sec. 5. AS 39.25.070 is amended by adding a new paragraph to read:

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

(SB 193, page 2, line 3)

Comment

The Personnel Board does not have statutory authority for employing staff members at present. The proposed language places any employees of the board in the classified service. The members of the commission considered that Personnel Board employees should be protected from the possibility of arbitrary action or undue influence to which they might be exposed if they were placed in the partially exempt or exempt service.

Sec. 6. AS 39.25.080 is repealed and reenacted to read:

Sec. 39.25.080. PUBLIC RECORDS. (a) State personnel records, including employment applications and examination materials, are confidential and are not open to public inspection except as provided in this section.

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

- (1) the names and position titles of all state employees;
- (2) the position held by a state employee;
- (3) prior positions held by a state employee;
- (4) whether a state employee is in the classified, partially exempt or exempt service;
- (5) the dates of appointment and separation of a state employee; and
- (6) the compensation authorized for a state employee.

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

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

(SB 193, page 2, line 6)

Comment

Current law provides that the state personnel records are public except for those which the rules require to be kept confidential. The Personnel Rules provide that except for examination materials, performance evaluations, personal history or other confidential materials so designated by the Director of Personnel, employee records are public records. (PR 14 07.0) The commission decided that it was more appropriate to indicate what materials actually are open to the public, and to make the remaining records confidential. The public materials are listed in subsection (b).

Subsections (c) and (d) set out new material to confirm a person's right to examine his own files and to establish when an applicant may review written examination materials.

Sec. 7. AS 39.25.090 is amended to read:

Sec. 39.25.090. COVERAGE OF CHAPTER. This chapter and the rules adopted under it apply to all positions in (1) the classified service, and (2) the partially exempt and exempt services (SERVICE) as specifically provided.

(SB 193, page 2, line 26)

Comment

Since amendments proposed to AS 39.25.170 extend limited appeal rights to members of the exempt service, the coverage of the chapter has changed.

Sec. 8. AS 39.25.110 is repealed and reenacted to read:

Sec. 39.25.110. EXEMPT SERVICE. Unless otherwise provided by law, the following positions in the state service constitute the exempt service and are exempt from the provisions of this chapter and the rules adopted under it:

- (1) persons elected to public office by popular vote or appointed to fill vacancies in elected offices;
- (2) justices of the supreme court, judges of the court of appeals, judges of the superior court, and judges and magistrates of other state courts established by law;
- (3) employees of the state court system, and employees and members of the Judicial Council;
- (4) employees of the state legislature and its agencies;
- (5) the head of each principal department in the executive branch;
- (6) officers and employees of the University of Alaska;
- (7) certificated teachers and noncertificated employees employed by a regional educational attendance area established and organized under AS 14.08.031 - 14.08.041 to teach in, administer, or operate schools under the control of a regional educational attendance area school board;
- (8) patients and inmates employed in state institutions;
- (9) persons employed in a professional capacity to make a temporary or special inquiry, study or examination as authorized by the governor, the legislature, or a legislative committee;
- (10) members of boards, commissions, or authorities;

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

(A) Alaska Commercial Fisheries Entry Commission;

(B) Alaska Gas Pipeline Financing Authority;

(C) Alaska Permanent Fund Corporation;

(D) Alaska Energy Center;

(E) Alaska Industrial Development Authority;

(12) the executive officer of the Alaska Commission on Post-secondary Education;

(13) the ombudsman and his staff;

(14) the executive secretary and legal counsel of the Alaska Municipal Bond Bank Authority;

(15) licensed physicians, as defined in AS 47.30.340(9), employed by the division of mental health and developmental disabilities, Department of Health and Social Services;

(16) petroleum engineers and petroleum geologists employed in a professional capacity, the Department of Natural Resources except for those employed in the division of geological and geophysical surveys;

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

(18) persons employed by the division of marine transportation as masters and members of the crews of vessels who operate the state ferry system and who are covered by a collective bargaining agreement provided in AS 23.40.040.

(SB 193, page 3, line 2)

Comment

The phrase "unless otherwise provided by law" is added to the introductory section. Obsolete or redundant paragraphs have been deleted and the list has been

reorganized for clarity.

Judges of the Court of Appeals have been added in paragraph (2). In paragraph (9), the wording has been changed from "temporary and special inquiry" to "temporary or special inquiry". For a table comparing the order and content of the new sections with the existing statute, see Appendix C.

Sec. 9. AS 39.25.120 is repealed and reenacted to read:

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

(b) A person holding a position in the partially exempt service is not required to take an examination or qualify or earn a place on a register, and is not eligible for a hearing by the personnel board in case of dismissal, demotion, or suspension, except as provided in AS 39.25.170. Positions in the partially exempt service are specifically exempt from the rules established under AS 39.25.150(3) - (10), (13), (14), and (17).

(SB 193, page 4, line 25)

Comment

The bill restructures AS 39.25.120 and changes the references to other sections of the State Personnel Act to conform to amendments made since this section was adopted and amendments proposed in the bill. The substance of the beginning section is not changed.

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

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

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

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

(4) one private secretary for each head of a principal department in the executive branch;

(5) employees of the Office of the Governor and the office of the lieutenant governor, including the staff of the governor's mansion;

(6) the executive director and deputy director of the Alaska Public Utilities Commission;

(7) the state forester in the Department of Natural Resources;

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

(9) not more than two special assistants to the commissioner of each of the principal departments of the executive branch;

(10) the principal executive officer of the following boards, councils or commissions:

(A) Alaska Public Broadcasting Commission;

(B) Professional Teaching Practices Commission;

(C) Parole Board;

(D) Board of Nursing;

(E) Real Estate Commission;

(F) Alaska Royalty Oil and Gas Development Advisory Board;

(G) Alaska Historical Commission;

(H) Alaska State Council on the Arts;

(I) Alaska Police Standards Council;

(J) Council on Science and Technology;

- (11) Alaska Pioneers' Home managers;
- (12) hearing examiners in the Department of Revenue;
- (13) the comptroller in the division of treasury, Department of Revenue;
- (14) investment officers in the Department of Revenue;
- (15) the chief of subsistence in the Department of Fish and Game;
- (16) airport managers in the Department of Transportation and Public Facilities employed at the Anchorage and Fairbanks International Airports;
- (17) the deputy director of the division of tourism and the deputy director of the division of insurance in the Department of Commerce and Economic Development;
- (18) the executive director and staff of the Alaska Public Offices Commission.
- (19) the director, deputy director, personnel analysts II, labor relations analysts I, labor relations analysts II, senior negotiators, research directors of the division of labor relations in the Department of Administration.

(SB 193, page 5, line 8)

Comment

The bill adds deputy commissioners to paragraph (1) and makes specific reference to the assistant adjutant general of the Department of Military Affairs and to regional directors in the Department of Transportation and Public Facilities.

Paragraph (2) places all division directors in the partially exempt service. The State Personnel Act currently provides that division directors who are listed in the paragraph and any others designated by the Governor are members of the partially exempt service. Since the

Governor designates all division directors to be partially exempt, the commission considered the change to be appropriate.

Paragraph (9) is a new provision placing special assistants to commissioners in the partially exempt service. This reflects current practice. The commission considered that the number should be limited to two special assistants. If a commissioner needs more than two, the Personnel Board has the authority under AS 39.25.130 to add additional positions. (See section 10, page 16, infra)

Paragraphs (10)(A) - (E) and paragraphs (11) - (16) add several positions to the section. These positions are now in the partially exempt service but are not listed in the State Personnel Act. Similarly, paragraph (17) places the deputy director of insurance in the partially exempt service.

Paragraph (19) places those employees responsible for representing the state in collective bargaining negotiations in the partially exempt service. They are now in the classified service but are not members of any collective bargaining unit. The majority of the commission considered that it was important for these employees to be directly responsive to the policies of the administration.

For a table comparing the statute with the provisions of the bill, see Appendix D.

Sec. 10. AS 39.25.130(a) is amended to read:

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

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

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

(3) involves responsibilities and duties of a type not susceptible to the ordinary recruiting and examining procedures.

(SB 193, age 7, line 7)

Comment

The Personnel Board exercises the power to move positions from the classified service to the partially exempt service over positions created after April 19, 1960, as well as over positions created before that date. The commission considered this exercise of power to be appropriate and therefore the bill amends the statute by deleting reference to the dates.

Sec. 11. AS 39.25.130(c) is amended to read:

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

(SB 193, page 7, line 19)

Comment

As in section 10 above, the reference to dates in

AS 39.25.130(3) has been deleted since the Personnel Board has traditionally acted to change positions created after April 19, 1960, as well as those created before that date.

Sec. 12. AS 39.25.140 is repealed and reenacted to read:

Sec. 39.25.140. AMENDMENT OF PERSONNEL RULES. (a) The director of personnel shall prepare and submit proposed amendments of the personnel rules to the commissioner of administration for review and approval.

(b) The commissioner of administration shall review the proposed amendments and if he approves them, he shall submit them to the personnel board.

(c) When the proposed amendments are submitted to the personnel board, the commissioner of administration shall post notice in public buildings throughout the state that the personnel board has the proposed amendments under consideration.

(d) If the proposed amendments concern matters of public policy, the personnel board shall adopt them in accordance with the Administrative Procedure Act (AS 44.62).

(SB 193, page 7, line 24)

Comment

The bill makes several changes in AS 39.25.140. In subsections (a) and (b), the Commissioner of Administration is given the power to approve or disapprove amendments proposed by the Director of Personnel. In paragraph (d) those amendments which concern matters of public policy are made subject to the rule-making provisions of the Administrative Procedure Act. The State Personnel Act presently exempts adoption of the Personnel Rules from the APA. The commission found that additional opportunity for public notice and comment should

be provided over those subjects which affect the public and therefore recommends the change in the rule-making procedures. (Note that subsection (f) sets out topics which are included within "matters of public policy".)

(e) If the proposed amendments relate only to the internal management of the state agencies

(1) notice of the proposed amendments shall be posted for at least 30 days;

(2) if requested by the commissioner of administration or by a person receiving notice of the proposed amendments, the personnel board may hold public hearings on the proposed amendments and may appoint a hearing officer to conduct the hearings;

(3) the personnel board may amend the proposed amendments;

(4) the proposed amendments become effective 45 days after they are submitted to the personnel board unless the board has disapproved them;

(5) the amended rules shall be published in the Alaska Administrative Register and Code for informational purposes.

(SB 193, page 8, line 9)

Comment

Those amendments to the Personnel Rules which relate only to the internal management of state agencies are adopted under the procedures of this subsection. These procedures are substantially identical to those now set out in the State Personnel Act.

In paragraph (2) the bill permits the Personnel Board to appoint a hearing officer to conduct hearings on amendments. The Personnel Board is granted the power to amend the proposed rules in paragraph (3), a power which it does not now have.

The bill provides in paragraph (4), that the amendments take effect 45 days after submission to the Board, rather than the present 30 days. The additional time gives the board an opportunity to consider any written or oral testimony received from the public. Paragraph (5) requires that the amended rules be published in the Alaska Administrative Register and Code. Publication of the rules in the Code is discretionary now.

(f) In this section "matters of public policy" include, but are not limited to, matters concerning

- (1) recruitment;
- (2) examinations;
- (3) selection methods;
- (4) prohibitions and penalties;
- (5) public records;
- (6) eligible lists;
- (7) hours of work;
- (8) merit increases; and
- (9) hearings and appeals relating to matters listed in (1) - (8) of this subsection.

(SB 193, page 8, line 23)

Comment

The topics listed are those which the commission believed were of most concern to the public. Personnel Rules on recruitment, examinations, selection methods, and eligible

lists all affect members of the public if they apply for state employment. The prohibitions and penalties applying to state employees define their conduct and are important to all citizens of the state. The hours which state employees work are similarly of widespread concern as are merit increases.

Sec. 13. AS 39.25.150 is repealed and reenacted to read:

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

(1) the preparation, maintenance, and revision by the director of personnel, subject to approval of the commissioner of administration and the personnel board, of a position classification plan for all positions in the classified and partially exempt services; the position classification plan shall include

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

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

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

(SB 193, page 9, line 6)

Comment

The bill restructures paragraphs (1) and (2) to make

their content clearer. In addition, paragraph (2) is amended to refer to the Public Employment Relations Act and to set out that it is legal for the state to pay employees in accordance with a collective bargaining agreement even if the agreement does not conform to the state pay plan.

Provisions in the State Personnel Act which specify that the pay plan be prepared after consultation with appointing authorities and employee representatives and that commissioners' salaries are not the maximum limit for the pay plan are deleted. There is nothing in the law to prevent the pay plan from providing for salaries exceeding those of commissioners. Since collective bargaining agreements between the state and employee representatives now set pay levels for almost all the classified employees, there is considerable consultation with employee representatives before salary levels are established.

(3) the use of employee selection methods which will fairly test the capacity and fitness of the person examined to efficiently discharge the duties of the class in which employment is sought;

(SB 193, page 10, line 3)

Comment

This paragraph is rewritten to more clearly state the standards for employee selection methods which the Personnel Rules will implement.

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

(5) the procedure for certifying eligible candidates;

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

(7) a period of probation not to exceed one year before an appointment to a position becomes permanent, except that a permanent employee receiving a promotional appointment retains permanent status in the service and job class from which appointed for the duration of the probationary period and may be demoted to a former class without right of appeal, notwithstanding AS 39.25.170, but if the employee is dismissed from the service the appeal rights under AS 39.25.170 apply;

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

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

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

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

(12) the payment of transportation costs when an employee transfers from one area to another at the request of the employer;

(13) the reinstatement of a person who resigns in good standing;

(14) layoffs for reason of lack of money or work, abolition of positions, or material changes in duties or organization; both performance and seniority records shall be considered in the development of layoff orders;

(15) the development, maintenance, and use of employee performance records;

(SB 193, page 10, line 6)

Comment

The bill reorders and rephrases paragraphs (4) - (15). The substance is unchanged. For a table comparing the bill with the Act, see Appendix E.

(16) the establishment of disciplinary measures which may include disciplinary suspension without pay;

(SB 193, page 11, line 11)

Comment

The State Personnel Act currently limits the imposition of disciplinary suspension without pay to 30 days in any 12-month period. The bill deletes that limit. The commissioner is continuing to work to develop a comprehensive framework of graduated disciplinary measures which will be more effective than the present system.

(17) the procedures for review of disputed personnel actions, and for resolving employee and interagency grievances, and for resolving grievances of the general public concerning the operation of the state personnel system;

(SB 193, page 11, line 13)

Comment

This paragraph is amended to require that the Personnel Rules include procedures for resolving grievances of the public concerning the state personnel system. These would include problems arising out of applying for state employment, state employment examinations, and the selection process.

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

(19) methods and procedures covering overtime work and pay;

(20) the granting of employment preference rights to a veteran at each time application is made for employment not within the area of promotion, when the veteran possesses the necessary qualifications in the job classification applied for under this chapter; in the examination to determine the qualification of applicants for entrance into the classified service under merit system examination, five additional points shall be added to the passing grade of a veteran and ten additional points shall be added to the passing grade of a disabled veteran; if a position in the classified service is eliminated, employees shall be released in accordance with rules which give due effect to all factors; if all job qualifications are equal, the veteran shall be given preference over the nonveteran and the veteran shall be kept on the job; in this paragraph

(A) "veteran" means a person with 90 days or more active service in the armed forces of the United States who has been honorably discharged after having served during any period between April 6, 1917, and December 1, 1919, between September 16, 1940, and December 31, 1947, or between June 27, 1950, and November 7, 1975;

(B) "disabled veteran" means a veteran who is rated by the United States Veterans' Administration as having at least a 10 percent service-connected disability;

(21) the employment of persons in permanent positions on a part-time basis of 15 hours or more a week, including the employment of two persons to fill one permanent full-time position; these employees shall be designated as permanent part-time employees;

(22) the granting of employment preference to severely handicapped persons; this includes the right to provisional appointment without competitive examination for periods up to four months and the granting of eligibility to a severely handicapped person provisionally appointed under the rules who demonstrates ability to perform the job for permanent appointment without competitive examination; provisional employment under this paragraph may not exceed four months during a 12-month period; "severely handicapped" as used in this paragraph means persons certified by the director of the division of vocational rehabilitation to be severely handicapped;

(SB 193, page 11, line 17)

Comment

The bill reorders and rephrases paragraphs (18) - (22). The substantive content is unchanged. For a table comparing the bill with the Act, See Appendix E.

(23) the establishment of programs facilitating the employment of disadvantaged persons, including limitation of competition for appointment and promotion to individuals who meet the program requirements;

(SB 193, page 12, line 26)

Comment

This paragraph is added to the State Personnel Act to provide statutory authority for the adoption of Rules to implement programs such as the Comprehensive Employment and Training Act (CETA) or the Senior Community Service Employment Program (SCSEP). The language is taken from the Model Public Personnel Administration Law.

(24) the delegation, when feasible, of personnel responsibilities and duties to the principal departments of the executive branch;

(25) other rules and administrative regulations, not inconsistent with this chapter, which are necessary for its enforcement.

(SB 193, page 13, line 1)

Comment

The bill renumbers these paragraphs. They are identical with provisions in the State Personnel Act.

Sec. 14. AS 39.25.153 is repealed and reenacted to read:

Sec. 39.25.153. PERSONNEL OFFICERS. (a) If a principal depart-

ment of the executive branch has a personnel officer, the personnel officer shall be employed by and located within that department.

(SB 193, page 13, line 5)

Comment

Subsection (a) of the bill provides that personnel officers shall be departmental employees. This resolves the question of whether they should be centralized as employees of the Division of Personnel stationed in the individual departments, or whether they should be decentralized as employees of the departments they serve, in favor of decentralization. The commission considered that the working relationship of the personnel officer with the commissioner and staff of the department was crucial to his or her effectiveness and that this relationship could be impaired if he or she were not an employee of the department. Since not all departments have a personnel officer (the Department of Law does not), the bill does not require each department to have one.

(b) Subject to the provisions of (d) of this section, the personnel officers for the Departments of Transportation and Public Facilities, Fish and Game, Education, Labor, and Health and Social Services, have the following powers with respect to the classes of positions unique to their departments:

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

(2) to administer and score examinations and to place successful applicants on the eligible lists;

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

(SB 193, page 13, line 9)

Comment

This section of the State Personnel Act grants to the personnel officers for certain departments the power to amend the Personnel Rules for classes of employees unique to their departments. This power has never been used. The commission recommends that the actions which a departmental personnel officer may take independently from the Division of Personnel be more clearly and more narrowly defined and that they no longer have the power to amend the Personnel Rules.

This section does not change which personnel officers are granted authority to act under AS 39.25.153 except to delete reference to the Department of Highways and to substitute the Department of Transportation and Public Facilities. However, instead of giving the named personnel officers the power to amend the Personnel Rules, subsection (b) sets out the actions they may take. The commission considered that these are the areas where the ability to act quickly is most likely to be crucial to the success of a departmental program.

During the year the Director of Personnel has delegated the classification authority for some classes to certain personnel officers. This has been done under AS 39.25.150(21), which permits delegation of personnel

functions, rather than under this section. The agreement extends beyond the scope of AS 39.25.153 which is limited to positions unique to the department.

(c) The initial determination of classes of positions unique to the departments listed in (b) of this section shall be made by the personnel officer of the department in consultation with the commissioner of his department subject to the approval of the director of personnel in the Department of Administration.

(d) The assumption of a power set out in (b) of this section must be approved by the commissioner of administration and must be in harmony with the merit principle of personnel administration (AS 39.25.-010).

(SB 193, page 13, line 21)

Comment

Subsection (c) is taken from existing language in AS 39.-25.153. Subsection (d) is new language giving the Department of Administration some control over the actions of the personnel officers and emphasizing the importance of the merit principle of employment.

Sec. 15. AS 39.25.160 is repealed and reenacted to read:

Sec. 39.25.160. GENERALLY. (a) A classified employee or an exempt employee in a position named in AS 39.25.110(3) may not take an active part in the management of a political party above the precinct level.

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

(c) A person may not require an assessment, subscription, contribution, or service for a political party from a state employee.

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

(e) An employee in the classified or partially exempt service who seeks nomination or becomes a candidate for state or national elective political office shall immediately resign any position held in the state service.

(SB 193, page 13, line 29)

Comment

That part of the existing AS 39.25.160(a) which grants political rights to state employees is placed in section 19 of the bill. (See page 35, infra)

All of these subsections have been rephrased for style, but their content is unchanged except as noted in the following comments.

The bill adds the phrase securing or making to subsection (b). The scope of subsection (c) is expanded to cover all state employees, not just those in the classified service. Subsection (e) extends the requirement for resignation when seeking nomination to political office to members of the partially exempt service.

(f) Action affecting the employment status of a state employee or an applicant for a position in state service, including appointment, promotion, demotion, suspension, or removal, may not be taken or withheld on the basis of unlawful discrimination due to race, sex, color, religion, national origin, age, or handicap.

(g) Action affecting the employment status of an employee in the classified service or an applicant for a position in the classified service, including appointment, promotion, demotion, suspension, or removal, may not be taken or withheld on the basis of unlawful discrim-

ination due to political beliefs.

(SB 193, page 14, line 18)

Comment

Protection against discrimination in employment is extended by subsection (f) not only to classified service employees but to members of the partially exempt and exempt service. The categories of unlawful discrimination are increased from race and religion to include sex, color, national origin, age and handicap. The provision which protects members of the classified service from discrimination based on political beliefs is placed in subsection (g). The bill prohibits only unlawful discrimination.

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

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

(SB 193, page 14, line 28)

Comment

A requirement that a person act knowingly is added to subsection (h). Otherwise, these two subsections are not substantively changed.

Sec. 16. AS 39.25.170 is repealed and reenacted to read:

Sec. 39.25.170. HEARINGS AND APPEALS UPON DISMISSAL, DEMOTION, OR SUSPENSION. (a) An employee may be dismissed, demoted, or suspended by delivery of written notice of the proposed action and the reason for it from the appointing authority to the employee.

(SB 193, page 15, line 7)

Comment

This subsection adds to the statute a requirement that the notice of disciplinary action given to the employee be in writing. It also requires that the notice set out the reasons for the action.

(b) A permanent employee in the classified service who has been dismissed, demoted, or suspended may appeal the action to the personnel board.

(c) An employee who has been dismissed, demoted, or suspended due to unlawful discrimination based on race, sex, color, religion, national origin, age, or handicap may appeal the action to the personnel board.

(d) An employee in the classified service who has been dismissed, demoted, or suspended due to unlawful discrimination based on political beliefs may appeal the action to the personnel board.

(e) A permanent employee in the classified service who holds probationary status in his present position may appeal a dismissal from the classified service to the personnel board.

(f) An employee who is on leave without pay from a position in the classified service and who is employed by the state in another capacity, either in the exempt or partially exempt service, may appeal a dismissal from the classified service to the personnel board.

(SB 193, page 15, line 12)

Comment

These subsections set out the employees who are granted appeal rights.

Subsection (b) repeats the existing statutory provision.

Subsection (c) is based on the expanded scope of AS 39.25.160(f) which extends protection from unlawful discrimination to partially exempt and exempt state employees and expands the classes of people protected from discrimination.

Subsection (d) extends protection against disciplinary action based on political beliefs to classified employees who are not in permanent status as well as to permanent classified employees.

Appeal rights granted by AS 39.25.150(7) are repeated in subsection (e). Subsection (f) is based on current practice and is consistent with the rationale of subsection (e).

(g) An employee begins an appeal by filing a written request for review of the action with the personnel board within 15 days of receiving written notice of the action from the appointing authority.

(h) If requested by the employee at the time of filing an appeal, the personnel board shall hold a hearing to determine the reasonableness of the the action taken by the appointing authority. If the employee requests it, the hearing shall be open to the public. The employee may be represented by another person and has the right to present evidence. Technical rules of evidence do not apply to the hearing.

(SB 193, page 15, line 28)

Comment

These subsections set out existing provisions of AS 39.25.-170(a). The new language makes clear that an employee must request his appeal in writing, that the employee has the right to determine whether the hearing is open to the public, that the employee's representative need not be an attorney, and

that the technical rules of evidence do not apply to the proceedings.

(i) If the personnel board finds that the action complained of was due to unlawful discrimination based on race, sex, color, religion, national origin, political beliefs, age, handicap, or in violation of the provisions of this chapter or the personnel rules, the employee shall be reinstated to the position without loss of pay or leave benefit for the period of dismissal, demotion, or suspension. In all other cases, the board shall report its findings and recommendations to both parties.

(SB 193, page 16, line 9)

Comment

The substance of subsection (i) is found in AS 39.25.170(b). The new subsection repeats the expanded classes protected from discrimination to all of those listed in the new AS 39.25.160.

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

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

(b) If a person refuses to respond to a subpoena issued under this section, or refuses to testify at a hearing authorized by AS 39.25.170, the personnel board may apply to the superior court for an order requiring the person to respond to the subpoena or to testify.

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

(SB 193, page 16, line 17)

Comment

The power to subpoena witnesses is already granted to the Personnel Board in AS 39.25.070(6). This new section sets out the procedures which the board may follow should

a person refuse to comply with the subpoena.

Sec. 18. AS 39.25 is amended by adding new sections to read:

Sec. 39.25.18.. DEFINITIONS. In this chapter,

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

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

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

(C) prevent another from acquiring pertinent information;

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

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

(4) "state employee" means a person employed by the state who is paid a wage or salary, but does not include a person hired by the state to work as an independent contractor.

(SB 193, page 16, line 27)

Comment

The definition for "fraud" is taken from the Criminal Code definition of "deception", AS 11.81.900(b)(14), and is rewritten for use within the State Personnel Act. The definition for "knowingly" is also taken from the Criminal Code, AS 11.81.-900(a)(2), with amendments for use within the State Personnel

Act.

The definition for "precinct" is taken verbatim from the State Election Code, AS 15.60.010(17). The bill includes a new definition for "state employee".

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

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

- (1) be a member of a national, state, or local political party;
- (2) take part in a political campaign;
- (3) express political opinions;
- (4) register party preference;
- (5) serve as a voting or nonvoting delegate to a party convention;
- (6) be appointed, nominated, or elected to nonpartisan public office in a local government unit; and
- (7) make contributions to a political party or a candidate for public office.

(SB 193, page 17, line 20)

Comment

This section sets out the political rights listed in the present AS 39.25.160(a) with amendments for style. Paragraph (7) is added to clarify that state employees may make contributions to a political party or candidate.

Sec. 20. AS 39.25.180 is repealed.

(SB 193, page 18, line 5)

Comment

The Revisor of Statutes has determined that this section, which provides for the transfer of territorial employees to state employees, is obsolete. The commission agrees with her. Therefore, the bill repeals the section.

Sec. 21. This Act takes effect July 1, 1981.

(SB 193, page 18, line 6)

Comment

The commission recommends an effective date to insure a smooth transition from the existing practices to those set out in the bill.

SENATE BILL 194: RELATING TO NEPOTISM IN STATE EMPLOYMENT.

PURPOSE

The present statute prohibiting nepotism in state employment is directed at relatives of the executive head of a department or agency. It prohibits the employment of anyone related within the second degree of kindred to the executive head. However, the Personnel Rules also prohibit the employment of persons related within the second degree of kindred to the head of the division or subdivision within which the person is working. (PR 13 09.2). In addition, the Rule requires that before a person may be employed in the same agency with a close relative, that the Director of Personnel and the appointing authority for the department or agency must give express approval to the appointment. (PR 13 09.3)

The scope of the Personnel Rules is broader than the scope of the statute. The Attorney General has advised the Division of Personnel that the Rules are therefore not completely enforceable. The commission considered the issue and the majority recommends that the scope of the statute be enlarged to include the provisions of the Personnel Rules. While provisions against nepotism limit the opportunities of some Alaskans to find employment with particular offices in the state, the disadvantage to those people should be weighed against the appearance of impropriety and favoritism which is created if relatives of the head of a division or department

are working within that division or department.

The Director of Personnel advised the commission that in the past he has routinely approved waivers for relatives to work in a non-supervisory status in the same office. The majority of the commission recommends that requirement for review of these situations be placed in the statute to provide a mechanism for review should an instance of abuse arise.

SECTION BY SECTION ANALYSIS

Section 1. AS 39.10.010 is repealed and reenacted to read:

Sec. 39.10.010. NEPOTISM PROHIBITED. (a) A person may not be appointed to a position in a state department or agency, whether in the legislative, judicial, or executive branch, if that person is the spouse of or is related by blood or marriage within and including the second degree of kindred to the commissioner or a deputy or assistant commissioner of the principal department, or to the executive head of the agency.

Comment

This subsection prohibits the employment of a person related to the top-level managers of a department or agency. It encompasses the present substance of AS 39.10.010 and extends it to include deputy and assistant commissioners.

(b) A person may not be appointed to a position in a division of a state department or agency, whether in the legislative, judicial, or executive branch, if that person is the spouse of, or is related by blood or marriage within and including the second degree of kindred to, the executive head of the division.

(c) A person may not be appointed to a position in a state department or agency in the executive branch, if that person is the spouse of, or is related by blood or marriage within and including the second degree of kindred to, an employee in the department or agency unless

the director of personnel and the person who makes the appointment approve the appointment in writing. An appointment prohibited by (a) or (b) of this section may not be approved under this subsection.

Comment

These subsections extend the scope of the statute to include the provisions of the Personnel Rule. Subsection (b) prohibits the employment within a particular division of persons related to the division director. It applies to all three branches of government.

Subsection (c) provides that before two close relatives may work in the same office in the executive branch of government, the Director of Personnel and the person who is making the hiring decision must both approve the appointment in writing.

Section 2. This Act takes effect immediately in accordance with AS 01.10.070(c).

Comment

Because the state is operating without an effective nepotism law, the commission recommends that the bill take effect immediately.

SENATE BILL 195: LIMITING THE ADJUSTMENT OF RETIREMENT
BENEFITS.

PURPOSE

This bill remedies a problem which the commission was advised of in testimony from a retired state employee. When the employee retired in 1976, she had been advised on four separate occasions by the staff of the Division of Retirement and Benefits that she was eligible for more than nine years of credited service with the state. Shortly after she retired the legislature amended the retirement laws and she was told that she would receive credit for an additional three years because of her military service. She began receiving retirement benefits on that basis.

In 1979 the division wrote to advise her that their original computations had been in error and that her years of employment with the University of Alaska could not be included in her credited service. Therefore, she had received over \$5000 in benefits which she would have to repay. They reduced the amount of her check by \$100 to be credited towards that overpayment, in addition to reducing the check to the amount she was actually entitled to receive. The basis for denying credit for the employee's period of service with the University of Alaska was a regulation adopted by the Division of Retirement and Benefits in 1978 -- two years after she had retired.

The employee appealed to the Public Employee Retirement Board, which can waive collection of overpayments in cases of hardship. In

determining whether there would be hardship to the employee, the board considered her family's financial situation and found that she was not entitled to the waiver.

Commission members discovered that this was not an isolated instance. A number of retired state employees have undergone similar experiences. They relied on assurances from the division of retirement and benefits only to discover a considerable time later that errors had been made and that their benefits would be reduced.

The commission recommends that a two-year statute of limitations be placed on the collection of overpayments. Two years gives the Division of Retirement and Benefits ample time to audit its records and find and correct any errors made. After that period of time, a retired person should be freed from the burden of having to pay back the state for mistakes of the state's employees. This protection should be available only in cases where the retired person did not contribute to causing the error. It should not apply to persons working for employers other than the state, since those employers may not be in a financial position to absorb the cost of errors made by state employees.

SECTION BY SECTION ANALYSIS

Section 1. AS 11.25.173 is amended by adding a new subsection to read:

(b) An adjustment which requires repayment of benefits may not be made under this section if

(1) the incorrect benefit was first paid two years or more before the member or teacher or beneficiary was notified of the change

or error; and

(2) the change or error was not caused by the member or teacher or beneficiary.

Comment

This section amends the Teachers Retirement System by prohibiting the Division of Retirement and Benefits from decreasing benefits in order to collect for a previous overpayment if two conditions are met. The first condition is that the overpayment began two years or more before the division told the retired teacher of the error. The second condition is that the teacher did not cause the error.

Sec. 2. AS 39.35.520 is amended by adding a new subsection to read:

(b) An adjustment which requires repayment of benefits may not be made under this section if

(1) the incorrect benefit was first paid two years or more before the employee or beneficiary was notified of the change or error;

(2) the change or error was not caused by the employee or beneficiary; and

(3) the change or error relates to the employee's credited service with the state and not with another participating employer.

Comment

This section amends the Public Employee Retirement System in the same way that section 1 amends the TRS. However, in this section there is an additional condition. The error in computation must relate to the employee's credited

service with the state, and not with another participating employer.

Sec. 3. This Act is retroactive to July 1, 1979.

Sec. 4. This Act takes effect immediately in accordance with AS 01.10.-070(c).

Comment

Section 3 makes the Act retroactive in order to include the retired person who testified before the commission. Section 4 provides that the Act takes effect immediately in order to address the hardship to retired state employees.

SENATE BILL 196 : RELATING TO THE MEMBERSHIP OF THE
PUBLIC EMPLOYEES RETIREMENT BOARD.

PURPOSE

This bill amends the Public Employees Retirement Act to change the membership of the Public Employees Retirement Board. The law presently requires that the three members who are appointed to the Personnel Board shall also serve on the PERB. AS 39.35.030. Those three individuals are also, by statute, appointed to the Labor Relations Agency, which is involved in collective bargaining issues. AS 23.40.250(3). The activities of both the LRA and the PERB have grown considerably recently. In the last legislative session, the PERB was made responsible for overseeing the supplemental employee benefit program and the deferred compensation program for state employees. AS 39.35.040(9) and (10). The increase in the number of state employees who are members of collective bargaining organizations has led to additional work for the LRA. The three members of the Personnel Board are citizen volunteers appointed by the Governor who are not employed by the state.

While the issues which are addressed by the Personnel Board are related to some of the issues addressed by the Labor Relations Agency, this is not the case with the subjects of concern to the Public Employees Retirement Board. Therefore, the commission recommends that the members of the Personnel Board continue to serve as the members of the LRA and that they be removed from the PERB.

The PERB should be composed of four elected members and one member appointed by the Governor. In addition, the commission recommends that one of the elected members should be a retired person to insure that those most directly affected by the system have a voice in the decision-making body.

SECTION BY SECTION ANALYSIS

Section 1. AS 39.35.030(b) is amended to read:

(b) One (THREE) board member (MEMBERS) shall be appointed by the governor and shall serve at his pleasure (MEMBERS OF THE PERSONNEL BOARD OF THE DEPARTMENT OF ADMINISTRATION). The remaining four (TWO) board members shall be members of the system (AND) elected by the members of the system, and at least one of the elected board members shall be retired.

Comment

Section 1 of the bill sets out the changes in membership of the PERS board which are discussed above.

Sec. 2. Notwithstanding AS 39.35.030(b), as amended by sec. 1 of this Act, a person serving on the Public Employees Retirement Board on the effective date of this Act who was from the personnel board of the Department of Administration shall continue to serve until his successor is elected or appointed by the governor.

Comment

Section 2 is a temporary measure to enable the board to continue to act until new members have been selected according to the new method.

SENATE BILL 197: APPLYING THE ADMINISTRATIVE PROCEDURE
ACT (AS 44.62) TO ADOPTION OF REGULATIONS
BY STATE RETIREMENT SYSTEMS.

PURPOSE

This bill amends the law to require that both the Public Employees Retirement Board and the Teachers Retirement System administrators comply with the Administrative Procedure Act when adopting regulations. Both retirement systems are presently exempted from the APA. The commission recommends the change because of concern that regulations have been adopted in the past without adequate opportunity for public comment. Although rule-making under the APA may be more time-consuming than rule-making under the present methods of the retirement systems, the improved public notice requirements outweigh that disadvantage. In instances in which either retirement system is faced with a need for immediate change in regulations, the APA provides for emergency rule-making. AS 44.62.250.

SECTION BY SECTION ANALYSIS

Section 1. AS 39.35.042 is repealed and reenacted to read:

Sec. 39.35.042. REGULATIONS. Adoption of regulations under this chapter is subject to the Administrative Procedure Act (AS 44.62).

Comment

Section 1 of the bill amends the Public Employees Retirement System statute to make the PERS subject to the APA rule-making requirements.

Sec. 2. AS 14.25.022 is repealed and reenacted to read:

Sec. 14.25.022. REGULATIONS. Adoption of regulation by the administrator under this chapter is subject to the Administrative Procedure Act (AS 44.62).

Comment

Section 2 amends the Teachers Retirement System statute to make the TRS subject to the APA rule-making requirements.

CHAPTER II

UNRESOLVED PERSONNEL ISSUES

A number of the issues in the state personnel system continue to be of concern to the commission. There has not been time to address them fully during the past year.

NONPERMANENT CATEGORY OF EMPLOYEES

The passage of the nonpermanent law ended many of the difficulties which had existed with the temporary category of employees. However, the nonpermanent law brought about a significant change in the system for employing short-term workers for the state. Problems remain to be resolved in the fine-tuning of that system. Recently, the commission was advised of one aspect of these problems.

The Department of Fish and Game employs a number of people during the summer months to inventory the wildlife resources of the state. The length of employment can be as short as three weeks. Before the nonpermanent law was passed, these positions were classified as temporary positions. Last year, the department changed them to permanent seasonal positions. With the change from temporary to permanent seasonal, the department was, for the first time, required to fill the positions from the state's registers (the list of eligible applicants for positions). In the past, many of these positions had been filled by local residents. However, the local residents are not as likely to apply for the positions and to be placed within the top five candidates on the register as are college students looking for summer work. This had led to a decrease in local hire.

The issues which this situation raises include whether positions of this kind should be classified as permanent seasonal, and, if not, how they should be incorporated into the nonpermanent category of employees. The commission expects to discuss these issues during its ensuing meetings and to fully review the state's experience with the nonpermanent law.

APPLICATION PROCESSING BY THE DIVISION OF PERSONNEL

It takes an average of about six weeks for an application for state employment to be evaluated and the applicant advised whether he meets the minimum qualifications and to be scheduled for any examination required for the job class applied for. This is an average time and the actual time varies considerably based on the job class applied for and the place where the application is submitted. While the six weeks delay

is lower than previous averages, it is longer than it should be. In addition, the division expects to receive an increased number of applications during the summer months, and this increase will probably lead to a longer processing time.

The division has advised the commission of steps it is taking to automate part of the application system, so that record keeping will be done automatically and it will be easier to track the progress of an application. The commission encourages the division to do all that it can to improve the situation. The commission will continue to consider the issue.

MEMBERSHIP IN THE EXEMPT AND PARTIALLY EXEMPT SERVICES

Membership in the exempt and partially exempt services is established by the State Personnel Act. In its revision of the Act, the commission does not make substantial changes in that membership. However, it continues to be concerned about agencies whose employees might more appropriately be placed in the classified service and subject to the merit principle of employment. The commission has urged the Governor to continue to examine this question, and where appropriate, to move employees into the classified service.

DISCIPLINARY SYSTEM FOR STATE EMPLOYEES

Neither the State Personnel Act nor the Personnel Rules provide a comprehensive system of disciplinary measures for state employees. The Act does include a statement that the Rules shall provide for the imposition of disciplinary suspension without pay for not longer than 30 days in a 12-month period. AS 39.25.150(17). The Act also makes willful violation of the State Personnel Act or the Personnel Rules grounds for conviction of a misdemeanor. Following conviction, a state employee immediately forfeits his office or position. AS 39.25.210.

The commission is working towards the development of a disciplinary system which would guide supervisors so that all state employees receive fair and consistent treatment which corrects problems where possible and encourages an effective, motivated work force.

REVISION OF THE PERSONNEL RULES

The commission continues to recommend that the Personnel Rules be comprehensively revised to bring them into accord with modern personnel practices. Issues which should be addressed in the revision include the use of block scoring and the application and selection procedure for state employment, especially for rural positions. The Rules should also indicate the extent to which they are affected by collective bargaining.

SENATE CONCURRENT RESOLUTION 10: EXTENDING THE LIFE OF THE
BLUE RIBBON COMMISSION ON THE STATE
PERSONNEL ACT.

PURPOSE

As noted in the previous sections, there are a number of issues which the commission has not been able to resolve in the time available to it. The commission requests that its operation be extended for another year so that it can continue with the projects it has begun. Therefore, it is introducing Senate Concurrent Resolution No. 10. A fiscal note for the resolution is included as Appendix F.

TEXT

WHEREAS in 1978 the legislature through Legislative Resolve No. 27 authorized the Legislative Council, in cooperation with the director of personnel, to form a "blue ribbon" commission to study the State Personnel Act; and

WHEREAS the commission was formed as authorized by the resolution, made its report to the First Session of the Eleventh Legislature, and, in response to the commission's request for additional time to study problems it had identified, was funded by the legislature for a second year; and

WHEREAS in 1980 the commission made its second report to the legislature, and the legislature through Legislative Resolve No. 38 authorized the commission to continue to perform the assignments made to it by 1978 Legislative Resolve No. 27; and

WHEREAS the commission is continuing to develop answers to the issues

it has identified and more time is needed to complete the task which it was assigned;

BE IT RESOLVED by the Alaska State Legislature that the Blue Ribbon Commission on the State Personnel Act is authorized to continue to perform the assignments made to it by 1978 Legislative Resolve No. 27, through June 30, 1982.

APPENDICES

STATE OF ALASKA

THE LEGISLATURE

1978

Source

SCR 88 am HLegislative
Resolve No.27

Directing the Legislative Council to carry out certain studies.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

The legislature has determined that the laws of the state found in Title 4, Alaska Statutes, and relating to the sale and dispensing of alcoholic beverages, are in serious disarray. This disarray is the result of patchwork amending over several decades and as a result the laws are very difficult to administer effectively and defy constructive amendment on a piecemeal basis. This small but important body of law is overdue for a substantive revision. A revision project would involve a thorough review of the policies involved and a comprehensive re-arrangement and rewording of the laws to make effective administration possible and to facilitate legislative amendment in the future.

The Senate Special Committee on the Revision of Title 4 of the Alaska Statutes (Alcoholic Beverages) will expire with other special committees at the end of the regular session, but the legislature finds that the subject matter before it will require interim attention between adjournment and the convening of the next legislature.

BE IT RESOLVED by the Alaska State Legislature that under provisions of AS 24.20.090 and Uniform Rule 48(c) the Legislative Council is directed to establish a joint interim committee of the council to continue the special committee's work and accomplish a substantive revision of Title 4, Alaska Statutes (Alcoholic Beverages) during the 1978 interim; and

WHEREAS the State Personnel Act (AS 39.25) of the State of Alaska represents a considerable and vital body of law which has not undergone substantive revision and is consequently vastly

out of step with personnel developments of the last decade; and

WHEREAS the advent of collective bargaining and the tremendous growth in the number of state government employees require refinement of the personnel system; and

WHEREAS investigations by the legislative audit division and the office of the ombudsmen have revealed major deficiencies in the present personnel system; and

WHEREAS it is impossible during the course of a legislative session to devote the necessary time required to study and refine the Personnel Act;

BE IT RESOLVED by the Alaska State Legislature that the Legislative Council, in cooperation with the director of personnel, is authorized to form a "blue ribbon" commission to study and refine the State Personnel Act and to investigate the feasibility of decentralizing the hiring of employees and a method for regularizing the hiring of specialists who, because of higher comparable salaries in the private sector for the skills involved, must be paid at levels in excess of the salary schedule, and to submit the First Session of the Eleventh Legislature a proposed revision of the State Personnel Act based on the commission's recommendations; and be it

FURTHER RESOLVED that the membership of the commission should be representative of all persons and groups vitally concerned with the personnel system; and be it

FURTHER RESOLVED that the Legislative Council is authorized to contract with a competent person or firm knowledgeable in the varying aspects of personnel administration to oversee and direct the work of the commission.

STATE OF ALASKA

THE LEGISLATURE

1980

Source

Legislative
Resolve No.SCR 5038

Extending the life of the Blue Ribbon Commission on the State Personnel Act.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

WHEREAS in 1978 the legislature through Legislative Resolve No. 27 authorized the Legislative Council, in cooperation with the director of personnel, to form a "blue ribbon" commission to study the State Personnel Act; and

WHEREAS the commission was formed as authorized by the resolution, made its report to the First Session of the Eleventh Legislature, and, in response to the commission's request for additional time to study problems it had identified, was funded by the legislature for a second year; and

WHEREAS additional time is needed to study the complex, interrelated problems which the commission has identified;

BE IT RESOLVED by the Alaska State Legislature that the Blue Ribbon Commission on the State Personnel Act is authorized to continue to perform the assignments made to it by 1978 Legislative Resolve No. 27 through June 30, 1981.

TABLE OF COMPARISON - AS 39.25.110

<u>EXISTING</u>	<u>PROPOSED</u>	<u>COMMENT</u>
(1)	(1)	
(2)	(2)	Adds judges of the court of appeals
(3)	(3)	Rephrased - content the same
(4)		Deleted - encompassed within (4) of proposed
(5)	(4)	Rephrased - content the same
(6)	(5)	
(7)	(6)	Rephrased - content the same
(8)	-	Deleted - There are no longer schools operated by the state
(9)	(8)	
(10)	(9)	Change in line 16 to read "temporary or special inquiry"
(11)	(10)	"Unless otherwise provided by law" moved to subsection (a) (page 2 lines 23-24) and therefore deleted here.
(12)	(18)	
(13)	-	Deleted - included within proposed (10)
(14)	(12)	
(15)	(10) & (11)(A)	
(16)	(13)	
(17)	(10) & (14)	

AS 39.25.120 (continued)

<u>EXISTING</u>	<u>PROPOSED</u>	<u>COMMENT</u>
(8)	(17)	The proposed paragraph includes the deputy director of insurance, who is in the partially exempt service but not listed in the present statute.
(9)	(2)	
(10)	(6)	
(11)	(7)	
(12)	(18)	
(13)	(3)	
(14)	(10)(G)	
(15)	(10)(H)	
(16)	(10)(I)	
(17)	(10)(J)	
(18)	(8)	
--	(9)	All special assistants to commissioners are in the partially exempt service. The commission set a limit of two special assistants for each commissioner. Where appropriate, the Personnel Board has the authority to approve additional special assistants.
--	(10)(A)-(E) and (11)-(16)	All of these positions are in the partially exempt service but are not listed in the present statute.

TABLE OF COMPARISON - AS 39.25.150

<u>EXISTING</u>	<u>PROPOSED</u>	<u>COMMENT</u>
(1)	(1)	Restructured - content unchanged
(2)	(2)	Some deletions of unnecessary material. The proposed version adds the phrase "or unless the payment is in accordance with a valid agreement entered into in accordance with AS 23.40;"
(3)	(3)	New language to more clearly express what "sound employee selection methods" means. The existing paragraph states: The use of sound employee selection methods, including open competitive examinations to test the fitness of applicants for positions in the state service;
(4)	(6)	
(5)	(4)	Rephrased - content unchanged
(6)	(5)	
(7)	(7)	Rephrased - content unchanged
(8)	(8)	The proposed paragraph combines existing paragraphs (8) and (9)
(9)	(8)	
(10)	(9)	
(11)	(10)	
(12)	(11)	
(13)	(12)	
(14)	(13)	

AS 39.25.150 (continued)

<u>EXISTING</u>	<u>PROPOSED</u>	<u>COMMENT</u>
(15)	(14)	Rephrased - content unchanged
(16)	(15)	Rephrased - content unchanged
(17)	(16)	The proposed version deletes the 30-day limit to disciplinary suspension without pay.
(18)	(17)	The proposed version adds a requirement that the Personnel Rules provide procedures for resolving citizen grievances.
(19)	(18)	
(20)	(19)	
(21)	(24)	
(22)	(25)	
(23)	(20)	Restructured for clarity - the content is unchanged
(24)	(21)	
(25)	(22)	
--	(23)	This paragraph is added to make clear that the Personnel Rules can provide for programs such as CETA and the Senior Community Service Employment Program. The language is taken from the Model Public Personnel Administration Law.

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SENATE CONCURRENT RESOLUTION NO. 10
 Title Extending the life of the Blue Ribbon Commission on the State Personnel Act
 Requested by Senator Bill Ray Date 02/18/81

II. FISCAL DETAIL

Agency Affected Legislative Affairs
 Program Category Affected General Government
 BRU, Program, or Subprogram(s) Affected Legislative Council
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES		77.9				
200 TRAVEL		25.0				
300 CONTRACTUAL		5.0				
400 COMMODITIES		1.2				
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS CLAIMS, ETC						
TOTAL		109.1				

FUNDING (Thousands of Dollars)

GENERAL FUND		109.1				
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME		2				
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Continuation of present staff and activity:

One Admin. Asst. full-time \$ 50,730
 One Secretary full-time 27,210
 v/benefits \$ 77,940

Travel - Staff and Commission

Estimate 10 members per meeting at \$ 25,000
 \$500 travel & per diem per trip for five trips

Contractual - phone, public notices, etc. 5,000
 Commodities 1,200

TOTAL

\$ 109,100

IV. DATE 2/19/81

PREPARED BY

Richard D. Berg

AGENCY

Legislative Affairs Agency

PHONE

465-3850

Original Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)