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ALASKA PUBLIC EMPLOYEES ASSOCIATION

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TO: Senate State Affairs Committee

FROM: Darlene S. Livermore ^{DSL} for Cherie Shelley,
Executive Director

SUBJECT: Senate Bill No. 194
Opposition Statement

DATE: April 23, 1981

The current Alaska Statute 39.10.010 provides that it is unlawful for a person who is a spouse, or related by blood within the second degree of kindred (cousins, aunts, uncles) to the executive head of principal state department commissioner to be employed by that department.

SB 194 attempts to place a modified form of existing Personnel Rules, derived through the authority of 39.25.150, into statute. More importantly SB 194 appears to create a major inconsistency with AS 18.80.220. AS 18.80.220 provides that it is an unlawful employment practice to refuse employment or discriminate against an employee, because of marital status or changes in marital status (emphasis added). APEA believes that with the number of working couples working for the State of Alaska, often within the same department, there seems to be no valid reason for such discrimination.

With the Civil Service Reform Act of 1978, the federal government repealed its 97-year-old "members of family restriction" statute that prohibited employment of relatives in certain situations. Instead, the remaining regulation (Section 310 of Title V of the US Code), passed in 1968, is directed at abuse of power by elected officials. This nepotism statute prevents a public official or a member of Congress from appointing or promoting family members.

The formal government stance, backed up by a 1966 addition to Title V of the US Code, prohibits discrimination because of sex and marital status. Evidently it's effective. Under President Carter, eight married couples held jobs, with combined salaries of up to \$100,000.

Similar nepotism rules apply on the state level. For instance, Oregon is one of the few states with a law that prohibits discrimination based on family relationships.

Some other states do not have a real problem with nepotism in state employment. There are several reasons for this. In urban areas, in the lower 48, jobs are plentiful in many fields - professional, industrial and with private companies in a variety of office positions. Spouses and relatives, not necessarily through design, find themselves working in diverse fields, probably across town from each other.

Employment in Alaska is not diversified. Most job opportunities are available in only a few categories - namely, government, fishing and the oil industry. As a result, especially in the rural areas, or even in Juneau, geographic isolation, low population concentration and lack of commerce and industry, narrows the job field considerably.

From a personal point of view, and from experience with cases brought to the attention of APEA, it has been found that the greatest impact of this kind of curtailment has been on women. This seems to be from the simple fact that the expectation seems to be that women should or will step aside for their spouse.

It has been observed by the Association that promotions generally go to the male which in turn places them in conflict with their spouse's position. When this occurs the woman is generally transferred to a non-conflict situation although she may be giving up seniority in her work unit, work well known and personally satisfying, or in more extreme measures, forced to transfer agencies, take or request demotions, or leave the State service.

For the reasons stated, APEA must object to any changes in the current statute.

CS:DSL/p

INTRODUCTION OF BILLS (Senate)(cont'd)

SB 193 (cont'd)

New Section states that an employee may be dismissed, etc. by delivery of written notice of the proposed action and the reason for it from the appointing authority. Employee begins an appeal by filing a written request for review of the action with the Personnel Board within 15 days of receiving written notice (currently employee must request appeal within 15 days of dismissal, demotion, or suspension).

Sec. 17 adds new section to 39.25 which allows the use of subpoenas to compel the testimony of witnesses at hearings before the Personnel Board under 39.25.170.

Sec. 18 adds to 39.25 a new section containing definitions of fraud, knowingly, precinct, and state employee.

Sec. 19 adds new section to 39.25 entitled "Employee Political Rights." Allows a state employee to (1) be a member of a political party; (2) take part in a political campaign; (3) express political opinions; (4) register party preference; (5) serve as a voting or nonvoting delegate to a party convention; (6) be appointed, nominated, or elected to nonpartisan public office in a local government unit; and (7) make contributions to a political party or candidate for public office.

Sec. 20 repeals as 29.35.180, "Status of Present Employees" which is labeled "Obsolete" in updated version of statutes.

Provides Act effective July 1, 1981.

Introduced February 20 and referred to State Affairs and Judiciary.

Nepotism
in State
Employment

SENATE BILL NO. 194, by the Rules Committee by request of the Legislative Council (for the Blue Ribbon Commission on the State Personnel Act). Repeals and re-enacts current section relating to nepotism, AS 39.10.010. Existing section states that it is unlawful for a person who is the spouse of or is related by blood within and including the second degree of kindred to the executive head of a state department or agency to be employed in that department or agency. New section expands on this prohibition, specifying that it applies to departments and agencies in the legislative, judicial, and executive branches & extending it to relatives of Deputy and Assistant Commissioners, and to executive heads of agencies.

Adds subsection which prohibits a person from being appointed to a position in a division of a state department or agency, in any branch of government, if person is related to executive head of the division.

Adds a third subsection which prohibits a person from being appointed to a position in a state department or agency in the executive branch if person is related to an employee in the department or agency "unless the director of personnel and the person who makes the appointment approve the appointment in writing." This is the only case where exceptions may be allowed.

INTRODUCTION OF BILLS (Senate)(cont'd)

SB 194 (cont'd)

Provides Act effective immediately.

Introduced February 20 and referred to State Affairs and Judiciary.

Retirement
Benefits
(limiting
adjustments)

SENATE BILL NO. 195, by the Rules Committee by request of the Legislative Council (for the Blue Ribbon Commission on the State Personnel Act). Adds new subsections to AS 14.25.173 (Adjustment of Teachers' Retirement Benefits) and AS 39.35.520 (Adjustment of Public Emp. Retirement Benefits) which state that an adjustment which requires repayment of benefits may not be made under the section if (1) the incorrect benefit was first paid two years or more before the member or teacher or beneficiary (employee or beneficiary) was notified of the change or error; (2) the change or error was not caused by the member or teacher or beneficiary (employee or beneficiary); and (3) in the case of Public Employees' Retirement System, the change or error relates to the employee's credited service with the state and not with another participating employer. Act is retroactive to July 1, 1979. Effective immediately.

Introduced February 20 and referred to State Affairs and Finance.

Public Emp.
Retirement
Board
(membership)

SENATE BILL NO. 196, by the Rules Committee by request of the Legislative Council (for the Blue Ribbon Commission on the State Personnel Act). Changes the membership on the Public Employees' Retirement Board (AS 39.35.030). Currently, of the five members, three shall be members of the Personnel Board in the Dept. of Administration and the remaining two shall be members of the Public Employees' Retirement System, elected by members of the system. Bill changes composition of board so that one member is appointed by the Governor and the remaining four are members of the system, elected by the members of the system. Also adds a requirement that at least one of the elected board members be retired. Sec. 2 of bill states that a person serving on the Board on the effective date of Act who was from the Personnel Board of the Dept. of Admin. shall continue to serve until his successor is elected or appointed by the Governor. Does not provide for effective date.

Introduced February 20 and referred to State Affairs.

Regulations
(adoption of
by retire-
ment systems)

SENATE BILL NO. 197, by the Rules Committee by request of the Legislative Council (for the Blue Ribbon Commission on the State Personnel Act). Amends law so that regulations adopted by the state retirement systems are subject to the provisions of the Administrative Procedure Act. Currently sections is AS 39.35 and AS 14.25 relating to the adoption of regulations by the systems state that the regulations relate to the internal management of state agencies and their adoption is not subject to the Admin. Procedure Act. (Bill repeals and re-enacts 39.35.042 and 14.25.022.) Does not provide for effective date. Introd. 2/20, ref. to State Affairs & Judiciary.

Fed. Mgmt.
Areas
(citizens'
adv. comm.)

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 36, (see p. 16). Makes following changes to original bill: establishes the commission as a temporary advisory agency "of the executive branch" of the state and states that commission shall consider the views of



JUNEAU, ALASKA

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT
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Senator Bill Ray
Chairman

MEMORANDUM

April 20, 1981

TO: Senate State Affairs Committee

FROM: Teresa B. Cramer *TBC*
Administrative Assistant

SUBJECT: SB 194: Relating to Nepotism in State Employment

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

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

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

the statute to provide a mechanism for review should an instance of abuse arise.

SECTION BY SECTION ANALYSIS

Section 1. Subsection (a) prohibits the employment of a person related to the top-level managers of a department or agency. It encompasses the present substance of AS 39.10.010 and extends it to include deputy and assistant commissioners.

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

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

Section 2. Because the state is operating without an effective nepotism law, the commission recommends that the bill take effect immediately.

TBC:lmk
Attachment

PERSONNEL RULES

13 09.0 Nepotism

13 09.1 No person may be employed in a position in any agency who is the spouse of or is related by blood or marriage within and including the second degree of kindred to the appointing authority of the agency.

13 09.2 No person may be employed in a position in any division or subdivision of any agency who is the spouse of or is related by blood or marriage within and including the second degree of kindred to the head of the division or subdivision of the agency.

13 09.3 No person may be employed in a position in any agency who is the spouse of or is related by blood or marriage within and including the second degree of kindred to any other employee in the agency without the expressed approval of the appointing authority and the Director.