

S

B

/

o

B

COMMITTEE REPORT
SENATE

5/15/81

FURTHER: None

Date: MARCH 31, 1982

Mr. President:

The Committee on JUDICIARY has had SB 193
amending the State personnel Act

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for SB 193 same title
 new title
- and recommends DO PASS
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Walter Anderson

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Robert F. ...

Walter Anderson
CHAIRMAN
Do pass

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF ADMINISTRATION

OFFICE OF THE COMMISSIONER

POUCH C

JUNEAU, ALASKA 99811

465-2200

April 20, 1982

Honorable Ray Metcalfe
Chairman, House State Affairs Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Chairman:

CSSB 193 (Jud) am, amending the State's personnel laws, has been referred to your committee. We request that you make the following changes:

1. Delete Sec. 39.25.120(17)
2. Delete Section 12
3. Add to Sec. 39.25.150(5)
(;) including preference for local residents under appropriate circumstances;
4. Delete Section 16

Your consideration of these changes is greatly appreciated.

Respectfully,



W. R. Hudson
Commissioner

WRH/mjc

cc: Honorable Ramona Barnes
Chairwoman, House Judiciary
Committee

Keith Specking
Legislative Assistant
Office of the Governor



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

May 5, 1982

The Honorable Ramona Barnes
Chairwoman, House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Chairwoman Barnes:

HCS CS SB 193 (SA) is now before your committee. It is my understanding that amendments previously requested by the Governor were included by the House State Affairs Committee. It has also come to my attention that Commissioner Hudson had requested amendments which were not included. These amendments are fully supported by this office.

Please amend HCS CS SB 193 (SA) as follows:

Amendment 1:

Page 7, line 8

Change semi-colon to period so that line reads:

Offices Commission (;) .

Page 7, line 9

Delete paragraph 17.

Amendment 2:

Page 8, line 1

Delete existing section 12 and insert new section 12 to read:

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

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

Amendment 3:

Page 10, line 2

Add language to paragraph 5 so that it reads:

- (5) the procedure for certifying eligible candidates (;) including preference for local residents under appropriate circumstances ;

Amendment 4:

Page 15, line 20

Change existing Section 16(c) to:

- (c) An employee in the executive branch of state governments who has been dismissed, demoted, or suspended due to unlawful discrimination based on race, religion, color, or national origin, or because of age, handicap, sex, marital status, change in marital status, pregnancy, or parenthood may appeal the action to the State Commission for Human Rights or the personnel board.

The first requested amendment would result in Labor Relations working-level staff remaining in the classified service. Retaining this status maintains the integrity of the ongoing relationship between the State and labor organizations representing State employees, and provides a buffer from union applied political pressure on the professional staff. Retention of knowledge of the intricate workings of the State provides a continuity at the bargaining table that takes years to develop. The director of this division is already in the partially exempt service and is therefore subject to replacement at the discretion of those in higher authority.

Amendment two represents a compromise between present law and the current proposal. This amendment would command the publication of Personnel Rules in the Administrative Code thus providing greater public opportunity for review. It would also provide a period of time for the State to assess the impact of placing the Personnel Rules in the Administrative Code.

Amendment three is offered with the intent of providing more employment opportunities for rural residents.

The Honorable
Ramona Barnes

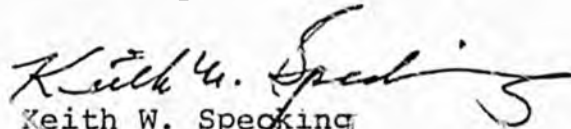
-3-

May 5, 1982

Amendment four is also a compromise between the proposed act and current practice. This amendment would have the effect of legally assuring an administrative hearing for employees who believe they have been discriminated against but avoiding the costs of redundant administrative processes. The employee could exercise the choice of appealing the action through AS 18.80 with the Human Rights Commission or pursuing relief from the personnel board.

Thank you for your consideration of these amendments.

Sincerely,



Keith W. Specking
Legislative Assistant
to the Governor

cc: The Honorable Bill Ray
Chairman
Blue Ribbon Commission
on the Personnel Act

The Honorable William R. Ho son
Commissioner, Department of Administration

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU ALASKA 99801
907 465 3600

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 14, 1982

SUBJECT: HCS CSSB 193 (Judiciary)

TO: Representative Ramona L. Barnes
Chairman, House Judiciary Committee

FROM: *ELA* Linn H. Asper
Legislative Counsel

You have asked for an analysis of the changes made by the Judiciary Committee in the proposed Judiciary committee substitute for SB 193. The changes and the effect of the changes are as follows: (References are to the May 14, 1982 draft of the committee substitute)

1. In *Sec. 11, the proposed AS 39.25.140 has been deleted. This means that the comprehensive amendments to personnel rules adoption procedures that were passed by the Senate have been eliminated in favor of existing law on the subject. The Judiciary committee substitute changes AS 39.25.140(e) by making publication of personnel rules in the Alaska Administrative Register and Code mandatory instead of permissive.
2. In *Sec. 12, the proposed AS 39.25.150(3) has been changed to add language requiring open competitive examinations, when appropriate, in the employee selection process under the personnel rules. This change encourages the use of open competitive examinations in the state employee selection process without requiring them that they be used.
3. In *Sec. 12, the proposed AS 39.25.150(5) has been changed to add language to encourage the hiring of local residents. Since local hire provisions face constitutional difficulties the added language does not make local hire mandatory, instead providing for local hire "when appropriate".

May 14, 1982

4. In *Sec. 12, the proposed AS 39.25.150(22) deletes language that would allow personnel rules to provide for limitation of competition in state employment hiring decisions for disadvantaged persons. The deletion of this language does not mean that the personnel rules could not include a limited competition plan, but the legislative affirmation of such a plan has been removed.

5. In *Sec. 17, the proposed AS 39.25.192(3) has been changed by adding language to more clearly delineate what political conduct a state employee not engage in while engaged on official business of the state.

6. The proposed amendment to AS 39.25.170 has been deleted in the committee substitute, which means that the existing law regarding hearings and appeals upon dismissal, demotion or suspension of a state employee would continue to apply. The effect of this change would be to eliminate the expansion of employee hearing and appeal rights that is contemplated in the Senate passed version of the bill.

LHA:ljb



JUNEAU, ALASKA

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT

Senator Bill Ray, Chairman

Pouch YG
Mail Stop 3123
Juneau, Alaska 99811
(907) 465-4442

M E M O R A N D U M

April 30, 1982

TO: House Judiciary Committee

FROM: Teresa B. Cramer *IBC*
Administrative Assistant

SUBJECT: HCS CSSB 193 (SA) Amending State Personnel Laws

The Blue Ribbon Commission sponsored Senate Bill 193 as a comprehensive revision of the State Personnel Act. It makes changes in some personnel practices, expands the protections granted to employees in the exempt and partially exempt services and makes the Act consistent with the Public Employment Relations Act.

Those sections of the bill which present significant changes are analyzed briefly below.

Page 2 Section 6. Amending AS 39.25.080. PUBLIC RECORDS.
Lines 6-25

This section sets out those personnel records which will be open to public inspection. All other personnel records will be kept confidential.

The current law provides that all records are public except those which the Personnel Rules make confidential. In fact, the amendment would not change the existing practice since those items listed are the only personnel records now open to the public.

Page 2 Section 7. Amending AS 39.25.090. COVERAGE OF CHAPTER.
Line 27 ff.

This amendment provides that the State Personnel Act applies to exempt positions as specifically provided. The Committee Substitute gives added rights of appeal to exempt employees of the executive branch in cases of unlawful discrimination. (See Section 16)

Section 8. Amending AS 39.25.110. EXEMPT SERVICE.

Page 5
Line 2

The House Committee Substitute adds paragraph (20) which changes employees of the Office of the Governor and the Lt. Governor from the partially exempt to the exempt service. Employees of councils, boards, or commissions established by statute in those offices are left in the partially exempt service.

Page 4
Line 7 ff

In addition, this section does add statutory reference to employees of the Citizen's Advisory Commission on Federal Areas in Alaska (11)(G), petroleum engineers and petroleum geologists employed by the Oil and Gas Conservation Commission (14), employees of the state who reside in foreign countries (17), employees of the Alaska Seafood Marketing Institute (18), and firefighters employed by DNR for a fire emergency (19).

Page 7
Line 9

Section 9. Amending AS 39.25.120. PARTIALLY EXEMPT SERVICE.

In paragraph (17) the bill adds those employees of the Division of Labor Relations who are responsible for negotiating labor contracts with state employee organizations to the partially exempt service. These employees are currently members of the classified service but do not belong to any bargaining unit and are not members of any union or employee association. At one time they were members of the Confidential Employees Association.

Page 8
Line 1 ff

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

The Committee Substitute requires that those amendments to the Personnel Rules which are matters of public policy shall be adopted according to the Administrative Procedures Act. (Subsection (c), page 7, line 28) The current law entirely exempts the Personnel Rules from the APA.

For those rules which are not matters of public policy, the Committee Substitute maintains the current system of adoption, but adds that the Personnel Board

may amend rules proposed to it (Subsection (f)). The Committee Substitute also requires that amended rules shall be published in the Administrative Code, (Subsection (h)).

Page 8
Line 29 ff

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

This section remains basically the same as the current law with the following exceptions.

Page 11
Line 2

(15) no longer sets a limit of 30 days to a period of disciplinary suspension.

Page 11
Line 4

(16) adds a requirement that the Personnel Rules include procedures for resolving disputes from the general public.

Page 11
Line 10

(19) sets out the provisions for veterans' preference in state employment in different form. The substance of the preference is basically unchanged. The definition of veteran is amended to require that an individual have served 181 days in active service instead of the present 90 days. This is in conformance with federal veterans' preference system. The definition of disabled veteran is also changed slightly. It no longer requires that an individual have a 10% service connected disability but instead specifies that the individual be entitled to compensation from the Veterans' Administration.

Page 12
Line 21

(22) provides that the Personnel Rules shall include procedures for programs which may be set up to facilitate the employment of disadvantaged persons and permits the procedures to limit competition for hiring for those programs.

Page 12
Line 27

(24) adds a requirement that the Rules provide for assistance in finding work to partially exempt or exempt employees whose positions are moved into the classified service. Classified employees must pass examinations to be hired. Exempt and partially exempt employees do not have to meet these merit system standards and may be unable to qualify for the positions which they previously held.

Page 13
Line 4 ff

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. These powers have never been exercised. They are retained in limited form by the Committee Substitute.

Page 13
Line 28

Section 15. Amending AS 39.25.160. GENERALLY.

Most of this section remains unchanged. The following subsections have been amended.

Page 14
Line 7

Subsection (c) extends protection from being required to make a political contribution to all state employees. The current law protects only classified employees.

Page 14
Line 12

Subsection (e) adds a requirement that partially exempt employees resign from state employment when seeking political office. The subsection also clarifies when the employee's position becomes vacant.

Page 14
Line 18

Subsection (f) extends protection from unlawful discrimination to all state employees and applicants for state service. The current law is limited to members of the classified service.

Page 15
Line 11 ff

Section 16. Amending AS 39.25.170. HEARINGS AND APPEALS UPON DISMISSAL, DEMOTION OR SUSPENSION.

This section changes the statutes to reflect caselaw and adds that employees in the executive branch of state government who have been unlawfully discriminated against may appeal to the Personnel Board. The current law limits the protection of the State Personnel Act and the scope of appeals to the Personnel Board to members of the classified service. (Subsection (c)).

The Committee Substitute provides in Subsection (i) that executive branch employees who the Personnel Board finds have been unlawfully discriminated against will be reinstated without loss of pay. This remedy is currently available only to classified employees. The Committee Substitute adds that the decision of the Personnel Board may be appealed to the Superior Court.

TBC:Imk

PROPOSED AMENDMENTS TO SB 193

APEA

3/31/81

Section 8

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

- (A) Alaska Gas Pipeline Financing Authority;
- (B) Alaska Permanent Fund Corporation;
- (C) Alaska Energy Center;
- (D) Alaska Industrial Development Authority;

(12) the executive officer of the Alaska Commission on Postsecondary Education and the Alaska Commercial Fisheries Entry Commission.

COMMENTS

In order to place the employees of the Alaska Commission on Postsecondary Education and Alaska Commercial Fisheries Entry Commission in classified service, the following changes are necessary:

TITLE would have amended

Sec. 16.43.080 is amended to read as follows:

Sec. 66.43.080. Employment of personnel. (a) The commission may employ those persons necessary to carry out the purposes of this chapter. [EMPLOYEES] The executive officer of the commission [ARE] is in the exempt service under AS 39.25.110. Other employees of the commission are in the classified service.

Sec. 14.40.913 is amended to read as follows:

Sec 14.40.913. Executive officer and staff; administration. (a) The commission may employ those persons necessary to carry out the purposes of this chapter. The commission may appoint an executive officer. The executive officer is a member of the exempt service under AS 39.25.110, serves at the pleasure of the commission, and he receives compensation fixed by the commission. Other employees of the commission are in the classified service [THE EXECUTIVE OFFICER APPOINTS PERSONS TO THE STAFF POSITIONS AUTHORIZED BY THE COMMISSION, AND STAFF COMPENSATION IS FIXED BY THE COMMISSION.] The executive officer is the executive secretary of the student financial aid committee. Each employee of the commission shall elect membership either in the state teachers' retirement system (AS 14.25), if qualified, or in the public employees' retirement system (AS 39.35).

PROPOSED AMENDMENTS TO SB 193

Section 12

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.

(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.

COMMENTS

Paragraphs d, e, and f were deleted. Paragraphs e-1 through e-5 become c-1 through c-5 subsections.

The subjects included as matters of public policy are all negotiable items under the collective bargaining process.

PROPOSED AMENDMENTS TO SB 193

Section 13 AS 39.25.150 (3)

(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;

COMMENTS

While capacity and the fitness of an individual may be tested, it is impossible to test an individual's efficiency.

PROPOSED AMENDMENTS TO SB 193

Section 15 AS 39.25.160

(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 withheld on the basis of unlawful discrimination due to race, religion, color or national origin, or because of his age, physical handicap, sex, marital status, changes in marital status, pregnancy or parenthood when the reasonable demands of the position do not require distinction on the basis of age, physical handicap, sex, marital status, changes in marital status, pregnancy, parenthood, or any other non merit reason.

(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 discrimination due to race, religion, color or national origin, or because of his age, physical handicap, sex, marital status, changes in marital status, pregnancy or parenthood when the reasonable demands of the position do not require distinction on the basis of age physical handicap, sex, marital status, changes in marital status, pregnancy, parenthood, political beliefs, or any other non merit reason.

PROPOSED AMENDMENTS TO SB 193

Section 16 AS 39.25.170

(c) An employee who has been dismissed, demoted, or suspended due to unlawful discrimination based on race, religion, color or national origin, or because of his age, physical handicap, sex, marital status changes in marital status, pregnancy or parenthood when the reasonable demands of the position do not require distinction on the basis of age, physical handicap, sex, marital status, changes in marital status, pregnancy, parenthood, or any other non merit reason 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 or based on race, religion, color or national origin, or because of his age, physical handicap, sex, marital status, changes in marital status, pregnancy or parenthood when the reasonable demands of the position do not require distinction on the basis of age, physical handicap, sex, marital status, changes in marital status, pregnancy, parenthood, political beliefs, or any other non merit reason may appeal the action of the personnel board.

SEE PAGE 4
NOTE

Original sponsor: Rules/Legislative Council

1 IN THE SENATE BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 193 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

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

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

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

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

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

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

1 (3) hear and determine appeals by employees [IN THE CLASSI-
2 FIED SERVICE] as provided in AS 39.25.170;

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

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

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

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

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

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

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

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

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

18 (5) the dates of appointment and separation of a state em-
19 ployee; and

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

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

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

26 * Sec. 7. AS 39.25.090 is amended to read:

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

1 vided.

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

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

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

9 (2) justices of the supreme court, judges of the court of
10 appeals, judges of the superior court, and judges and magistrates of
11 other state courts established by law;

12 (3) employees of the state court system, and employees and
13 members of the Judicial Council;

14 (4) employees of the state legislature and its agencies;

15 (5) the head of each principal department in the executive
16 branch;

17 (6) officers and employees of the University of Alaska;

18 (7) certificated teachers and noncertificated employees
19 employed by a regional educational attendance area established and
20 organized under AS 14.08.031 - 14.08.041 to teach in, administer, or
21 operate schools under the control of a regional educational attendance
22 area school board;

23 (8) certificated teachers employed by the Department of
24 Education as correspondence teachers or teachers in skill centers
25 operated by the Department of Education;

26 (9) patients and inmates employed in state institutions;

27 (10) persons employed in a professional capacity to make a
28 temporary or special inquiry, study or examination as authorized by the
29 governor, [the legislature, or a legislative committee;

1 (11) members of boards, commissions, or authorities;

2 (12) the officers and employees of the following boards,
3 commissions and authorities:

4 (A) Alaska Gas Pipeline Financing Authority;

5 (B) Alaska Permanent Fund Corporation;

6 (C) Alaska Energy Center;

7 (D) Alaska Industrial Development Authority;

8 (E) Alaska Commercial Fisheries Entry Commission;

9 ^F ~~415~~ [the executive officer of the] Alaska Commission on Post-
10 secondary Education;

11 [(14) the ombudsman and his staff;]

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

14 (16) licensed physicians, as defined in AS 47.30.340(9),
15 [employed by the division of mental health and developmental disabili-
16 ties, Department of Health and Social Services;]

17 (17) petroleum engineers and petroleum geologists employed in
18 a professional capacity by the Department of Natural Resources except
19 for those employed in the division of geological and geophysical
20 surveys; * See: 31 05 023(b) OIL + GAS CONSERVATION COMMISSION

21 (18) officers, agents, and employees of the Alcoholic Bever-
22 age Control Board granted limited peace officer powers by the Alcoholic
23 Beverage Control Board under AS 04.06.110;

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

28 (20) officers and employees of the state who reside in foreign
29 countries;

1 (21) employees of the Alaska Seafood Marketing Institute.

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

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

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

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

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

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

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

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

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

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

1 (7) the state forester in the Department of Natural Resour-
2 ces;

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

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

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

11 (A) Alaska Public Broadcasting Commission;

12 (B) Professional Teaching Practices Commission;

13 (C) Parole Board;

14 (D) Board of Nursing;

15 (E) Real Estate Commission;

16 (F) Alaska Royalty Oil and Gas Development Advisory

17 Board;

18 (G) Alaska Historical Commission;

19 (H) Alaska State Council on the Arts;

20 (I) Alaska Police Standards Council;

21 (J) Council on Science and Technology;

22 (11) Alaska Pioneers' Home managers;

23 (12) hearing examiners in the Department of Revenue;

24 (13) the comptroller in the division of treasury, Department
25 of Revenue;

26 (14) investment officers in the Department of Revenue;

27 (15) the chief of subsistence in the Department of Fish and
28 Game;

29 (16) airport managers in the Department of Transportation and

1 Public Facilities employed at the Anchorage and Fairbanks International
2 Airports;

3 (17) the deputy director of the division of tourism and the
4 deputy director of the division of insurance in the Department of Com-
5 merce and Economic Development;

6 (18) the executive director and staff of the Alaska Public
7 Offices Commission;

8 (19) the executive director, but not other staff, of the
9 Older Alaskans Commission in the Department of Administration.

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

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

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

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

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

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

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

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

28 Sec. 39.25.140. AMENDMENT OF PERSONNEL RULES. (a) The director
29 of personnel shall prepare and submit proposed amendments of the

1 personnel rules to the commissioner of administration for review and
2 approval.

3 (b) The commissioner of administration shall review the proposed
4 amendments and if he approves them, he shall submit them to the person-
5 nel board.

6 (c) If the proposed amendments concern matters of public policy,
7 the personnel board shall adopt them in accordance with the Administra-
8 tive Procedure Act (AS 44.62).

9 (d) If the proposed amendments relate only to internal management
10 of a state agency, the commissioner of administration shall post notice
11 in public buildings throughout the state that the personnel board has
12 the proposed amendments under consideration. The notice required by
13 this subsection shall be posted at least 30 days before any decision is
14 made to amend the personnel rules and shall include an address for the
15 receipt of written comments.

16 (e) If requested by the commissioner of administration or by a
17 person receiving notice of the proposed amendments, the personnel board
18 may hold public hearings on the proposed amendments and may appoint a
19 hearing officer to conduct the hearings.

20 (f) The personnel board may amend the proposed amendments.

21 (g) The proposed amendments become effective 45 days after they
22 are submitted to the personnel board unless the board has disapproved
23 them.

24 (h) The amended rules shall be published in the Alaska Administra-
25 tive Register and Code for informational purposes.

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

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

29 (1) the preparation, maintenance, and revision by the rec-

1 tor of personnel, subject ~~to~~ approval of the commissioner of adminis-
2 tration and the personnel board, of a position classification plan for
3 all positions in the classified and partially exempt services; the
4 position classification plan shall include

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

7 (B) an appropriate title, a description of the duties
8 and responsibilities, training and experience qualifications, and
9 other necessary [position] specifications for each class of posi-
10 tions;

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

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

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

29 (5) the procedure for certifying eligible candidates;

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

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

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

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

18 (10) transfers from one department to another and from an-
19 other merit system jurisdiction to the state service;

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

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

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

25 (14) layoffs for reason of lack of money or work, abolition
26 of positions, or material changes in duties or organization; both
27 performance and seniority records shall be considered in the develop-
28 ment of layoff orders;

29 (15) the development, maintenance, and use of employee perfor-

1 mance records;

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

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

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

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

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

25
26
27
28
29

10 years limit

(A) "veteran" means a person with 181 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

FREE MOVES
11 DEFINED IN A OF THIS
SUBSECTION 1 AND
#24

1 November 7, 1975;

2 (B) "disabled veteran" means a veteran who is entitled
3 to compensation under laws administered by the United States
4 Veterans' Administration, or a person who was discharged or re-
5 leased from active duty because of a service-connected disability;

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

10 (22) the granting of employment preference to severely handi-
11 capped persons; this includes the right to provisional appointment
12 without competitive examination for periods up to four months and the
13 granting of eligibility to a severely handicapped person provisionally
14 appointed under the rules who demonstrates ability to perform the job
15 for permanent appointment without competitive examination; provisional
16 employment under this paragraph may not exceed four months during a
17 12-month period; "severely handicapped" as used in this paragraph means
18 persons certified by the director of the division of vocational reha-
19 bilitation to be severely handicapped;

20 (23) the establishment of programs facilitating the employ-
21 ment of disadvantaged persons, including limitation of competition for
22 appointment and promotion to individuals who meet the program require-
23 ments;

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

26 (25) guarantees to an employee of the same or similar job
27 class assignment, salary grade, and step placement if his position is
28 withdrawn from the partially exempt or exempt service and placed in the
29 classified service;

Sub.
Amendment

1 (26) other rules and administrative regulations, not incon-
2 sistent with this chapter, which are necessary for its enforcement.

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

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

7 (b) Subject to the provisions of (d) of this section, the per-
8 sonnel officers for the Departments of Transportation and Public Facili-
9 ties, Fish and Game, Education, Labor, and Health and Social Services,
10 have the following powers with respect to the classes of positions
11 unique to their departments:

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

16 (2) to administer and score examinations and to place suc-
17 cessful applicants on the ^{DEPARTMENT'S} eligible lists;

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

19 (c) The initial determination of classes of positions unique to
20 the departments listed in (b) of this section shall be made by the
21 personnel officer of the department in consultation with the commis-
22 sioner of his department subject to the approval of the director of
23 personnel in the Department of Administration.

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

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

28 Sec. 39.25.160. GENERALLY. (a) A classified employee [or an
29 exempt employee in a position named in AS 39.25.110(3)] may not take an

1 active part in the management of a political party above the precinct
2 level.

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

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

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

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

16 (f) Action affecting the employment status of a state employee or
17 an applicant for state service, including appointment, promotion, demotion,
18 suspension, or removal, may not be taken or withheld on the basis
19 of unlawful discrimination due to race, religion, color, or national
20 origin, age, handicap, sex, marital status, change in marital status,
21 pregnancy, parenthood, or other reason not related to merit.

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

27 (h) A person may not knowingly make a false statement, certifi-
28 cate, mark, rating, or report with regard to a test, certification, or
29 appointment made under this chapter or in any manner commit a fraud

1 preventing the impartial execution of this chapter and the personnel
2 rules adopted under this chapter.

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

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

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

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

14 (c) An employee who has been dismissed, demoted, or suspended due
15 to unlawful discrimination based on race, religion, color, or national
16 origin, or because of age, handicap, sex, marital status, change in
17 marital status, pregnancy, or parenthood, or other reason not related
18 to merit may appeal the action to the personnel board.

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

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

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

29 (g) An employee begins an appeal by filing a written request for

1 review of the action with the personnel board within 15 days of receiv-
2 ing written notice of the action from the appointing authority.

3 (h) If requested by the employee at the time of filing an appeal,
4 the personnel board shall hold a hearing to determine the reasonable-
5 ness of the the action taken by the appointing authority. If the
6 employee requests it, the hearing shall be open to the public. The
7 employee may be represented by another person and has the right to
8 present evidence, and to confront and cross-examine witnesses. Techni-
9 cal rules of evidence do not apply to the hearing, but all testimony
10 shall be taken under oath.

11 (i) If the personnel board finds that the action complained of
12 was due to unlawful discrimination based on race, sex, color, religion,
13 national origin, political beliefs, age, handicap, marital status,
14 change in marital status, pregnancy, parenthood, or any other reason
15 not related to merit, or in violation of the provisions of this chapter
16 or the personnel rules, the employee shall be reinstated to the position
17 without loss of pay or leave benefit for the period of dismissal, demo-
18 tion, or suspension. In all other cases, the board shall report its
19 findings and recommendations in writing, to both parties within 30 days
20 of a hearing conducted under (h) of this section, and the decision of
21 the board may be appealed to the superior court, [by the employee.]

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

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

25 (b) If a person refuses to respond to a subpoena issued under
26 this section, or refuses to testify at a hearing authorized by AS 39.-
27 25.170, the personnel board may apply to the superior court for an
28 order requiring the person to respond to the subpoena or to testify.

29 (c) Failure to obey the order of the superior court requiring

1 response to a subpoena or testimony at a hearing may be punished as
2 contempt of court.

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

4 Sec. 39.25.181. DEFINITIONS. In this chapter,

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

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

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

12 (C) prevent another from acquiring pertinent informa-
13 tion;

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

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

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

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

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

28 (1) be a member of a national, state, or local political
29 party;

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

10 * Sec. 20. AS 39.25.180 is repealed.

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

12

13 *Sec 20 Post Secondary Ed. Comm.*

14 *Sec 21 Commercial Fisheries Survey Com.*

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

AMERICAN ASSOCIATION
ALASKA



OF UNIVERSITY WOMEN
DIVISION

Susan R. Clark
Legislative Chair
1109 C Street
586-6952

Members of the Senate Judiciary
State Capitol
Juneau, Alaska 99811

March 6, 1982

Dear Senator Rodey,

AAUW would like to request only one substantive amendment to CSSB 193 in which the State Personnel Laws deal with veteran's preference in state employment. On page 11, lines 17-21, the veteran is given lifetime preference in cases when a classified service position is eliminated. In such a case a veteran is kept on the job whereas the equally qualified non-veteran is dismissed. We feel that this should not be a lifetime preference, but should be handled similarly to a veteran's initial employment.

The effect of this wording on women is serious, since women are already too often in the position of being the last hired and consequently the first fired anyway. Lifetime veterans' preference when government is experiencing reductions in force only compounds the inequities.

We would like to suggest that either a time limit be put on veterans who would take advantage of this section, or that the preference be limited to the first job or position that the veteran has with the state. For example:

".., the veteran who was discharged from the armed forces of the United States for ten years or less before the date of classified position elimination, shall be given preference...." or

".., the veteran who was employed in that position three years or less before the elimination of the classified position, shall be given preference...." or

".., the veteran who has used additional veterans points to obtain that position, shall be given preference...."

We believe that some qualifying phrase must be added in the interest of fairness to both veterans and women who have been subject to discrimination that has kept them out of the military (please refer to the AAUW testimony on SB 193).

Sincerely,

Susan R Clark



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

March 31, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

SB 193 - "An Act amending the state personnel laws; and providing for an effective date."

SB 327 - "An Act relating to parole of offenders; continuing the existence of the Board of Parole; and providing for an effective date."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:30 P.M. Committee members present were: Senators Rodey, Ray, Parr, and Anderson. Senator Bennett was absent.

009 - Call to order.

013 - Chairman Rodey brought SB 193 before the committee.

040 - Mr. Bruce goes over the different areas of the bill where there is disagreement.

196 - Senator Ray suggests on Page 4, Line 12 insert , and by the Oil and Gas Conservation Commission; between the words "Resources" and "except", and on Page 4, Line 16, delete Subparagraph B. There was no objection.

241 - Senator Ray moved to delete paragraph 24 beginning on Page 12, Line 17 and insert The establishment of transition periods of up to twelve months for an employee to be reappointed to a classified position when his position is withdrawn from the partially exempt or exempt service and placed in the classified service. There was no objection.

380 - Senator Ray moved to delete [;], and add except during the performance of official duties on Page 17, Line 25, Paragraph 3. There was no objection.

492 - Senator Ray moved to delete [political beliefs] on Page 16, Line 7. There was no objection. Also on Page 16, Line 8 to insert the word "or" between "," and "parenthood", and delete [for] inserting the words and for those in the classified service.

605 - Terry Cramer, Blue Ribbon Commission suggested deleting [or other reason not related to merit] on Page 15, Line 11, Subsection C. Senator Ray moved to adopt this language change. There was no objection.

659 - Terry Cramer suggested on Page 14, Line 13, inserting the word "or" between "," and "parenthood", and deleting [or other reason], inserting and for positions in the classified service; reasons. Senator Ray moved to adopt this language change. There was no objection.

727 - Senator Parr moved on Page 17, Line 18 insert ,or a person that is in the state's custody after the word "contractor". There was no objection.

757 - Chairman Rodey asks staff to prepare final Committee Substitute for SB 193.

778 - Senator Ray moved to pass SB 193 from Committee with individual recommendations. There was no objection and the bill was passed with Senators Rodey, Ray, and Anderson signing do pass. Senator Parr signed no recommendation.

804 - Chairman Rodey brought SB 327 before the Committee.

837 - Mr. Bruce gives overview of the HESS Committee Substitute.

849 - Mr. Sam Trivette, Alaska Parole Board, joined the Committee.

SIDE TWO

001 - Mr. Trivette gives boards position on SB 327.

020 - Senator Ray moves on Page 1, Line 18, add and within 30 days of a vacancy. after the word "term". There was no objection. Also to delete [The presiding officer shall have at least two years judicial experience or experience in corrections, probation, or parole work.] beginning on Page 1, Line 20. There was no objection.

124 - Senator Ray moves to delete subsection (b) beginning on Page 3, Line 6. There was no objection.

522 - Senator Ray moves on Page 6, Line 28, add This section does not abrogate the authority of the board to deny a prisoner parole if, as a result of the lack of treatment, a prisoner is determined unsuitable for parole under AS 33.16.120(a). There was no objection.

619 - Senator Ray moved on Page 8, Line 23, insert the word "drugs" between "," and "or". There was no objection.

758 - Chairman Rodey directs Mr. Bruce to prepare final Committee Substitute.

770 - Chairman Rodey adjourned the meeting at 3:10 P.M.



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

FEBRUARY 24, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

- SB 620 - "An Act repealing the limitations on awarding compensation to victims of violent crime if the victim is a relative or member of the household of the offender."
- SB 193 - "An Act amending state personnel laws; and providing for an effective date."
- SB 611 - "An Act revising the criminal penalties for unlawful operation of an aircraft."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:30 P.M. Committee members present were: Senators Rodey, Parr, Bennett, and Ray.

Chairman Rodey first brought before the committee SB 620. Mr. Bruce gave a brief summary of previous action on the bill.

Sue Johnson, Violent Crimes Compensation Board, testified against CSSB 620, stating that the Board would rather have the discretion in awarding claims than the language in the committee substitute.

Chairman Rodey next called Caren Robinson, Alaska Network on Domestic Violence, before the committee. She testified in favor of the concept of CSSB 620, but stressed that a section should be added to allow direct payment to care providers.

Senator Ray moved that the following amendment be made: Page 1, Line 15, and 17, delete "reported", and insert "filed with"; Page 1, Line 18, delete "report", and insert "filing". Senators Ray, Bennett, and Parr voted in favor of the amendment. Senator Rodey voted against the amendment. The amendment was adopted.

Senator Ray moved that on Page 1, Line 16 and 17, the word "five" be deleted and "fifteen" inserted in its place. Senators Rodey, Bennett, and Ray voted in favor of the amendment. Senator Parr voted against the amendment. The amendment was adopted.

Senator Bennett left the committee meeting to attend to his Finance Committee duties.

Senator Ray moved to pass CSSB 620 from committee as amended. There was no objection. Senator Parr signed no recommendation. Senators Ray and Rodey signed do pass.

Chairman Rodey next brought SB 611 before the committee. Senator Ray explained the purpose of the bill and its background.

After brief discussion Senator Ray moved that the bill be passed from committee. There was no objection. Senators Rodey, Ray, and Parr signed do pass.

The last item on the agenda was SB 193. Mr. Bruce reviewed the history of the bill for the committee.

Chairman Rodey calls Cherie Shelly, APEA, before the committee. Ms. Shelly testified against the deletion of the Limited Entry Commission and the Post Secondary Education from the classified service.

Ken Kareen, Director of Personnel, briefly explained the amendments that the Department of Administration submitted to the Committee last meeting.

There was no action taken on SB 193 and it was returned to the file.

Chairman Rodey adjourned the meeting at 2:50 P.M.



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

JANUARY 27, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

SJR 6 - Proposing an amendment to the Constitution of the State of Alaska relating to sessions of the legislature."

SB 193 - "An Act amending the State Personnel Act (AS.39.25); and providing for an effective date."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:35 P.M. Committee members present were: Senators Rodey, Parr, and Bennett. Senator Hoiman and Ray were absent.

Chairman Rodey first brought before the committee three bills of interest to the court system that he would like to introduce as committee bills. There was no objection by committee members.

Chairman Rodey next took up SJR 6. Senator Bennett requested the resolution be held over as he wanted to study the resolution further. SJR 6 was held over until the next meeting.

Senator Ray entered the room and his presence was noted for the record.

The next item on the calendar was SB 193. Terry Cramer, Blue Ribbon Commission, was called before the committee to testify. She distributed a memorandum to committee members which addressed the major changes the bill makes to the existing Personnel Act and some of the changes the committee substitute makes which were not in the bill originally sponsored by the Commission. Please refer to attached memorandum.

The committee discussed whether the state statutes were being violated in the collective bargaining process.

Bob Simon, Commissioner of the Commercial Fisheries Entry Commission, testified and distributed a memorandum giving proposed amendments for SB 193 prepared by the Commercial Fisheries Entry Commission. Please refer to the attached memorandum.

Fred Muller, Deputy Commissioner for the Department of Administration, testified, giving recommendations by the Department of Administration. They are as follows:

- 1.) Delete Sec. 8 (39.25.110)(7)
- 2.) Delete C-H in Sec. 12 (39.25.140) and replace with C-E of the original bill
- 3.) Amend Sec. 13 (39.25.150)(20) to allow veterans to use 5 points on all job registers until the veteran is employed.
- 4.) Delete Sec. 13 (39.25.159)(25)
- 5.) Delete Sec. 20, and
- 6.) Delete Sec. 21

After discussion, the committee held the bill over. Chairman Rodey adjourned the meeting at 2:45 P.M.



JUNEAU, ALASKA

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT

Senator Bill Ray, Chairman

February 2, 1982

Pouch YG
Mail Stop 3123
Juneau, Alaska 99811
(907) 465-4442

TO: Kevin Bruce, Administrative Assistant
Senate Judiciary Committee

FROM: Teresa B. Cramer, Administrative Assistant
Blue Ribbon Commission *TC*

SUBJECT: Classified Positions not in Bargaining Units

I spoke with the directors for Personnel and for Labor Relations to learn which positions are not placed in a union bargaining unit but remain in the classified service. The following list is accurate at present, but is subject to change. The Division of Personnel is currently in the process of obtaining union concurrence to have a third Personnel Analyst V position excluded from the Confidential Employees Association. The Division of Labor Relations has requested that some of its positions be reclassified, but those have not yet been approved.

POSITION AND SALARY RANGE	NUMBER
Deputy Director, Labor Relations - Rg 23	1
Labor Relations Analyst I - Rg 13	3
Labor Relations Analyst II - Rg 20	3
Senior Negotiators - Rg 21	2
Personnel Technician (only the Personnel Tech in Labor Relations) - Rg 12	1
Deputy Director, Personnel - Rg 23	1
Personnel Analyst V - Rg 22	<u>2</u>
TOTAL	13

AMERICAN ASSOCIATION
ALASKA

OF UNIVERSITY WOMEN
DIVISION



Jan. 1982

To: Members of the Senate Judiciary
From: Susan R. Clark, Legislative Chair
1109 C St., Juneau 99801 (586-6952)

Re: Veterans' Preference in State Employment (CSSEB 193 - State Personnel Laws)

TESTIMONY

I would like to begin with an acknowledgement that preference for Veterans has been created 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 personally grew up in the military, and in fact the current Alaska state president of AAUW is herself a veteran.

AAUW feels, however, 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 discrimination 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, even than that which is evident in the CS of this bill.

According to the Veterans' Preference Act of 1944, veterans' 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. In fact the attraction of veterans to civil service has worked perhaps too well. Veterans Administration officials say that veterans compose about 20% of the national work force, but constitute over 50% of the federal work force. Additionally, the Civil Service Commission figures show that while veterans make up only 27% of those who pass civil service tests, they constitute 41% of those who are hired. Conversely, women make up 39% of those who pass the exams and only 21% of those who are hired.

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 her or his job, and perhaps for three to ten 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. National legislation introduced in 1978 by the Carter administration proposed that veterans' preference apply mainly to those seeking entry to the civil service rather than promotion (a provision we welcome in this bill), and that it be available for only the first 10 years after a veteran's discharge from service. Explaining the reason for that limit, a Veterans Administration official said: "It should be a readjustment benefit rather than a lifelong benefit" except for those disabled or

service.

Because of 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 come 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 hundredths 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. For this reason the suggestion has been made to reduce those points to 3 points for able-bodied veterans, and to 5 points for disabled veterans.

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, as well as lifetime preference on insulation from lay-offs, 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. Research into the role military women have played in our nation's history is a fascinating one. Two examples are pertinent. During the Second World War several temporary women's units were formed including the 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. Official military corps for women were not given regular military status until 1948 with the Women's Armed Services Integration Act; but some women serving before that time were not included. The WAC (Woman's Army Corps), for example, did not include the non-militarized WAAC, and this omission has led Massachusetts to include in its veterans' law language which includes these women: / "Any woman who was 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...shall be deemed to be a veteran." We would propose such language in the Alaska law. |

You may be aware that the Women Airforce Pilots won their veteran status only six years ago! During the war they 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 "appointments as officers in the U.S. Army...contemplates men exclusively, and may not be regarded as authority for commissioning women as officers...."

Exclusion of women from the military did not end with the 1948 "militarization" of some women's corps. 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

AMERICAN ASSOCIATION
ALASKA



OF UNIVERSITY WOMEN
DIVISION

29 Jan. 1982

To: Members of the Senate Judiciary
From: Susan R. Clark, Legislative Chair, Ak. AAUW
Re: CS SB 193 Amending State Personnel Laws: Veterans' Preference

AAUW feels that we must bring to the attention of the legislature that while the goals of preference for veterans 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.

National statistics from the Veterans Administration indicate that veterans compose about 20% of the national work force, but over 50% of the federal work force. According to the Civil Service Commission, veterans make up only 27% of those who pass civil service tests but constitute 41% of those hired. Conversely, women make up 39% of those who pass the exams, and only 21% of those hired.

We would suggest the following amendments to the bill:

Page 11, line 8: after the first word "veteran" add: "during the first ten years after a veteran's discharge from service"...

This language was recommended by the Carter administration in 1978. At that time an Veterans Administration official explained that preference should be a readjustment benefit rather than a life long benefit - except for those disabled in service.

Line 19-21: Again, except perhaps for disabled veterans, veteran preference should be limited to a particular time period for readjustment, rather than as a lifetime benefit.

Line 12-13: We would recommend changing the points from 5 to 3 for able-bodied veterans, and from 10 to 5 for disabled veterans. In Alaska where mere hundredths of a single point can separate job applicants, the system is overly weighted in favor of veterans especially when you consider other handicapped, disadvantaged, or suspect classes of people. HB 906 introduced in 1980 at the request of the Blue Ribbon Commission recommended adding the 5 points only to the grade of a veteran "who was discharged from the armed forces of the U.S. for three years or less before the date of application for employment."

Line 26-28: We recommend that you include in the definition of veteran, the Massachusetts language that includes those women who served during WWI and II in units that were never "militarized":
...and any woman who was 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 air or sea of the United States.

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. 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 to 1975 - the percentage of enlisted women in the military doubled.

In giving veterans preference in areas of employment, as well as elsewhere, we need to remember other people who served their country with equal sacrifice and patriotism, and who also need or needed aid in undergoing the transition to "civilian" life. Those whom we do not call by the name veteran include: men and women who served in civil defense jobs, in 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 were also under attack). Looking again at women's contributions to efforts in the Second World War, we are but slightly aware of the sacrifices and contributions of over 2 million women who took the places of the absent men working in the American War Industries - in shipyards, aircraft plants, ammunition plants. The call to "enlist" 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. One amazing statistic of which you may be unaware is that during the war period "more deaths occurred from industrial accidents than from combat." For their commitment, valor and patriotism, these women were not rewarded with lifetime access to civil service jobs. They received only firings. No one helped them with their transition back into "civilian" jobs. For many minority women who were the major or sole 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.

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 that the sacrifice and hardship of military veterans must not be ignored. We would propose workable modifications in the law through which we can 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.

Thank you.

AMERICAN ASSOCIATION
ALASKA

OF UNIVERSITY WOMEN
DIVISION



29 Jan. 1982

To: Members of the Senate Judiciary
From: Susan R. Clark, Legislative Chair, Ak. AAUW
Re: CS SB 193 Amending State Personnel Laws: Veterans' Preference

AAUW feels that we must bring to the attention of the legislature that while the goals of preference for veterans 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.

National statistics from the Veterans Administration indicate that veterans compose about 20% of the national work force, but over 50% of the federal work force. According to the Civil Service Commission, veterans make up only 27% of those who pass civil service tests but constitute 41% of those hired. Conversely, women make up 39% of those who pass the exams, and only 21% of those hired.

We would suggest the following amendments to the bill:

2) Page 11, line 2: after the first word "veteran" add: "during the first ten years after a veteran's discharge from service"...

This language was recommended by the Carter administration in 1978. At that time an Veterans Administration official explained that preference should be a readjustment benefit rather than a life long benefit - except for those disabled in service.

First time + Reversion Provision

Line 19-21: Again, except perhaps for disabled veterans veteran preference should be limited to a particular time period for readjustment, rather than as a lifetime benefit.

Line 12-13: We would recommend changing the points from 5 to 3 for able-bodied veterans, and from 10 to 5 for disabled veterans. In Alaska where mere hundredths of a single point can separate job applicants, the system is overly weighted in favor of veterans especially when you consider other handicapped, disadvantaged, or suspect classes of people. HB 906 introduced in 1980 at the request of the Blue Ribbon Commission recommended adding the 5 points only to the grade of a veteran "who was discharged from the armed forces of the U.S. for three years or less before the date of application for employment.

* Line 23-28: We recommend that you include in the definition of veteran, the Massachusetts language that includes those women who served during WWI and II in units that were never "militarized": "...and any woman who was 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.

February 3, 1982

Page 2

Line 29 Delete exempt and

Reason: The rules pertain only to classified and partially exempt employees. By definition, exempt employees are excluded from personnel rules.

Page 3 Substitute For clarification and renumber

Lines 9-13 (2) justices, magistrates, judges and employees of the judicial branch including the Judicial Council.

DOES NOTHING

OK

Page 3

Lines 23-25 Substitute (8) certificated teachers employed by the Department of Education as classroom teachers;
Reason: Correspondence teachers do not teach in classroom setting. They function as any classified employee.

NO

✓ THE OUT

Page 3

Line 29 Delete. . . the legislature, or a legislative committee
Reason: Legislative employees by definition 34.25.110(4) are exempt

DOES NOTHING

OK

Page 4

Line 12 Delete

OK

Reason: Legislative employees by definition are exempt

Page 4

Line 16-17

Delete. . .division of mental health and developmental disabilities, Department of Health and Social Services
Reason: All licensed physicians employed by the State should be exempt not just those working for mental health.

OK

Page 4

Line 30

Add section
(22?) emergency firefighters employed by the Department of Natural Resources whose employment is limited to a fire emergency.
Reason: Current and past use of firefighters warrants placing them into exempt status.

OK

~~STATUS AS
PTG~~

?

Page 5

Line 9 & 10

Delete. . . except as provided in AS 39.25.170
Reason: Partially exempt employees should not have the same rights as classified employees. Sufficient protection is provided under current antidiscriminatory laws.

?

Page 6

Line 1

Delete
Reason: This position is currently held by the Director, Division of Forestry who is partially exempt.

DOES NOT APPLY

OK

DOES NOTHING

Page 6

Line 27

Delete

OK

Reason: This position has been reclassified to a Director status and is partially exempt.

Page 8

Line 3 - 22 Delete and substitute existing language of 39.25.140(c)-(e)

Reason: In addition to the fact that current law excludes personnel rules from being subject to the Administrative Procedures Act (APA) if the new language becomes law, it will remove the protection and flexibility so that almost every change instituted by the Division of Personnel, whether a new test, recruiting effort, the awarding of preference points for veterans et al, would fall under lengthy public scrutiny through APA. This will cause increasing and lengthy delays in placing applicants on registers and reduce flexibility to make the system better.

~~has~~

Page 9

Line 6

Delete the word position. . .necessary position specifications. . . .

OK

Reason: Specifications for classes are general. Each position in a class could have a different position description.

Page 10

Lines 18 & 19

Delete

Reason: By longstanding practice this is accomplished by the State Administrative Manual, Section 7672-7684. Additionally, it only covers approximately 14 positions.

~~Does not affect?~~

OK

Page 11

Lines 7 - 29

Delete: Replace with Blue Ribbon recommendation as contained in original SB 193

DONE

→ WORK ON

Page 12

Lines 1 - 3

Reason: This will reduce confusion and provide a better vehicle for veteran hire

Page 12

Lines 14 - 27

Delete existing -

substitute:

The establishment of transition periods of up to twelve months for an employee to be reappointed to a classified position when his position is withdrawn from the partially exempt or exempt service and placed in the classified service.

Reason: The bill language provides guarantees that far exceed any current rules, statutes, or collective bargaining agreements and it is unlimited by time.

OK
~~DISAPPROVED~~
~~WORTHY~~

Page 13

Change "the" to "departments" so that

Line 15

(17)

. . . applicants on (the) department
eligible lists.

OK

Reason: This section deals with departmental pers-
onnel officers who do not test and place applicants
onto a statewide list

Page 13

Delete - (. . . or an exempt employee in a position

Line ~~26~~ & 27

(2a)

named in AS 39.25.110(3)). . . .

OK

Reason: Separation of powers

Page 14

Line 13

(15)

Add - In the absence of a resignation, the appoint-
ing authority shall accept written evidence of
candidacy as a resignation.

Line 7

OK

Reason: An employee may not immediately inform his
supervisor regarding nomination or candidacy for a
state or national elective office. In the absence
of a formal resignation, the employer should be able
to effect a resignation.

Page 14

Line 14

Add ". . . of a classified state. . . ."

Reason: This section deals with classified
employees only not employees of the legislative
and judicial branches

EXECUTIVE BRANCH ONLY

APPEAL SHOULD MAKE CHOICE OF APPEAL PROCESS

Line 15

PAGE 14

". . .applicant for classified state service. . ."

Reason: This section deals with classified employees only, not employees of the legislative and judicial branches.

Page 15

Line 6, 12 & 27 An employee in the classified service. . .

Reason: This section deals with classified employees only not employees of the legislative and judicial branches

Page 16

Does NOTHING

Line 19 21 delete "by the employee" . . . superior court.

OK

Reason: The decision of the board should be appealable by both the employer and the employee

EXCEPT ~~THE~~ DURING THE

Page 17

Line 29

✓ OUT COURT CASE OTHERWISE OK

Reword - express political opinions, provided that ~~PERFORMANCE OF~~ DUTY. while engaged on official business, an employee may not display or distribute partisan political material in any form or manner.

Page 18

Lines 8 - 27 Delete sections 20 and 21

Reason: Exempt and partially exempt employees do not compete for their positions. Their knowledge, skills, abilities, and salary range could differ considerably from their corresponding class and range in this classified service.

Line 29

Effective date should be changed to July 1, 1982

JAY S. HAMMOND
GOVERNOR



PHONE
1907) 274-3003

STATE OF ALASKA
OFFICE OF THE GOVERNOR

ALASKA COMMISSION ON THE STATUS OF WOMEN
308 DENALI STREET, SUITE 650
ANCHORAGE, ALASKA 99501

January 26, 1982

Senator Patrick Rodey, Chair
Senate Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Rodey:

Relative to hearings scheduled on SB 193, an act amending the State Personnel Act, I wish to communicate to you the Commission's concern regarding discrimination in state employment. The Commission on the Status of Women wanted to undertake an overall review of the state's personnel system following testimony we received that criticized the system itself as discriminating against women. Our lack of money and time prevented us from doing so. We still believe it is of utmost importance that the state legislature institute a serious review of the personnel system to identify remedies for the systemic discrimination which does exist within state government. I would draw your attention to the testimony I provided to the Blue Ribbon Commission on November 19, 1981, which has been included in your materials for the hearing of the 27th.

We do not believe that asking individuals to testify to the Blue Ribbon Commission, in public, regarding personal discrimination they have experienced working for the state, constitutes a systematic review. We would urge the legislature to initiate such a review.

My thanks for your consideration.

Sincerely,

Barbara L. Schluhmann
Barbara L. Schluhmann
Chairwoman

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3300

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 9, 1979

SUBJECT: Effect of statutory or regulatory changes on future public employee collective bargaining agreements.
(Work Order No. 6427)

TO: Ken Humphreys, Policy Analyst
Division of Research

FROM: Kenneth M. Rosenstein, Legislative Counsel *KMR*

You have asked what effect a change in the statutes or regulations relating to public employment would have on a public employee collective bargaining agreement negotiated after the change.

Statutory or regulatory changes not affecting wages, hours, or other terms and conditions of employment, i.e., matters not subject to collective bargaining under AS 23.40.070 - 23.40.260, would apply to future agreements, and may not be superceded by such agreements.

Statutory changes affecting matters subject to collective bargaining may be superceded by a collective bargaining agreement unless the statute itself provides to the contrary. The effect of such a statute would be to remove the matters it addresses from the ambit of collective bargaining. Regulations adopted under such a statute would have a similar effect. Only collective bargaining agreements concluded after the effective date of such a statute would be required to comply with its terms. It would have no effect on agreements existing at the time it went into effect.

A regulation attempting to remove a certain matter from the ambit of collective bargaining would be ineffective for that purpose without a clear expression from the legislature that the matter was no longer subject to collective bargaining, or a delegation of the legislature's power to determine the scope of collective bargaining.

Ken Humphreys
Page 2
March 9, 1979

In other words, under current law, it is the province solely of the legislature to determine the permissible scope of collective bargaining with respect to public employees. Moreover, any reduction of that scope would apply only to agreements negotiated after the legislature has acted and not to agreements existing at the time of legislative action.

KMR:nem

THE FOLLOWING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

August 3, 1976

The Honorable Andrew S. Warwick
Commissioner
Department of Administration
Pouch C
Juneau, Alaska 99811

Re: Statute vs. Collective
Bargaining Agreement

Dear Commissioner Warwick:

You have asked whether the provisions of a collective bargaining agreement may be pre-empted by a conflicting state law which comes into effect after the contract is executed. Specifically you have asked whether provisions of ch. 27 SLA 1976 relating to mandatory insurance contributions by permanent part-time employees supersedes existing Tri-Trades labor-contract language requiring full insurance-premium payments for such employees by the State. In our opinion, it is clear that the terms of an antecedent labor contract take precedence over a later statute. This conclusion is based on case-law application of the contract clauses of the United States and Alaska Constitutions: "No State shall . . . pass any . . . law impairing the Obligation of Contracts." U.S. Const. Art. I, §10; "No law impairing the obligation of contracts . . . shall be passed." Alaska Const. Art. I, §15.

T. THE CONTRACT CLAUSE APPLIES TO CONTRACTS MADE BY A STATE.

Numerous cases hold that contracts to which a state is a party are within the constitutional prohibition against the statutory impairment of contract obligations. This rule was established as early as 1850 by the U.S. Supreme Court in the case of Woodruff v. Trapnall, 10 How. 190, 206, 13 L.Ed. 383. There the court stated:

A state may no more impair, by legislation, the obligation of its own contracts than it can impair the obligation of the contracts of individuals.

In the case of Hall v. State of Wisconsin, 103 U.S. 5, 11, 26 L.Ed. 302, 305 (1830), the court used the following language:

When a state descends from the plane of its sovereignty, and contracts with private persons, it is regarded pro hac vice as a private person itself, and is bound accordingly.

See also, Wolff v. New Orleans, 103 U.S. 358, 26 L.Ed. 395 (1831).

Recent state cases reiterate this theme. See, for example, Bruen v. Tax Commission, 211 P.2d 651, 681 (Wash. 1949) ("that contracts, when entered into by a state, cannot be changed by legislative enactment is fundamental."); Wa-Wa-Yanda, Inc. v. Dickerson, 239 U.S.2d 473, 477 (1963) ("the general rule is

that this mandate [U.S. Const., Art. I, §10] applies to a contract to which a state or a political subdivision thereof is a party as well as to contracts between individuals."); Jones v. Cheney, 439 S.W.2d 755, 791 (Ark. 1973) ("the constitutional provision prohibiting the passage of laws impairing obligations of contracts applies to contracts, not only between individuals, but also to those made by the state or by one of its agencies which is authorized by law.") There can be no doubt but that the prohibitions of Art. I, §10 of the United States Constitution (and its counterpart at Art. I, §15 of the Alaska Constitution) are applicable to the State's contract with the Tri-Trades Public Service Council.

II. THE CONTRACT CLAUSE APPLIES TO LABOR AGREEMENTS.

Case law clearly establishes that labor contracts — like other contracts — are within constitutional protection. The case of Carder Realty Corp. v. State, 23 N.Y.S.2d 395 (1940), is on point. In Carder, the State of New York had entered into a contract with the claimant for the construction of several buildings and connecting tunnels. Several months after the execution of this contract the legislature enacted amendments to the labor laws of the state. The question in the case was whether the amendments applied to or affected this contract, given a State Attorney General's opinion advising that the amended law did not affect existing contracts. The Attorney

August 3, 1976

- 4 -

General, and ultimately the court, concluded an amended statute, if applied to an existing contract, "would be to add a burden or condition to the contract in the contemplation of the parties at the time of its execution." 23 N.Y.S.2d at 399. The court also stressed the general rule that a statute is to be applied prospectively unless there is a clear expression of legislative purpose which justifies retroactive operation of the statute. The court stated:

The contractor is only bound by the terms of his contract and the amendments to the Labor Law were not a part of that contract because they were not enacted until several months after the date of the contract . . . The State in this respect stands the same as citizens, its rights are just as great as those of private citizens and no greater . . . To impose the obligations of these sections upon a contract already existing would be to impair the obligations of that contract contrary to the provisions of section 10 of article 1 of the United States Constitution. 23 N.Y.S.2d at 404.

Similarly, in the case of Pennsylvania Labor Relations Board v. Beaton, 329 A.2d 477 (Pa. 1974), the court applied the protections of the contract clause to a labor contract. There the court held that application of the Public Employee Relations Act to invalidate a prior collective bargaining agreement did not impair a contractual obligation when employees affected by the change were not parties to the contract. Obviously, if the affected employees were parties, the Act could not invalidate the contract.

Undoubtedly, if the State of Alaska were to apply Chapter 27 SLA 1976 to their existing 1975 contract with the Tri-Trades Public Service Council, this would have the effect of rewriting an antecedent contract, and would thereby unconstitutionally change the substantive rights of the parties to an existing contract. The only instance in which a legislative enactment can constitutionally alter an existing contract is where the public welfare requires remedial legislation. The situation must justify the exercise of the State's inherent police power to protect the public welfare. "The constitutional prohibition upon state laws impairing the obligation of contracts does not restrict the power of the State to protect the public health, the public morals, or the public safety, as the one or the other may be involved in the execution of such contracts." New Orleans Gas & Light Co. v. Louisiana Light and Heat Producing and Manufacturing Co., 115 U.S. 350, 29 L.Ed. 516, 524 (1885). See also, Home Bldg. & L. Assn. v. Blaisdell, 290 U.S. 398, 443-44 (1933): contract-clause restrictions must be read in harmony with public welfare responsibilities of states. Here, ch. 27 SLA 1976 does not focus directly upon public welfare, but rather was enacted to benefit the state by saving it money.

III. CONCLUSION.

For the above reasons, the obligation of the state's

contract with Tri-Trades Public Service Council would be "impaired" within the constitutional provision prohibiting the impairment of the obligation of a contract if ch. 27 SLA 1976 were to take precedence over the existing contract. The statute would alter the terms of the contract by imposing new conditions or adding new duties not in the contemplation of the parties when the contract was executed. This sort of hardship is that which Article I, §10 of the United States Constitution was intended to prohibit. Therefore, the terms of the 1975 contract negotiated with Tri-Trades Public Service Council take precedence over the 1976 statute.

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By:

Robert M. Johnson
Assistant Attorney General

RMS:jf:EW

May 15, 1975

M E M O R A N D U M

TO: Honorable Jay S. Hammond
Governor

FROM: Avrum M. Gross
Attorney General

BY: Mark Ertischek
Assistant Attorney General

SUBJECT: Conflict between Requirements
of Existing Collective Bargaining

You have asked whether or not there is any conflict between the requirements of existing collective bargaining agreements involving state employees and the merit system. There is a conflict between the basic concept of the merit system which seeks to focus on the qualification of the individual and the procedures for selecting such an individual for employment or promotion; and the concept of a collective bargaining system which focuses primarily on the needs of the employees as a group. The legislature has attempted to resolve the conflict in practice by providing in the Public Employment Relations Act AS 23.49.070(3) that merit system principles should be maintained. The parties to the labor contracts negotiated pursuant to the Act agreed to support these principles though it is not at all clear what they are. The merit principles can only be ascertained by focusing on the actual provisions of the personnel statutes, the personnel rules and the labor agreements actually negotiated.

A review of these contracts leads to the conclusion that, though the theoretical conflicts still exist to date, the legislative compromise has been workable. The agreements do not undercut the state's authority for selecting employees for employment or promotion but in general focus on the issues of pay, benefits, and grievance procedures.

With regard to the question of layoffs, we have reviewed the labor contracts in force and the applicable personnel rules and conclude that there are some minor conflicts at the present time.

THE PRECEDING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

MEMORANDUM

State of Alaska

TO: File

DATE: March 4, 1975

FILE NO:

TELEPHONE NO:

FROM: Mark Ertischek *ME*
Assistant Attorney GeneralSUBJECT: Effective collective bargaining
agreements reached under
the Alaskans Public Employment
Relations Act/upon existing
legislative provisions./

On February 3rd our office received a request from the Chairman of the House Finance Committee to assign one Attorney to testify regarding possible conflict between existing statutory provisions regarding public employees and contractual provisions negotiated under The Alaska Public Employment Act. The specific conflict in which the legislature is interested at this juncture is that between AS 39.20.240 which limits the accumulation of annual leave except under certain circumstances and the annual leave provision found on page 31 of the agreement between the State of Alaska and Alaska Public Employees association covering supervisory unit employees. This provision provides that the limitations on the accumulation of leave stated in AS 39.20.240 shall not continue in effect. Upon reviewing the Alaska Public Employees Act and the policies upon which it is founded it is my opinion that AS 39.20.240 can be validly superceded by the provisions of the collective bargaining agreement.

While logically other provisions could be subject to being superceded in this way we have not sought to catalogue the provisions susceptible to inclusion in a collectively bargained contract. We would necessarily need to review the question on an ad hoc basis.

* I plan to testify that my research has disclosed what appears to be the intent of the Public Employment Relations Act: To give the unionized employees of the State of Alaska the right to bargain collectively over wages, hours and working conditions. The statute obligates the employer to bargain over these subjects and further provides that the employer can in fact enter into an enforceable contract respecting the agreements arrived at during the course of the negotiations. I am necessarily led to the conclusion that the legislature intended that the provisions of the existing statutes might in some respects be superceded by the provisions of the collective bargaining agreements reached under the terms of this act. One can envision an alternative system of bargaining in which a collective bargaining agreement is submitted to the Legislature for ratification and appropriation of funds according to its terms but the present law makes no provision for this type of arrangement.

AS 39.25.150(15) requires that the personnel rules deal with:

layoffs for reason of lack of funds or work, abolition of positions, or material changes in duties or organization; both performance and seniority shall be considered in the development of layoff orders.

Personnel Rule 11 04.4 provides that:

The order of layoff due to a reduction in force shall be based upon performance reports and seniority under a formula established by the Director.

The Director has prepared the formula and it is attached to this memorandum.

An analysis of the requirements as they relate to the various labor contracts in existence discloses the following:

1. The Marine Transportation employees are exempted from the requirements of the merit system by AS 39.25.110(12). So their contracts which provide for layoffs on a strict seniority basis involves no conflict.
2. The contracts of the Confidential Unit, the General Government Unit, and the Supervisory Unit do not speak to the issue of layoffs. So they do not represent a conflict.
3. The contract covering the Tri-Trades employees does represent a conflict because it provides for layoffs on a strict seniority by unit basis. We may have the legal right to insist on the use of the director's formula in this situation. However, we believe it is undesirable to do so and exacerbate the difficult personnel problems that will result during a layoff. Since the personnel rule does provide for the use of seniority in layoffs and since the employees were originally hired under merit system principles, the layoff provisions in their contract does not represent a major conflict.

We would also like to suggest that in the event the legislature does not fully fund the new pay scale that the unions be contacted with a view to renegotiating the pay settlement to come within the limits of the funds we have been given. The unions may regard this alternative as more palatable than a layoff.

TO: Members of the Senate Judiciary Committee

February 3, 1982

We the undersigned hereby register our desire to preserve our current employment status in the exempt service and urge you to deny the passage of SB 193 into law.

SIGNATURE	PRINTED NAME	AGENCY
<u>Marilyn McKinnon</u>	<u>MARILYN MCKINNON</u>	<u>POSTSECONDARY ED.</u>
<u>Linda M Jennings</u>	<u>LINDA M. JENNINGS</u>	<u>Postsecondary Ed.</u>
<u>Debbie Finnell</u>	<u>Debbie Finnell</u>	<u>Postsecondary Ed.</u>
<u>Estrella Floresca</u>	<u>ESTRELLA FLORESCA</u>	<u>Postsecondary Ed.</u>
<u>Margaret J. Borovac</u>	<u>Margaret J. Borovac</u>	<u>Postsecondary Ed.</u>
<u>Billie Jean Hall</u>	<u>BILLIE JEAN HALL</u>	<u>Postsecondary Ed.</u>
<u>Heather L. Draperuy</u>	<u>Heather L. Draperuy</u>	<u>Postsecondary Ed.</u>
<u>Janet M Hill</u>	<u>JANET M. HILL</u>	<u>POSTSECONDARY ED.</u>
<u>Jane H. Weiss</u>	<u>Jane H. Weiss</u>	<u>Postsecondary Ed.</u>
<u>Lauri Laudert</u>	<u>LAURI LAUDERT</u>	<u>POSTSECONDARY ED.</u>
<u>Virginia Lumba</u>	<u>VIRGINIA LUMBA</u>	<u>POST ED.</u>
<u>Helene Lewis</u>	<u>Helene Lewis</u>	<u>Postsecondary Ed.</u>
<u>Toni Cameron</u>	<u>TONI CAMERON</u>	<u>POST ED.</u>
<u>Julia B. Bennett</u>	<u>Julia B. Bennett</u>	<u>Postsecondary Ed.</u>
<u>Carol M. Watts</u>	<u>CAROL M. WATTS</u>	<u>Postsecondary Education</u>
<u>Bette M. Hamm</u>	<u>Bette M. Hamm</u>	<u>Postsecondary Education</u>
<u>Dianne K. Bothun</u>	<u>Dianne K. Bothun</u>	<u>Postsecondary Ed.</u>
<u>Charleen Jones</u>	<u>CHARLEEN JONES</u>	<u>Postsecondary Ed.</u>
<u>Linda S. Whitfield</u>	<u>Linda S. Whitfield</u>	<u>Postsecondary Ed.</u>
<u>Margarita F. Manuel</u>	<u>MARGARITA F. MANUEL</u>	<u>Postsecondary Educ.</u>
<u>Kristie J. Swanson</u>	<u>Kristie J. Swanson</u>	<u>Postsecondary Ed.</u>
<u>Kurilee Watts</u>	<u>Kurilee Watts</u>	<u>Postsecondary Ed.</u>
<u>Robin Stephens</u>	<u>ROBIN STEPHENS</u>	<u>Postsecondary Ed.</u>
<u>Linda Landvik</u>	<u>Linda Landvik</u>	<u>Postsecondary Ed.</u>
<u>Quique Cheney</u>	<u>QUIQUE CHENEY</u>	<u>Postsecondary Ed.</u>
<u>Sylvia Tiller</u>	<u>SYLVIA TILLER</u>	<u>Postsecondary Ed.</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

JAY S. HAMMOND
GOVERNOR



PHONE -
(907) 276-3000

STATE OF ALASKA
OFFICE OF THE GOVERNOR

ALASKA COMMISSION ON THE STATUS OF WOMEN
318 DENALI STREET, SUITE 650
ANCHORAGE, ALASKA 99501

January 26, 1982

Senator Patrick Rodey, Chair
Senate Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Rodey:

Relative to hearings scheduled on SB 193, an act amending the State Personnel Act, I wish to communicate to you the Commission's concern regarding discrimination in state employment. The Commission on the Status of Women wanted to undertake an overall review of the state's personnel system following testimony we received that criticized the system itself as discriminating against women. Our lack of money and time prevented us from doing so. We still believe it is of utmost importance that the state legislature institute a serious review of the personnel system to identify remedies for the systemic discrimination which does exist within state government. I would draw your attention to the testimony I provided to the Blue Ribbon Commission on November 19, 1981, which has been included in your materials for the hearing of the 27th.

We do not believe that asking individuals to testify to the Blue Ribbon Commission, in public, regarding personal discrimination they have experienced working for the state, constitutes a systematic review. We would urge the legislature to initiate such a review.

My thanks for your consideration.

Sincerely,

Barbara L. Schuhmann
Barbara L. Schuhmann
Chairwoman

MEMORANDUM

State of Alaska

TO: Honorable Patrick Rodey, Chairman
Senate Judiciary Committee

DATE: January 26, 1982

Honorable Bill Ray, Chairman
Blue Ribbon Commission

FILE NO:

TELEPHONE NO:

FROM: Robert J. Simon, Chairman
Commercial Fisheries Entry Commission

SUBJECT: SB193

Attached for your consideration are proposed amendments prepared by the Commercial Fisheries Entry Commission that we have discussed with each of you previously.

RJS/rmg

AMENDMENT NO.: _____

* Sec. 8 AS 39.25.110(12) is amended to read:

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

- (A) Alaska Gas Pipeline Financing Authority;
- (B) Alaska Permanent Fund Corporation;
- (C) Alaska Energy Center;
- (D) Alaska Industrial Development Authority;
- (E) Alaska Commercial Fisheries Entry Commission;

AS 39.25.110(14) is deleted; renumber (15) through (21) accordingly.

* Sec. 21 is deleted; * Sec. 22 and 23 are renumbered accordingly.

1	POSITION TITLE Regulations Specialist II				RANGE/STEP 16 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		JUSTIFICATION: To properly implement Senate Bill 193, as it has been presented, will require the services of a Regulation Specialist I'. 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.				
	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							
7	TOTAL PERSONAL SERVICES		35,318							
9	TRAVEL		700							
10	CONTRACTUAL		3,200							
11	COMMODITIES		3,000							
12	EQUIPMENT									
13	OTHER									
14	TOTAL COST		complete	42,218						
	CODE	FUNDING SOURCE								
15		FED RCPTS. 1002								
16		GF MATCH. 1003								
17		GEN. FUND 1004		42,218						
18		I-A RCPTS. 1007								
19		PGM RCPTS 1008								
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

Page 2 of 4

REVISED DATE _____

13 REQUEST FOR NEW POSITION.

FY 82

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

3	TYPE OF EXPENDITURE	AMOUNT
	1	2
4	PERSONAL SERVICES:	
	SALARY 1,319 per mo.	15,828
5	BENEFITS 15.79 %	2,500
6	FICA 6.13 %	970
7	HEALTH INS. 150 per mo.	1,800
8	TOTAL PERSONAL SERVICES	21,098
9	TRAVEL	
10	CONTRACTUAL	3,200
11	COMMODITIES	3,000
12	EQUIPMENT	
13	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. 1004
19		PGM RCPTS 1028
20		OTHER

21 CONTINUATION

22 ADDITION

FOR B&M USE ONLY

4A-KEY NUMBER _____ COLUMN NO. _____

AGENCY Administration PROGRAM Centralized Administrative Services

BRU Personnel

COMPONENT Personnel

13 REQUEST FOR NEW POSITION.

FY 82

TO: Senator Vic Fischer
Chairman
Senate State Affairs Committee

DATE : April 6, 1981

FROM: Robert J. Simon *Robert J. Simon*
Chairman
Commercial Fisheries Entry
Commission

SUBJECT: SB 193 (Personnel Act
Amendments)

A member of the Commercial Fisheries Entry Commission (CFEC) has listened to a tape recording of the testimony of Cherie Shelley (APEA) regarding the exempt status of CFEC staff. Her testimony was a bit ambiguous regarding the appearance last year of CFEC before the Blue Ribbon Commission on the State Personnel Act.

At the time the Entry Commission was asked to make a presentation to the Blue Ribbon Commission, we offered evidence regarding the legal status of the Entry Commission and the results of a secret ballot which the staff completed regarding their classification preferences. Briefly, the Commission is a quasi-judicial, regulatory commission created outside of the executive. It is not "subject" to the executive, and is therefore appropriately placed in the exempt service under guidelines developed by the Blue Ribbon Commission.

The results of the secret ballot were also disclosed to the Blue Ribbon Commission. No staff member of the CFEC voted in favor of being changed to classified service. Four staff voted for partially exempt service. The remainder voted to stay as exempt. A tape recording was provided the Blue Ribbon Commission of the discussion which occurred between the staff and the commission directors prior to that vote. That tape could be obtained from them if you should wish to review the instructions which were provided the staff.

We are providing you with this memorandum to clarify any misconception which may have resulted from Ms. Shelley's testimony. Should you desire the commission to present formal testimony on this matter, we would be happy to do so. Our testimony would be in favor of the Commercial Fisheries Entry Commission's officers and employees being in the exempt service in accordance with Sec. 39.25.110(11)(A) as proposed in SB 193.



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 negotiation. Such an interpretation would immediately remove eligibility, 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

MEMO

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

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

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 relettered 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.

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 unobtrusive term of service.

Because to 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, I 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 (AS 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



NEA - ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

Robert C. Manners
Executive Secretary
Juneau Office

Robert C. Cooksey
Deputy Executive Secretary
Juneau Office

James D. Alter
Field Staff
Juneau Office

Charles L. O'Connell
Deputy Executive Secretary
Anchorage Office

Dianne Anderson
Field Staff
Anchorage Office

Steve Pulkkinen
Field Staff
Anchorage Office

Mary Ann Elninger
Deputy Executive Secretary
Fairbanks Office

JUNEAU OFFICE
147 SOUTH FRANKLIN #207
JUNEAU, ALASKA 99801
PHONE: (907) 586-3090

ANCHORAGE REGIONAL OFFICE
1411 WEST 33rd
ANCHORAGE, ALASKA 99503
PHONE: (907) 274-0536

FAIRBANKS REGIONAL OFFICE
825 COLLEGE ROAD
FAIRBANKS, ALASKA 99701
PHONE: (907) 456-4435

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.

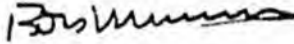
Exclusion at this time from exempt service status may have the effect of disenfranchising this group of employees of the State of Alaska from their statutory rights under 23.40, the Public Employees Relations Act, to organize and negotiate their terms and conditions of employment.

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

April 6, 1981

- Senator Jalmar Kertulla
Pouch V
Juneau, Ak 99811

Dear Senator:

recently found that Senate Bill 193 includes a section 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 Cameran, 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. Booher
Hiley
Bill Ray, Chairman
Blue Ribbon Commission on the State
Personnel Act
Ikerd
Sen. Vic Fisher, Chairman
Senate State Affairs Committee

All Called

CALL LIST ON SB 193

Wed. 1:30 pm

TELEPHONE

- ✓ 4970 JACK CHENOWETH OMBUDSMAN
- ✓ 4430 KEN KAREEN DIRECTOR, DIV. OF PERSONNEL
- 2200 FRED MULLER DEPT. OF ADMINISTRATION
- 276-3003 KATIE HURLEY COMMISSION ON THE STATUS OF WOMEN
- 586-6952 SUSAN CLARK Am.
- BOB MANNERS NEA - ALASKA
- ✓ 4081 BOB SIMON COMMERCIAL FISHERIES COMMISSION
- 586-2334 CAREY SWEENEY - ^{NON} APEA
- 11442 TERESA CRAWFORD - BLUE RIBBON COMMISSION STAFF

TERESA CANNON - EXPLAINS DIFFERENCE BETWEEN ORIGINAL BILL AND S.A.C.S. AND ANSWERED QUESTIONS BY COMMITTEE MEMBERS.

Sec: 13 (17) (20)

BENNETT - DO WE LARGEN THE STATUTE ~~AND~~ IN COLLECTIVE BARGAINING.

Price - Aug 1st Amendment provision for Public Employees 39.26.010 (3) - PARIC REQUESTS INCLUSION

Bob Simon - ~~Commission Employees~~ WANTS TO BE IN EXEMPT CLASSIFICATION

MULLER -

Sec 8 (39.25.110) (1) - WANTS TO DELETE

Sec 12 WANTS C-H DELETED (39.25.140)

PUT BACK IN C-E

Sec 13 39.25.150 (20) - AMENDMENT TO MINOR VETS ^{ALL JOBS} (OK)

(25) WANTS TO DELETE

(APEA's Amendment - WANTS TO KEEP)

Sec 20 - DELETE (OK)

Sec 21 - DELETE (OK)