

gov
18154

Introduced: 4/19/85
Referred: State Affairs and
Finance

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 390

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act placing the employees of the Alaska Power
7 Authority in the exempt service under the State
8 Personnel Act; and providing for an effective date."

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

10 * Section 1. AS 39.25.110(11) is amended to read:

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

- 13 (A) Alaska Gas Pipeline Financing Authority;
- 14 (B) Alaska Permanent Fund Corporation;
- 15 (C) Alaska Energy Center;
- 16 (D) Alaska Industrial Development Authority;
- 17 (E) Alaska Commercial Fisheries Entry Commission;
- 18 (F) Alaska Commission on Postsecondary Education;
- 19 (G) Alaska Power Authority;

20 * Sec. 2. AS 44.83.045(c) is amended to read:

21 (c) The authority shall employ an executive director who may,
22 with the approval of the authority, employ additional staff as neces-
23 sary. In addition to its staff of regular employees, the authority
24 may contract for and engage the services of legal and bond counsel,
25 consultants, experts, and financial and technical advisors the author-
26 ity considers necessary for the purpose of conducting studies, inves-
27 tigations, hearings, or other proceedings. The board of directors
28 shall establish the compensation of the executive director. The
29 executive director and staff of the authority are in the exempt

1 service under AS 39.25.110 [IS SUBJECT TO THE PROVISIONS OF AS 39.25.-
2 010 -- 39.25.220].

3 * Sec. 3. This Act takes effect immediately in accordance with AS 03.-
4 10.070(c).

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NB 390

Handwritten initials and date: "4/19"

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 19, 1985

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the exemption of the Alaska Power Authority's officers and employees from the State Personnel Act (AS 39.25).

The amendment in sec. 1 of the bill clarifies the status of the authority's executive director and staff by codifying a longstanding practice, i.e., treatment of the executive director and his or her staff as being in the exempt service. The members of the authority are already in the exempt service by virtue of AS 39.25.110(10), which places "members of boards, commissions, or authorities" in that category. Adding the Alaska Power Authority to the list in AS 39.25.110(11), as sec. 1 of the bill does, may create an element of redundancy regarding "members" and "officers," but that list already contains precedent for doing so, and it leaves no doubt as to this authority -- both members and staff -- being in the exempt service.

The amendment in sec. 2 of the bill corrects what appears to be an error made when AS 44.83.045 became law in 1978 (ch. 156, SLA 1978). AS 44.83.045(c) contains language making the executive director of the authority "subject to the provisions of AS 39.25" (which citation the revisor of statutes, evidently, changed to refer specifically to the sections of AS 39.25). The State Personnel Act covers all state employees, placing them in one of three categories of service: exempt, partially exempt, or classified. Making the executive director "subject to" the State Personnel Act merely means that he or she is either exempt, partially exempt, or in the classified service. In effect, the language in question has no meaning.

Section 2 of the bill, therefore, deletes that language from AS 44.83.045(c), and makes clear what category of service the executive director and the rest of the staff are in -- consistent with the amendment in sec. 1.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill Sheffield".

Bill Sheffield
Governor

**STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE**

4/19

Revision Date: _____

REQUEST

Bill/Resolution No.: HB-390
 Title: An act placing the employees of APA
 in the exempt service under the State Personnel Act
 Sponsor: Senate Rules Committee
 Requestor: Governor
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Alaska Power Authority
 Program Category Affected: _____
 BRU, Program or Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL			- 0 -			
400 SUPPLIES						
500 EQUIPMENT			NOT APPLICABLE			
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING						

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE						
----------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS			- 0 -			
OTHER						
TOTAL			NOT APPLICABLE			

POSITIONS:

FULL-TIME			- 0 -			
PART-TIME			NOT APPLICABLE			
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Robert D. Heath Phone: 276-0001
 Division: Alaska Power Authority Date: 4/12/85

Approved by Commissioner: _____ Date: _____
 Agency: _____

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

COMMITTEE COPY

ALASKA STATE LEGISLATURE	
14th... Legislature FIRST... Session	
HOUSE	BILL..... NO. 390
By THE RULES COMMITTEE BY.... REQUEST OF THE GOVERNOR	
"An Act placing the employees of the Alaska Power Authority in exempt service under the State Personnel Act; and providing for an effective date."	
Ak. Power Authority Personnel in Exempt Service	
Introduced in the House 4/19., 19. 85	

HISTORY IN THE HOUSE											
19 85	Read first time and referred to Committee on										
Apr. 19	STATE AFFAIRS AND FINANCE										
	Reported back with recommendation that										
	Read second time and										
	Read third time and										
	<table style="width: 100%;"> <tr> <td style="text-align: center;">PASS</td> <td style="text-align: center;">Effective Date</td> </tr> <tr> <td>Yeas</td> <td>Yeas</td> </tr> <tr> <td>Nays</td> <td>Nays</td> </tr> <tr> <td>Absent</td> <td>Absent</td> </tr> <tr> <td>Excused</td> <td>Excused</td> </tr> </table>	PASS	Effective Date	Yeas	Yeas	Nays	Nays	Absent	Absent	Excused	Excused
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Nays	Nays										
Absent	Absent										
Excused	Excused										
	Reconsideration										
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Nays	Nays										
Absent	Absent										
Excused	Excused										
	Reported correctly engrossed Signed by Speaker Sent to Senate										
CHIEF CLERK OF THE HOUSE											

HISTORY IN THE SENATE											
19	Read first time and referred to Committee on										
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	Read third time and										
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Excused	Excused										
	Reported correctly engrossed Signed by President Returned to House										
SECRETARY OF THE SENATE											

HISTORY IN THE HOUSE	
19	Received from Senate
	Concurred in Senate amendment thus adopting: VOTE
	Failed to concur in Senate amendment; asked Senate to recede VOTE
	Senate receded from amendment VOTE
	Senate failed to recede from amendment VOTE
	CC appointed by House
	CC appointed by Senate
	CC adopted by House VOTE
	CC adopted by Senate VOTE
	To enrolling Reported correctly enrolled Sent to Governor by Governor
	Filed with Lt. Governor
	Chapter No.

COMMITTEE COPY

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 390
 Title : Status of employees

 Sponsor : Governor
 Requestor : House Finance Committee
 Date of Request : 4/24/86

FISCAL DETAIL

Agency Affected : Alaska Power Authority
 BRU : _____

 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		-0-	-0-	-0-	-0-	-0-
TRAVEL		-0-	-0-	-0-	-0-	-0-
CONTRACTUAL		-0-	-0-	-0-	-0-	-0-
SUPPLIES		-0-	-0-	-0-	-0-	-0-
EQUIPMENT		-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES		-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS		-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS		-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-

CAPITAL		-0-	-0-	-0-	-0-	-0-
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REVENUE		-0-	-0-	-0-	-0-	-0-
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FUNDING : (Thousands of Dollars)

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS		-0-	-0-	-0-	-0-	-0-
OTHER		-0-	-0-	-0-	-0-	-0-
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

No Funds are needed to implement this Bill.

Prepared by : Representative Al Adams - Chairman
 Division : House Finance Committee

Phone : 465-3706
 Date : 4/24/86

Approved by Commissioner : _____
 Agency : _____

Date : _____

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

BILL SHEFFIELD
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 19, 1985

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

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The amendment in sec. 1 of the bill clarifies the status of the authority's executive director and staff by codifying a longstanding practice, i.e., treatment of the executive director and his or her staff as being in the exempt service. The members of the authority are already in the exempt service by virtue of AS 39.25.110(10), which places "members of boards, commissions, or authorities" in that category. Adding the Alaska Power Authority to the list in AS 39.25.110(11), as sec. 1 of the bill does, may create an element of redundancy regarding "members" and "officers," but that list already contains precedent for doing so, and it leaves no doubt as to this authority -- both members and staff -- being in the exempt service.

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Sincerely,

A handwritten signature in cursive script, appearing to read "Bill Sheffield".

Bill Sheffield
Governor



Alaska Public
Employees Association **APEA**

~~State Headquarters: 340 N. Franklin Juneau, AK 99801 (907) 586-2334~~
210 Ferry Way, Suite 200, Juneau, AK 99801
(907)586-2334

MEMORANDUM

TO: Representative Al Adams, Chairman
House Finance Committee

FROM: Cherie Shelley
Executive Director

SUBJECT: HB 390

DATE: April 21, 1986

House Bill 390 proposes to include employees of the Alaska Power Authority in the exempt service. While such designation may be appropriate for the Executive Director and certain high level, appointed positions, it is totally inappropriate for the vast majority of employees at the APA.

AS 39.25.130(a) establishes the criteria necessary to classify positions as part of the exempt service. They are:

1. The position involves principle responsibility for the determination of policy;
2. The position involves principle responsibility for the way in which policies are carried out; or
3. The position involves responsibilities and duties of a type not susceptible to the ordinary recruiting and examining procedure.

Clearly, a case can not be made for including employees of the Alaska Power Authority in the exempt service based upon the criteria established by law.

This group of employees includes secretaries, clerks, administrative assistants, accountants, and engineers. None of these positions are primarily responsible for the determination or interpretation of policy. Additionally, these positions have counterparts in the classified service for which hiring must be done from registers.

Fairbanks Field Office
825-D College Road
Fairbanks, AK 99701
Telephone: (907) 456-5412

Anchorage Field Office
833 Gambell Street, Suite A
Anchorage, AK 99501
Telephone: (907) 274-1688

Juneau Field Office
227 4th Street
Juneau, AK 99801
Telephone: (907) 586-6305

SB 292 will place over 80 positions in the exempt service. Hiring for these positions will not be covered by the standard personnel procedures of the State. There is no requirement for overview by the Division of Personnel. There is no requirement for competitive evaluation of candidates based upon education and experience. These positions become political appointments which can be doled out to friends and supporters of the current administration. We trust you will agree; this is not good public policy. Further, it is more expensive to place employees in the exempt service due to the cost of personal leave. A new employee receives 24 days a year which may be taken or cashed out upon termination.

While the committee is considering the issue, we suggest that past errors be corrected. The Alaska Commission on Postsecondary Education and the Alaska Commercial Fisheries Entry Commission are also unjustifiably included in the exempt service. The Blue Ribbon Commission on the State Personnel Act recommended that employees of these commissions be placed in the classified service.

The Fisheries Commission has 43 positions including analyst programmers, research analysts and fish permit clerks. Obviously, the degree of independent policy-making authority for these positions cannot justify inclusion in the exempt service. Likewise, the Commission on Postsecondary Education employs 61 people including records processors, repayment specialists and accounting technicians. Once again, there is no valid reason for including these positions in the exempt service.

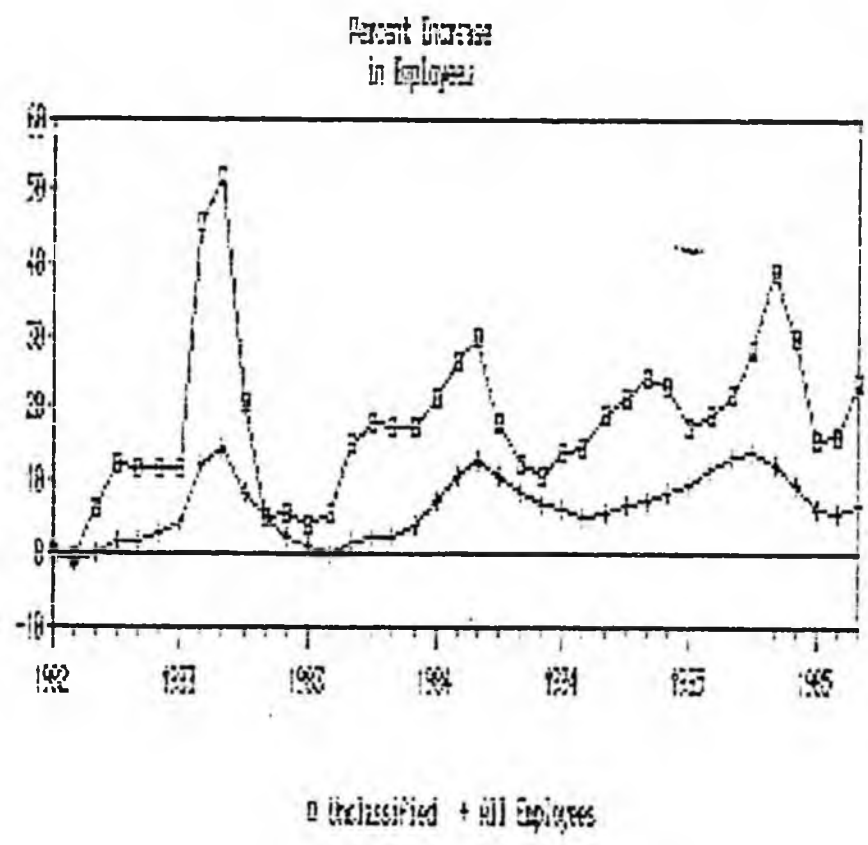
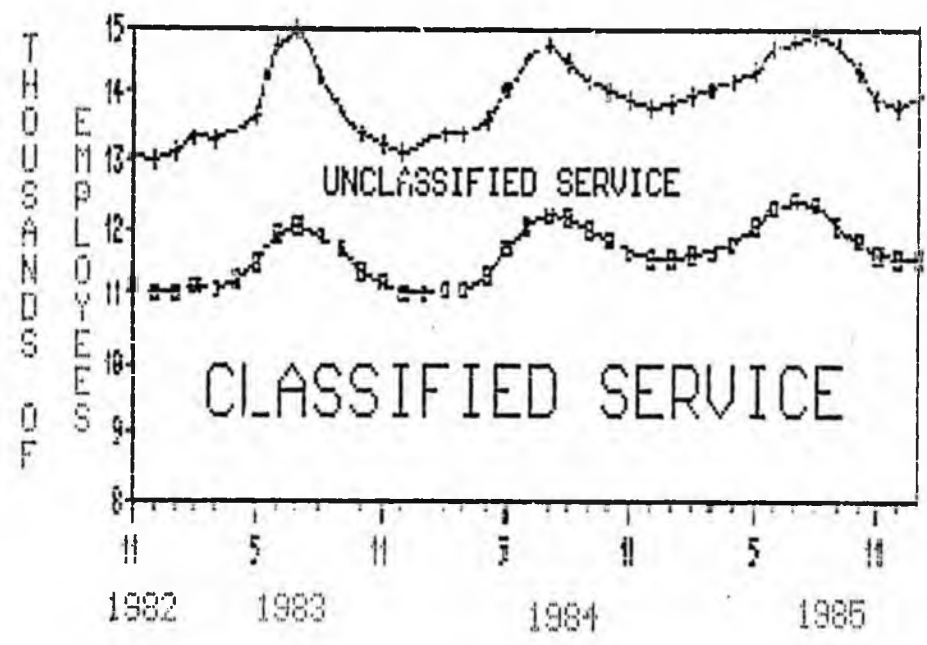
It is our understanding that this legislation was requested after an employee was fired without just cause. APA maintained that the Authority was an exempt agency and did not need just cause to terminate an employee. Upon investigation APA could not find any legal authority for that assertion. It is clear that the APA has violated Alaska Statute in treating their employees as exempt. APEA finds it interesting that the administration is proposing to place file clerks, mail clerks, correspondence secretaries, etc., in the exempt service while retaining the entire Division of Labor Relations, which negotiates all collective bargaining agreements for the State, in the classified service.

Of equal concern is the disproportionately large increase in the number of positions either created in or transferred to the exempt service since 1982. The authority of the administration to classify positions in the exempt service is being abused, as is evident by the attached graphs. Whereas the number of classified employees in state government has increased 3.82% since 1982, the number of unclassified positions has increased by 23.60%. This rampant disregard for the system circumvents the classification process and opens state government to political patronage.

The cause of good government in Alaska would be best served by following the procedures established by AS 39.25 whereby the Personnel Board determines those positions to be included in the exempt service.

CS/kr

SIZE OF EXECUTIVE BRANCH



□ Unclassified + All Employees

		CLASSIFIED SERVICE		UNCLASSIFIED		STATEWIDE TOTALS	
		NUMBER EMPLOYEES		NUMBER EMPLOYEES		NUMBER EMPLOYEES	
YEAR	MONTH	TOTAL	% incr.	TOTAL	% incr.	TOTAL	% incr.
1982	11	11,139	0.00	1,953	0.00	13,092	0.00
1982	12	11,055	-0.75	1,942	-0.56	12,997	-0.73
1983	1	11,039	-0.90	2,081	6.55	13,120	0.21
1983	2	11,146	0.06	2,197	12.49	13,343	1.92
1983	3	11,132	-0.06	2,188	12.03	13,320	1.74
1983	4	11,299	1.44	2,191	12.19	13,490	3.04
1983	5	11,516	3.38	2,183	11.79	13,699	4.64
1983	6	11,926	7.07	2,848	45.83	14,774	12.85
1983	7	12,037	8.06	2,965	51.82	15,002	14.59
1983	8	11,884	6.69	2,364	21.04	14,248	8.83
1983	9	11,721	5.22	2,051	5.02	13,772	5.19
1983	10	11,372	2.09	2,070	5.99	13,442	2.67
1983	11	11,190	0.46	2,036	4.25	13,226	1.02
1983	12	11,070	-0.62	2,070	5.99	13,140	0.37
1984	1	11,065	-0.66	2,252	15.31	13,317	1.72
1984	2	11,087	-0.47	2,309	18.23	13,396	2.32
1984	3	11,132	-0.06	2,303	17.92	13,435	2.52
1984	4	11,324	1.66	2,298	17.67	13,622	4.05
1984	5	11,698	5.02	2,380	21.86	14,078	7.53
1984	6	12,060	8.27	2,478	26.89	14,538	11.04
1984	7	12,262	10.08	2,540	30.06	14,802	13.06
1984	8	12,179	9.34	2,312	19.39	14,491	10.69
1984	9	12,030	8.00	2,199	12.54	14,228	8.98
1984	10	11,962	6.49	2,189	11.09	14,151	7.17
1984	11	11,666	4.73	2,237	14.54	13,903	6.19
1984	12	11,565	3.82	2,240	14.70	13,805	5.45
1985	1	11,543	3.63	2,329	19.26	13,872	5.96
1985	2	11,608	4.21	2,380	21.94	13,988	6.84
1985	3	11,673	4.79	2,430	24.42	14,103	7.72
1985	4	11,786	5.91	2,406	23.29	14,192	8.40
1985	5	12,057	6.24	2,302	17.67	14,359	9.68
1985	6	12,368	11.03	2,327	19.15	14,695	12.24
1985	7	12,476	12.00	2,381	21.92	14,857	13.48
1985	8	12,422	11.52	2,512	29.62	14,934	14.07
1985	9	12,050	8.18	2,720	39.27	14,770	12.82
1985	10	11,928	6.19	2,541	30.11	14,469	9.75
1985	11	11,639	4.49	2,265	15.98	13,904	6.20
1985	12	11,567	3.84	2,275	16.48	13,842	5.73
1986	1	11,564	3.82	2,414	23.60	13,978	6.77



Alaska Public
Employees Association **APEA**

~~State House quarters: 340 Al. Franklin Juneau, AK 99801 (907) 586-2334~~
210 Perry Way, Suite 200, Juneau, AK 99801
(907) 586-2334

MEMORANDUM

TO: Representative Al Adams, Chairmar
House Finance Committee

FROM: Cherie Shelley
Executive Director

SUBJECT: HB 390

DATE: April 21, 1986

House Bill 390 proposes to include employees of the Alaska Power Authority in the exempt service. While such designation may be appropriate for the Executive Director and certain high level, appointed positions, it is totally inappropriate for the vast majority of employees at the APA.

AS 39.25.130(a) establishes the criteria necessary to classify positions as part of the exempt service. They are:

1. The position involves principle responsibility for the determination of policy;
2. The position involves principle responsibility for the way in which policies are carried out; or
3. The position involves responsibilities and duties of a type not susceptible to the ordinary recruiting and examining procedure.

Clearly, a case can not be made for including employees of the Alaska Power Authority in the exempt service based upon the criteria established by law.

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Juneau Field Office
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Juneau, AK 99801
Telephone: (907) 586-6205

SB 292 will place over 80 positions in the exempt service. Hiring for these positions will not be covered by the standard personnel procedures of the State. There is no requirement for overview by the Division of Personnel. There is no requirement for competitive evaluation of candidates based upon education and experience. These positions become political appointments which can be doled out to friends and supporters of the current administration. We trust you will agree: this is not good public policy. Further, it is more expensive to place employees in the exempt service due to the cost of personal leave. A new employee receives 24 days a year which may be taken or cashed out upon termination.

While the committee is considering the issue, we suggest that past errors be corrected. The Alaska Commission on Postsecondary Education and the Alaska Commercial Fisheries Entry Commission are also unjustifiably included in the exempt service. The Blue Ribbon Commission on the State Personnel Act recommended that employees of these commissions be placed in the classified service.

The Fisheries Commission has 43 positions including analyst programmers, research analysts and fish permit clerks. Obviously, the degree of independent policy-making authority for these positions cannot justify inclusion in the exempt service. Likewise, the Commission on Postsecondary Education employs 61 people including records processors, repayment specialists and accounting technicians. Once again, there is no valid reason for including these positions in the exempt service.

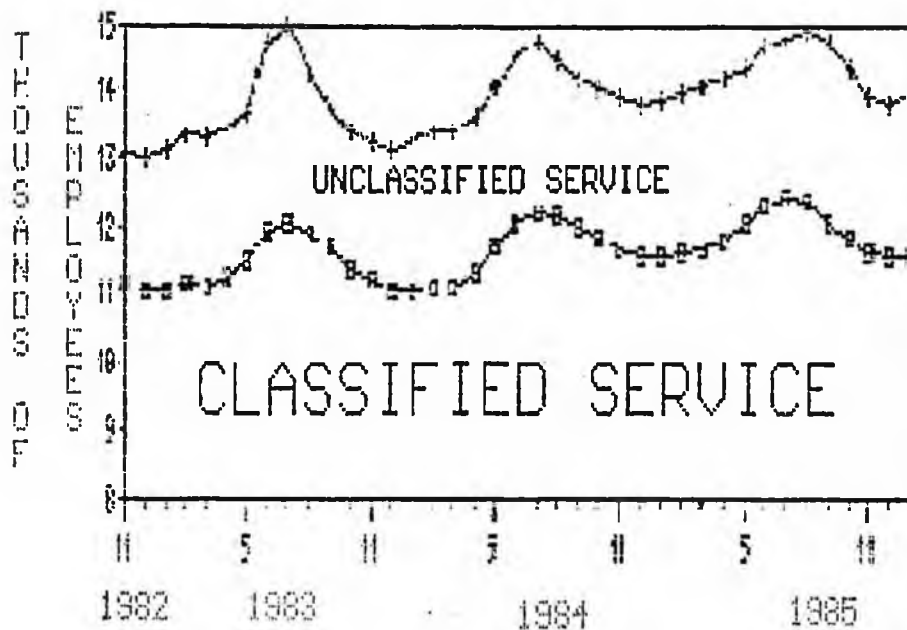
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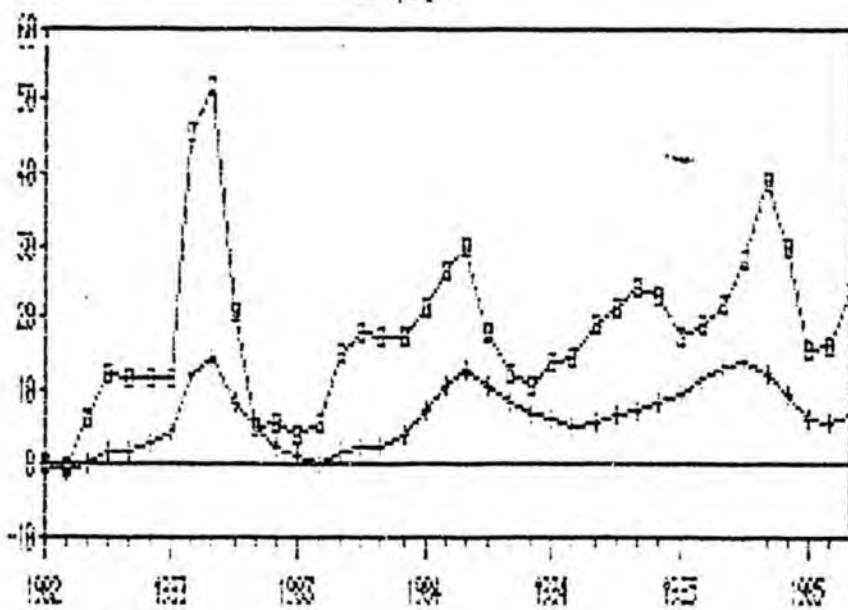
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CS/kr

SIZE OF EXECUTIVE BRANCH



Percent Increase
in Employees



□ unclassified + all Employees

		CLASSIFIED SERVICE		UNCLASSIFIED		STATEWIDE TOTALS	
		NUMBER EMPLOYEES		NUMBER EMPLOYEES		NUMBER EMPLOYEES	
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1983	3	11,132	-0.06	2,188	12.03	13,320	1.74
1983	4	11,299	1.44	2,191	12.19	13,490	3.04
1983	5	11,516	3.38	2,183	11.78	13,699	4.64
1983	6	11,926	7.07	2,848	45.83	14,774	12.85
1983	7	12,037	8.06	2,965	51.82	15,002	14.59
1983	8	11,884	6.69	2,364	21.04	14,248	8.83
1983	9	11,721	5.22	2,051	5.02	13,772	5.19
1983	10	11,372	2.09	2,070	5.99	13,442	2.67
1983	11	11,190	0.46	2,036	4.25	13,226	1.02
1983	12	11,070	-0.62	2,070	5.99	13,140	0.37
1984	1	11,065	-0.66	2,252	15.31	13,317	1.72
1984	2	11,087	-0.47	2,309	18.23	13,396	2.32
1984	3	11,132	-0.06	2,303	17.92	13,435	2.62
1984	4	11,324	1.66	2,298	17.67	13,622	4.05
1984	5	11,698	5.02	2,390	21.86	14,072	7.53
1984	6	12,060	9.27	2,478	26.99	14,533	11.04
1984	7	12,262	10.08	2,540	20.06	14,802	13.06
1984	8	12,179	9.34	2,312	19.39	14,491	10.69
1984	9	12,030	8.00	2,198	12.54	14,228	8.68
1984	10	11,962	6.49	2,159	11.05	14,121	7.17
1984	11	11,666	4.73	2,237	14.54	13,903	6.19
1984	12	11,565	3.82	2,240	14.73	13,805	5.45
1985	1	11,543	3.63	2,329	19.28	13,872	5.96
1985	2	11,608	4.21	2,380	21.94	13,989	6.84
1985	3	11,673	4.79	2,430	24.42	14,103	7.72
1985	4	11,786	5.81	2,406	23.20	14,192	9.40
1985	5	12,057	8.24	2,302	17.67	14,359	9.68
1985	6	12,368	11.03	2,327	19.15	14,695	12.24
1985	7	12,476	12.00	2,391	21.92	14,867	13.48
1985	8	12,422	11.52	2,512	29.62	14,934	14.07
1985	9	12,050	6.18	2,720	39.27	14,770	12.82
1985	10	11,828	6.19	2,541	30.11	14,369	9.75
1985	11	11,639	4.49	2,265	15.98	13,904	6.20
1985	12	11,567	3.84	2,275	16.49	13,842	5.73
1986	1	11,564	3.82	2,414	23.60	13,978	6.77

**Alaska Power Authority**

State of Alaska

April 23, 1986

The Honorable Al Adams
Chairman
House Finance Committee
P.O. Box V
Juneau, AK 99811

Dear Representative Adams:

HB 390, which relates to placing the employees of the Alaska Power Authority (APA) in the exempt service under the State Personnel Act, was introduced for the purpose of clarifying the legal status of the Executive Director and staff of the Alaska Power Authority.

Currently, the legal status pertaining to the employees of the Alaska Power Authority is not expressly stated through statute. The Authority has been advised by the Attorney General's Office to seek legislation clarifying the agency's status. The Alaska Power Authority Board supports the amendment to AS 39.25.110(11) and has adopted Resolution No. 1985-03, which requests the Governor to introduce legislation to specifically name the Alaska Power Authority as an agency in exempt service.

Of historical note, G. Thomas Koester, in his July 27, 1977 AG Opinion No. J-66-719-77, stated that there was intent by the Legislature for the Executive Director to be exempt from the State Personnel Act. He further stated that it was difficult to determine whether the Act applies to the APA staff. The opinion suggested that the staff employed by the APA be considered in the exempt service and not covered by the provisions of AS 39.25. This conclusion was based on the fact that the Authority is "a public corporation of the state," and has a "separate and independent legal existence."

In addition, the exempt status approach has been applied to other public corporations of the state, such as the Alaska State Housing Authority and the Alaska Housing Finance Corporation. However, being as the Attorney General viewed the exempt status approach to the Power Authority as

The Hon. Al Adams

-2-


April 23, 1986

not certain, legislation clarifying the status was recommended.

In another AG Opinion No. J-66-808-78 of July 11, 1978, by Rodger W. Pegues, it was pointed out that existing statute reference of AS 39.25 was made in error relating to the status of the Executive Director. The statutory reference should have been to AS 39.50. Further, it was Mr. Pegues' view that the "plain error rule controls." It was his understanding that the Statute Revisor would be asked to make a corrective amendment in 1979. Corrective action was not taken, and amendment is required.

The Board of Directors of the Alaska Power Authority reaffirmed their support for HB 390 at the March 24, 1986 board meeting. .

Sincerely,


Robert D. Heath
Executive Director

Attachments

cc: Members, House Finance Committee
Office of the Governor

July 27, 1977

The Honorable H. Phillip Hubbard
Commissioner
Department of Commerce and
Economic Development

AVRUM M. GROSS
ATTORNEY GENERAL

Legal status of executive
director and staff of
Alaska Power Authority
Our File: J-66-719-77

By:
G. Thomas Koester
Assistant Attorney General
Department of Law

You requested an opinion regarding the applicability of AS 39 to the executive director and staff of the Alaska Power Authority, AS 44.56. We understand that the thrust of your request relates to the coverage of these positions by the State Personnel Act, AS 39.25.

AS 44.56.050 provides that the executive director employed by the authority is subject to confirmation by the legislature. While the confirmation requirement is invalid, Bradner v. Hammond, 553 P.2d 1 (Alaska 1976), this is a clear indication that the legislature intended the executive director to be exempt from Personnel Act coverage. Therefore, we believe the Act has no application to the executive director position.

Whether the Act applies to the staff is difficult to determine. AS 44.56 provides no guidance, and we have been unable to discover anything in its legislative history to resolve the issue.

The statutes governing agencies similar to the Power Authority usually state expressly the status of employed staff (e.g., Municipal Bond Bank Authority: employees are in the classified service, AS 44.58.070; Small Business Development Corporation: employees are in the exempt service, AS 44.60.380). One notable exception is AS 18.55, the Alaska State Housing Authority (ASHA) Act. However, AS 18.55.070, the provision authorizing ASHA to employ staff, was enacted by the Territorial Legislature in 1949, several years before the Personnel Act was enacted in 1960. ASHA employees have been considered in the exempt service since 1960; ASHA has its own personnel rules which are similar to those governing "normal" state employment, but does not consider itself under the Personnel Act. The legislature arguably ratified this situation in 1971 when it created the Alaska Housing Finance Corporation (AHFC), AS 18.56, providing that "[t]he personnel of the corporation are exempt from AS 39.25 to the same extent as the personnel of [ASHA]." AS 18.56.070.

The Honorable H. Phillip Hubbard
Commissioner
Department of Commerce and
Economic Development

July 27, 1977

We suggest that staff employed by the Alaska Power Authority be considered in the exempt service and not covered by the provisions of AS 39.25. This conclusion is based on the fact that the authority, while "a public corporation of the state," has a "separate and independent legal existence," AS 44.56.020, the fact that the legislature arguably has ratified this approach, and the fact that this approach applies to most of the other public corporations of the state (ASHA, AHFC, Alaska Toll Bridge Authority, Small Business Development Corporation; the one exception is the Municipal Bond Bank Authority). However, note that whatever personnel system is established must incorporate merit principles. Alaska Const., art. XII, §6. Perhaps the authority can follow a system patterned after the ones employed by ASHA and AHFC.

However, because it is not certain that this approach is correct and it could be argued the other way, we urge you to seek legislative clarifying the status of staff employed by the Alaska Power Authority.

GTX:md

cc: V. Kent Dawson
Legislative Assistant
Office of the Governor

STATE
of ALASKA

MEMORANDUM

TO: Hon. Phillip Hubbard, Commissioner, DATE: July 11, 1978
 Department of Commerce & Economic
 Development FILE NO: J-66-808-78
 ATTN: Lois Cook TELEPHONE NO.

FROM: AVRUM M. GROSS SUBJECT: Status of personnel
 ATTORNEY GENERAL of the Alaska Power
 Authority

By: Rodger W. Pegues
 Assistant Attorney General

This responds to your request for our opinion as to the effect of the recent amendment to the APA's organic act which provides, "The executive director of the authority is subject to the provisions of AS 39.25."

We are advised on good authority that the amendment was proposed to make the executive director subject to the Conflict of Interest Act and that, by error, the reference was made to AS 39.25 rather than to AS 39.50. The bill was rushed through at the last minute, and passed without correction to the reference. The Statute Reviser will be asked to make a corrective amendment in his omnibus bill next year.

In our view, the plain error rule controls. The amendment makes sense only if it is read to be 39.50 rather than 39.25. Making a person "subject to" the State Personnel Act -- without anything more -- accomplishes nothing. Under that Act, one may be exempt, partially exempt, or classified. If the amendment is read to mean AS 39.25, i.e., the Personnel Act, then all it says is that the executive director is exempt, partially exempt, or classified. He is that now, i.e., he is exempt. Moreover, there is neither rhyme nor reason to place the executive director under the Personnel Act and not include his staff. That will be the result, however, if the amendment's plain language is followed. On the other hand, if the reference were to AS 39.50, i.e., to the Conflict of Interest Act, it would subject the executive director to that Act's requirements and thereby accomplish the amendment's purpose. Moreover, it would make sense to subject the executive director to that Act but not to include his staff. Accordingly, the reference to AS 39.25 must be considered plain error, and the status quo ante obtains.

That the amendment was intended to subject the executive director to the Conflict of Interest Act does not, however, mean that he is now subject to that Act. Until a

Lois Cook
July 11, 1978
Page #2

law has been passed subjecting him to that Act, he is not subject to it; it takes more than intent to make a law. Train v. City of New York, 420 U.S. 35, 45 (1975). Nothing prevents his filing a Conflict of Interest Statement voluntarily, however, or the authority's requiring him to file one as a condition of employment.

The answers to your questions then are as follows:

- (1) The executive director of the APA is in the exempt service.
- (2) The other employees of the APA are in the exempt service.

RWP/pjg

ALASKA POWER AUTHORITY
Resolution 1985-03

RESOLUTION BY THE ALASKA POWER AUTHORITY BOARD OF DIRECTORS RECOMMENDING THAT AS 39.25.110 BE AMENDED TO SPECIFICALLY NAME THE ALASKA POWER AUTHORITY AS A STATE AGENCY IN EXEMPT SERVICE.

WHEREAS, the Alaska Power Authority was created as a public corporation of the State of Alaska with a separate and independent legal existence in the Department of Commerce and Economic Development; and

WHEREAS, the Alaska Power Authority consists of a seven member board of directors required to employ an Executive Director, who employs additional staff as necessary, and is granted powers under AS 44.83.080 to carry on and further its corporate purposes; and

WHEREAS, the Alaska Power Authority, although considered to be a State agency in exempt service not covered by the provisions of AS 39.25 (the State Personnel Act), is not specifically named as such in this chapter; and

WHEREAS, the Authority has been advised by the Office of the Attorney General to seek legislation to provide clarification on the status of the Executive Director and staff;

NOW THEREFORE, BE IT RESOLVED, by the Board of Directors of the Alaska Power Authority:

That AS 39.25.110 is recommended for statutory amendment to specifically name the Alaska Power Authority as being a State agency in exempt service, thereby exempting the Authority from the provisions of the State Personnel Act;

BE IT FURTHER RESOLVED, that the Alaska Power Authority Board of Directors respectfully requests the Governor to introduce legislation providing for amendment to AS 39.25.110 as recommended herein.

This resolution having been submitted to a vote, the vote thereon was as follows:

YEAS: _____

NAYS: _____

ABSENT: _____

And the resolution was declared adopted on this the 26th day of MARCH, 1985.

ALASKA POWER AUTHORITY

BY: _____
Chairman

BY: _____
Secretary

Introduced: 4/19/85
Referred: State Affairs and
Finance

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2 HOUSE BILL NO. 390

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act placing the employees of the Alaska Power
7 Authority in the exempt service under the State
8 Personnel Act; and providing for an effective date."

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

10 * Section 1. AS 39.25.110(11) is amended to read:

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

13 (A) Alaska Gas Pipeline Financing Authority;

14 (B) Alaska Permanent Fund Corporation;

15 (C) Alaska Energy Center;

16 (D) Alaska Industrial Development Authority;

17 (E) Alaska Commercial Fisheries Entry Commission;

18 (F) Alaska Commission on Postsecondary Education;

19 (G) Alaska Power Authority;

20 * Sec. 2. AS 44.83.045(c) is amended to read:

21 (c) The authority shall employ an executive director who may,
22 with the approval of the authority, employ additional staff as neces-
23 sary. In addition to its staff of regular employees, the authority
24 may contract for and engage the services of legal and bond counsel,
25 consultants, experts, and financial and technical advisors the author-
26 ity considers necessary for the purpose of conducting studies, inves-
27 tigations, hearings, or other proceedings. The board of directors
28 shall establish the compensation of the executive director. The
29 executive director and staff of the authority are in the exempt

1 service under AS 39.25.110 [IS SUBJECT TO THE PROVISIONS OF AS 39.25.-
2 010 -- 39.25.220].
3 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-
4 10.070(c).