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Sec. 39.10.010. Nepotism prohibited. 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 principal state department or agency to be employed in that department or agency. (1 ch 98 SLA 1959)

Am. Jur. 2d reference. — 63 Am. Jur. 2d Public Officers and Employees, § 97.

Chapter 15. Official Bonds.

Section	Section
10. Form, amount, and conditions	60. Number of sureties
20. Obligation and effect	70. Justification of sureties
30. Action on bond	80. Release of sureties
40. Recovery on defective bond	90. Proceedings for release of sureties
50. Procedure when bond becomes insufficient	100. Failure to file new bond

Sec. 39.15.010. Form, amount, and conditions. The official bond of an officer or employee of the state required by statute, or rule or regulation under authority of law shall be in a form joint and several, and made payable to the state in the penal sum and with the conditions required by law. (§ 11-2-1 ACLA 1949)

Cross reference. — As to surety bonds furnished by the principal executive officer of each department and subordinate officials, see AS 39.05.050.

Am. Jur. 2d references. — 12 Am. Jur. 2d, Bonds, § 1 et seq.; 63 Am. Jur. 2d, Public Officers and Employees, §§ 122, 414-482.

Sec. 39.15.020. Obligation and effect. Bonds of state officers and employees are in force and obligatory upon the principal and sureties for breach of the condition of the bond committed during the time the officer or employee discharges the duties of or holds the office or appointment. Each bond is considered in force and obligatory upon the principal and sureties for the faithful discharge of all duties required of the officer or employee by any law enacted after the execution of the bond and this condition shall be set out in the bond. (§ 11-2-2 ACLA 1949)

Sec. 39.15.030. Action on bond. An official bond executed by a state officer or employee is in force and obligatory upon the principal and sureties to and for the state, and for the use and benefit of all persons injured or aggrieved by the wrongful act or default of the officer or employee in his official capacity or employment. A person injured or aggrieved may bring suit on the bond in his name. (§ 11-2-3 ACLA 1949)

Public Utilities and Carriers Title 42

Public Records and Recordors Title 40

Public Resources Title 41

Public Utilities and Carriers Title 42

Article 1. Administration.

Section

- 10. Purpose of chapter
- 20. Appointing authority
- 30. Division of personnel and board
- 40. Director of personnel
- 50. Powers and duties

Section

- 60. Personnel board
- 70. Powers and duties of personnel board
- 80. Public records

Sec. 39.25.010. Purpose of chapter. (a) It is the purpose of this chapter to establish a system of personnel administration based upon the merit principle and adapted to the requirements of the state to the end that persons best qualified to perform the functions of the state will be employed, and that an effective career service will be encouraged, developed and maintained.

(b) The merit principle of employment includes the following:

(1) recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment;

(2) regular integrated salary programs based on the nature of the work performed;

(3) retention of employees with permanent status on the basis of the adequacy of their performance, reasonable efforts of temporary duration for correction in inadequate performance, and separation for cause;

(4) equal treatment of applicants and employees with regard only to consideration within the merit principles of employment; and

(5) selection and retention of an employee's position secure from political influences. (§ 1 ch 144 SLA 1960; am § 1 ch 46 SLA 1980)

Effect of amendment. — The 1980 amendment added subsection (b).

Legislative history report. — For report on original bill, see 1960 House Journal, p. 209.

Quoted in *Mueller v. Alaska State Bd.*

of Personnel, Sup. Ct. Op. No. 396 (File No. 738), 425 P.2d 145 (1967).

Am. Jur. 2d references. — 15A Am. Jur. 2d, Civil Service, § 1 et seq.; 1 Am. Jur. 2d, Administrative Law, § 1 et seq.

Sec. 39.25.020. Appointing authority. The authority to appoint to positions in the state service is as follows:

(1) The legislature is the appointing authority for all officers and employees of the legislature and the legislative agencies, but the authority to make appointments may be delegated.

(2) The governor is the appointing authority for all officers and employees of the executive branch, but the authority to make appointments may be delegated.

(3) The chief justice of the supreme court is the appointing authority for all administrative and clerical personnel of the state judicial system, but the authority to make appointments may be delegated.

(4) The board of regents is the appointing authority for all employees of the University of Alaska, but the authority to make appointments may be delegated. (§ 8 ch 144 SLA 1960)

Stated in State v. Bogenrife, Sup. Ct. Op. No. 918 (File No. 1665), 513 P.2d 13 (1973). Cited in Wolfe v. O'Neill, 336 F. Supp. 1255 (D. Alas. 1972).

Sec. 39.25.030. Division of personnel and board. There is established within the Department of Administration a division of personnel. There is established within the division of personnel a personnel board. (§ 9 ch 144 SLA 1960)

Sec. 39.25.040. Director of personnel. The head of the division of personnel is the director of personnel appointed by the commissioner of administration and responsible to the commissioner of administration for the execution of the duties and responsibilities imposed by this chapter and the rules adopted under this chapter. The director of personnel must have at least three years of practical working experience in the field of personnel administration. (§ 10 ch 144 SLA 1960; am § 3 ch 82 SLA 1975)

Sec. 39.25.050. Powers and duties. The director of personnel shall direct and supervise the administrative and technical activities of the division of personnel. In addition to the other duties imposed on him, he shall

- (1) administer this chapter and the personnel rules;
- (2) encourage and exercise leadership in the development of effective personnel administration in the state government;
- (3) develop, in cooperation with appointing authorities and others, programs for the improvement of employee effectiveness and morale;
- (4) attend meetings of the personnel board and serve as secretary for the board;
- (5) establish and maintain a roster of employees subject to this chapter;
- (6) prepare the rules, not inconsistent with this chapter, which are required to implement and administer this chapter;
- (7) perform other lawful acts which he considers necessary or desirable to carry out the purposes of this chapter. (§ 14 ch 144 SLA 1960)

The scope of rules prepared pursuant to this section is limited severely in AS 39.25.150, leaving the director of personnel very little discretion and virtually no policymaking power. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Quoted in Whaley v. State, Sup. Ct. Op. No. 465 (File No. 833), 438 P.2d 718 (1968).

Cited in State v. Bogenrife, Sup. Ct. Op. No. 918 (File No. 1665), 513 P.2d 13 (1973).

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION

DIVISION OF PERSONNEL
February 2, 1983

BILL SHEFFIELD, GOVERNOR

POUCH C-0201
JUNEAU, ALASKA 99811-0201
(907) 465-4430

Honorable Mitch Abood
Chairman
House State Affairs Committee
Alaska State Legislature

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Dear Mr. Chairman:

This is a follow up to my testimony given before the House State Affairs Committee on January 26, 1983. At your request I am reducing to writing some of my concerns about House Bill 49.

At the outset I wish to express my support for a nepotism bill for the Executive Branch of Government. At the present time AS 39.10.010 only prohibits spouses and close relatives of "... the executive head of a principal state department or agency..." from being employed. Therefore the need for additional prohibitions is obvious.

There are, however, some potential problems with House Bill 49 which I would like to point out:

1. Concepts of Nepotism - There are two concepts of nepotism, one of which should be decided on:
 - a. The Narrow Concept - Nepotism is the prohibition of a high official from using his or her influence to hire a spouse or other close relative.
 - b. The Broader Concept - Nepotism is the prohibition of spouses or close relatives working together.

Under the first concept, it would be permissible for two people to continue to work together provided they were married after being employed. Under the second broader concept, when two employees got married, one of them would have to quit because of apparent conflict of interest.

I recommend the narrower concept to allow people who meet on the job and decide to live together to have the choice of marriage.

It is my understanding that the phrase "A person may not be appointed..." incorporates the narrower concept only. I support this interpretation. However, I feel it is arguable. There-

fore, I recommend that the intent of the legislation be clear in the bill so that it will not be administered on the basis of an Attorney General's Opinion.

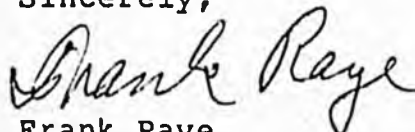
2. Possible conflict with Title 18. - Alaska law prohibits discrimination on the basis of marital status or change in marital status. To prohibit one from working with a spouse could be argued to be discrimination. The counter argument is that the discrimination is based on who a person is married to (that is a state employee) not on marital status per se (that is if a person is married or single). Again, I believe the argument should be settled prior to the adoption of the legislation.
3. Approval by the Director of Personnel - Paragraph C of House Bill 49 prohibits a person from being appointed to any executive branch, department or agency if they are the spouse or close relative to any other employee in that department or agency "...unless the director of personnel and the appointing authority approve the appointment in writing."

I recommend that language be changed to permit the executive head of a department or agency to give written approval. I see no need to have the Director of Personnel give approval. Furthermore, you may wish to state in the bill conditions under which commissioners and agency heads may give their approval. For example, it may be desirable to prohibit one spouse from supervising another.

4. Definition - I also suggest the bill provide a definition of "second degree of kindred". This is a term which, as I understand it, comes from probate law and which does in fact have a legal definition. However, that definition is not commonly understood nor readily available.

Thank you for the opportunity to give testimony before your committee and for considering these points. I will be glad to appear before you again to answer any questions or discuss any of these issues further.

Sincerely,



Frank Raye
Director

FR/sjh

c.c. Teresa E. Cramer
Blue Ribbon Commission

Commissioner Lisa Rudd
Department of Administration

Members of Blue Ribbon Commission

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. HB 49
 Title An Act relating in State employment
 Requested by House State Date January 24, 1983

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

EXPENDITURES (Thousands of Dollars)

	FY 83.	FY 84.	FY 85	FY 86	FY 87.	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0					

FUNDING (Thousands of Dollars)

GENERAL FUND	0					
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

No fiscal impact presuming the Executive Branch will not be expected to monitor or enforce this Act in the Legislative or Judicial Branch.

IV. DATE January 24, 1983 PREPARED BY Frank Raye
 AGENCY Administrator Personnel
 PHONE 465-4430

Original: Legislative Finance OMB Reviewed By: Liz Blecker
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

II. FISCAL DETAIL

Agency Affected Administration

Program Category Affected Centralized Administrative Services

BRU, Program, or Subprogram(s) Affected Labor Relations

(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 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, F						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-					
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME	-0-					
PART TIME	-0-					
TEMPORARY	-0-					

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

No fiscal impact.

Guy E. Stringham

IV. DATE 1-25-83

PREPARED BY *John P. Black*
AGENCY Division of Labor Relations
PHONE 465-4404

Original: Legislative Finance OMB Reviewed By: Liz Blecker
cc: Budget and Management
Prime Sponsor (First Legislator Named)



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

January 20, 1983

TO: House State Affairs Committee

FROM: Teresa B. Cramer *Teresa B. Cramer*
Administrative Assistant

SUBJECT: House Bill 49, Relating to Nepotism in State Employment

The existing statute prohibiting nepotism in state employment forbids only the employment of anyone related to the executive head of a department or agency. AS 39.10.010. The Personnel Rule is more extensive, prohibiting the employment of relatives of the head of a division or subdivision within that division or subdivision. In addition, the Rule prohibits the employment of two related persons in the same agency unless express approval is given by both the appointing authority and the Director of Personnel.

The scope of the Personnel Rule is broader than the statutory authority granted in AS 39.10.010. In addition, the rule-making authority given to the Personnel Board by the State Personnel Act may not extend to nepotism, since the nepotism statute is placed outside the Act. The Attorney General has advised the Division of Personnel that the nepotism rule may exceed the scope of statutory authority. A lawsuit has been filed challenging the Department of Transportation's implementation of nepotism prohibitions.

The Blue Ribbon Commission recommends that legislation prohibiting nepotism in state employment be adopted to provide statutory authority for the Personnel Rule. The prohibition against employing relatives does limit the opportunities for some Alaskans to find state jobs. The disadvantage to those people should be weighed against the appearance of impropriety and favoritism which is created by people working for a close relative. Problems can also arise if relatives are working in the same office so it is appropriate that the hiring decision be scrutinized with the potential for personnel problems in mind.

Bill Analysis

Page 1 The first section of the proposed legislation codifies the
Line 9 Personnel Rule. The first paragraph retains the existing
nepotism prohibition and extends it to include relatives of

deputy or assistant commissioners. The prohibition against employing a person related to the executive head of an agency applies to all legislative, judicial and executive branch agencies.

Line 17 The second paragraph adds new language based on the Personnel Rule to prohibit appointment of a relative of the head of a division within that division. It applies to positions in the legislative, judicial or executive branch.

Line 22 The third paragraph prohibits employment of two relatives within the same executive branch department or agency unless the appointing authority and the Director of Personnel approve the second appointment in writing.

In each of the paragraphs, relatives include spouses and persons within the "second degree of kindred", which the Personnel Rules define as:

father, mother, son, daughter, brother, sister, husband, wife, grandfather, grandmother, grandson, granddaughter, uncle and aunt including those involving half or step relationships.

Line 29 The second section of the proposed legislation provides for an immediate effective date.

Will TESTIFY

FRANK

RAYE

PERSONNEL
DIRECTOR

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1980

Personnel Rules
Administrative Codes

under any provision of these Personnel Rules or in any manner commit any fraud preventing the impartial execution of these Personnel Rules.

13 08.0 Rights of Others

No State employee or other person may defeat, deceive, or obstruct any person in his right to examination, eligibility, certification, appointment, or promotion under these 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.

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13 10.0 Information from Applicant

No State agency or agency supported in whole or in part by State funds may request or suggest that an applicant for employment provide information concerning the applicant's religious opinions, or his membership in fraternal organizations or of an applicant for a classified position as to his political convictions.

13 11.0 Outside Employment

13 11.1 No employee or official of the state shall engage in or accept private employment, or render services for private interest when such employment or service is incompatible with the proper discharge of his official duties.

13 11.2 No employee or official of the State may solicit, negotiate for, or promise to accept employment by or anything of substantial value from any person, firm or company with which he or his agency is engaged in the transaction of business on behalf of the state, or which may be affected by his official action.

13 12.0
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I. REQUEST

Bill/Resolution No. HB 49

Title An Act relating to nepotism in State employment

Requested by Abood

Date 1-25-83

II. FISCAL DETAIL

Agenc, Affected Administration

Program Category Affected Centralized Administrative Services

BRU, Program, or Subprogram(s) Affected Labor Relations

(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 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-					
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME	-0-					
PART TIME	-0-					
TEMPORARY	-0-					

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

No fiscal impact.

Guy E. Stronheim

IV. DATE 1-25-83

PREPARED BY Mr. P. [unclear]
AGENCY Division of Labor Relations
PHONE 465-4404

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named) OMB Reviewed By: Liz Blecker

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 49, SB 56

Title An Act relating to nepotism in State employment

Requested by House State Affairs

Date January 24, 1983

II. FISCAL DETAIL

Agency Affected Administration

Program Category Affected Central Administrative Services

BRU, Program, or Subprogram(s) Affected Personnel

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

EXPENDITURES (Thousands of Dollars)

	FY 83.	FY 84.	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0					

FUNDING (Thousands of Dollars)

GENERAL FUND	0					
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

No fiscal impact presuming the Executive Branch will not be expected to monitor or enforce this Act in the Legislative or Judicial Branch.

IV. DATE January 24, 1983

PREPARED BY Frank Raye

AGENCY Administrator Personnel

PHONE 755-4430

Original: Legislative Finance

OMB Reviewed By: Liz Blecker

cc: Budget and Management

Prime Sponsor (First Legislator Named)

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STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

RECEIVED
FEB 24 1983

STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

COPY

MEMORANDUM

February 24, 1983

SUBJECT: Nepotism
(HB 49)

TO: Representative Mitchell E. Abood, Jr.
Chairman, House State Affairs Committee

FROM: *LHA* Linn H. Asper
Legislative Counsel

You have asked whether the relationships included in the "second degree of kindred" as that term is defined in the proposed committee substitute for HB 49 are the same relationships that are traditionally associated with that phrase. The term "degree of kindred" is not defined in the Alaska Statutes. In other jurisdictions the "degree of kindred" between one person and another is normally determined as follows: Take the closest common ancestor of the two persons and count the generations back to that ancestor from each; each generation represents a degree of kindred. Thus, the first degree of kindred to a person includes the parents and children of that person, the second degree includes brothers and sisters, grandparents, and grandchildren, and the third degree includes nephews and nieces and aunts and uncles. In proposed CSHB 49 aunts and uncles are included within the definition of "second degree of kindred" although they would normally be considered to be in the "third degree of kindred". In other respects the statutory and common law definitions are the same.

It should be pointed out that since the definition of "second degree of kindred" in the proposed CSHB 49 only applies to the section in which it appears, the term can include any relationships that the legislature sees fit to include. You can also use a different term, such as "close relationship" if you feel that use of the traditional "degree of kindred" terminology will cause confusion.

LHA:ljb

Enclosure