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REPORT OF THE  
BLUE RIBBON COMMISSION ON THE  
~~STATE PERSONNEL ACT~~

TO THE  
TWELFTH ALASKA STATE LEGISLATURE  
FIRST SESSION

Senator Bill Ray  
Chairman

February, 1981

SB 197

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

PURPOSE

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

SECTION BY SECTION ANALYSIS

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 AS 39.35.042 is repealed and reenacted to read:

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

Comment

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

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 AS 14.25.022 is repealed and reenacted to read:

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

Comment

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

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. Senate Bill No. 197  
 Title An Act Applying the Administrative Procedure Act (AS 44.62) to Adoption of Regulations  
 Requested by Senator Vic Fischer Date \_\_\_\_\_

II. FISCAL DETAIL

Agency Affected Administration - Division of Retirement and Benefits  
 Program Category Affected Labor Services  
 BRU, Program, or Subprogram(s) Affected 02-96-8-01-01 (PERS)  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 STATE TRS MATCHING						
100 BENEFITS						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
VETERAN'S FUND						
FISH & GAME FUND						
HIGHWAY FUND						
AIRPORT FUND						
CAPITAL FUND						
PERS						
TRS						
<u>POSITIONS</u> NONE						
FULL TIME						
PART TIME						
TEMPORARY						

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

IV. DATE 4/02/81 PREPARED BY Ken Humphreys, for Paul S. Arnold, Director  
 AGENCY Division of Retirement & Benefits  
 PHONE 365-3360  
 Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named) Senator Ray



JUNEAU, ALASKA

# Alaska State Legislature

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

Senator Bill Ray  
Chairman

## MEMORANDUM

April 3, 1981

TO: Senate State Affairs Committee

FROM: Teresa B. Cramer *TBC*  
Administrative Assistant

SUBJECT: SB 197 Applying the Administrative Procedure Act (AS 44.62)  
to Adoption of Regulations by State Retirement Systems.

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

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

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

TBC:lmk

Introduced: 1/20/81  
Referred: Health, Education &  
Social Services and Judiciary

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

1 IN THE SENATE

2 SENATE BILL NO. 101

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Teachers' Retirement System  
7 and authorizing adoption of regulations by the Alaska  
8 Teachers' Retirement Board."

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

10 \* Section 1. AS 14.25.020(a)(1) is repealed and reenacted to read:

11 (1) recommend to the board regulations to govern the opera-  
12 tion of the system;

13 \* Sec. 2. AS 14.25.022 is amended to read:

14 Sec. 14.25.022. REGULATIONS. Regulations adopted by the board  
15 [PROMULGATED BY THE ADMINISTRATOR] under this chapter [AS 14.25.010 -  
16 14.25.220] relate to the internal management of a state agency and  
17 their adoption is not subject to the Administrative Procedure Act  
18 (AS 44.62).

19 \* Sec. 3. AS 14.25.035 is amended by adding a new subsection to read:

20 (i) The board shall consider and may adopt, amend, or repeal  
21 regulations to govern the operation of the system.

22 \* Sec. 4. AS 14.25.220 is amended by adding a new paragraph to read:

23 (41) "board" means the Alaska Teachers' Retirement Board  
24 established under AS 14.25.035.

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26  
27  
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29  
*+ amend*

A M E N D M E N T

OFFERED IN THE SENATE:

By:  RAY

To: \_\_\_\_\_ SENATE BILL No. 101

HOUSE BILL No. \_\_\_\_\_

PAGE: 1

LINE: 16 - 18

Delete Lines 16 - 18 and replace with the following:

14.25.220] that only relate to the internal management of a state agency shall be posted for 30 days before their adoption. However regulations that concern matters of public policy shall be adopted under the Administrative Procedures Act (AS 44.62).

Introduced: 2/20/81  
Referred: State Affairs and  
Judiciary

BY THE RULES COMMITTEE BY  
REQUEST OF THE LEGISLATIVE  
COUNCIL (for the Blue Ribbon  
Commission on the State  
Personnel Act)

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

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

17  
18 Fred Muller - cumbersome, not necessary,

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20 APA requires rigid process

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22 Terry Cramer - public not adequately  
23 informed → ind. members of ret. system

24  
25 Cherie Trucl → apply Benefits  
26  
27 & (2) Deferred Compensation

TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

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PERS						
TRS						

POSITIONS NONE

FULL TIME						
PART TIME						
TEMPORARY						

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

IV. DATE 1/02/81 PREPARED BY Paul R. Arnoldt, Director  
 AGENCY Division of Retirement & Benefits  
 PHONE 465-4460  
 Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named) Senator Ray

*Ken Humphreys, for [Signature]*



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

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TBC:lmk

MEMO

TO: Vic

FROM: Nan *Smiles!*

DATE: April 10, 1981

RE: SB 101 entitled "An Act relating to the Teacher's Retirement System and authorizing adoption of regulations by the Alaska Teachers Retirement Board."

SB 101 before you in Senate HESS today is in direct conflict with SB 197 (see attached Exhibit A) which is part of the retirement package in State Affairs.

The current statutes (see Exhibit B, page 2) exempt regulations promulgated by the administrator from adoption in conformance with the procedures outlined in the Administrative Procedure Act (APA). "Administrator" as currently used in the Teachers' Retirement System means the Department of Administration.

SB 197 amends the law to require that both the Public Employees Retirement Board and the Teachers Retirement System Administrators comply with the Administrative Procedure Act when adopting regulations. Both retirement systems are presently exempted from the APA. The Blue Ribbon Commission recommends the change because of concern that regulations have been adopted in the past without adequate opportunity for public comment. Although rule-making under the APA may be more time-consuming than rule-making under the present methods of the retirement systems, the improved public notice requirements outweigh that disadvantage. In instances in which either retirement system is faced with a need for immediate change in regulations, the APA provides for emergency rule-making. AS 44.62.250.

SB 101 Analysis

Section 1 states that the Department of Administration may recommend regulations to the Teachers' Retirement Board.

Section 2 gives the Teachers' Retirement Board the authority to adopt regulations without following the procedures of the APA.

Section 3 gives the Teachers' Retirement Board the power to consider and adopt, amend or repeal regulations to govern the retirement system.

Section 4 amends the definition section of the act to define "board" to mean the Alaska Teachers' Retirement Board.

Note: As I interpret the amendments proposed in SB 101 there is no requirement that the Board adopt any regulations even though the Board has the authority to do so.

Sec. 1 of SB 101 repeals Sec. 14.25.020. Powers of the Administrator. (a) The administrator may

(1) promulgate and issue appropriate regulations having the force of law to implement this chapter and to cover matters not expressly touched upon or anticipated but implied by this chapter; *This section repealed, section is not replaced by any of the amendments proposed in SB 101.*

Overview of APA procedures for Adopting Regulations

The APA spells out specific procedures for adopting regulations such as notice, publication, opportunity for submitting comments and a public hearing. All regulations are reviewed by the regulations attorney in the Department of Law. All state agencies which by statute possess regulation-making authority must adopt regulations in conformity with the APA requirements. Cases interpreting regulations have held that when a conflict exists between a statute and a regulation, the statute prevails.

The Supreme Court will review regulations in the following manner: First, it will ascertain whether the regulation is consistent with and reasonably necessary to carry out the purposes of the statutory provisions conferring rule-making authority on the agency. This aspect of review insures that the agency has not exceeded the power delegated by the legislature. Second, the court will determine whether the regulation is reasonable and not arbitrary. This latter inquiry is proper in the review of any legislative enactment.

Introduced: 2/20/81  
Referred: State Affairs and  
Judiciary

BY THE RULES COMMITTEE BY  
REQUEST OF THE LEGISLATIVE  
COUNCIL (for the Blue Ribbon  
Commission on the State  
Personnel Act)

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4 TWELFTH LEGISLATURE - FIRST SESSION

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15 administrator under this chapter is subject to the Administrative  
16 Procedure Act (AS 44.62).

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Exhibit "A"

**Chapter 25. Teachers' Retirement.**

**Article**

**1. Teachers' Retirement System (§§ 14.25.010 — 14.25.020)**

**Article 1. Teachers' Retirement System.**

**Section**

- 10. Retirement system established
- 20. Powers of the administrator
- 22. Regulations
- 30. Duties of the administrator
- 35. Teachers' Retirement Board
- 40. Membership
- 45. Participation by National Education Association employees
- 50. Contributions by teachers
- 55. Supplemental contribution by a teacher
- 60. Arrearages
- 65. Transmittal of contributions
- 70. Contributions by employer
- 80. Contributions by the state
- 90. [Repealed]
- 100. Credit for service in the armed forces
- 110. Eligibility for service retirement
- 120. Manner of computing service retirement salary
- 130. Eligibility for disability retirement
- 135. Deferred retirement benefit

**Section**

- 137. Deferred vested retirement benefit
- 138. Notification of intention to retire
- 140. Manner of computing disability retirement salary
- 142. Cost of living allowance
- 143. Post retirement pension adjustment
- 145. Interest on individual accounts
- 150. Payment on withdrawal from system
- 160. Payment upon death of teacher
- 162. Survivor's allowance
- 164. Spouse's pension
- 168. Medical benefits
- 169. Duplicate benefits
- 170. Administration
- 180. Custody and investment
- 190. Actuarial evaluations of the retirement fund
- 200. Exemption from taxation and process
- 205. Time limit for application
- 210. Penalty for false statements
- 220. Definition of terms

**Sec. 14.25.010. Retirement system established.** A joint-contributory retirement system for teachers of the state is created. (§ 1 ch 145 SLA 1955; am § 1 ch 89 SLA 1960)

Am. Jur., ALR and C.J.S. references. — 40 Am. Jur., Pensions, § 1 et seq.; 47 Am. Jur., Schools, § 27 et seq.; 48 Am. Jur., Social Security, Unemployment Insurance and Retirement Funds, § 1 et seq.

Validity of statute providing for pensions for teachers, 37 ALR 1162.

Validity of repeal or modification of pension statute provisions, 52 ALR2d 437; 81 C.J.S. State § 94.

**Sec. 14.25.020. Powers of the administrator.** (a) The administrator may

(1) promulgate and issue appropriate regulations having the force of law to implement this chapter and to cover matters not expressly touched upon or anticipated but implied by this chapter;

(2) make expenditures from the retirement fund necessary to administer this chapter.

(b) The administrative expenditures permitted by (a) (2) of this section shall be included in the governor's budget for each fiscal year and are subject to appropriation by the legislature. (§ 4 ch 145 SLA 1955; am § 2 ch 142 SLA 1957; am § 3 ch 89 SLA 1960)

Exhibit "B"  
86  
Page 1

Sec. 14.25.022. Administrator management Administrative

Sec. 14.25.023. (1) establish retirement fu (2) approve (3) keep an (4) publish retirement fu (5) do what this chapter. 89 SLA 1960)

Sec. 14.25.024. the Alaska T appointed by member shall this chapter. governor a li (b) Member each member the rate estab (c) The bo and revenue of the Teache to them as th (d) The bo administrative information (e) The bo at the reques (f) rulings of retirement s (g) administrator to discuss pr consider and (h) The bo members, or (i) Expend teachers' re (j) Executive C (k) ch 61 SLA

governor's no

Education

Sec. 14.25.022. Regulations. ~~Regulations promulgated by the administrator under §§ 10 — 220 of this chapter relate to the internal management of a state agency and their adoption is not subject to the Administrative Procedure Act (AS 44.62). (§ 1 ch 13 SLA 1963)~~

Title 15  
Education

Sec. 14.25.030. Duties of the administrator. The administrator shall  
(1) establish and maintain an adequate system of accounts for the retirement fund;  
(2) approve or disapprove claims for retirement salary;  
(3) keep an official record of all proceedings;  
(4) publish annually a report showing the financial condition of the retirement fund; and  
(5) do whatever else may be necessary to carry out the purposes of this chapter. (§ 4 ch 145 SLA 1955; am § 2 ch 142 SLA 1957; am § 3 ch 89 SLA 1960)

Sec. 14.25.035. Teachers' Retirement Board. (a) There is established the Alaska Teachers' Retirement Board consisting of five members appointed by the governor for overlapping three-year terms. One member shall be a resident who is receiving retirement benefits under this chapter. Statewide teacher organizations may submit to the governor a list of recommended nominees to serve on the board.

(b) Members of the board serve without compensation except that each member may be reimbursed for actual and necessary expenses at the rate established in AS 39.20.180.

(c) The board shall confer with the commissioners of administration and revenue regarding the administration and the investment policies of the Teachers' Retirement Fund and may make such recommendations to them as they consider necessary.

(d) The board shall be furnished reports relating to the condition and administration of the retirement fund which shall be distributed for the information of the members of the system.

(e) The board shall serve as an appeal board and shall hold hearings at the request of an employer, employee, or any beneficiary in regard to rulings or decisions made by the administrator of the teachers' retirement system. The board shall submit its findings to the administrator. The board shall hold annually one or more public hearings to discuss proposed changes in the teachers' retirement system and to consider and adopt resolutions which might apply to this system.

(f) The board shall meet at the call of the chairman, any three members, or at the request of the commissioner of administration.

(g) Expenses for the board and its operation shall be paid from the teachers' retirement fund.

Executive Order No. 26, SLA 1964; am §§ 1 — 3 ch 85 SLA 1969; am § 1 ch 61 SLA 1972)

Revisor's note. — Under § 23, art. III of the state constitution, the governor can issue executive orders which have the force of law, if they are not disapproved by the legislature.

Exhibit "B"  
Page 2

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Administrator

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